

Chapter 224

WETLANDS PROTECTION

GENERAL REFERENCES

Stormwater management — See Ch. 193.

Noncriminal disposition of violations — See Ch. 325.

Penalties — See Ch. 300.

§ 224-1. Purpose.

The purpose of this bylaw is to protect the wetlands, flood plains, water resources, and adjoining land areas in the Town of Ipswich by prior review and control of activities deemed by the Conservation Commission ("The Commission") likely to have a significant or cumulative effect on wetland values, including but not limited to the following:

Public or private water supply

Flood control

Erosion or sedimentation control

Storm damage prevention

Water quality

Water pollution prevention

Fisheries

Land containing shellfish

Wildlife habitat

(collectively, the "interest protected by this bylaw").

§ 224-2. Jurisdiction.

A. Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove soil or vegetation from, fill, dredge, build upon, discharge into, or alter the following Resource Areas: **[Amended 10-27-2015 TM by Art. 14, approved by Attorney General 2-1-2016]**

- (1) Coastal wetlands,
- (2) Freshwater wetlands,
- (3) Bank, beach, dune, marsh, meadow, swamp, or flat bordering on a water body; or
- (4) Land within 100 feet of these resource areas; or
- (5) Land under a water body; or

- (6) Land subject to flooding, tidal action or coastal storm flowage; or
 - (7) Vernal pools within a wetland resource area; or
 - (8) Land within 150 feet of the Grand Marsh Area of Critical Environmental Concern; or
 - (9) Riverfront Area as defined by MGL c. 131, § 40, as most recently amended.
- B. In any case where (i) a project or activity exceeds the review threshold contained in § 193-5 of Chapter 193, Stormwater Management, of the General Bylaws as may be amended, (ii) the project or activity does not require Site Plan Review, Definitive Subdivision or Special Permit Approval from the Planning Board, and (iii) only a portion of that project or activity occurs within the above Resource Areas, the entire project or activity shall be subject to the requirements of Section 2. V. E, "Stormwater Management" of the Rules and Regulations adopted pursuant to this bylaw as they may be amended from time to time. When acting thereunder, the Conservation Commission shall consult with the Department of Public Works regarding any proposed action. Otherwise any activity proposed or undertaken outside the above areas is not subject to regulation under this bylaw and does not require the filing of a permit application unless and until that activity actually alters any of the said resource areas. **[Amended 10-26-2010 STM, approved by Attorney General 2-24-2011]**
- C. In the event that the commission determines that such activity has in fact altered a Resource Area as identified in this bylaw, it shall impose such conditions on the activity or any portion thereof as it deems necessary to contribute to the protection of the interests identified in this bylaw.

§ 224-3. Definitions, exemptions, time frames, requirements, and performance standards.

- A. Except as otherwise provided in this bylaw or regulations of the Commission, including but not limited to § 224-19 of this bylaw, the definitions of terms, exemptions, limited projects, performance standards, time frames, and requirements in this bylaw shall be as set forth in the Wetlands Protection Act, MGL c. 131, § 40, and in 310 CMR 10.00 ("the State regulations") as may be amended from time to time. **[Amended 10-27-2015 TM by Art. 14, approved by Attorney General 2-1-2016]**
- B. The following definitions shall apply in the interpretation and implementation of this bylaw:
- (1) The term "Fresh Water Wetland" shall include any marsh, bog, swamp or wet meadow, whether or not it borders on a water body. Said wetland may be defined by its vegetational community, soil composition or hydrologic regime. A wetland not bordering on a body of water and not exceeding 5,000 square feet shall not be subject to protection under this bylaw, unless said wetland is or can be certified as a Vernal Pool, as established by Massachusetts Natural Heritage and Endangered Species Program's "Guidelines for Certification of Vernal Pool Habitat." **[Amended 10-27-2015 TM by Art. 14, approved by Attorney General 2-1-2016]**
 - (2) The term "water body" shall mean any creek, ocean or land subject to tidal action, lake, pond, river, estuary, or stream, whether intermittent or not, man-made or natural.
 - (3) The term "Land Subject to Flooding" shall mean all land subject to inundation by ground or surface water, including land within the 100 year floodplain, isolated land

subject to flooding, and bordering land subject to flooding as defined in the State regulations.

- (4) The term "Flood Plain" shall mean Bordering land subject to flooding as defined by 310 CMR 10.57(2)(a) as may be amended from time to time.
- (5) The term "Great Marsh Area of Critical Environmental Concern" shall include that portion of the state-approved Great Marsh ACEC identified in the publication entitled Coastal Areas of Critical Concern prepared by the Massachusetts Coastal Zone Management office, revised August 1989, and as further shown on a map entitled Great Marsh Area of Critical Environmental Concern, scale 1" = 1/4 mile, prepared by the Office of Coastal Zone Management as an enlarged composite of four maps from the United States Geological Service. **[Amended 10-27-2015 TM by Art. 14, approved by Attorney General 2-1-2016]**
- (6) The term "vernal pool" shall mean any vernal pool certified by the Massachusetts Division of Fisheries and Wildlife in accordance with 310 CMR 10.57.
- (7) The term "alter" shall mean to change the condition of any area subject to protection under this bylaw. Examples of alterations include, but are not limited to the following:
 - (a) Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
 - (b) Changing of pre-existing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
 - (c) Drainage or other disturbances of water level or water table;
 - (d) Dumping, discharging or filling with any material which may degrade water quality;
 - (e) Placing of fill, or removal of material, which would alter elevation;
 - (f) Driving of piles, erection or repair of buildings, or structures of any kind;
 - (g) Placing of obstructions or other dam-like structures in water;
 - (h) Destruction of plant life; **[Amended 10-27-2015 TM by Art. 14, approved by Attorney General 2-1-2016]**
 - (i) Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
 - (j) Any activities, changes or work which may cause or tend to contribute to pollution of any resource area under the jurisdiction of the Commission;
 - (k) Application of pesticides and/or herbicides.

§ 224-4. Filing procedure.

- A. A permit application ("Application"), which may be identical in format to state Wetlands Protection Act forms, as required pursuant to MGL c. 131, § 40, shall, at a minimum, have the same content as that required by these forms. The application shall include such plans

as may be necessary to describe the boundaries of wetland resource areas, the proposed activity, and its effects and potential impacts upon the ability of the resource area to protect the interests identified in this bylaw. No work shall begin until the permit, which may be the same as the permits issued under MGL c. 131, § 40, has been issued, all appeal periods have expired, and said permit, if required by MGL c. 131, § 40, has been recorded with the Registry of Deeds or Land Court, in accordance with § 224-18 of this bylaw. **[Amended 10-27-2015 TM by Art. 14, approved by Attorney General 2-1-2016]**

- B. The application shall be sent by certified mail, return receipt, or hand delivered to the Office at the Town Hall, or if necessary to the Planning Office. No such application shall be sent before all permits, variances, and approvals, except a building permit, required by local bylaw with respect to the proposed activity have been obtained except that such application may be filed, at the option of the applicant, after the filing of an application or applications for said permit, variances, and approvals; provided that such application shall include any information submitted in connection with such permits, variances, and approvals which is necessary to describe the effect of the proposed activity on the interests protected by this bylaw. **[Amended 10-27-2015 TM by Art. 14, approved by Attorney General 2-1-2016]**
- C. Any person filing a notice of intention with a Conservation Commission shall at the same time give written notification thereof, by delivery in hand or certified mail, return receipt requested to all abutters within 100 feet of the property line of the land where the activity is proposed, at the mailing addresses shown on the most recent application tax list of the assessors, including but not limited to, owners of land directly opposite said proposed activity on any public or private street or way and in another municipality or across a body of water. Said Notification shall be at the applicant's expense and shall state where copies of the notice of intention may be examined and obtained and where information regarding the date, time and place of notice mailed or delivered shall be filed with the Conservation Commission. The notification required by this section shall not apply to projects of the Department of Highways.
- D. The Commission is authorized to require the applicant to pay the reasonable costs and expenses borne by the Commission for reasonable expert engineering and consultant services deemed desirable by the Commission to review the Notice of Intent and/or the Request for Determination of Applicability. Said payment can be required at any time in the deliberations prior to a final decision being rendered. Said services may include, but are not limited to, wetland resource area surveys and delineations, wetland resource area reports, hydrogeological and drainage analysis, wildlife evaluations, shellfish surveys, and environmental/land use law. **[Added 10-22-1990 TM, approved by Attorney General 1-14-1991]**
- (1) The Commission is authorized to require said fee when the Notice of Intent and/or Request for Determination of applicability proposes any of the following: alteration of 500 square feet or more of a coastal or inland wetland resource area; 50 linear feet or greater of bank alteration to an inland or coastal waterway; 500 square feet or greater alteration to the buffer zone; alteration of greater than 500 square feet of land under a water body or the ocean discharge of any pollutants into or contributing to surface or groundwater or the wetland resource area or buffer zone; and/or the construction of any detention or retention basin or water control structure.
 - (2) Said fee shall be paid by the applicant to the Town of Ipswich into a professional service appropriation account of the Ipswich Conservation Commission set up for this

purpose which may be drawn upon by the Commission for services approved by the Commission at a public hearing. Any unused portion of said fee shall be returned by the Commission to the applicant within 45 calendar days of written request by the applicant, unless the Commission decides in a public meeting that other action is not necessary. Any applicant aggrieved by the imposition of, or the size of, the fee, or any act related thereto, may appeal according to the provisions of Massachusetts General Laws.

- E. The Commission may establish and amend an application fee schedule in addition to that authorized in Subsection D of this Section, to defray the reasonable expenses incurred by the staff of the Commission in its review and processing of applications filed under the provisions of this bylaw. Application fees collected pursuant to this paragraph shall be deposited in the general fund of the Town as unrestricted receipts. **[Added 10-17-1994 STM, approved by Attorney General 12-6-1994]**

§ 224-5. Entry upon private property; enforcement.

The Commission, its agents, officers and employees may enter upon privately owned land to perform their duties under this bylaw and make or cause to be made such examinations, surveys or samplings as the Commission deems necessary.

§ 224-6. Request to determine if bylaw applies.

An applicant may submit a written request to the Commission for a determination of the applicability of this bylaw to any land or work thereon. Upon receipt of said request, the Commission shall, within 21 calendar days, make a written determination as to whether this bylaw is applicable to land or work as described by plans submitted with the request, unless an extension is authorized in writing by the applicant.

§ 224-7. Hearing.

When an application for a permit as provided in § 224-4 has been submitted to the Commission, a public hearing on said application shall be scheduled by the Commission within 21 calendar days of the date of submission as determined by the date of receipt, unless an extension is requested or authorized in writing by the applicant. Notice of the time and place of such hearing and of the subject matter, sufficient for the identification, shall be given by the Commission (at the expense of the applicant) by advertisement in a newspaper of general circulation in Ipswich at least five business days prior to the date of such hearing.

§ 224-8. Burden of proof.

- A. The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not adversely affect the interests protected by this bylaw. The Commission may, if a majority of its members deem it necessary in order to make a decision before issuing a permit, require that the applicant provide an engineering, hydrogeological, botanical, or other study. No engineering, hydrogeological, botanical, or other study shall commence until such time as the applicant has agreed, in writing, to the specified study. The costs of such studies are to be borne by the applicant. Selection of a consultant to perform a required study shall be subject to the approval of the Commission. Said approval shall be based on the experience, qualifications and credentials of the consultant and shall not be unreasonably withheld.

- B. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not adversely affect the interests protected by this bylaw shall be sufficient cause for the Commission to deny a permit, or to grant a permit with conditions, or in the Commission's discretion to continue the hearing to another date to enable the applicant or others to present additional evidence. The Commission and the applicant may also mutually agree to continue the hearing.

§ 224-9. Permits and conditions. [Amended 10-27-2015 TM by Art. 14, approved by Attorney General 2-1-2016]

- A. The Commission shall issue a permit to the applicant or, if in the opinion of the Commission the proposed work described in the application may adversely affect the interests protected by this bylaw, deny such permit within 21 calendar days after the conclusion of the public hearing or such further time as may be agreed upon at the written request of the applicant. The Commission shall set forth in what manner the interests of this bylaw are affected in the permit or denial. The Commission may impose such conditions as it determines are reasonable to protect those interests. All work shall conform to the conditions set forth in the permit.
- B. In the event of a denial of an application, the Commission shall set forth in detail the reasons for the denial, and shall send notice of such action to the applicant by certified mail, return receipt requested, to the address stated on the application.
- C. Permits shall expire three years from the date of issuance. An applicant may apply for an extension before 30 calendar days prior to the expiration of the permit or extension and the Commission may grant extensions for one or more periods of up to three years each.

§ 224-10. Amendments to permits.

- A. The conditions contained in the permit issued under the provisions of § 224-9 may be amended by the Commission with the consent of the applicant. Amendments that may be approved by the Commission shall be limited to the following:
 - (1) Amendments by deletion provided that such deletions do not derogate the intent and purpose of the permit conditions.
 - (2) Perfecting amendments, inclusive of, but not limited to, the correction of typographical errors, and errors of reference.
 - (3) Amendments that alter the scope but not the intent of the particular condition being amended.
 - (4) Other amendments approved following notice and a public hearing.
- B. The Commission shall not approve any amendments to conditions contained in permits for work that has been completed in accordance with the provisions contained in the original permit.
- C. For good cause, the Commission may revoke or modify a permit issued under this bylaw, after notice to the holder of the permit, notice to the public, and a public hearing.

§ 224-11. Appeals.

Any aggrieved party may appeal the action or inaction of the Commission. Appeals may be taken as provided by MGL c. 249, § 4, as may be amended.

§ 224-12. Emergency projects. [Amended 10-27-2015 TM by Art. 14, approved by Attorney General 2-1-2016]

The notice provisions of this bylaw shall not apply to emergency projects initiated by the Town of Ipswich or other governmental Boards, Agencies, or Commissions necessary for the immediate protection of public health, safety and welfare of the citizens of Ipswich. However, the Commission shall be notified within 24 hours of the commencement of such projects. In the absence of members of the Commission, notification may be made to the Board of Selectmen, Town Manager, or Board of Health. A certificate of emergency condition shall be filed with the Commission by the Board, Town Manager, Agency, or Commission which authorized the project, within 14 calendar days after the initiation of work.

§ 224-13. Pre-acquisition violations.

Any person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of the provisions of this bylaw, or in violation of any order issued pursuant to this bylaw, shall forthwith comply with an order to restore such real estate to its condition prior to any such violations or to comply with conditions determined by the Commission if restoration is impractical. No action by the Town of Ipswich, civil or criminal, shall be brought against such person unless commenced within three years of the acquisition of the real estate.

§ 224-14. Rules and regulations.

After due notice and public hearing, the Commission may promulgate regulations and procedures for compliance with this bylaw, a copy of which shall be filed with the Town Clerk. Failure by the Commission to promulgate such procedures or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effects of this bylaw.

§ 224-15. Severability.

The invalidity of any section or provision of this bylaw shall not invalidate any other section, nor shall it invalidate any permit or determination which previously had been issued.

§ 224-16. Security.

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below and which have been approved by Town Counsel:

- A. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the reasonable judgment of the Commission;
- B. By a conservation restriction, easement or other covenant enforceable in a court of law executed and duly recorded by the owner of record, running with the land to the benefit of this municipality or its inhabitants whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage.

§ 224-17. Enforcement; violations and penalties.

- A. The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, enforcement orders, and civil or criminal court actions.
- (1) Upon request of the Commission, the Board of Selectmen and the Town Counsel may take legal action for enforcement under civil law. Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law.
 - (2) In addition to the duties previously set forth in this bylaw, the Commission, its agents, officers and employees, and any officer with police powers may issue enforcement orders directing compliance with this bylaw and may undertake any other enforcement action authorized by law. Enforcement orders issued or ratified by a majority of the Commission may be recorded in the Registry of Deeds if voted by the Commission. Any person who violates the provisions of this bylaw may be ordered to restore property to its original condition and take other actions deemed necessary to remedy such violations.
 - (3) No person shall remove, fill, dredge or alter any area subject to protection under this bylaw without the required authorization, or cause, suffer, or allow such activity or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with an enforcement order issued pursuant to this bylaw. Each day such violation continues shall constitute a separate offense except that any person who fails to remove unauthorized fill or otherwise fails to restore illegally altered land to its original condition after giving written notification of said violation to the Conservation Commission and the Department of Environmental Protection (the "Department") shall not be subject to additional penalties unless said person thereafter fails to comply with an enforcement order or order of conditions.
- B. Criminal complaint. Whoever violates any provision of the Ipswich Wetlands Protection Bylaw, regulations thereunder, or permits issued thereunder may be subject to indictment or complaint brought in District Court. Except as may otherwise be provided by law, and as the District Court may see fit to impose, the maximum penalty for any violation of these provisions shall be \$300 for each offense. Each day on which any violation exists shall be deemed to be a separate offense.
- C. Non-criminal disposition. In addition to the procedure set forth in Subsection B, the provisions of the Ipswich Wetlands Protection Bylaw may also be enforced by the Conservation Administrator or by a police officer of the Town, by a non-criminal complaint pursuant to the provisions of MGL c. 40, § 21D. Each day on which any violation continues to exist shall be deemed to be a separate offense.
- D. The penalties for violation of any provision of the Ipswich Wetlands Protection Bylaw shall be as follows:

	Buffer Zone	Wetlands Resource Area	Noncompliance With an Order of Conditions or Enforcement Order
1st offense	\$25	\$50	\$75
2nd offense	\$50	\$150	\$200
3rd offense and any subsequent	\$300	\$300	\$300

§ 224-18. Recording of permits and adjustments thereto.

Prior to the commencement of work subject to any permit issued under the provision of § 224-9 and any amendment thereof approved under the provisions of § 224-10, the permits and amendments thereto shall be recorded with the Essex County Registry of Deeds, or in the event that the permit has been issued for work on registered land, with the Land Court of the Commonwealth. A copy of the recorded permit shall be submitted to the Commission within 21 days of such recording.

§ 224-19. Effective date; applicability.

- A. This bylaw shall not apply to those projects and activities for which a Notice of Intent has been filed on or before August 15, 1990, and for which a Final Order of Conditions is ultimately issued by the Commission or the Department of Environmental Protection and to those projects for which an Order of Conditions is issued approving the project on or before September 1, 1990. The bylaw shall apply to all other projects and activities.
- B. This bylaw shall not apply to those projects or activities which are exempt from the provisions of the Wetlands Protection Act, MGL c. 131, § 40, as amended. This bylaw does not exempt those activities cited in 310 CMR 10.02(2)(b), as may be amended, unless specifically cited in the Ipswich Wetland Protection Bylaw rules and regulations. **[Amended 10-27-2015 TM by Art. 14, approved by Attorney General 2-1-2016]**