

Article ____ To see if the Town of Truro will vote to amend the Truro General Bylaws by adding a new Chapter VIII, Truro Conservation Bylaw, as follows:

Chapter VIII: Truro Conservation Bylaw

Section 1 Purpose

- 8-1-1 The purpose of this Bylaw is to protect the natural resources and wetlands existing in the Town of Truro by review and control of activities deemed to have a significant direct or cumulative adverse effect upon resource area values, including but not limited to public or private water supply, groundwater supply and quality, flood control, erosion and sedimentation control, storm damage prevention including coastal storm flowage, water quality, water pollution control, fisheries, shellfisheries, wildlife habitat, rare species habitat including rare plant and animal species, and aquaculture.
- 8-1-2 This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (G.L. c. 131 §40) and Regulations thereunder (310 CMR 10.00).

Section 2 Definitions

- 8-2-1 Except as otherwise provided in this Bylaw or in regulations of the Conservation Commission (hereinafter "Commission"), the definition of terms in this Bylaw shall be as set forth in the Wetlands Protection Act (G.L. c. 131 §40) and Regulations thereunder (310 CMR 10.00).

Section 3 Jurisdiction

- 8-3-1 No person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter any Resource Area or buffer zone without first filing a written Notice of Intent with the Commission of the Town of Truro and receiving and complying with an Order of Conditions issued by said Commission pursuant to this Bylaw.
- 8-3-2 Other than for emergency exemption identified in Section 9 herein, and the agricultural exemption contained in the Wetlands Protection Act (G.L. c. 131 §40) and Regulations thereunder (310 CMR 10.00), no other exemptions shall apply to this Bylaw, and a permit shall be required as set forth in this Bylaw whether or not an Order of Conditions is also required under the Wetland Protection Act or Regulations thereunder.

Section 4 Applications and Procedure

- 8-4-1 A written application in the form of a Notice of Intent (NOI) shall be filed with the Commission prior to the performance of any activities which involve removing, filling, dredging, building upon, degrading, discharging into or otherwise altering any Resource Area protected by this Bylaw. The permit application shall include such information and plans as are deemed necessary by the Commission to describe both the proposed

activities and their effects on the Resource Areas protected by this Bylaw. The NOI application shall be sent by certified mail or be hand-delivered to the Commission at the Town Offices.

- 8-4-2 Upon the written request of any person, the Commission may make a Determination of Applicability of this Bylaw to any proposed activity or to any area. Such a Request for Determination of Applicability (RDA) shall include such information and plans as are deemed necessary by the Commission to make the determination.
- 8-4-3 Filing of NOI or RDA application may be accomplished in the same manner as provided in the Massachusetts Wetlands Protection Act (G.L. c. 131 §40) and Regulations thereunder, and shall conform in all respects with any submission guidelines adopted by the Commission as part of its Regulations. The Commission, in its discretion, may hear any oral presentation under this Bylaw at the same public hearing required to be held under the provisions of the Wetlands Protection Act. The Commission may combine the orders issued under this Bylaw with the orders issued under the Wetland Protection Act.
- 8-4-4 At the time of filing an NOI or RDA application with the Commission, the applicant shall pay a filing fee set by the Commission to cover the costs of administering this local Bylaw. This fee is in addition to that required by the Wetlands Protection Act. These fees are not refundable.
- 8-4-5 Upon receipt of an application, or at any point during the hearing process, the Commission is authorized to require an applicant to pay a consultant fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. The specific consultant services may include, but are not limited to, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydro geologic and drainage analysis; and researching environmental or land use law. The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information available only through outside consultants is necessary for the making of an objective decision.

Section 5 Notice and Public Hearing

- 8-5-1 Any person filing an NOI, RDA or any other application with the Commission shall, at the same time, give written notice thereof, by certified mail (return receipt requested) or by hand delivery, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite any water body or any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality. The notice to abutters shall enclose a copy of the application or request, and shall state where site plans and additional information filed with the Commission may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice

mailed or delivered, shall be filed with the Commission. Written notice of the public hearing on such application shall be given by the Commission at the cost of the applicant at least five business days prior to the hearing, in a newspaper of general circulation in the municipality.

- 8-5-2 The Commission shall commence the public hearing within 21 days of receipt of a completed application unless an extension is authorized in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant. The Commission shall issue its decision, order or determination in writing within 21 days of the close of the public hearing thereon unless the applicant consents, in writing, to an extension.

Section 6 Action on Application

- 8-6-1 If the Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which will result therefrom, are likely to have a significant individual or cumulative effect upon the resource area values protected by this Bylaw, the Commission shall issue an Order of Conditions, permitting the activities requested or denying the application.
- 8-6-2 If the Commission issues an Order of Conditions permitting the work, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.
- 8-6-3 Where the work cannot be conditioned to avoid or prevent significant or cumulative effects upon the Resource Areas protected under this Bylaw, the Commission shall issue an Order of Conditions denying the project for failure to meet the requirements of this Bylaw. It may also deny a permit application for failure to meet the performance standards and other requirements provided for in the regulations of the Commission.
- 8-6-4 The Commission shall take into account the cumulative adverse effects resulting from past activities, permitted and exempt, and foreseeable future activities. In all determinations of the Commission, the applicant shall have the burden of proving by clear and convincing evidence that the activity proposed will not have a significant direct or cumulative effect upon the environmental values protected by this Bylaw. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

Section 7 Orders of Condition Permitting the Work

- 8-7-1 An Order of Conditions ("Order") shall expire three (3) years from the date of issuance. Any Order may be extended for a period of up to two (2) additional years, provided that a request for renewal is received in writing by the Commission prior to the expiration.

Notwithstanding the above, an Order may identify specific conditions which shall remain enforceable for a stated number of years beyond three (3), or indefinitely, or until permanent protection is in place, and shall be applicable to all successor owners of the land.

- 8-7-2 If any work subject to an Order of Conditions issued under this Bylaw is not completed within three (3) years from the date of issuance thereof, or any timely granted extension thereof, a new Notice of Intent must be filed, public hearing(s) held and the work re-conditioned or denied by the Commission applying all regulations in effect at the time of re-application.
- 8-7-3 The Commission may grant waivers and/or administrative review in cases where warranted, pursuant to rules adopted by the Commission..

Section 8 Appeals

- 8-8-1 Any person aggrieved by the Commission's order or determination or failure to act may appeal to the Department of Environmental Protection and to an appropriate court..

Section 9 Emergency Repair Exemption

- 8-9-1 Emergency Repairs. The NOI application required by Section 4 of this Bylaw shall not apply to emergency projects necessary for the protection of the property, or health or safety of the citizens of the Town of Truro. As used in this Section, the term "emergency project" means a project to remedy an unsafe or dangerous condition arising from storm, fire, or other disaster. The work permitted by this Section shall only include such work as shall be immediately necessary to ensure safety and to prevent further damage. Where storm or water damage washes out or undermines structure in coastal areas, property owners may secure such structures and may remove debris, and with the prior approval of the conservation agent and at least one member of the Commission, may also add, move or remove sand. In all instances, the emergency project shall be limited in scope to the work necessary to secure the area and prevent further damage. Any more extensive remediation shall only be undertaken in conformity with the procedures set forth in Section 4 of this Bylaw.
- 8-9-2 Procedure. The work of an "emergency repair" must be detailed in an "Emergency Repair Application" available from the Conservation Agent, and must be filed prior to the commencement of the work or within 24 hours after commencement. No filing fee shall be required. Following inspection of the site by the Conservation Agent, such application may be approved by the Agent, except as to those applications to move, add or remove sand, which may be approved by the Agent and at least one member of the Commission, following the site inspection. Upon completion of the "emergency repair" the applicant shall so certify to the Commission. All emergency repair applications, permits and certificates of completion shall be reviewed at the next regularly scheduled meeting of the Conservation Commission. All "'Emergency Repair Applications", permits and certificates of completion shall be maintained as public records of the Commission.

Section 10 Security

8-10-1 The Commission may require the posting of security in the form of a deposit of money, or negotiable securities, or other undertaking of financial responsibility, or a bond with surety running to the municipality, and sufficient as to form and surety in the opinion of the Commission's Counsel, to secure faithful and satisfactory performance of the work required by any Order of Conditions, in such sum and upon such conditions as the Commission may require. The amount of such bond shall not exceed 150% of the estimated cost of the work required or the restoration of affected lands and properties if the work is not performed as required, whichever is greater.

Section 11 Enforcement

8-11-1 The Commission, its agents and a constable shall have authority to enforce this Bylaw, its regulations and Orders issued thereunder by violation notices, administrative orders, citations, and civil court actions. Any person who violates provisions of this Bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

8-11-2 Any person who violates any provision of this Bylaw, or regulations, permits or administrative orders issued thereunder, may be punished by a fine of not more than \$300.00. Each day or portions thereof during which a violation continues shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

Section 12 Regulations

8-12-1 After public notice and public hearing, the Commission may promulgate and, from time to time, amend, rules and regulations to effectuate the purpose of this local Bylaw, which shall become effective when voted by the Commission and filed with the Town Clerk. The scope and extent of the Commission's authority to promulgate and amend rules and regulations shall be limited to defining key terms in this Bylaw, creating and defining performance standards for specific Resource Areas, creating and defining design standards for specific categories of projects (i.e., fences, docks, landscape or mitigation plans, etc.), creating consultant and filing fee schedules, creating schedules for fines, creating policies and procedures relative to filings and variances, and creating administrative review procedures for smaller projects. More substantive regulations which exceed the scope and extent described above will require further Town Meeting vote. Failure or delay by the Commission in promulgating such regulations, or a legal declaration of their invalidity by a court of law, shall not act to suspend or invalidate the effect of this Bylaw, nor shall such failure be construed to require the Commission to apply only the minimum standards contained in the Wetlands Protection Act and Regulations where this Bylaw authorizes greater protection for Resource Areas protected by this Bylaw.

Section 13 Severability

8-13-1 The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any order of determination which previously has been issued.

Or to take any other action relative thereto.

Comment:

The Truro Conservation Commission's primary purpose is to apply the state's Wetlands Protection Act to local projects as they arise. The Commission has found, however, that while the Act provides excellent general guidance to the Commission, there are times it does not address Truro's particular local needs. The Conservation Commission urges adoption of this proposed bylaw to give the Commission added latitude and flexibility, while ensuring standardized treatment through regulations: benefits all of the other towns on the Cape and most of the towns in the Commonwealth, have recognized and put in place.

The Truro Conservation Commission seeks this by-law so we can tailor our procedures and rules to our local situation. For example, this past winter when big storms caused massive erosion all along our coastal banks and beaches, we experienced severe damage to the serpentine fences that have, over the past several years, expanded to line almost the entire bay side, from South Truro to Beach Point. Most of the fences between Corn Hill and North Truro were partly or entirely destroyed, and debris from these fences was strewn everywhere, including hundreds of pieces of loose wood pickets with nails sticking out of them. The Conservation Commission decided that we needed to establish rules for construction of these fences, including requiring that the wooden pickets and poles in the fences be marked with lot and parcel number, to identify the owners, so when the fences are washed out in storms the owners can be charged with the cost to clean up our beaches.

We had a series of hearings and developed a "fence policy." However, because we don't have a local conservation bylaw, we cannot make that "policy" binding on property owners. In the course of the hearings we held on our "policy," many people, including builders, suggested that we have property owners post bonds when they construct these fences, so that the cost of cleanup will be covered by the bond. However, unless we have a local bylaw, we cannot ask for bonds from property owners. This is just one example of a local problem that needs a local solution, and the only way we can fashion such local solutions, is to pass a local Conservation bylaw.

Most of the issues that come before the Truro Conservation Commission can be handled under the state Wetlands Protection Act, but some issues, like the fences, are not covered by the state law and need to be addressed by local rules. This bylaw will allow us to make local rules, and to establish fair and uniform procedures for maintenance permits (which are not allowed under the state law) and for administrative review, waivers and variances, so that everyone who comes before the Conservation Commission can know in advance what is required and can be assured of fair and equal treatment.