

## **TOWN OF HAMILTON, MASSACHUSETTS GENERAL WETLANDS PROTECTION/CONSERVATION BYLAW**

### **SECTION 1: Introduction and Purpose**

The purpose of this Bylaw is to protect the wetlands, water resources, flood prone areas and adjoining upland areas in the Town of Hamilton by controlling activities deemed by the Hamilton Conservation Commission [hereafter referred to as “the Commission”] as likely to have a significant or cumulative effect on Resource Area values, either through immediate and direct action such as land development, or through delayed or indirect actions such as pollution; or the introduction of stressors into an environment, such as acid rain or invasive species. While the root causes behind delayed or indirect actions such as those listed may lie outside the scope of the Commission’s jurisdiction, or of the Town of Hamilton itself, actions taken within the scope of the Commission’s jurisdiction will aim to avoid contributing to such root causes to the maximum extent practicable.

These Resource Area values in Hamilton include, but are not limited to, the following: public or private water supply and quality, groundwater supply and quality, aquifer recharge and discharge, flood control, erosion and sediment control, storm drainage and damage prevention, prevention and control of pollution, carbon sequestration, ecosystem services such as air and water filtration, wildlife habitat, rare species habitat including rare plant and animal species, agriculture, and recreation.

This Bylaw is intended to utilize the Home Rule authority of the Town of Hamilton to confer authority on the Commission to adopt its own Regulations so as to protect the resource areas in Hamilton under the Wetlands Protection Act (G.L. Ch. 131 s. 40; “the Act”) to a greater degree; to protect additional resource areas beyond the Act recognized by the Town as significant; to protect all resource areas for additional values beyond those recognized in the Act; to impose in local regulations and permits additional standards and procedures stricter than those of the Act and Regulations (310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth and other relevant bylaws of the Town of Hamilton; and to impose fees as necessary to cover the cost of consultants and administration.

### **SECTION 2: Definitions**

Except as otherwise provided in this Bylaw or Regulations of the Commission, the definitions of terms referenced in this Bylaw shall be as set forth in the Wetlands Protection Act and in the Regulations thereunder, 310 CMR 10.00. The following subset of definitions shall apply in the interpretation and implementation of terms within this Bylaw, and be noted in the text through the use of capital letters:

**Alter** – Includes, without limitation, the following activities when undertaken upon, within or affecting Resource Areas (see definition) protected by this Bylaw:

- a. Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;

- b. Changing of pre-existing drainage characteristics, flood retention characteristics, flow patterns, or changing of preexisting soil profiles;
- c. Drainage or other disturbance 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, or erection, repair or removal of buildings or structures of any kind;
- g. Placing obstructions or objects in water;
- h. Destruction of plant life, including but not limited to cutting of trees;
- i. Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
- j. Any activities, changes, or work, including bi-section by roads and the construction of septic tank leach fields, which may cause or contribute to degradation or pollution of any body of water or groundwater;
- k. Such other activities which have, or may have, a cumulative adverse impact on the resource areas protected by this Bylaw.

**Buffer Zone** - see “*Regulated Buffer Zone*”

**Cumulative Effect** – An effect that is significant when considered in combination with, or as part of, the effect of other activities that have occurred, are going on simultaneously, or that are likely to occur, whether such other activities have occurred or are contemplated as a separate phase of the same project, such as the build-out of a subdivision or an industrial park, or unrelated but reasonably foreseeable actions, including other development projects that are currently under construction, under review, or that may be expected to come forward.

**Edge Effects** – The result of a transition between significantly different natural habitats. In essence, it is a break in continuity between adjacent habitats, leading to changes in the environmental and biological conditions. Edge effects may appear, for example, as a consequence of the construction of a highway or of a forest fire. Not all habitat edges present the same characteristics, as they may have significant differences, depending on the ecosystem and the conditions under which they have appeared. In this sense, there might be a smooth transition area between two adjacent habitats, which allows for a higher biological circulation (movement of species between habitats) and a lower flow of physical variables (such as the existence of a lower temperature gradient). On the other hand, more “abrupt” edges present less species exchange between habitats and a higher flow of physical variables, which is detrimental to species stability. Edge effects are usually linked to habitat fragmentation, destruction, or degradation. Habitat degradation and loss, which are caused by fragmentation and edge effects, are behind 30% of all species extinctions.

**Edge Habitat** – Edge habitat is found where one habitat type meets another. For example, where the tree line of a forest meets a farm field is edge habitat. Roadsides, thickets, barnyards, old fields, ditches, fence rows, building ledges and rooftops, vacant lots, urban areas, power line corridors, borders of streams, rivers, ponds, swamps and lakes and many other areas qualify as edge. Habitat edges are not the ideal environment for plant and animal species that utilize such habitats, as individual organisms are subject to more extreme environmental conditions, such as stronger insolation, and the alteration of light cycles, noise, temperature and humidity fluctuations, etc. from those found in the center of any given habitat.

**Intermittent Stream** – Intermittent streams lack surface water flow within them throughout the year. Intermittent streams begin at the point a river ceases to be perennial, and may encompass a series of hydrologically connected pools, regardless of surface water flow. Intermittent streams are most commonly upgradient of all bogs, swamps, wet meadows and marshes. An area which can be documented as having no flow for 5 consecutive days in non-drought status conditions may be certified under this Bylaw as an Intermittent Stream.

**Land Subject to Flooding** (Isolated and Bordering) – means land subject to periodic inundation by ground water or surface water as defined under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Sec. 40, and regulations thereunder, 310 CMR 10.00, in a “1%” storm/”100 year” storm. The current National Oceanic and Atmospheric Administration (NOAA) Atlas14 methodology assumes climate stationarity — an assumption that is undercut by climate change. Also, the current funding model presents challenges to timely volume updates, which are done on a region by-region basis spanning several decades. Therefore, the Commission will require these determinations to be made in accordance with the most recent rainfall prediction models, such as those currently being generated through the Texas Tech University Climate Center ([Climate Center Data | Climate Center | TTU](#)), which helped to generate Cambridge’s FloodViewer ([Understanding Flood Risks & Protecting Your Property - City of Cambridge, MA \(cambridgema.gov\)](#)), which is among the most realistic efforts taken locally to account for future flood risks.

*(Metchis, K., Beller-Simms, N., Hodgins, M., Mecray, E., & Speciale, A. (2022). Our Changing Precipitation: A Conversation on the Science of Precipitation and Planning for the Future. National Oceanic and Atmospheric Administration, Climate Program Office, Adaptation Sciences Program.)*

**Maintenance** – Routine and/or periodic activity undertaken to prevent, stop, or to correct deterioration of an existing condition, facility or structure so that, after completion, the condition, facility, or structure is as near as possible to that which originally existed.

**Permit Application** – Any application for a permit or action under the Massachusetts Wetlands Protection Act, MGL Chapter 131 Sec 40, or this Bylaw. Examples include, but are not limited to, a Commission Administrative Approval Form, Notice of Intent, Abbreviated Notice of Intent, Abbreviated Notice of Resource Area Delineation, or request for an Amendment to a Notice of Intent or Extension to an Order of Conditions.

**Person** – Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town Bylaws, administrative agencies, public or quasi-public corporations or bodies, Town of Hamilton, and any other legal entity, its legal representatives, agents, or assigns.

**Plans** – Such data, maps, engineering drawings, calculations, specifications, schedules and other materials, to describe a site and/or work proposed thereon, to determine the applicability of this Bylaw or to determine the impact of the proposed work upon the Resource Area values identified in the Bylaw. An applicant shall submit, in addition to those plans specified in this Bylaw and the Regulations of the Commission, such plans as are deemed necessary by the Commission.

**Recreation** – Any passive leisure activity that does not conflict with or diminish wetland functions or the Resource Area values protected under this Bylaw. Examples include, but are not limited to,

the following: legally licensed fishing, boating, swimming, walking and hiking, canoeing, and bird watching.

**Regulated Buffer:** The Regulated Buffer is a Resource Area that includes:

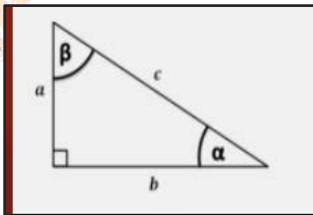
- the **100 ft. Wetlands Regulated Buffer** - extends 100 feet horizontally outward from the boundary of any Resource Area listed in this Bylaw in Section 3(1). Namely: Any freshwater wetland, isolated wetland, marsh, wet meadow, spring, bog or swamp; any Bank; any land under water bodies or waterways; any reservoir, lake, or ponds of any size; any land subject to inundation by groundwater; any Land Subject to Flooding;
- the **200 ft. Vernal Pool Regulated Buffer** - extends 200 feet horizontally outward from the boundary of any Vernal Pool as defined by this Bylaw, and
- the **200 ft. Riverfront Regulated Buffer** - extends 200 feet horizontally outward from the boundary of any river, intermittent or perennial stream, brook, or creek, and aligns with the Riverfront Area, as defined by 310 CMR 10.58(2)

Regulated Buffers are measured horizontally lateral from the Resource Area, as in the image below. The Regulated Buffer Zone is that distance represented by “b,” rather than “c”.

Example: If line b measures 100 ft, the distance between points “a” and “b” in the buffer zone is 100 ft, but a 10% gradient will produce a reading of ~ 101.5 ft point using a measuring tape laid across the ground from point “a” to point “b”

**Resource Areas** - collectively the “Resource Areas protected by this Bylaw”, are as listed numerically in Section 3 of this Bylaw, #1 through #5. These are:

1. Any freshwater wetland, isolated wetland, marsh, wet meadow, spring, bog or swamp; any Bank; any land under water bodies or waterways; any reservoir, lake, or ponds of any size; any land subject to inundation by groundwater; any Land Subject to Flooding;
2. Any land within 100 feet of the wetland areas listed in #1, known as the buffer zone under the WPA, and referred to as Wetlands Regulated Buffer under this Bylaw;
3. Any certified or certifiable Vernal Pool;
4. Any land within 200 feet of a Vernal Pool, known as the buffer zone under the WPA and referred to as Vernal Pool Regulated Buffer under this Bylaw;
5. Any land within a Riverfront Area (as defined by 310 CMR 10.58 (2), known as the Riverfront Area under the WPA and considered as Riverfront Regulated Buffer under this Bylaw.



**Regulations** - Rules and regulations promulgated by the Commission through the authority of this Bylaw, after public notice and public hearing, that may define additional terms and conditions, and impose filing and consultant fees.

**Vernal Pool** – In addition to the existing definition of Vernal Pool under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Sec. 40, and regulations thereunder, 310 CMR 10.00, within these Bylaws Vernal Pool shall include any confined basin or depression not occurring in

existing lawns, gardens, landscaped areas, or driveways which, in at least most years, holds fresh water for a minimum of two continuous months during the spring and/or summer, is at least 200 cubic feet in size at some time during most years, is free of adult predatory fish populations, and demonstrates evidence of essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless of whether the site and habitat has been certified by the Massachusetts Natural Heritage & Endangered Species Program. The Commission shall presume that all areas meeting the definition of Vernal Pool and the adjacent 200 foot Vernal Pool Regulated Buffer perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the applicable basin or depression does not provide essential vernal pool habitat functions. Any formal evaluation shall be performed by an individual meeting the qualifications under the Massachusetts Wetlands Protection Act Regulations at 310 CMR 10.60.

**Watershed** - For the purposes of this Bylaw, a watershed is defined as the Basin delineated by the USGS Streamstats website ([StreamStats \(usgs.gov\)](https://streamstats.usgs.gov) or equivalent, and as may be adjusted to groundtruth this electronic data source) which contains the location where work is proposed. When using StreamStats to delineate the Basin for a proposed project, the point upon which the delineation is based shall be immediately prior to and upstream of where the Basin containing the proposed work is subsumed into the next larger Basin, continuing downstream to repeat this process as needed until the reported Area that drains to a point on a stream (DRNAREA in Streamstats) is greater than 1 square mile.

**Wetlands** – For the purposes of this Bylaw wetlands are defined by vegetation and type as in the Wetlands Protection Act (M.G.L. Ch. 131 s. 40). Wetlands shall include swamps, wet meadows, marshes, and bogs as defined in the Wetlands Protection Act. Wetlands also include the Resource Area values as enumerated in Section 2 of this Bylaw. This Bylaw does not require that the wetlands border on a body of surface water nor does it restrict the size of the resource area to be protected. Where natural vegetation has been altered or is absent as a result of mowing, grazing, or other disturbance, or where determination by the Commission based on wetland vegetation is inconclusive, hydric soils shall be used to provide positive determination of wetland boundaries.

Additional definitions may be added as needed or required to the Hamilton Conservation Bylaw Regulations.

### **SECTION 3: Jurisdiction**

Except as permitted by the Commission or as provided in this Bylaw, no person shall Alter any of the following Resource Areas (collectively the “resource areas protected by this Bylaw”):

1. Any freshwater wetland, isolated wetland, marsh, wet meadow, spring, bog or swamp; any Bank; any land under water bodies or waterways; any reservoir, lake, or ponds of any size; any land subject to inundation by groundwater; any Land Subject to Flooding;
2. Any land within 100 feet of these wetland areas, known as the buffer zone under the WPA, and referred to as Wetlands Regulated Buffer under this Bylaw;
3. Any certified or certifiable Vernal Pool;
4. Any land within 200 feet of a Vernal Pool, known as the buffer zone under the WPA and referred to as Vernal Pool Regulated Buffer under this Bylaw;

5. Any land within a Riverfront Area (as defined by 310 CMR 10.58 (2), known as the Riverfront Area under the WPA and considered as Riverfront Regulated Buffer under this Bylaw.

Said Resource Areas shall be protected whether or not they border surface waters.

Boundaries of wetlands will normally be determined by criteria specified in the Wetlands Protection Act (M.G.L. Ch. 131, Sec. 40). However, if the natural vegetation has been altered by grazing, mowing or earth removal, or if determination is otherwise inconclusive, then hydric soils shall be used to determine conclusively these boundaries. The standards for establishing boundaries shall be detailed within the Regulations to be promulgated under this Bylaw's Section 8.

Significant research<sup>1</sup> exists documenting the importance and effectiveness of maintaining riparian buffers to minimize impacts to water quality; in addition, riparian buffers have been shown to provide habitat and movement corridors for many species of birds, mammals, reptiles, fish and invertebrates. Therefore, the Commission shall impose conditions on activities that occur within the Regulated Buffers in order to protect and promote the Resource Area values identified in Section 1.

The jurisdiction of this Bylaw shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture, in accordance with work performed for normal maintenance or improvement of land in agricultural use as defined by the Wetlands Protection Act regulations, found at 310 CMR 10.04.

#### **SECTION 4: Exemptions and Exceptions**

- a. The applications and permits required by this Bylaw shall not be required for work performed for normal maintenance or improvement of land in agricultural and aquaculture use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04.
- b. The applications and permits required by the Bylaw shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; that advance notice, oral or written, has been given to the Commission prior to commencement of the work or within 24 hours after commencement; the Commission or its agent certifies the work as an emergency project; the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and that within 21 days of commencement a permit application shall be filed with the Commission for review. Upon failure to meet these and other requirements of the commission the Commission may, after notice and a public hearing revoke or modify an emergency project approval and order restoration and mitigation measures.

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<sup>1</sup> Examples of such research can be found in, but are not limited to: [Benefit Accounting of Nature-Based Solutions for Watersheds: Guide. \(2021\)](#), [MACC Wetlands Buffer Zone Guidebook \(2019\)](#), [NHANRS Scientific Wetland Buffer Report \(2017\)](#), [The Massachusetts Buffer Manual \(2003\)](#)

- c. The applications and permits required by this Bylaw shall not be required for mosquito control work conducted by the State Reclamation and Mosquito Control Board (SRMCB) or a Mosquito Control District (MCD) pursuant to G.L. ch. 252.
- d. The applications and permits required by this Bylaw shall not be required for the removal of non-native invasive species, as identified in regulations adopted by the Commission or certified in advance by the Commission or its agent in a particular instance, so long as a management plan is in place, and on file with the Commission, provided the Conservation Administrator has reviewed the materials provided, and issued a formal statement of support.
- e. The Commission may also establish, in its regulations, those projects which the Commission feels are best handled through an administrative approval process overseen by the Conservation Administrator. These may include such activities as the cutting of trees provided habitat snags are left behind, the confirmation of activities allowed which do not require Commission approval, and the approval of invasive species control projects, as specified according to this Bylaw and the regulations promulgated thereunder.

Other than as stated in this Bylaw, the exceptions provided in the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations thereunder (310 CMR 10.00) shall not apply under this Bylaw.

## **SECTION 5: Applications and Fees**

Where this Bylaw and the Wetlands Protection Act, G.L. Chapter 131, Sec. 40, and Regulations 310 CMR 10.00 have concurrent or co-extensive jurisdiction, the Commission may accept the Notice of Intent (NOI), Abbreviated Notice of Intent (ANOI), Request for Determination of Applicability (RDA), Abbreviated Notice of Resource Area Delineation (ANRAD) and other forms and plans filed under the Wetlands Protection Act as the permit application and plans required under this Bylaw. The Commission may describe, specify and amend the forms it will accept and issue under this Bylaw in the Regulations it adopts hereunder.

### **1. Application guidance and pre-submission requirements:**

The Commission shall develop a set of pre-submission requirements for the assistance of persons making application to the Commission, a current copy of which shall be on file with the Commission. Any person filing a permit or other application or RDA or ANRAD or other request with the Commission shall complete the filing in accordance with such requirements. The Commission may specify, in a particular situation or for certain types of situations, which elements of the requirements are reasonable and necessary for an application or applications. The Commission also reserves the right to ask for any additional information it deems reasonable and necessary to evaluate the application, and to require the applicant to provide expense funding for the purpose of engaging experts to assist the Commission in the process.

### **2. Determining applicability of the Bylaw to a proposed area of work:**

Any person desiring to know whether proposed work or an area is subject to this Bylaw may in writing request a determination of applicability from the Commission. Such a Request for Determination of Applicability (RDA) shall include information and plans as are deemed reasonable and necessary by the Commission.

**3. Certification of Resource Areas:**

Any person desiring to certify, for purposes of this Bylaw, the limits of Resource Areas on a site may submit as an application, a RDA or an Abbreviated Notice of Resource Area Delineation (ANRAD) for Commission confirmation. Such a RDA or ANRAD shall include such information and plans as deemed reasonable and necessary by the Commission to describe and define the applicable Resource Areas. The Commission will also accept the ANRAD as an application for a simplified review as defined in the Wetlands Protection Act Regulations at 310 CMR 10.02(2)(b)2.

**4. Permit requests**

Written application in the form of a Notice of Intent or Abbreviated Notice of Intent shall be filed with the Commission to perform activities affecting Resource Areas protected by this Bylaw. The application shall include such information and plans as are deemed reasonable and necessary by the Commission and as specified in the Bylaw and its Regulations to describe proposed activities and their effects on the Resource Areas protected by this Bylaw. No activity shall commence except in accordance with a permit issued pursuant to this Bylaw.

Fees: At the time of an application, the applicant shall pay a filing fee specified in the Regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act and regulations. The fee shall be deposited in a dedicated account, for use only for wetlands protection activities, from which the Commission may withdraw funds with the approval of the Board of Selectboard. These fees shall be specified within any promulgated Regulations, as allowed under this Bylaw.

Pursuant to G.L. Ch. 44, §53G and the Regulations promulgated by the Commission, the Commission is fully authorized to impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of applications. Such funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose. Expenditures from this account shall be made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant. Any funds remaining in the account after the Commission has rendered a decision will be returned to the applicant. Additional consultant fees shall be authorized where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected shall be paid from this account, and expenditures may be made at the sole discretion of the Commission. Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission. The Commission shall provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or delivered. The applicant may withdraw the application within five (5) business days without incurring any costs or expenses.

The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested consultant fee within ten (10) business days of the request for payment shall be

cause for the Commission to declare the application administratively incomplete and deny the application without prejudice. The Commission shall inform the applicant and Department of Environmental Protection (DEP) of such a decision in writing.

The applicant may appeal the selection of an outside consultant to the Board of Selectboard, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue, or a related field. The applicant shall make such an appeal in writing, and it must be received within ten (10) business days of the date that the request for consultant fees was made by the Commission. Such appeal shall extend the applicable time limits for action upon the application.

## **SECTION 6: Notice and Hearings**

**Written notice to abutters:** Any person filing a permit or other application or RDA or ANRAD or other request with the Commission shall, at the same time, give written notice thereof (by certified mail with return receipt requested or by personal delivery in hand) to all abutters according to the most recent tax records of the assessors, including owners of land directly opposite on 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 or across a body of water. The applicant shall obtain a certified list of names and addresses of all persons required to be notified from the Hamilton Board of Assessor's Office. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing date. In addition, copies of such notice shall be sent at the time of filing, by certified mail, to the Hamilton Board of Selectmen, the Planning Board, and the Hamilton Board of Health.

The notice to abutters shall include a copy of the application or request, with plans, or shall state where copies 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. When a person filing an application is other than the owner, the application, the notice of the hearing, and the determination itself shall be sent to the owner by the person making the request.

**Public hearings:** The Commission shall conduct a public hearing for any person filing a permit or other application or RDA or ANRAD with the Commission at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the Town. The Commission shall commence the public hearing within 21 days from the receipt of a completed permit application, RDA or ANRAD unless an extension is authorized in writing by the applicant.

The Commission may combine its hearing under this Bylaw with the hearing conducted under the Wetlands Protection Act (M.G.L., Ch. 131, Sec. 40) and regulations (310 CMR 10.00).

The Commission shall have the authority to continue the hearing to a date and time certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant deemed necessary by the Commission in its discretion, or comments and recommendations of Town boards and officials. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

The Commission shall issue its permit, other order or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.

## **SECTION 7: Permits and Conditions**

### **A. Project evaluation**

If the Commission after a public hearing, determines that the activities which are the subject of the 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, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested unless an extension is authorized in writing by the applicant. The Commission shall take into account:

1. The extent to which the applicant has avoided, minimized and mitigated any such effect. The Commission shall also take into account any loss, degradation, isolation, restoration and/or replication of protected Resource Areas or the values protected by this Bylaw elsewhere in the Town and the applicable Watershed, resulting from past activities, whether permitted, unpermitted, or exempt under this Bylaw, and foreseeable future activities in those areas; and,
2. the extent to which the proposed project may preclude the ability of a Resource Area to provide Resource Area Values by reducing its resiliency to the effects of climate change (e.g. an increase in Edge Area allows climate change to drive edge effects to further extremes, thereby degrading habitat quality/quantity) or if project components will be likely to result in future resource area impacts due to the effects of climate change.

Beyond the requirements established by this Bylaw, the Commission may establish for the purpose of clarifying the intent and interpretation of this Bylaw, in its regulations, additional design specifications, performance standards, and other measures and safeguards and other work limits for protection of such lands, including without limitation strips of continuous, undisturbed vegetative cover, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw.

### **B. Resource Area alteration and replication**

It is the Commission's goal that there shall be no net loss of Resource Areas, including marshes, wet meadows, bogs, swamps, Vernal Pools, springs, banks, reservoirs, lakes, ponds of any size, estuaries, intermittent streams, brooks and creeks, and Regulated Buffers.

Therefore, to prevent the loss of any Resource Areas, and their associated Resource Area Values protected by this Bylaw, the Commission shall require applicants to avoid the alteration of Resource Areas protected by this Bylaw wherever feasible; shall minimize Resource Area alteration; and, where alteration is unavoidable, first minimize and then mitigate any Resource Area alteration that does occur.

The Commission may authorize or require replication of Resource Areas as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication. The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless of the type of Resource Area or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60).

### **C. Activities within the Regulated Buffer (Section 3: Resource Areas 2, 4, & 5)**

Lands within the Regulated Buffer are presumed to be important to the protection of adjacent Resource Areas because activities undertaken in close proximity to wetlands and other such Resource Areas have a high likelihood of adverse impact upon the Resource Area, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation: erosion, siltation, loss of groundwater, degraded or poor surface or ground water quality, changes in water temperature, changes in water pH, changes in light regimes, changes in auditory regimes, an increase in Edge Habitat and corresponding increase in Edge Effect, the introduction of invasive or non-native species, reduced capacity of resource areas to sequester carbon, reduced capacity of resource areas to absorb and slow precipitation, destruction of vegetation, and loss of wildlife habitat. The potential for adverse impacts to Resource Areas from work in the Regulated Buff may increase with the extent of the work and the proximity to the Resource Area, or the presence of steep slopes. Conditions may include limitations on the scope and location of work in the Regulated Buffer; erosion and sedimentation controls during construction; a clear limit of work; the preservation of natural vegetation; or, where the Regulated Buff has already been developed, measures such as the restoration of natural vegetation within the Regulated Buffer.

Lands within the Regulated Buffer are further presumed to provide Resource Area values, including the provision of critical habitat, in their own right and independent of their relationship to adjacent Resource Areas. Non-human species need fluvial, riparian, and upland habitat for food, breeding, nesting and hibernation, as well as the ability to move through the landscape. Fragmentation, noise and light pollution, human activity, and the spread of invasive species can result in disturbance to, and loss of, valuable habitat areas and the resources they provide. Destruction of vernal pools and the habitat in the immediate vicinity is likely to have a significant adverse impact on local reptiles and amphibian populations who can lose critical aquatic, riparian and upland habitats used for foraging, overwintering, breeding and nesting. .

In reviewing activities within any Regulated Buffer, the Commission shall presume the Regulated Buffer is important to all the Resource Area values protected by this Bylaw unless demonstrated

otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this bylaw, has proved by a preponderance of the evidence that (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.

It is the Commission’s goal that each Watershed (as defined by this Bylaw) within Hamilton shall work toward preserving, maintaining, or restoring the maximum amount practicable of its Resource Areas in an undisturbed or naturalizing state. At the same time, the Commission recognizes that for certain required or beneficial land uses, the protection of the Regulated Buffer as laid out above may be overly limiting or burdensome. Therefore, under the Hamilton Conservation Bylaw [INSERT DATE ~ September 2022], the Commission recognizes the following classes of activity within the Regulated Buffer:

1. **Exempt Activities:** *May be permitted without mitigation requirements in the Regulated Buffer. These include:*
  - Existing development and development that had already been permitted prior to the implementation date of this Bylaw shall be bound by the laws as they existed at the time the permit was granted. Any permit extensions shall extend the applicability of the laws at the time the permit was granted.
  - Public or Private Health and Safety Projects - such as septic system components - for which avoidance, minimization and mitigation have been employed to the maximum extent feasible, and which demonstrably cannot be provided for elsewhere on the property
  - Ecological improvements such as invasive species control
2. **Minor Activities** - *May be permitted in sections of the Regulated Buffer with conditions, if they meet the following requirements. These activities include:*

ACTIVITY	REQUIREMENT
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<p>Projects filed using the Request for Determination, and which will result in a Negative Determination of Applicability</p>	<ul style="list-style-type: none"> <li>● 25 ft. No Disturb Area &amp; 50 ft. No Build Zone surrounding Vernal Pools and Wetlands (Resource Areas 1 &amp; 3; Section 3 of this Bylaw)</li> </ul>
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**3. Redevelopment Activities** - *May be permitted in the Regulated Buffer with conditions if they meet the following requirements. These activities include:*

ACTIVITY	REQUIREMENT
<p>Projects filed using a Notice of Intent which will utilize only already developed land</p>	<p><u>Whichever is greater of the following:</u></p> <ul style="list-style-type: none"> <li>- A 50% improvement in existing on site natural areas,</li> <li>- the naturalization of 25% of the Regulated Buffer,</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>- Equivalent restoration of the same sq. ft. as either of the above options within the same watershed (as defined by this Bylaw)</li> </ul>

**4. Natural Area Development Activities:** *May be permitted within the Regulated Buffer with conditions if they meet the following requirements. These activities include:*

ACTIVITY	* REQUIREMENT
<p>Conversion of natural areas to non-natural vegetation such as lawns</p>	<p>1.5 : 1 replacement/restoration elsewhere within the same watershed (as defined by this Bylaw)</p>

Conversion of natural areas to permeable hardscaping	2 : 1 replacement/restoration elsewhere within the same watershed (as defined by this Bylaw)
Conversion of natural areas to impermeable hardscaping	3 : 1 replacement/restoration elsewhere within the same watershed (as defined by this Bylaw)
<p>* These above listed ratios shall hold for areas in the outermost 25% of the Regulated Buffer, shall be doubled for areas within the next adjacent 25% of the Regulated Buffer, shall be tripled for areas within the 25% of the Regulated Buffer one further away, and shall be quadrupled for areas in the 25% of the Regulated Buffer furthest from its outermost edge. So for the W-BZ, 0-25 ft is 4x the above ratios, 25 - 50 ft is 3x the above ratios, and 50 - 75 ft is 2x the above ratios. For V-BZ &amp; R-BZ, 0-50 ft is 4x the above ratios, 50 - 100 ft is 3x the above ratios, and 100 - 150 ft is 2x the above ratios. Replacement/Restoration areas within the same watershed must be approved by the Commission, and are expected to be proposed within areas jurisdictional to the Commission and in a similar location to the impacted BZ. For example, to install a lawn in the 0-25 ft area, restoration will be expected elsewhere in the watershed in a 0-25 ft area, rather than in a 75 - 100 ft area.</p>	

Replacement / Restorations Activities may include, but are not limited to:

Invasive species control, removal of replacement of lawn with beneficial native vegetation, removal of impermeable surfaces, planting of vegetation beneficial to native wildlife, etc.

Due to past development practices, the Commission realizes that the scenarios outlined above may not encompass every situation. The Commission reserves the right to waive these requirements on a case by case basis, especially when proposed projects do not neatly fit into the above outlined circumstances, and a demonstrable effort has been made to find areas to re-naturalize with insufficient success.

Locations provided for restoration under these standards shall be denoted in the plans of record, and the Special Conditions in the Order of Conditions granted under Hamilton’s Wetlands Bylaw; both of which shall be recorded at the Southern Essex Registry of Deeds. When such locations are on property owned by another, a copy of the Order of Conditions granted under Hamilton’s Wetlands Bylaw shall be recorded at the Southern Essex Registry of Deeds, and a standardized

acknowledgement form which shall be outlined in the Regulations Associated with this Bylaw, shall be recorded at the Applicant's expense as part of the other property's chain of title.

#### **D. Issuance of conditions**

If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect said Resource Area values, and all activities shall be done in accordance with those conditions. Where no conditions are adequate to protect said Resource Area values, the Commission is empowered to deny a permit for failure to meet the requirements of this Bylaw. It may also deny a permit for failure to submit necessary information and plans requested by the Commission; failure to abide by Subsection C requirements regarding Regulated Buffers; failure to comply with the procedures, design specifications, performance standards, and other requirements in the Regulations of the Commission; failure to avoid, minimize or mitigate significant or cumulative effects upon the Resource Area values protected by this Bylaw; and where no conditions are adequate to protect those values.

#### **E. Waivers**

Due consideration shall be given to any demonstrated hardship, financial or otherwise, on the applicant by reason of denial, as presented at the public hearing. The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that the Commission finds in writing after said public hearing:

- a) that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations;
- b) that avoidance, minimization and mitigation have been employed to the maximum extent feasible;
- c) and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation

**F. Term/duration of permit validity:** A permit, Determination of Applicability (DOA), or Order of Resource Area Delineation (ORAD) shall expire three years from the date of issuance.

Notwithstanding the above, the Commission in its discretion may issue a permit, determination or order expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one year period, provided that a request for renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and which shall apply to all present and future owners of the land and recorded as such with the appropriate Registry of Deeds.

**G. Amendments to permits:** For good cause the Commission may revoke or modify any permit, DOA or ORAD or any other order, determination or other decision issued under this Bylaw after notice to the holder and owner of the property, after a public hearing.

Amendments to permits, DOAs, or ORADs shall be processed and handled in the manner set out in the Wetlands Protection Act regulations and policies thereunder.

#### **H. Other Issues**

The Commission, at its discretion in an appropriate case, may combine the decision issued under this Bylaw with the permit, DOA, ORAD, or Certificate of Compliance (COC) or other action issued under the Wetlands Protections Act and regulations thereunder. For decisions issued in this manner, the permits issued under the Wetlands Protection Act shall be considered to represent the Bylaw as well.

No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the Registry of Deeds or, if the land affected is registered land, in the Registry section of the Land Court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded. If the Commission, after a public hearing, determines that the activities which are subject to the permit application are likely to have a significant individual or cumulative effect on the Resource Area values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect.

#### **SECTION 8: Regulations**

After public notice and public hearing, the Commission may promulgate regulations to effectuate the purposes of this Bylaw, effective when voted and filed with the Town Clerk. The Commission may establish, in its regulations, additional definition of terms, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of such lands, including without limitation strips of continuous, undisturbed vegetative cover, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw. The Commission may also establish, in its regulations, building materials, utilities, or other materials needed to successfully complete a proposed project which the commission will not approve in accordance with Section 1, m. The Commission may also establish, in its regulations, those projects which the Commission feels are best handled through an administrative approval process overseen by the Conservation Administrator. Failure by the Commission to promulgate such regulations or legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw. At a minimum these regulations may reiterate the terms defined in this Bylaw, define additional terms not inconsistent with this Bylaw, and establish filing and consultant fees, as well as specifying the forms it will accept and issue under this Bylaw.

#### **SECTION 9: Burden of Proof**

The applicant shall have the burden of proving by a preponderance of credible evidence that the activity proposed in the Request for Determination of Applicability or the Notice of Intent will not have a significant or cumulatively detrimental effect upon the interests and values protected by this Bylaw. Failure to provide to the Commission adequate evidence for it to determine that the proposed activity will not cause such impacts shall be sufficient cause for the Commission to deny

permission or to grant permission with such conditions as it deems reasonable, necessary, or desirable to carry out the purposes of this Bylaw; or to postpone or continue the hearing or public meeting to another date certain to enable the applicant and others to present additional evidence, upon such terms and conditions as deemed by the Commission to be reasonable.

Due consideration shall be given to possible effects of the proposal on all interests and values protected under this Bylaw

### **SECTION 10: 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 shall require that the performance and observance of the conditions imposed hereunder (including conditions requiring mitigation work) be secured wholly or in part by one or more of the methods described below:

- (a). By a proper bond, deposit money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility, sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a COC for work performed pursuant to the permit. Such bond or money or negotiable securities must be approved as to form and manner of execution by the Town Counsel or counsel to 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 the Town whereby the permit conditions shall be performed and observed before any work authorized by the Commission commences and before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

### **SECTION 11: Enforcement**

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this Bylaw, 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 a permit or an enforcement order issued pursuant to this Bylaw.

The Commission, its agents, officers, employees, and consultants shall have authority to enter upon privately owned land for the purpose of performing their duties under this Bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

The Commission shall have authority to enforce this Bylaw, its regulations, and permits issued thereunder, and may issue violation notices, non-criminal citations under G.L. Ch. 40 §21D, and file civil and criminal court actions. Any person who violates any provision of this Bylaw may be ordered to restore the subject property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Upon request of the Commission, the Board of Selectmen and the Town Counsel (counsel to the Commission) shall 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.

Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of this Bylaw, regulations thereunder, or permits or administrative orders issued thereunder, shall be punished by a fine of not more than three hundred dollars (\$300.00). Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the Bylaw, regulations, permits or administrative orders violated shall constitute a separate offense.

Pre-Acquisition Violation: Any person who purchases, inherits or otherwise acquires Real Estate upon which work has been done in violation of the provisions of the By-Law or in violation of any permit issued pursuant to this By-law shall forthwith comply with any such order or restore such land to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless commenced within three years following the date of acquisition of the Real Estate by such person, or five years after the violation, whichever is earlier.

### **SECTION 12: Appeals**

A decision of the Commission under this Bylaw shall be reviewable in the Superior Court in accordance with G.L. Ch. 249, Section 4.

### **SECTION 13: Relation to the Wetlands Protection Act**

This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, General Laws, Chapter 131, Section 40, and regulations (310 CMR 10.00) thereunder. It is the intention of this Bylaw that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Wetlands Protection Act and regulations thereunder.

### **SECTION 14: Waiver from Regulations**

Waivers are not favored, and will not be granted, except in the most rare and unusual circumstances. All waiver requests must be in writing and no waiver request will be considered unless it is part of a complete Notice of Intent application. The waiver request will be denied unless the applicant shows that there is no alternative proposal which meets the requirements of these regulations, and the applicant must show that the granting of the waiver is consistent with the intent and purpose of the Bylaws and these Regulations. In addition, the applicant must demonstrate that a waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation. Applicants shall present documented evidence that site specific conditions of slope, vegetation, soil type, and water sources taken together with the applicant's proposed plan are fully and entirely consistent with maintaining resource area quality and function.

### **SECTION 15: Severability**

If any section, paragraph, sentence, clause, provision, phrase, or word of this Bylaw shall be adjudged not valid, the adjudication shall apply only to the material so adjudged and the remainder of this Bylaw shall be deemed to remain valid and effective. Any such adjudication shall not invalidate any permit or determination which has previously been issued.

Failure by the Commission to promulgate such regulations or legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.

