

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

### SECTION 1: 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, including but not limited to the following: public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention, water quality, prevention and control of pollution, fisheries, shellfisheries, wildlife habitat, rare species habitat including rare plant and animal species, agriculture, aquaculture, and recreation values, deemed important to the community (collectively, the “resource area values protected by this bylaw”).

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.

### SECTION 2: Definitions

Terms defined by Massachusetts Constitution Amendments Article XCVII (97); Massachusetts General Laws, Chapter 40 Section 8C and Chapter 131, Section 40 (hereafter referred to as the "Act"), as well as 310 CMR 10.00 Wetlands Regulations are hereby incorporated by reference and made a part hereof, except as otherwise modified by this Hamilton Conservation Bylaw, its promulgated Regulations, and any subsequent amendments. References to government bodies shall be taken as references to those government bodies or to their successors in the relevant governmental role (e.g. references to the USDA Soil Conservation Service currently apply to the US Natural Resources Conservation Service, or to the Department of Environmental Quality Engineering apply to the Department of Environmental Protection.

1. The term "***Alter***" shall include without limitation, the following actions when undertaken in areas subject to this Bylaw:
  - A. changing of pre-existing drainage characteristics, sedimentation patterns, flow patterns or flood retention characteristics;
  - B. placement of fill, excavation or re-grading;
  - C. destruction of vegetation, including cutting and removing of ground cover, shrubs or live or dead trees; without regard to whether such vegetation might be defined as invasive.

- D. changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water, including but not limited to the application of herbicides, pesticides, deicing agents, fertilizers, or oils for insect control;
  - E. any activities, changes or work which pollute or cause displacement of any body of water or groundwater;
  - F. any activities, changes or work which cause alteration of wildlife habitat.
2. The term ***“Associated Upland Resource Area”*** (***“AURA”*** hereafter) means that area of land extending 100 feet horizontally outward from the boundary of any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, springs, banks, reservoirs, lakes, ponds of any size, and lands under water bodies. The area known as Riverfront and defined at 310 CMR 10.58(2) shall not have an AURA. The AURA is a Resource Area under this Bylaw. The AURA serves to protect the following interests established in Section 1 of this Bylaw, including but not limited to the following: public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention, water quality, prevention and control of pollution, fisheries, shellfisheries, wildlife habitat, rare species habitat including rare plant and animal species, agriculture, aquaculture, and recreation values.
3. The term ***“burden of proof”*** means the applicant shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application taking place anywhere within a resource area (including AURA) shall not have an unacceptable significant and/or cumulative effect upon the wetland values protected by this Bylaw. Failure to provide adequate evidence that the work proposed in the application shall not have an unacceptable significant and/or cumulative effect upon the wetland values protected by this Bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.
4. ***Freshwater Wetlands:*** Certain land may not meet the definition of a bordering vegetated wetland under the Act but still provide identified, important wetland functions and values. Such areas are significant to all of the interests of this Bylaw.
- A. The term "freshwater wetland" under this Bylaw shall mean:  
An isolated or previously disturbed area that meets the criteria of the currently applicable procedures under 310 CMR 10.00 or meets at least 2 of the following 3 criteria:
    - i. the vegetative community consists of at least 50% wetland plant species (listed as OBL, FACW, FAC by US Fish and Wildlife Service)
    - ii. hydric soils as listed by the US Natural Resources Conservation Service are present
    - iii. hydrology or field indicators of hydrology according to the procedures of the 1987 Federal Method for Wetlands Delineation (US Environmental Protection Agency) are present
  - B. A "freshwater wetland" as described in this bylaw that does not meet the definition of a bordering vegetated wetland under the Act must be a minimum of 1000 sq. ft. in surface area to be protected.
5. ***“Genetically modified seeds, plants or micro-organisms”*** are those organisms primarily used in agriculture which are created through the technique of artificial gene splicing.
6. One ***“growing season”*** is considered the entire period from approximately March 15 to October 15.
7. The terms ***“land subject to storm flowage”*** and ***“land subject to inundation”*** can include vernal pools.

8. The term "**permits**" shall collectively refer to Orders of Conditions and/or Determinations of Applicability.
9. The term "**person**" shall include 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 by-laws, administrative agencies, public or quasi-public corporations or bodies, the Town of Hamilton, and any other legal entity, its legal representatives, agents or assigns. All other terms and definitions shall be understood and applies in the manner set forth in General Laws, Chapter 131, Section 40, in applicable regulations promulgated by the Department of Environmental Protection, and as further defined by the Commission by regulation or amendment."
10. The term "**pond**" shall mean any open body of fresh water, either natural occurring or man-made, with a surface area observed or recorded within the last ten (10) years of at least 5,000 square feet, and which is never without standing water due to natural causes, except during periods of extended drought. For purposes of this definition, extended drought shall mean any period of four (4) or more months during which the average rainfall for each month is 50 % or less of the (10) year average for that same month. Basins or lagoons which are part of waste water treatment plants shall not be considered ponds, nor shall swimming pools or other impervious man-made retention basins.
11. The term "**stream**" shall mean a body of flowing water, including brooks and creeks, which moves in a channel in the ground due to a hydraulic gradient, and which flows within, into or out of an area subject to protection under the Act or Bylaw. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (i.e., which is intermittent) is also considered a stream unless it is up-gradient of all freshwater wetlands.
12. **Vernal Pools:** Such areas are presumed to be significant to the 'wildlife' and 'wildlife habitat' interests of this Bylaw. This presumption of significance can exist in the absence of Certification by the MA Division of Fisheries and Wildlife and whether or not the vernal pool is located outside wetlands. The surrounding vegetation and trees are vital to a vernal pool, with the canopy and other plant life eventually providing the dead leaves that spark the energy transfer in the food chain. Bacteria and other organisms feed on the detritus and decomposing organisms add important nutrients to the water. Studies have shown that removal of vegetation or disturbance of these areas, which range from 750 to 1,200 feet from the vernal pool, can wipe out the vernal pool populations. The commission's jurisdiction is limited to the 100 foot AURA surrounding vernal pools. Such areas can be regulated by this Bylaw since these areas protect the public interests identified in this Bylaw. Vernal Pools are defined as follows:
  - A. They are fresh water bodies,
  - B. They contain NO predatory fish populations,
  - C. They are confined depressions that may dry up during the summer,
  - D. They hold water for a minimum of two (2) consecutive months, usually in spring to summer but may include autumn to winter,
  - E. They must contain a minimum of two hundred (200) square feet in surface area as defined by the greatest limit of flooding observed or determined by field indicators of hydrology,
  - F. They must contain evidence of endangered, rare, or threatened wildlife, "species of special concern" or obligate vernal pool breeders; OR they must contain evidence sufficient to meet the criteria listed by the Massachusetts Division of Fisheries and Wildlife's Natural Heritage and Endangered Species Program.

13. *"Wetland Resource Areas", "Resource Areas" or "Wetlands"* are those areas subject to protection under this Bylaw and Regulations, as stated in this Bylaw.

### **SECTION 3: Jurisdiction**

Except as permitted by the Conservation Commission, and in accordance with the definition of terms contained within this Bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, springs, banks, reservoirs, lakes, ponds of any size, and lands under water bodies; lands adjoining these resource areas out to a distance of 100 feet, known as the Associated Upland Resource Areas (AURA); rivers, streams, brooks and creeks whether perennial or intermittent; lands adjoining these resource areas out to a distance of 200 feet, known as the riverfront area; lands subject to flooding or inundation by groundwater or surface water (collectively the “resource areas protected by this bylaw”). Said resource areas shall be protected whether or not they border surface waters.

The areas subject to protection under this Bylaw differ from those protected by the Act in that additional areas are protected by this Bylaw. The additional areas subject to protection under this Bylaw include smaller ponds, vernal pools and certain freshwater wetlands that may not meet the definition of bordering vegetated wetland under the Act and including Associated Upland Resource Areas (AURA’s) as defined herein.

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, including work performed for normal maintenance or improvement of land in agricultural or aquacultural uses as defined by the Wetlands Protection Act regulations, found at 310 CMR 10.04.

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

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.

The applications and permits required by this bylaw shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Conservation Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

The applications and permits required by this 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.

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**

Written application shall be filed with the Conservation Commission to perform activities affecting resource areas protected by this bylaw. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

The Commission in an appropriate case may accept as the application and plans under this bylaw any application and plans filed under the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00), but the Commission is not obliged to do so.

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such a Request for Determination of Applicability (RDA) or Abbreviated Notice of Resource Area Delineation (ANRAD) filed under the Act shall include information and plans as are deemed necessary by the Commission.

At the time of an application, the applicant shall pay a filing fee specified in regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act and regulations. Pursuant to G.L. Ch. 44 §53G and regulations promulgated by the Commission, the Commission may 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 proposed projects. Such funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested 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 or request within five (5) business days of the date notice is given 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 permit without prejudice, except in the case of an appeal. 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 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 must be received within ten (10) business days of the date that 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**

### **A. 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.

### **B. 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, with written notice given 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 Conservation 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 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. The Commission also shall take into account any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities.

In the proceedings pursuant to any notice of intent filed with the Conservation Commission, the Commission may require the Applicant to demonstrate that the land development purpose of the project proposed cannot be reasonably met by a project design which can be expected to cause less disruption of wetlands resource area and /or AURA function than the design initially proposed by the Applicant.

### **B. Resource Area Alteration and Replication**

To prevent resource area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting 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 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. AURA**

In reviewing activities within the AURA, the Commission shall presume the AURA is important in its own right, and is important to the protection of other resource areas because activities undertaken in close proximity have a high likelihood of adverse impact, 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 recharge, poor water quality, and loss of wildlife habitat. Beyond those provided by this Bylaw, the Commission may establish, in its regulations, 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 this Bylaw.

#### **D. No Disturbance and No-Build Zones**

When proposing alterations of land within 100 feet of a wetland, the applicant must overcome a strong presumption of adverse impact on the adjacent wetlands and their functions and values. The commission will require a no-disturbance zone extending from the edge of all wetland resource areas and a no-build zone extending from the no disturbance zone to a certain distance from the wetlands resource area as determined below. Building construction of any kind is prohibited in the no-building zone. The Commission will also require a 100 Foot No Disturb Zone constituting the entire AURA adjacent to any vernal pool. Building construction means any construction that requires a permit from the building department under the regulations and bylaws of the Town in effect at the time of the filing of the project. This includes, but is not limited to, home construction, porches, decks, additions, and sheds. Driveways and fences may be allowed after a consideration of the interests sought to be protected by this Bylaw.

No construction activity or removal of vegetative cover is allowed in the no-disturbance zone, and, with the exception of contained organic composting areas, there shall be no dumping of leaves, grass clippings, trash or any kind of refuse, within the resource area or the no disturbance zone.

1. The no disturbance zone shall be bounded by the edge of the wetlands resource area and a line 25 feet away from the wetlands resource area; and the no build zone shall extend from the no disturbance zone to a line 50 feet from the edge of the wetlands resource area for: Residential lots actually occupied on December 31, 2007; Residential lots for which a building permit for a residential structure has been issued not later than December 31, 2007;
2. In all other cases, the no disturbance zone shall be bounded by the edge of the wetlands resource area and a line 50 feet away from the wetlands resource area; and the no build zone shall extend from the no disturbance zone to a line 75 feet from the edge of the wetlands resource area.

The imposition of these additional zones is established since alteration of land immediately adjacent to a wetland invariably results in the alteration of the wetland itself. Such wetland alterations have been observed during construction such as siltation, overgrading, or depositing construction debris. Such alterations have been observed after construction from improper land use such as unregulated filling, cutting of vegetation, extension of lawns, and the depositing of yard waste. Such alterations have been observed resulting in increased runoff, siltation and temperature or nutrient loading resulting from the change in land use immediately adjacent to the wetlands. These subsequent alterations cannot be regulated without the imposition of the restricted zones detailed above. Since the commission cannot allow unregulated alterations of wetlands, these restricted zones will likely be imposed on all projects.

#### **E. Riverfront Area**

In reviewing activities within the riverfront area, the Commission shall presume the riverfront area is important to all the resource area values 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.

#### **F. Vernal Pools**

The Commission shall presume that all areas meeting the definition of “vernal pools” under §II of this bylaw, including the adjacent area, 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 basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act regulations.

#### **G. 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 requirements associated with the AURA;
- failure to comply with the procedures, design specifications, performance standards, and other requirements in the Regulations of the Commission;
- or for failure to avoid, minimize or mitigate significant or cumulative effects upon the Resource Area 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. 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 that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that such 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.

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 this Bylaw as well.

#### **H. 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.

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 applicant fails to perform such recording, the Commission may record the documents itself and require the Applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a COC.

### **I. 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.

## **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 this 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 otherwise approve in accordance with Section 1. 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, and employees, 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, by letters, phone calls, electronic communication and other informal methods, 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 this Bylaw, regulations, permits or administrative orders violated shall constitute a separate offense.

### **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 this Bylaw and its 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. The Commission shall act on the request and shall provide to the applicant, either by certified mail or hand delivery, its written decision. A Waiver Request Form shall be promulgated as part of the Regulations to be developed under this Bylaw.

### **SECTION 15: Severability**

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

***EFFECTIVE DATE***

*This bylaw was first adopted in 2006. Between May and August 2022, a series of advertised public hearings to discuss amending this Bylaw were held. On August 10, 2022 the Commission voted to submit a revised bylaw for inclusion on the warrant at the October 2022 Special Town Meeting.*

*This bylaw shall be effective upon filing with the Town Clerk, the Clerk's time stamp is affixed on Page 1 of this bylaw.*

