

# TOWN OF WENDELL, MASSACHUSETTS GENERAL WETLANDS PROTECTION 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 Wendell by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect on resource area values, including but not limited to the following (collectively, the "resource area values protected by this Bylaw"):

- a. public or private water supply;
- b. groundwater supply and groundwater quality;
- c. aquifer recharge and discharge;
- d. surface water and surface water quality;
- e. flood control;
- f. erosion and sediment control;
- g. storm damage prevention;
- h. prevention and control of pollution;
- i. fisheries;
- j. shellfisheries;
- k. storm drainage;
- l. runoff;
- m. wildlife habitat;
- n. rare species habitat including rare plant and animal species;
- o. recreation;
- p. agriculture;
- q. aquaculture.

## SECTION 2: Jurisdiction

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, construct septic tank leach fields upon, degrade, pollute, discharge into or otherwise alter the following resource areas (collectively the "resource areas protected by this Bylaw"):

- a. any freshwater wetland, isolated wetland, marsh, wet meadow, spring, bog or swamp;
- b. any vernal pool;
- c. any bank;
- d. any land under water bodies or waterways;
- e. any riverfront area;
- f. any land subject to flooding (bordering and isolated);
- g. any land within 100 feet of the areas described under Subsections 2 a., c., and e.;
- h. any land within 200 feet of the area described under Subsection 2 b.

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.

Lands within 100 feet of specific resource areas protected by this Bylaw 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 wetland or other resource, 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 water quality, thermal effects and loss of wildlife habitat. Accordingly, any land within 100 feet of the areas described under Subsections 2 a., b., and e. is protected by this Bylaw as a resource area under Subsection 2. f. and is presumed to provide or promote the resource area values identified in Section 1.

The Commission shall presume that all areas meeting the definition of “vernal pools” under Section 10 of this Bylaw, and the adjacent 200 foot upland 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 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.

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 or aquacultural uses as defined by the Wetlands Protection Act regulations, found at 310 CMR 10.04.

### **SECTION 3: Conservation Zone**

The Commission shall require that a fifty (50) foot wide strip of undisturbed soil and native vegetation, called the Conservation Zone, be maintained adjacent to any freshwater wetland, isolated wetland, marsh, wet meadow, spring, bog, swamp, bank, but not including riverfront area. No work, structures, disturbance or alterations will be allowed within the Conservation Zone, except for minor activities, such as mowing, gardening, and pruning within existing lawn, garden or landscaped areas, as described in the Regulations adopted by the Commission pursuant to this Bylaw.

The Conservation Zone for vernal pools will be the area within a one hundred (100) foot setback of undisturbed native vegetation 100 feet outward from the mean annual high-water line defining the depression.

Where the Conservation Zone is already altered in such a manner that the presumed protection offered by any land within 100 feet of the areas described under Subsections 2 a., c., and e. or land within 200 feet of the area described under Subsection 2 b. is not being met, the Commission may issue an Order of Conditions for a project, provided that it finds that the proposed alterations will not increase adverse impacts on that specific portion of the Conservation Zone or associated resource areas, and that there is no technically feasible construction alternative. In such cases the Commission may modify the scope

and detail of the proposed project to minimize impact on or improve protection of the resource area values protected by this Bylaw.

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

### **a. Existing Structures or Facilities**

The applications and permits required by this Bylaw shall not be required for maintaining, repairing, or replacing an existing and lawfully located structure or facility:

- (1) in existence prior to March 10, 1988; or
- (2) used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunications services;

provided that all of the following conditions are met:

- i. the structure or facility is not substantially changed or enlarged;
- ii. written notice has been given to the Commission prior to commencement of work;
- iii. the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

### **b. Emergency Projects**

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 all of the following conditions are met:

- (1) the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth, Town of Wendell, or a political subdivision thereof;
- (2) advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement;
- (3) the Conservation Commission or its agent certifies the work as an emergency project;
- (4) the work is performed only for the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency;
- (5) within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided in this Bylaw.
- (6) 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.

### **c. Agriculture**

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 aquacultural use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04.

### **d. Invasive Species**

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, using hand removal methods when the purpose of this work is to protect the resource area values protected by this Bylaw.

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.

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 an RDA or other permit application 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.

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, which includes any land within 100 feet of the areas described under Subsections 2 a., b., and e. 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.

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.

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.

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 the 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

applications. 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 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 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**

Any person filing a permit application 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 notice shall state a brief description of the project or other proposal and the date of any Commission hearing date, if known.

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 by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any permit application, RDA, or ANRAD 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

Approved by Special Town Meeting Vote on March 16, 2017

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, at its discretion in an appropriate case, 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 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 boards and officials listed in Section 6 herein. 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: Coordination with Other Boards**

Any person filing a permit application or RDA with the Commission shall provide a copy thereof at the same time (by certified mail with return receipt requested, or by personal delivery in hand) to the Selectboard, Planning Board, Board of Appeals, Board of Health, and Building Inspector. The Commission shall not take final action until the above-listed boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any such comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

## **SECTION 8: Permits, Determinations and Conditions**

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. 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 protected resource areas elsewhere in the Town and the applicable watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities in those areas.

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 comply with the procedures, design specifications, performance standards, and other requirements in the Regulations of the Commission; failure to avoid, minimize or mitigate unacceptable significant or

cumulative effects upon the resource area values protected by this Bylaw; and where no conditions are adequate to protect those values.

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 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 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 prevent any practicable and reasonable use.

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.

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, the public, abutters, and Town boards, in accordance with Sections 6 & 7, 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.

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.

## **SECTION 9: Regulations**

After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this Bylaw, effective when voted and filed with the Town Clerk. Failure by the Commission to promulgate such rules and 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 shall reiterate the terms defined in this Bylaw, define additional terms not inconsistent with this Bylaw, and establish filing and consultant fees.

## SECTION 10: Definitions

Except as otherwise provided in this Bylaw or Regulations of the Commission, the definitions of terms in this Bylaw shall be as set forth in the Wetlands Protection Act and in the Regulations thereunder, 310 CMR 10.00. The following terms shall apply in the interpretation and implementation of this Bylaw.

**Agriculture** – As defined under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Sec. 40, and Regulations thereunder, 310 CMR 10.00.

**Alter** – Includes, without limitation, the following activities when undertaken upon, within or affecting resource areas protected by this Bylaw:

- a. Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- b. Changing of preexisting 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, erection or repair 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 which may cause or tend to contribute to 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.

**Applicant** – Any person who files a Notice of Intent, Request for Determination of Applicability, Abbreviated Notice of Resource Area Delineation or on whose behalf such a notice is filed.

**Aquaculture** – The growing of aquatic organisms under controlled conditions, including one or more of the following uses: raising, breeding or producing a specified type of animal or vegetable life including, but not limited to, finfish such as carp, catfish, black bass, salmon, shad, smelt, sturgeon, sunfishes, trout, eel, tilapia; shellfish such as mussels; amphibians such as frogs; reptiles such as turtles; and edible freshwater plants.

**Bank** – As defined under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Sec. 40, and regulations thereunder, 310 CMR 10.00.

**Consultant(s)** – Include, but are not limited to architects, biologists, wetland scientists, soil scientists and other environmental experts, chemists, engineers, geologists, landscape architects, lawyers, sanitarians, and surveyors.

**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



Approved by Special Town Meeting Vote on March 16, 2017

foreseeable actions, including other development projects that are currently under construction, under review, or that may be expected to come forward.

Dredge – To deepen, widen, or excavate, either temporarily or permanently.

Fill – To deposit any material so as to raise an elevation, either temporarily or permanently.

Hydric Soil – A soil that in its undrained condition is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of hydrophytic vegetation.

Land Subject to Flooding (Isolated and Bordering) – As defined under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Sec. 40, and regulations thereunder, 310 CMR 10.00.

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 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 Wendell, 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 Conservation Commission.

Rare Species – All vertebrate and invertebrate animal species and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

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 or hunting, boating, swimming, walking and hiking, canoeing, and bird watching.

Remove – To take away any type of material, thereby changing an elevation, either temporarily or permanently.

Riverfront Area – As defined under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Sec. 40, and regulations thereunder, 310 CMR 10.00.

Substantially Changing or Enlarging – As pertaining to Section 4 of this Bylaw, a footprint addition of more than one thousand (1000) square feet in the Conservation Zone.

Vernal Pool – In addition to that already defined under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Sec. 40, and regulations thereunder, 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, in at least most years, holds 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 provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Natural Heritage & Endangered Species Program. The Conservation Zone for vernal pools shall extend 100 feet from the mean annual high water line defining the basin or depression, but shall not extend over existing lawns, gardens, landscaped or developed areas.

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. 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 Conservation Commission based on wetland vegetation is inconclusive, hydric soils shall be used to provide positive determination of wetland boundaries.

Wetlands Protection Act – The Massachusetts Wetlands Protection Act, M.G.L. c. 131, s. 40.

Wildlife Habitat – Those areas qualifying as resource areas protected by this Bylaw which, due to their plant community composition and structure, hydrologic regime, or other characteristics, provide important food, shelter, migratory or overwintering areas, or breeding areas for wildlife.

## SECTION 11: Security

As part of a permit issued under this Bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed hereunder (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 Council 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. Such a covenant shall provide that the permit conditions shall be performed and observed before the land, or any lot or other part thereof, may be conveyed other than by mortgage deed.

## **SECTION 12: 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 Selectboard 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.

## **SECTION 13: Burden of Proof**

The applicant for a permit shall have the burden of providing by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable significant or cumulative effect upon the resource area values protected by this Bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

## **SECTION 14: Appeals**

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

## **SECTION 15: 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 16: 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.