

**Town of Holliston
Article XXX
Wetlands Protection Bylaw**

I. Membership

The Town shall have a Conservation Commission consisting of seven (7) members appointed by the Board of Selectmen for a term of three years each and so appointed that no more than three (3) nor less than two (2) shall expire in any one year.

II. Purpose

The purpose of this bylaw is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Holliston by controlling activities deemed by the Holliston Conservation Commission 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, wildlife, 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 so as to protect the resource areas under the Wetlands Protection Act (G.L. Ch.131 §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 their additional values beyond those recognized in the Act, and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and regulations thereunder (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 Holliston.

III. Jurisdiction

Except as permitted by the Conservation Commission no person shall commence to remove, fill, dredge, build upon, discharge into, or otherwise alter the following resource areas:

- A. Any wetlands, marshes, wet meadows, bogs, swamps, vernal pools, springs, banks, reservoirs, lakes, ponds of any size, beaches, and any lands under water bodies and/or intermittent or perennial streams, brooks and creeks;
- B. lands adjoining the resource areas specified in Section III.A out to a distance of 100 feet, known as the buffer zone;
- C. perennial rivers, streams, brooks and creeks;
- D. lands adjoining the resource areas specified in Section III.C out to a distance of 200 feet, known as the riverfront area;
- E. any lands subject to flooding or inundation by groundwater or surface water;

Collectively the areas specified in Sections III.A-E, constitute the resource areas protected by this bylaw. Said resource areas shall be protected whether or not they border surface waters.

IV. 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 aquacultural 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, sewer, drainage, 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; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this bylaw. 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 stated in this bylaw, the exceptions provided in the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) shall not apply under this bylaw.

V. Applications, Application Fees and Consultant Fees

A. Applications and Application Fees

Written application shall be filed with the Conservation Commission to perform activities affecting resource areas protected by this bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

The application may be in the form of a Notice of Intent, Abbreviated Notice of Intent, Abbreviated Notice of Resource Area Delineation, or Request for Determination of Applicability, or other form as the Commission specifies in its regulations. 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.

The Commission 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") 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 shall be deposited into a dedicated account for use only for wetlands protection activities, including but not limited to administration of this Bylaw. The filing fee is in addition to that required by the Wetlands Protection Act and Department of Environmental Protection ("DEP") wetland regulations (310 CMR 10.00). The Commission may waive the filing fee for a government agency.

B. Consultant Fees

Pursuant to G.L. Ch. 44 §53G and regulations promulgated by the Commission, the Commission may impose reasonable fees upon an applicant for the purpose of securing outside consultants including but not limited to engineers, wetlands scientists, wildlife biologists, attorneys, or other experts in order to aid in the review of a proposed project(s). 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 an applicant 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 DEP of such a decision in writing.

The applicant may appeal the selection of an outside consultant to the Board of Selectmen, 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.

VI. Notice and Hearings

Any person filing a permit application with the Conservation Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 100 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 or meeting date if known. The notice to abutters also 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 requesting a Determination of Applicability is other than the owner, the request, 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 provided that written notice is 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 of Holliston. The Commission shall commence the public hearing within 21 days from receipt of a completed permit application unless an extension is authorized in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials listed in §VII.

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.

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

VII. Coordination with Other Boards

Any person filing a permit application with the Conservation Commission shall provide at the same time, by certified mail (return receipt requested) or hand delivery, notice of such filing to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, Building Inspector, and other Town of Holliston officials or boards as designated by the Commission in its regulations. Notice shall be provided in the same manner to the Conservation Commission of an adjoining municipality if the permit application pertains to property within 300 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the above 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 comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

VIII. Permits and Conditions

The Conservation Commission, after a public hearing, shall determine whether 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 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. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

The Commission shall issue a permit approving the activities which are subject to the permit application, or the land and water uses which will result therefrom, after it determines that said activities, or uses which will result therefrom, will not have a significant individual or cumulative effect on the resource area values protected by this bylaw and comply with the procedures, design specifications, performance standards, and other requirements in regulations of the Commission. 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 conducted 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; for failure to comply with the

procedures, design specifications, performance standards, and other requirements in regulations of the Commission; or for failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values protected by this bylaw. The Commission may issue a Determination of Applicability that no further permit application need be filed with the Commission for a proposed activity within jurisdiction of this bylaw as long as the activity complies with conditions that the Commission imposes in said determination.

The Commission within 21 days of the close of the public hearing shall issue or deny a permit for the activities requested.

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 constitute an unconstitutional taking without compensation.

In reviewing activities within the buffer zone, the Commission shall presume such areas are 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. This presumption is rebuttable and may be overcome by credible evidence from a competent source that such buffer zones are not important to protection of other resource areas. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss or degradation of wildlife and wildlife habitat. 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 buffer zones, including without limitation, area strips of continuous, undisturbed vegetative cover. Such design specifications, performance standards, and other measures and safeguards shall apply unless the applicant convinces the Commission that the buffer zone area or part of it may be disturbed without harm to the values protected by the bylaw.

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 credible 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.

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, because of the high likelihood of failure of replication, only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success.

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 to require a wildlife habitat study 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 meets or exceeds the minimum qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60) and, when required by the Commission, has direct professional experience with the wildlife species or wildlife habitat at issue.

The Commission shall presume that all areas meeting the definition of vernal pools under §X of this bylaw, including the adjacent buffer zone 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 vernal pool habitat functions. Any formal evaluation should be performed by an individual who meets or exceeds the minimum qualifications under the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60) and, when required by the Commission, has direct professional experience with the wildlife species or wildlife habitat at issue.

A permit, Order of Conditions, (OOC), 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 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 for one or more additional one-year periods, provided that a request for a renewal is received in writing by the Commission thirty (30) days 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 shall apply to all present and future owners of the land.

For good cause the Commission may revoke any permit, OOC, 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, pursuant to §VI and §VII, and after a public hearing.

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

The Commission may combine the decision issued under this bylaw with the OOC, DOA, ORAD, or Certificate of Compliance (öCOCö) issued under the Wetlands Protection Act and regulations.

No work proposed in any application shall be undertaken until the permit, or ORAD 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 document has been recorded. If the applicant fails to perform such recording, the Commission may record the document 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.

IX. Regulations

After public notice and public hearing, the Conservation Commission shall promulgate and amend 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 a 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 the bylaw, and impose filing and consultant fees.

X. Definitions

The following definitions shall apply in the interpretation and implementation of this bylaw.

The term **öagricultureö** shall refer to the definition as provided by G.L. Ch. 128, §1A.

The term **öalterö** shall include, without limitation, the following activities when undertaken to, 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, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics
- 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, expansion or repair of buildings, or structures of any kind

- G. Placing of obstructions or objects in water
- H. Destruction of plant life including cutting or trimming of trees, shrubs, or undergrowth
- I. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters
- J. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater
- K. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

The term **öbankö** shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

The term “**buffer zone**”, as defined in Section III.B above, is that resource area which extends one hundred feet (100’) from the edge of those wetland resource areas identified in Section III.A.

- a. **50-Foot No-Disturbance Zone** is that portion of the Buffer Zone which extends fifty (50) feet from the edge of those wetland resource areas identified in Section II.A; however, it is possible that these resource areas will overlap in some instances (e.g., Riverfront Area and Land Subject to Flooding). Disturbance of any kind is prohibited within this Zone including but not limited to grading, landscaping, vegetation removal, pruning, cutting, filling, excavation, roadway construction and /or driveway construction.
- b. **100-Foot No-Disturbance Zone** is that buffer zone area that extends one hundred (100) feet from the edge of any Vernal Pool that is located in an upland area or, in the case of a larger wetland resource area that encompasses the pool, within one hundred (100) feet from the edge of the said larger wetland resource area. Disturbance of any kind is prohibited within this Zone including but not limited to grading, landscaping, vegetation removal, pruning, cutting, filling, excavating, roadway construction and/or driveway construction. The extent and location of this No-Disturbance Zone is subject to change based on the results of a biological and/or habitat evaluation, which may be required to determine the migratory pathways and other important habitat usage of Vernal Pool breeders.

The term **öbuild uponö** shall mean construction of any kind of structure, whether on land or in water; and/or placing of obstructions or objects in water (other than fish or shellfish traps, pens or trays used in conjunction with aquaculture, or aids to navigation).

The term **cumulative adverse effect** shall mean an effect on a resource area(s) that is significant when considered in combination with other activities that have occurred, are occurring simultaneously or that are reasonably likely to occur within that resource area(s), whether such other activities have occurred or are contemplated as a separate phase of the same project or activities, or as a result of unrelated projects or activities.

The term **discharge into** means, without limitation, any outfall of water that empties into a resource area or buffer zone, including infiltration.

The term **erosion control** means the prevention of the detachment or movement of soil or rock fragments by water, wind, ice, or gravity.

The term **groundwater** shall mean all subsurface water contained in natural geologic formations or artificial fill including soil water in the zone of aeration. Activities within 100 feet of resource areas shall not significantly alter the existing quality or elevation of naturally occurring groundwater.

The term **permits** shall collectively refer to Orders of Conditions, Notice(s) of Non-Significance, Enforcement Order(s), Determinations of Applicability, and/or Orders of Resource Area Delineation.

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 bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

The term **pond** shall follow the definition of 310 CMR 10.04 except that the size threshold of 10,000 square feet shall not apply.

The term **private water supply** shall mean any source or volume of surface or groundwater demonstrated to be in any private use or shown to have potential for private use for domestic purposes.

The term **public water supply** shall mean any source or volume of surface water or groundwater demonstrated to be in public use or approved for water supply pursuant to M.G.L. c. 111, Section 160 by the Division of Water Supply of the Department of Environmental Protection or shown to have a potential for public use.

The term **rare species** shall include, without limitation, all vertebrate and invertebrate animal and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless whether the site in which they occur has been previously identified by the Division.

The term **recreation** shall mean any leisure activity or sport taking place in, on, or within 100 feet of a resource area which is dependent on the resource area and its values

directly or indirectly for its conduct and enjoyment. Recreational activities include, but are not limited to, the following: noncommercial fishing and hunting, boating, swimming, walking, painting, birdwatching and aesthetic enjoyment. Structures and activities in or within 100 feet of a resource area shall not have a significant effect on public recreational values. Notwithstanding this definition, new or expanded recreational activities shall not have a significant effect on other wetlands values identified in §II of this chapter.

The term **spring** shall mean any point in the natural environment where water discharges to the surface of the earth from underground.

The term **vernal pool** shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, 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 Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be the mean annual high-water line defining the depression.

The term **wildlife** shall mean all non-domesticated mammals, birds, reptiles, amphibians, fishes or invertebrates. Special consideration shall only be given to members of the class Insecta if they are rare or endangered as defined by the Massachusetts Natural Heritage Program or its successor, or if they are a major food source of other wildlife, but not if the insect species is determined by the Commission and the Board of Health to constitute a pest whose protection under the By-law would be a risk to man at the proposed project site.

The term **wildlife habitat** shall mean areas having plant community composition and structure, hydrologic regime, or other characteristics sufficient to provide shelter, nutrient sourcing, growing conditions, nesting or breeding sites conducive to the propagation and preservation of wildlife.

Except as otherwise provided in this bylaw or in associated regulations of the Conservation Commission, the definitions of terms and the procedures in this bylaw shall be as set forth in the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00).

XI. 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 Conservation Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or both of the methods described below:

A. By a proper bond, deposit of 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.

B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant, shall not impose on the Commission any monitoring, reporting, or maintenance duties or obligations, and a charitable corporation or trust must be a grantee in addition to the Commission.

XII. 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 Conservation 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 civil and criminal court actions.

Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Upon request of the Commission, the selectboard and town counsel 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, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues, or unauthorized fill

or other alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

As an alternative to criminal prosecution in a specific case, the Commission may issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in G.L. Ch. 40 §21D, which has been adopted by the Town in Article XXIV §9 of the general bylaws. The penalty shall be \$100 for the first violation, \$200 for the second violation, and \$300 for each and all successive violations.

XIII. Burden of Proof

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

XIV. Appeals

A decision of the Conservation Commission shall be reviewable in the superior court in accordance with G.L. Ch. 249 §4.

XV. 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 (G.L. Ch. 131 §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.

XVI. 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.