

**BYLAW 12. WETLANDS PROTECTION****Section 12-1. Purpose**

The purpose of Bylaw 12 of the General Bylaws of the Town of Sutton ("Bylaw") is to preserve, protect, and where possible, restore the public interests ("Public Interests") associated with wetlands, related water resources and adjoining land areas in the Town, and to set forth a public review and decision making process for activities having an impact or effect upon any areas subject to protection ("Area Subject to Protection"). This Bylaw is a mandate unto itself and as an adjunct to the Massachusetts Wetlands Protection Act at MGL. c. 131, §40, and its Regulations at 310 CMR 10.00, as amended from time to time. This shall be done by controlling activities deemed by the Conservation Commission ("Commission") to have an impact or cumulative impact upon the resource areas ("Resource Areas) and stated public interests ("Public Interests") in MGL. c.131, §40 and 310 CMR 10.00 and this Bylaw. This Bylaw is intended to utilize the Home Rule authority of this municipality to protect additional Resource Areas and Public Interests, with additional standards and procedures stricter than those found in MGL c. 131, §40 and 310 CMR 10.00. As such, additional Public Interests under this Bylaw include the following:

- Protection of Aquatic Life Habitat;
- Protection of Recreational Activities;
- Protection of Aesthetics;
- Protection of Agriculture

**Section 12-2. Jurisdiction**

No person shall alter any Area Subject to Protection ("Resource Area") defined in MGL c.131, §40 and/or 310 CMR 10.00, which shall be afforded protection under this Bylaw, or the additional Areas Subject to Protection ("Bylaw Resource Area" or simply "Resource Area") under the Bylaw as stated below.

- Wetlands, regardless of whether they border a waterbody or watercourse;
- All streams, regardless of whether they are associated with a Resource Area or upgradient of a Resource Area;
- Areas Subject to Storm Flowage (ASSF)
- Vernal pools;
- Waterbodies less than 1/4acre-foot in size;
- Great Ponds;
- Adjacent Upland Resource Area ("AURA")

Notwithstanding the above, the Commission may permit Work within the above-mentioned Resource Areas deemed not to result in Adverse Impact to the Public Interests stated in MGL. c. 131, §40, its Regulations at 310 CMR 10.00, or in §12.1 above.

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 in 310 CMR 10.04.

**Section 12-3. Definitions**

The definition of terms in this Bylaw shall be as set forth in MGL c.131, §40 and 310 CMR 10.00, except as otherwise provided in this §12-3:

Activity- means any form of draining, dumping, dredging, damming, excavating, filling or grading; the erection, reconstruction or expansion of any buildings or structures; the driving of pilings; the construction or improvement of roads and other ways; the changing of runoff characteristics; the intercepting or diverging of

ground or surface water; the installation of drainage; sewage and water systems; the discharging of pollutants, including sediment; the destruction of plant life; and any other changing of the physical, biological, or chemical characteristics of land or water;

Adjacent Upland Resource Area- The land within 100' of a Resource Area as defined in MGL c.131, §40, 310 CMR 10.00, §13-2 of this Bylaw, or 200' from the bank of a Great Pond or Perennial River as defined in this Bylaw.

Adjacent Upland Resource Area ("AURA")- An Area Subject to Protection under this Bylaw which extends perpendicularly from the outermost edge of stated Resource Areas below, without regard for topography.

A 100' AURA shall apply to:

- Banks of Intermittent Streams;
- Wetlands, regardless of whether they border a waterbody or watercourse;
- Vernal pools;

A 200' AURA shall apply to:

- Banks/Bankfull Condition/Mean Annual High Water mark of Perennial Rivers;
- Great Ponds

AURA shall not apply to the following:

- Land Under Waterbodies & Waterways (LUW)
- Bordering Land Subject to Flooding (BLSF)
- Waterbodies less than 1/4acre-foot in size;
- Isolated Land Subject to Flooding (ILSF)

Aesthetics- Outward appearance: the way something looks, especially when considered in terms of how pleasing it is;

Adjunct- added as an accompanying object or circumstance; in this case, this Bylaw is an adjunct to MGL c.131, §40 and 310 CMR 10.00;

Adult Fish Population- this definition shall be consistent with the policies and procedures of the Massachusetts Division of Fisheries & Wildlife ("DFW") Natural Heritage and Endangered Species Program ("NHESP"), as amended from time to time;

Adverse- a) In general: having an opposing or contrary interest; in this case, opposing or contrary to the Public Interests;

b) In the context of Impact: in the opinion of the Conservation Commission, an Activity or Alteration to a Resource Area which, by its area, scope, or duration appears to represent more than a minimal change (i.e. Significant) to the characteristics, Functions or Values to the stated Public Interests;

Alter/Alteration- Means to change the condition of any Area Subject to Protection under MGL c.131 §40, or any Area Subject to Protection under the Bylaw. Examples of alterations include, but are not limited to the following:

- (a) the changing of pre-existing drainage characteristics, flushing characteristics, sediment patterns, flow patterns, and flood retention capabilities;
- (b) the lowering of the water level or water table;
- (c) the destruction of vegetation;
- (d) the changing of water temperature, biological oxygen demand (BOD), and other physical, biological or chemical characteristics of the receiving water

Application- The forms, documents, and plans submitted to the Commission in order to request the approval of a Permit or Order. Unless and until the Commission creates forms specific to the Bylaw, applicants may use Wetlands Protection Act forms created by the Massachusetts Department of Environmental Protection ("DEP").

Appurtenance- Any structural or adjunct or incidental construct to a single family residential structure or on any parcel of land, such as a septic system, garage, shed, deck, porch, patio, swimming pool, tennis/basketball courts, driveway, or sidewalk. Exclusions include, without limitations, lawns, landscaped areas, orchards, gardens, fields, pastures, paddocks, and in-ground sprinkler systems.

Aquatic Life Habitat- The ecological or environmental area particular to aquatic ecosystems and necessary for the function and well-being of aquatic life forms.

Area Subject to Storm Flowage (ASSF)- This shall include Drainage Ditch/Swales and channels that lead into, out of, pass through or connect other Wetlands or Waterbodies less than 1/4 acre-foot in size, and that carry flows resulting from storm events, but may remain relatively dry at other times and does not convey groundwater.

Avoid/Avoidance- To keep Work completely outside of Jurisdictional Areas.

Bankfull Condition- Synonymous with Mean Annual High Water (MAHW) and shall be commensurate with the term as used in 310 CMR 10.58(2).

Commute- To replace with something else.

Consultant- Synonymous with Qualified Professional, normally related to third party peer review under MGL c.44, §53G.

Control/Controlling- To regulate or govern by law; in this case, for the Conservation Commission to carry out MGL c.131, §40, 310 CMR 10.00, and Bylaw 12 of the Sutton General Bylaws.

Cumulative- Gradually building up: becoming successively larger; in this case normally related to Impact.

Day of Discovery- The day which a violation of this Bylaw is found to be present.

Discharge- Without limitation, any overland water or groundwater that empties into a Resource Area or its Adjacent Upland Resource Area.

Distance- All distances noted in this Bylaw (excluding depth), such as the distance between the outermost boundary of a Resource Area and outermost boundary of its associated Adjacent Upland Resource Area, are planar distances measured along a single elevation and without regard for topography.

Drainage Ditch/Swale: A man -made, channelized conveyance system normally created to convey surface or groundwater away from a developed area, such as a road, driveway, parking lot, roof, agricultural field or the like. If a Stream/Intermittent stream flows into a Drainage Ditch/Swale, that portion of the channel below the confluence shall be considered a Stream/Intermittent Stream.

Emergency- Sudden and unexpected event or condition, normally associated with public health and safety, that must be dealt with so urgently that the normal permitting process as described in this Bylaw must be bypassed.

Effective Date- June 1, 1983.

Existing- The condition in place as of the Effective Date of this Bylaw or the date of an Application.

Functions- The intrinsic, nature-governed actions of a Resource Area or its Habitat that contribute to its Value to the Public as a whole.

Great Pond- Waterbodies which contain or contained more than ten acres in their natural state, as listed by DEP, and which are subject to the jurisdiction of MGL c. 91. In this case, Lake Singletary, Manchaug Pond, and Ramshorn Pond. Further, this Bylaw shall consider Stevens Pond as a Great Pond although it is not listed by DEP as such.

Habitat- An ecological or environmental area that is inhabited by a particular species of animal, plant, or other type of organism. It is the natural environment in which an organism lives, or the physical environment that surrounds a species population. In this case, normally associated with Aquatic Life Habitat and Wildlife Habitat.

Illegal- As it pertains to this Bylaw, any Activity or Alteration not duly permitted by the Conservation Commission, or exempted under §12.4 of this Bylaw.

Impact- To have an effect on a Resource Area by Work, Activity, or Alteration.

Impracticable- A fact or circumstance that excuses a party from performing an act because it would cause extreme and unreasonable difficulty or hardship.

In-Kind- In the same way. In the context of a structure repair or replacement, it means that the nature, location, and footprint will remain the same as before said repair or replacement.

Inactive- Not in use or operation, especially in regards to being Maintained.

Individual- Pertaining to a single location or instance.

Jurisdictional Area- One or more of the Areas Subject to Protection under the Bylaw/ Resource Areas under the Bylaw.

Maintain/Maintained- To keep functional and in good repair or otherwise keep in a static state and not a Natural State. In the case of lawns, landscaped areas, fields, gardens, orchards, pastures, and paddocks, it means to continually cut herbaceous vegetation so that new woody vegetation is suppressed. When an area as just described has not been Maintained and therefore Inactive for a 5yr. or greater period\*, it is no longer considered Maintained and loses any Conditional Exemptions/Exceptions it may have enjoyed in the past. If, in the opinion of the Commission an area has reverted to a Natural State prior to the 5yr. period, said area loses its Maintain/Maintained status.

\*The "5yr. or greater period" is a reference to Agriculture as found in 310 CMR 10.04 and meant to be a corollary, but in this case is not limited to Agriculture/Land in Production.

Mean Annual High Water (MAHW)-

- a) Within the context of a river, MAHW is synonymous with Bankfull Condition and the definition of MAHW shall be commensurate with that found in 310 CMR 10.58(2);
- b) Within the context of Great Ponds, lakes, and ponds, the MAHW shall be commensurate with the term Bankfull Condition and shall be the line that is apparent from visible markings or changes in the character of soils or vegetation due to the prolonged presence of water and may not necessarily be located at a defined break in slope.

Minimal- In the opinion of the Commission, Minimal means Impact that is so small as to be non-significant to the Functions and Values of Resource Areas as they relate to the Public Interests.

Mitigate/Mitigation- Shall be commensurate with 310 CMR 10.04. Further, to lessen the impact of an Activity, Alteration, or Project so the effects on Resource Areas are no longer considered an Adverse Impact.

Most Years- Normally within the context of Vernal Pools, most years shall mean three (3) out of five (5) years, which means that the Commission shall have the right to require investigation of the presence or absence of a vernal pool for up to 5 years.

Natural State- An unmaintained condition in which an area is untouched by human intervention or no longer meets the definition of Maintain/Maintained.

Necessary- Required: indispensable to achieve a specific result.

Perennial River- Shall be consistent with the definition of River, including the ability to overcome the presumption of perennality, as found in 310 CMR 10.58(2) except that it need not empty into any ocean, lake, pond, or other river.

Permit- Synonymous with Order as found in 310 CMR 10.04.

Pre-Existing- Means in place prior to the enactment of Bylaw 12.

Project- An activity with a functional purpose (e.g. construction of a single-family house, expansion of a commercial development, dealing with an Emergency to public health and safety).

Public- Relating or belonging to an entire community; in this case, the Town of Sutton.

Public Interests- The general welfare that warrants recognition, protection, and something in which the public as a whole has a stake.

Qualified Professional- A Person having earned a college degree(s) in an area of study directly related to wetlands science and engineering and having a minimum of 3 years' demonstrable field experience of actual hands-on expertise in delineating, assessing, analyzing wetlands and their hydrologic, soil(s), biological, zoological and botanical characteristics, functions and values, and having a current working knowledge of all facets of the MGL c. 131, §40 and 310 CMR 10.00, DEP Wetlands Program Policies, and this Bylaw. The Commission may otherwise accept and act upon creditable information presented by a Person(s) other than a Qualified Professional, as defined herein, at its discretion.

Random- An Activity, Alteration, or Work for which an applicant does not specify in the application the entire Project proposed or contemplated by the Applicant or in which the purpose of the Activity, Alteration, or Work cannot be determined.

Recreation- In activity that a person takes part in for pleasure or relaxation. It may include active recreation, such as hiking, or passive recreation such as bird watching.

Restore/Restoration- To return to a previous condition, normally, a better condition.

Scope/Scope of Work- An accurate, detailed, and concise description of the Work to be performed as part of any Activity, Alteration, or Project. The Scope of Work includes the entire Project, and not merely a segment

of such (e.g. the entire subdivision, including proposed house, well, and septic system placement and not just road infrastructure).

Significant- Plays a role. Within the context of Resource Areas under MGL c. 131, §40 and 310 CMR 10.00 or Resource Areas under the Bylaw, they are significant if they play a role in the protection, as appropriate, of one or more Public Interests. Within the context of determining Impact or Adverse Impact, significant means more than Minimal.

Spring- March 20 to June 20 of any given year.

Statement of Impact Avoidance and Minimization- A portion of the narrative required in §12.5(B) which requires that an applicant satisfactorily demonstrate to the Commission that all probable Impacts to Resource Areas have been avoided to the maximum extent practicable, and where Impacts could not be avoided, that the Impacts to Resource Area(s) Functions and Values have been reduced to the maximum extent practicable so as not to result in Adverse Impact.

Stream/Intermittent Stream- The definition of stream shall be consistent with that found in 310 CMR 10.04 except a stream need not flow within, into or out of a Resource Area. It may stand alone without the accompaniment of a Resource Area (e.g. streams may occur upgradient of Wetlands or may exist without any wetland present whatsoever). Further, streams and intermittent streams may be supplied by either surface water runoff or groundwater, as opposed to ASSF's, which convey only surface water runoff. Intermittent streams dry at least once per year. If a Stream/Intermittent stream flows into a Drainage Ditch/Swale, that portion of the channel below the confluence shall be considered a Stream/Intermittent Stream.

Summer- June 21 to September 23 of any given year.

Threshold- Those established in 310 CMR 10.54(4)(a)4., 10.57(4)(a)3. and 10.58(4)(d)1.c. which establish quantitative numbers, below which alterations to Resource Areas are not deemed to impair capacity to provide important wildlife habitat functions.

Unavoidable- Impracticable to avoid.

Undesirable/Undesirable Alteration- Any Work, Activity, Alteration, or Project that poses an individual Adverse or Cumulative Impact.

Unreasonable- Not guided by reason; irrational or capricious.

Value- The importance or worth of one or more of a Resource Area or Habitat's Functions to the Public.

Vernal Pool- A confined basin, which need not be located within another Resource Area, and which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, are free of adult fish populations, and are further identified by the species of fauna that utilize them. The method for determining the fauna necessary to classify a vernal pool shall be that used by the Massachusetts Division of Fisheries & Wildlife, as amended from time to time. The outermost boundary of the Vernal Pool is the line that is apparent from visible markings or changes in the character of soils or vegetation due to the prolonged presence of water, or by using procedures outlined in 310 CMR 10.57(2)(b)(3) for Isolated Land Subject to Flooding. A vernal pool may have a permanent inlet, but may not have a permanent outlet. The Resource Area of Bank does not apply to Vernal Pool under this definition. The Vernal Pool need not be certified by the Massachusetts Division of Fisheries & Wildlife to be classified as such and receive protection under this Bylaw.

Waterbodies less than 1/4 acre-foot in size- An isolated area, which need not be located within another Resource Area, that provides temporary storage for water and where runoff and high groundwater pond and

slowly evaporate or infiltrate into the ground. They are not Vernal Pools in that the requisite aquatic life components are not found and are mainly, but not necessarily limited to flood control functions.

Wetland- As defined in 310 CMR 10.55(2), except that they shall not be limited to those that border on creeks, rivers, ponds, and lakes, but may be isolated in nature.

Work- Pertains to duties to be performed in association with Activities, Alterations, and/or Projects.

#### **Section 12-4. Conditional Exceptions**

A. An Application and Permit required by this Bylaw shall not be required for in-kind maintenance or repairs to Pre-Existing or duly Permitted structures, Appurtenances, or Maintained areas.

B. An Application and Permit required by this Bylaw shall not be required for normal maintenance or improvement of land in agricultural and aquacultural use defined under 310 CMR 10.04

C. An Application and Permit required by this Bylaw shall not be required for emergency projects necessary for the protection of health and safety of the public, provided 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 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 30 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided in this Bylaw. Failure to meet these and other requirements, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

D. Other than stated in this Bylaw, the exceptions provided in MGL c.131, §40 and 310 CMR 10.00 shall not apply under this Bylaw.

#### **Section 12-5. Applications for Permits**

A. Written application (“Application”) shall be filed with the Commission to perform all related Work associated with Activities, Alterations, and/or Projects affecting any Resource Area(s). The Application shall contain such plans and analysis deemed necessary by the Commission, and as specified in this Bylaw and its Regulations, which describe the proposed Work, Activities, Alteration(s) or Projects and their effect on Resource Area(s).

B. All Applications shall contain a written project description/work narrative, as well as a Statement of Impact Avoidance and Minimization in sufficient detail that describes the entire Scope of any/all proposed Work, Activity Alteration, or Project(s) associated with the Application;

C. The provisions of the DEP Stormwater Management Standards shall apply to those projects described at 310 CMR 10.05(6)(l). At its discretion, the Commission shall have the authority to require studies, to its satisfaction, for projects described at 310 CMR 10.05(6)(l), even if they do not discharge to a Critical Area as defined in 310 CMR 10.04. Examples of required studies would include the 100 year analysis for stormwater runoff associated with a single family house or small (4 or fewer lots) subdivision.

D. The Commission shall have the authority to require studies beyond those mentioned above for any Work, Activity, Alteration, or Project within a Resource Area, regardless of size, scope, or Threshold found in 310 CMR 10.00 and as defined in this Bylaw, to be conducted by a Qualified Professional. The decision shall be based upon the Commission's estimation of the importance of the Resource Area under consideration in relation to the Public Interests. Examples may include, but not necessarily be limited to, Type A or B wildlife habitat

evaluations (at the Commission's discretion), hydraulic/hydrologic studies of rivers and streams, and floodplain studies.

E. For the purposes of this Bylaw, the Commission may accept the Notice of Intent form or other forms filed pursuant to MGL c.131 §40 and 310 CMR 10.00, which shall be sent by certified mail to the Commission, accompanied with the appropriate fee(s), payable to the Town of Sutton.

F. All Application(s) shall be filed concurrently with (or after) any other application(s) for variances and approvals required by any other Town Board or Commission or under their Regulations, or after any such permit(s) have been issued, unless the Commission so decides to waive this requirement. The Commission shall have the conditional prerogative of withholding its final decision until all relevant or related permits are issued. Should an applicant have already filed and received a permit from another Town Board or Commission under their Regulations, the Commission shall not be held to conformance with those permits already received.

G. No work, Alteration(s) or Activities shall commence without receiving and complying with a Permit processed and issued pursuant to this Bylaw.

H. Unless and until the Commission creates separate application forms for projects jurisdictional under this Bylaw only, the Commission shall accept forms under 310 CMR 10.00 (e.g. WPA Form 3- Notice of Intent);

I. No parcel of land shall be considered buildable unless the buildings(s), well and septic system are located in contiguous upland acreage equal to the minimum required lot area for the zoning district where the lot is located.

#### **Section 12-6. Fees**

- A. At the time of an application, the applicant shall pay a filing fee, called the Bylaw Filing Fee, specified in regulations of the Commission. The Bylaw Filing Fee is in addition to that required by the Wetlands Protection Act and 310 CMR 10.00. 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.
- B. Town, County, State, and Federal projects are exempt from the Bylaw Filing Fee. The Commission may waive or decrease the filing fee for non-exempt persons, parties, or entities at its discretion. Filing with the Commission does not relieve any person, party, or entity, from filing for permits also required at the local, state, or federal level.
- C. The Commission shall provide the applicant with the Consultant Fee Schedule, to be specified in regulations of the Commission, and which shall also act as the contractual fee schedule for said Consultant. Any unused portions of collected fee(s) shall be returned to the applicant following issuance of a finding (e.g. Determination of Applicability) or a final Certificate of Compliance, unless the Commission, at a public hearing, decides that additional services and information will be required (e.g. pre-application meeting, construction monitoring). Procedures for the hiring and payment of a Qualified Professional shall be in accordance with MGL c.44, §53G and Rules and Regulations promulgated by the Commission in accordance therefore.
- D. 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.

- E. Specific Consultant services may include, but are not limited to interpretation of Work, Activity, Alteration, or a Project's compliance with MGL c.131, §40, 310 CMR 10.00, Bylaw 12 (i.e. this Bylaw), Resource Area(s) survey and delineation and delineation review, analyses of Resource Area(s) Functions and Values, including but not necessarily limited to wildlife, plant and aquatic habitat evaluations, invasive species and eradication plans and plan review, hydrogeologic, soils and drainage analysis, environmental or land use law, and interpretation(s) thereof, as well as stormwater, erosion and sedimentation control review and associated inspections of on-going construction, attending pre-construction meetings, inspections for Certificates of Compliance, presentations at public hearings and meetings to the Commission of findings and opinions in the form of reports, memos, photos, videos, GIS and computer services, and coordination of any of the above.
- F. All fees that are shared with the Commonwealth of Massachusetts, when paid, shall be placed and held in the Sutton Wetlands Protections Fund, so constituted, pursuant to GL c.43 §218 of the Acts of 1997 (Amending GL c.131 §40). Fees required solely under this Bylaw shall be deposited in a 'revolving fund' pursuant to GL c.44 §53 1/2. These fees shall include all Application fees, related and any prorated fees, or fees of any kind. Payment of the Consultant Fee schedule shall be placed in a Section 53G account, and shall be made at the time of application. The Consultant Fee may be amended from time to time in light of contemporary, competitive rates.
- G. The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested fees above 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.
- H. 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.

### **Section 12-7. Notice and Hearings**

- A. Procedures related to Notices and Hearings shall be commensurate with those found in MGL c.131, §40 and 310 CMR 10.00, as may be amended from time to time, except that notification to abutters shall be extended to 300 feet from the property line.
- B. To the extent permitted by law, by submitting an Application, an applicant is deemed to consent to entry onto the property that is the subject of the Application, by the Commission, its agents or Consultants, officers, members and employees during reasonable times, and upon reasonable notice, without such entry being deemed a trespass, for the purpose of performing their duties under this Bylaw.

### **Section 12-8. Permits, Conditions & Denials**

- A. If the Commission, after a public hearing, determines that the Work, Activities, Alterations, and/or Project which are the subject of the application are likely to have an Individual or Cumulative Impact, Adverse or no, upon the Functions and Values of Resource Areas as they relate to the Public Interests, the Commission shall within twenty one (21) days of the close of the hearing issue or deny a Permit for the Work, Activities, Alterations, and/or Project requested. The Commission shall impose conditions which it deems necessary or desirable for the protection of the Public Interests, and all Work, Activities, Alterations, and/or Projects shall be performed in accordance with those conditions. A Permit may identify requirements that shall be enforceable

for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all current and future owners of the land.

B. The Commission shall have the authority to impose conditions upon Determinations of Applicability if work is proposed within a Resource Area.

C. When making a determination to issue a Permit or denial, the Commission shall take into consideration the extent to which the applicant has avoided, minimized, and mitigated Individual or Cumulative Adverse Impacts for any such Work, Activity, Alteration, or Project. The Commission shall also take into account the individual or Cumulative Impacts to Resource Areas throughout the municipality as they relate to the application under consideration, resulting from past activities, permitted and exempt, and foreseeable future activities.

D. Where no conditions are adequate to protect said Resource Areas, 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 this Bylaw or Regulations of the Commission; for failure to avoid when practicable, or adequately minimize and mitigate when avoidance is not practicable, for Adverse Individual or Cumulative Impact upon the Functions and Values of Resource Areas as they relate to the Public Interests described in this Bylaw.

E. To the extent permitted by law, the Commission shall have the right to inspect properties, without the prior consent of the applicant or owner, during reasonable hours, for compliance with an Order of Conditions, even if expired, until that Permit receives a full Certificate of Compliance. The Commission shall not have the right to inspect a property if the Order of Conditions has expired and work has not begun unless there is probable cause to inspect due to unlawful Work, Activities, Alterations, or Projects occurring or having occurred on said property.

F. For good cause, the Commission may revoke any Permit or any other Order, determination, or other decision issued under this Bylaw after notice to the holder, the public, the abutters, Town Boards, and a public hearing.

G. Amendments to Permits shall be handled in the manner set out 310 CMR 10.00 and the DEP Wetlands Program Policies.

H. Unless and until the Commission creates individual forms, the Permit, Certificate of Compliance, Notice of Violation, or Enforcement Order issued under this Bylaw may use the DEP Wetlands and Waterways Program forms for such.

### **Section 12-9. Hardship & Waivers**

Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. Upon written request by the applicant, the Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements from this Bylaw or Regulations of the Commission 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, Alterations, and/or Project to proceed in compliance with the Bylaw or Regulations of the Commission; that avoidance, minimization, and mitigation have been employed to the maximum extent Practicable; 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 a taking without just compensation.

### **Section 12-10. Rules & Regulations**

A. After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate and clarify 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.

B. At a minimum, these regulations shall define key terms in this Bylaw not inconsistent with this Bylaw.

### **Section 12-11. 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 be secured wholly or in part by one or more of the methods described below:

- A. By a proper bond or deposit of money or negotiable securities 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 Certificate of Compliance for work performed pursuant to the permit.
- 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 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.

### **Section 12-12. Enforcement**

- A. 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 fill to be left in place 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 without the required authorization pursuant to this Bylaw.
- B. The Commission, its agents, officers and employees shall have authority, to the extent provided by the constitutions and laws of the United States and the Commonwealth or with prior approval from the property owner, 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.
- C. The Commission shall have authority to enforce this Bylaw, its rules and regulations and Permits issued thereunder by violation notices, administrative orders (i.e. cease & desist order), Enforcement Orders, non-criminal citations pursuant to Subsection G below, 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.
- D. Upon request of the Commission, the Board of Selectmen and the Town Counsel may take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law.
- E. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- F. Any person who violates any provision of this Bylaw, regulation thereunder, or permits or administrative orders issued thereunder, may be punished by a fine of not more than \$300, beginning, at the Commission's discretion, on the Day of Discovery. Each day or portion thereof during which a violation continues, or unauthorized fill remains in place, shall constitute a separate offense, and each provision of the Bylaw, regulations, permit or order violated shall constitute a separate offense. Fines may end when a written plan to Restore the affected area has been presented or accepted by the Commission, or an application for Permit received.
- G. Non-criminal disposition- In addition to the procedures for enforcement as described above, the provisions of this Bylaw may also be enforced by non-criminal complaint pursuant to the provisions of MGL c. 40, § 21D and Section 19.2.2 of the Town General Bylaws. The enforcement agent shall be the conservation agent or designee (e.g. Conservation Commissioner or consultant to the Commission) or police officer. The penalty for violation of any provision of this Bylaw shall be \$300 for the Day of Discovery, and each day the violation continues pursuant to subsection F above.
- H. Any Person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of the provisions of this Bylaw or in violation of any Permit issued pursuant to this Bylaw shall comply with any such order or Restore such land to its condition prior to any such violation. No action, civil or criminal, shall be brought against such Person provided that that such Person files a Notice of Intent and receives and records a duly issued Order of Conditions.
- I. Upon written appeal for good reason, the Commission may, at its discretion and at a public hearing, reduce or commute fines resulting from violations of this Bylaw.

**Section 12-13. 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 application will not present individual or cumulative Adverse Impact as defined by this Bylaw to a Resource Area or Bylaw Resource Area as they relate to the stated Public Interests.

**Section 12-14. Appeals**

A decision of the Commission shall be reviewable in the Superior Court in an action filed within 60 days thereof, in accordance with MGL c. 249, §4.

**Section 12-15. 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 (MGL c.131, §40) and its Regulations (310 CMR 10.00) thereunder. It is the intention of this Bylaw that the purposes, jurisdiction, authority, exemptions, rules and regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under MGL c. 131, §40 and 310 CMR 10.00.

**Section 12-16. 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.