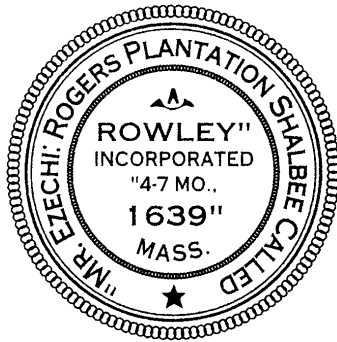


# **WETLANDS PROTECTION BYLAW**

## **TOWN OF ROWLEY**

**EFFECTIVE January 24, 2004**



**Rowley Conservation Commission**  
39 Central Street  
PO Box 24  
Rowley, MA 01969

Tel.: (978) 948-2330; Fax: (978) 948-7196  
email: [conservation@TownofRowley.org](mailto:conservation@TownofRowley.org)

Public Hearing(s): April 29<sup>th</sup>, June 10<sup>th</sup>, July 15<sup>th</sup>, August 19<sup>th</sup>, 2003  
This bylaw was passed at the Special Town Meeting of November 18, 2003 (Article 33), by  
ballot.  
It was approved by the Attorney General on January 24, 2004, and posted in accordance with the  
law.

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## **I. PURPOSE OF THE BYLAW**

The purpose of this Bylaw is to protect and preserve the wetland resource areas of the Town of Rowley (the Town). The Rowley Conservation Commission (the Commission) shall regulate activities deemed to have significant or cumulative effects upon the following interests and values: protection of public or private water supply; protection of groundwater; prevention and control of flooding, erosion, sedimentation, storm damage, and pollution; protection of fisheries and of land containing shellfish, wildlife, wildlife habitat, and having recreation or aesthetic value. The Protection of the Town of Rowley drinking water sources shall be a priority.

## **II. AUTHORITY UNDER THE BYLAW**

The Home Rule authority of the Town of Rowley entitles the Town to protect additional resource areas and values with additional standards and procedures more protective than those of the Wetlands Protection Act, Massachusetts General Laws (MGL) Chapter 131 Section 40, as amended from time to time, and the enabling regulations promulgated thereunder by the Department of Environmental Protection (DEP), 310 Code of Massachusetts Regulations (CMR) 10.00, as amended from time to time. In the event of any conflict between the provisions of this Bylaw and the Massachusetts Wetlands Protection Act MGL Chapter 131 Section 40 and Regulations 310 CMR 10.00, the more protective measures shall apply.

## **III. JURISDICTION UNDER THE BYLAW**

### **A. Protected Resource Areas subject to Jurisdiction by the Conservation Commission**

The provisions of this Bylaw apply to the following wetlands resource areas and presumptions. Except as otherwise provided in this bylaw, the wetlands resource areas and presumptions shall be set forth in MGL Chapter 131 Section 40 and 310 CMR 10.00. Each resource area or area subject to protection is presumed significant to the protection of the wetlands interests and values enumerated in Section I.

1. Isolated vegetated wetlands, including replication areas built according to an approved Order of Conditions;
2. Vegetated wetlands bordering on any creek, river, stream, pond or lake, ocean or estuary including replication areas built according to an approved Order of Conditions;
3. Coastal or inland banks, beaches, flats, marshes, wet meadows, bogs, or swamps;
4. Areas of Critical Environmental Concern (ACEC) as defined in 301 CMR 12.00, including without limitation the Parker River / Plum Island Sound ACEC;

5. A 100-foot buffer zone from any area specified in #1-4 listed above;
6. Vernal pool habitat, as defined in this Bylaw;
7. Land under any creek, river, stream, pond or lake, estuary, ocean, and any land subject to tidal action;
8. The 200-foot Riverfront Area as defined in 310 CMR 10.58;
9. Any areas designated critical or environmentally sensitive, including the approved Department of Environmental Protection Groundwater Protection Area, Zone I; the Approved Department of Environmental Protection Groundwater Protection Area, Zone II; habitats of rare wetlands wildlife as defined by the Natural Heritage and Endangered Species Program; or Outstanding Resource Waters (ORW) as defined by the Executive Office of Environmental Affairs.

#### **B. Activities Subject to Jurisdiction by the Conservation Commission**

Except as permitted in writing by the Commission, or as provided in this Bylaw, no person shall engage in the following activities ("activities"): removal of vegetation and soils, filling, dumping, dredging, discharging into, building upon, or otherwise altering or degrading any of the above resource areas specified in Section III(A) of this Bylaw.

Written application shall be filed with the Commission to perform activities affecting or within resource areas protected as specified in Section VII of this Bylaw.

Any activity proposed or undertaken outside the areas subject to protection is not subject to regulation under this Bylaw and does not require the filing of a written application, unless that activity may alter any of the above resource areas.

#### **C. Retention of Jurisdiction for Comprehensive Permits Under MGL Chapter 40B**

With respect for all applications for Comprehensive Permits pursuant to MGL Chapter 40B, the Commission retains its full jurisdiction and permit power under the Wetlands Protection Act, MGL Chapter 131 Section 40 and DEP Regulations, 310 CMR 10.00. The Commission shall hold hearings and render a decision under the Wetlands Protection Act on all proposed Comprehensive Permit projects if there are Protected resource areas affected by the proposed project that is the subject of the application.

### **IV. DEFINITIONS**

Except as otherwise provided in this Bylaw, the definition of terms, exemptions, limited projects, time frames and requirements shall be identical to those specified in MGL Chapter 131 Section 40 and in 310 CMR 10.00.

The following definitions shall apply in the interpretation and implementation of this Bylaw:

**Alter** shall mean to change the condition of any protected resource areas under this Bylaw.

Examples of alterations include, but are not limited to the following:

- a. Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind.
- b. Changing of pre-existing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns or flood retention characteristics.
- c. Changes of pre-existing water level or water table.
- d. Dumping, placing or removal of any material, that would alter elevation or degrade water quality.
- e. Driving of pilings, construction or repair of structures of any kind or size.
- f. Placing of obstructions or other dam-like structures in water
- g. Damage or destruction of plant life including trees and underbrush.
- h. Application of fertilizer, pesticide, or herbicide.
- i. Any activities, changes, or work that would change temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any body of water or groundwater or that may have a cumulative adverse impact on the resource areas protected by this bylaw.

**Area of Critical Environmental Concern (ACEC)** shall mean Area of Critical Environmental Concern (ACEC) as defined by 301 CMR 12.00 including without limitation the Parker River / Plum Island Sound ACEC, as amended from time to time.

**Isolated Vegetated Wetlands** – shall mean a freshwater wetlands not connected by surface water to any other water body or wetland. A vegetated wetland is an area where the soils and vegetation meet the criteria of 310 CMR 10.00.

**No Cut / No Disturbance Zone** shall be determined by a vote of the Commission and shall consist of an area, extending typically 25 – 50 feet from a resource area as specified in Section III(A) of this Bylaw, (but in no case extending beyond the 100 foot buffer zone), in which virtually no activities or work, other than non-motorized passage, are permitted. This determination will be made in order to protect the interests and values enumerated in Section I of the Bylaw. Among other site-specific conditions set by the Commission, no vegetation may be disturbed. The no disturbance zone shall remain unchanged from its natural, vegetated state. No Cut / No Disturbance zones exist only when ordered by a vote by the Commission on an application.

**Pond (inland)** shall include any open body of fresh water with a surface area observed or recorded within the most recent ten years of at least 5,000 square feet. Ponds may be either naturally occurring or man-made impoundments, excavation or otherwise. Ponds shall contain standing water except for periods of drought as defined in 310 CMR 10.00. Notwithstanding the above, the following man-made bodies of open water shall not be considered ponds:

- a. basins or lagoons which are part of wastewater treatment plants
- b. swimming pools or other impervious man-made basins; and

- c. individual gravel pits or quarries excavated from upland areas unless inactive for five or more consecutive years.

**Rare species** shall include, without limitation, all vertebrate and invertebrate animal 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 Massachusetts Division of Fisheries and Wildlife.

**Vernal pool habitat** shall mean confined basin depressions that, at least in most years, hold water for a minimum of two continuous months, that are free of adult fish populations, and provide essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, as well as the area within 100 feet of the mean annual high water of such depressions regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. The presumption of essential habitat value may be overcome by the presentation of credible evidence that in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations.

## **V. EXEMPTIONS TO THE BYLAW**

This Bylaw shall not apply to the following activities when conducted in protected resource areas except as noted:

1. Maintenance or repair, without substantial change or enlargement, of existing and lawfully located structures or facilities used in the service of the public and used to provide electric, gas, water, telephone, or other telecommunication services to the public, providing a written notice and a detailed description of work is given to the Commission prior to 30 days before the start of the project.
2. Normal maintenance of land in agricultural use, as defined in 310 CMR 10.04 Agriculture (b), and normal improvement of land in agricultural use, as defined in 310 CMR 10.04 Agriculture (c), provided individuals claiming exemption under 310 CMR 10.04 (14) the cutting and removal of trees for the purpose of selling trees when carried out in accordance with a Forest Cutting Plan approved by the Department of Environmental Management must submit written notice and Department of Environmental Management Forest Cutting Plan 30 days prior to the start of work.
3. Maintenance and repair of existing public ways, providing a written notice and a detailed description of work is given to the Commission prior to 30 days before the start of the project.
4. Minor activities, if they do not alter a protected resource area as specified in Section III(A) including unpaved pedestrian walkway provision and maintenance, wildlife-friendly fencing, residential vista pruning as defined in 310 CMR 10.04 and 310 CMR 10.58(6)(b)(3).

5. Normal and customary practices of saltmarsh hay farming, to the fullest extent permitted under 310 CMR 10.00.
6. Normal and customary practices of shellfishing, to the fullest extent permitted under 310 CMR 10.00.

## **VI. PERMIT APPLICATIONS UNDER THE BYLAW**

### **A. Submittal Requirements**

All applications to perform activities or approve delineations in the Town's protected resource areas shall be identical in form to permit applications as required under 310 CMR 10.00. The permit applications may be obtained from the Commission or from the Massachusetts Department of Environmental Protection and must be signed by the applicant or applicant's agent where required.

#### **1. Requirements for Timelines and Application Completeness**

Such applications shall contain data and plans as may be necessary to describe the boundaries of wetland resource areas, the proposed activity and any effects or potential impacts upon the ability of the resource area to protect the interests identified, in both this Bylaw and the 310 CMR 10.00, and shall be submitted in complete written form (including appropriate plans) to the Commission as required by this Bylaw, and Regulations. The date that serves to commence the Commission's hearing and decision process is the date of receipt of the complete application at the Conservation Commission offices, during regular, posted office hours.

#### **2. Requirements for Additional Information**

The Commission may require further plans, maps, professional opinion, or information as may be necessary to protect the interests and values listed in the Wetlands Protection Act or this Bylaw. In order to comply with the provisions of this Bylaw, each application must be complete as filed, and must comply with the rules set forth in this Bylaw and the Commission Regulations. In its discretion, the Commission may consider an application incomplete if filed before all permits, variances, and approvals required by the Bylaws of the Town have been applied for or obtained, or if fees are incorrect. Such application shall also include all relevant information submitted in connection with other department's permits, variance, applications and approvals that describe the effect of the proposed activity on the protected resource area(s).

As appropriate, the Commission may choose to solicit the advice and opinions of other town boards and officials in the course of its deliberations. Town boards and officials shall be entitled to make oral presentations or file written comments and recommendations with the Commission at or before the public hearings, which will be available for review at the Commission Office and at the public hearing. The Commission shall take any such comments and recommendations into

account but shall not be bound by them. 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 the vote of the Commission.

### **3. Requirements for Burden of Proof**

The applicant shall have the burden of proving by a preponderance of credible evidence that the activity proposed in the Notice of Intent or Request for Determination of Applicability will not cause adverse impacts to any of the interests and values intended to be protected by this Bylaw. The Commission may require the applicant to pay a reimbursement fee for the reasonable costs and expenses borne by the Commission for specific expert consultants as described in Section VI(C).

### **B. Submittal Fees**

At the time of the application and in addition to applicable State fees, the applicant shall pay a filing fee according to the following schedule with regard to jurisdictional activities associated with:

<b>Project</b>	<b>Submittal Fee</b>
a. Single minor project (e.g., house addition, barn, swimming pool, or other accessory residential activity)	\$25 each project
b. New Single Family Dwelling	\$250, each dwelling plus \$0.25 per square foot of disturbance in a resource area as described by this Bylaw
c. Subdivision – road and utilities only	\$500 plus \$2 per running foot of road within a resource area as described by this Bylaw
d. Drainage, detention/retention basins (temporary basins exempt)	\$500 each, plus \$2 per 100 cubic feet of basin within a resource area as described by this Bylaw
e. Multiple Dwelling Structure	\$500 each Structure, plus \$100/unit
f. Commercial and Industrial Projects	\$500 each building, plus \$0.50 per square foot of disturbance in a resource area as described by this Bylaw
g. Application filed after Enforcement Order	Double the above fee
h. Determination of Applicability and Abbreviated Notice of Resource Area Delineation	No Charge
i. Remediation of a Contaminated Site or Enhancement of a Degraded Resource (excluding violations)	\$25 per project



<b>Project</b>	<b>Submittal Fee</b>
j. Remediation of a Contaminated Site or Enhancement of a Degraded Resource (exclusively a violation)	\$200 each violation
k. Certificate of Compliance	No Charge
l. Amendments to an Approved Order of Conditions at the Applicant's initiative	\$50 per lot plus \$1 per amended running foot of roadway when original permit includes a roadway
m. Extension to an Approved Order of Conditions	\$50

Fees are cumulative and are not refundable. The Commission may waive the filing fee, consultant fee, and costs and expenses for a permit or other application filed by a government agency. These fees are in addition to those required by the Wetlands Protection Act, MGL Chapter 131 Section 40 and DEP Regulations, 310 CMR 10.00.

### **C. Consultant Services**

#### **1. Use of Consultant**

Upon receipt of an application, or at any point during the hearing process, the Commission is authorized to require an applicant to pay fees for the reasonable costs and expenses borne by the Commission for specific expert engineering or other consultant services deemed necessary by the Commission to come to a final decision on the application. Such fees are called the "consultant fees." The specific consultant services may include, but are not limited to, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydrogeologic and drainage analysis; and researching environmental or land use law and evaluating economic considerations including hardships. No such consultant services shall commence until such time as the applicant has agreed in writing to the scope and funding for such a review. Selection of a consultant by judgment of the Commission to perform a required study shall be based on experience, qualifications, credentials and cost of the consultant.

The project shall not be segmented to avoid the consultant deposit fee. These deposit fees are good faith estimates of the cost of review but the actual fees will be the actual cost that is incurred by the Commission. The amount to be deposited in advance of the work being commenced may therefore be modified at the sole discretion of the Commission as warranted by a particular project.

## 2. Cost of Consultant

<b>Residential Lots and Subdivisions</b>	
<b>Project Size</b>	<b>Deposit Fee</b>
1 lot / unit	\$2,000
2-15 lots / units	\$4,000
16-20 lots / units	\$6,000
21-25 lots / units	\$8,000
More than 25 lots / units	\$10,000

<b>Commercial and Industrial Property</b>	
<b>Project Size</b>	<b>Deposit Fee</b>
Less than 10,000 sq. ft. of gross floor area	\$3,000
10,001 to 30,000 sq. ft. of gross floor area	\$5,000
30,001 to 50,000 sq. ft. of gross floor area	\$8,000
More than 50,001 sq. ft. of gross floor area	\$11,000

A consultant fee may also be assessed for major or complex projects. A major or complex project means a project for which the Commission is likely to require substantial outside technical or legal assistance due to factors such as the novelty and technical complexity of the project; the potential adverse impact; the need for close scrutiny of the project; and the size and scope of the project. The Commission by majority vote may require a deposit fee of up to \$25,000 for major or complex projects.

When the balance of the applicant's consultant fee account falls below 25% of the initial consultant review fee, as imposed in the paragraph above, the Commission shall consider whether to require a supplemental consultant fee to cover the remaining project review and the attendant costs still to come.

Notwithstanding any provision in this Bylaw to the contrary, any unused portion of the fee assessed for consultation services shall be refundable to the applicant after a decision is made on the permit application.

## VII. HEARINGS UNDER THE BYLAW

### A. Combination with State Law Hearing

Unless the Commission otherwise orders, any oral presentation under this Bylaw shall be heard at the same public hearing that is under the provisions of MGL Chapter 131 Section 40. Notice of the time and place of such hearing(s) shall be given as required below.

## **B. Timelines**

The Commission shall commence the public hearing within 21 days from the receipt of the following complete permit applications unless an extension is authorized, in writing, by the applicant: Request for Determination of Applicability (RDA), Notice of Intent (NOI), Abbreviated Notice of Resource Area Determination (ANRAD), Request for Certificate of Compliance, Request for Extension Order. The Commission shall have authority to continue the hearing to the next time available at a public hearing, the date of which shall be announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others deemed necessary by the Commission. At its discretion, the Commission may open or continue a hearing in the event of non-attendance by an applicant or representative at a scheduled hearing.

## **C. Notice of Hearing**

Notice of the time and place of the hearing shall be given by the Commission, not less than five (5) business days prior to the public hearing, by posting at Town Hall and by publication in a newspaper of general circulation in Rowley, at the applicant's expense. All publications and notices shall contain the name of the applicant; the land owner; a description of the area where the activity is proposed by street address, if any, or other adequate identification of the location of the area or premises which is the subject of the notice; the date, time and place of the public hearing; the subject matter of the hearing; and the nature of the action or relief requested, if any. Notice under this Bylaw may be combined with notice provided under 310 CMR 10.00. Abutter notification under this Bylaw may be combined with abutter notification required by MGL Chapter 131 Section 40.

## **D. Burden of Proof**

The applicant shall have the burden of proving by a preponderance of credible evidence that the activities proposed will not cause significant or cumulative adverse impacts to any of the interests and values intended to be protected by this Bylaw.

Failure to provide to the Commission adequate evidence that the proposed activity will not cause adverse impacts, shall be sufficient cause for the Commission to

1. deny permission, or
2. grant permission with conditions as it deems reasonable or necessary to carry out the purposes of this Bylaw, or
3. by mutual consent to postpone or continue the hearing to another date specified to enable the applicant and others to present additional evidence, upon such terms and conditions as deemed by the Commission to be reasonable. Due consideration shall be given to possible effects of the proposal on all interests and values to be protected under this Bylaw.

## **VIII. ORDERS AND DECISIONS UNDER THE BYLAW**

### **A. Orders and Decisions**

If, after the hearing(s), the Commission determines that the proposed activity significantly affects one or more interests and values enumerated in Section I of this Bylaw, the Commission shall deny a permit for the activity requested. If, after the hearing(s), the Commission determines that the proposed activity does not significantly affect one or more interests and values enumerated in Section I of this Bylaw, the Commission shall issue a permit for the activity requested with conditions. The Commission may take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities. The Commission shall then issue the appropriate written decision within 21 days of the close of the public hearing. Written decisions under this Bylaw may be combined with permits issued under 310 CMR 10.00.

The Commission may establish such conditions, safeguards, and limitations on time and use on the proposed activity, including without limitation strips of continuous, undisturbed vegetative cover within the resource areas, or other form of work limit or setback to buildings, roads, landscaping and other features. This area shall be termed as a No Cut / No Disturbance Zone as described in Section IV of this Bylaw. The specific size and type of protected area shall be at the discretion of the Commission, as it deems necessary to contribute to the protection of wetlands interests and values enumerated in Section I.

Where no conditions are adequate to protect those resource values enumerated in Section I of this Bylaw, the Commission shall 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 meet design specifications, performance standards, and other requirements in the regulations of the Commission; or for failure to avoid or prevent significant or cumulative adverse impacts upon the resource area values protected by this Bylaw.

### **B. Security to Assure Performance**

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 provision described below:

1. By a proper bond, deposit of money, 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.

2. 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 town 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.

The Commission shall endeavor to avoid performance securities duplicative of those required by other town boards.

### **C. Duration of Orders**

Except at the discretion of the Commission, no activity governed by an Order of Conditions shall be performed unless such Order of Conditions or notification has been recorded or registered at the Essex South District Registry of Deeds or in the North Essex District of the Land Court Department, and all applicable appeal periods have expired. The Commission shall have the right to record or register its Order of Conditions with said Registry or Registry District at the expense of the applicant. In the event that an Order of Conditions issued pursuant to this Bylaw is identical to a final Order of Conditions issued pursuant to the provisions of MGL Chapter 131 Section 40, only one such order need be recorded or registered. All Orders of Conditions shall expire three (3) years after the date of issuance. At the discretion of the Commission an Order of Conditions may be extended for one (1) year at a time upon the request of the applicant in writing. The request for an extension of an Order of Conditions shall be made to the Commission at least 30 days prior to expiration of the Order of Conditions.

### **D. Amendments**

The Commission shall have the power (on its own motion or upon the petition of the applicant, or any abutter) to initiate an amendment to an Order of Conditions for causes specified. Decisions shall be based on the same standards as for the original application. Written notification to the applicant and abutters by certified mail is required in all cases.

In all cases where the applicant or property owner requests an amendment to an approved Order of Conditions such request shall be in writing to the Commission. The request shall be heard at a public hearing within 21 days of receipt.

### **E. Revocations**

The Commission shall have the power (on its own motion or upon petition of any abutter) to initiate a revocation of an Order of Conditions, for causes specified. The Commission shall notify the applicant and or owners and abutters by certified mail of its intent to consider revocation and shall hold a public hearing within 21 days of the notification date.

## **IX. CERTIFICATES OF COMPLIANCE UNDER THE BYLAW**

Upon receiving a Request for Certificate of Compliance, the Commission shall, within 21 days, issue a Certificate of Compliance appropriately applicable to the Town of Rowley Wetlands

Protection Bylaw to the owner of the property, applicant, or applicant's representative, in a form suitable for recording or registering, if the Commission determines that the activities have been completed in accordance with the Order of Conditions. This Certificate of Compliance may be identical to the form used by the DEP under 310 CMR 10.00.

## **X. PRE-ACQUISITION VIOLATION UNDER THE BYLAW**

Except as limited by applicable law, the Commission may enforce its orders and requirements against transferees of any property, without regard to whether a condition or violation may have existed prior to the transferee's acquisition of title or beneficial interest in the property.

## **XI. RULES AND REGULATIONS UNDER THE BYLAW**

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 Town Clerk. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity in whole or in part by a court of law shall not act to suspend or invalidate the effects of this Bylaw.

## **XII. ENFORCEMENT AND VIOLATIONS UNDER THE BYLAW**

In addition to the duties previously set forth in this Bylaw, the Commission, its administrators, officers and employees and any officer with police powers may issue enforcement orders directing compliance with this bylaw and may undertake any other enforcement action authorized by law. Any Enforcement Order issued by any individual must be ratified by the Commission at a public meeting. Enforcement Orders issued or ratified by the Commission may be recorded in the Registry of Deeds, at the property owner's expense. Upon request of the Commission, the Board of Selectmen and the Town Counsel may take legal action for enforcement under civil law, seek to restrain violations thereof and seek injunction and judgments to secure compliance with Conservation Commission orders. Upon request of the Commission, and the consent of the Board of Selectmen, the Chief of Police shall take legal action for enforcement under criminal law.

In accordance with the provisions of MGL Chapter 40 Sections 21D and 31 as well as every other authority and power that may have been or may hereafter be conferred upon it, the Town or Commission may enforce the provisions of this Bylaw, by taking either of the following actions or any other actions as listed below:

### **A. Violation Notice**

Any person who violates any provision of this Bylaw, or regulations, permits, or administrative orders issued there under, may be served with a written notice of violation enumerating the alleged violations. If after ten business days the Commission has not received what it deems to be either (a) sufficient evidence demonstrating that no

violations have occurred, or (b) written notice of intent to file the appropriate permit application within 21 days, or (c) a filing that will remediate the violations, then an Enforcement Order will be issued and fines will begin to accrue in accordance with the violation table.

## **B. Enforcement Orders**

In the event of a violation of this Bylaw, of the Wetlands Protection Act, or any of order issued by the Commission, the Commission or its agents may issue an Enforcement Order according to the provisions of Section XII requiring that the owner or applicant or applicant's agent cease and desist specified activities or order the property owner to perform certain remedial actions. The Order may be served by hand delivery, certified mail return receipt requested, or by posting in a conspicuous location on the site. Any person who shall violate the provisions of a Cease and Desist Order or shall fail to perform remedial actions shall be deemed in violation of the Bylaw; but the failure of the Commission to issue a Cease and Desist Order for any reason shall not prevent the Town from pursuing any other legal remedy at law or in equity to restrain violations of this Bylaw or promulgated regulations and to secure compliance with the orders of the Commission. The Commission or its agents may issue an Enforcement Order without regard to whether a violation Notice has been previously issued.

## **C. Fines**

Fines may be imposed beginning on the day of the issuance of an Enforcement Order following a Violation Notice or on the eleventh business day after the issuance of an Enforcement Order without a preceding Violation Notice. Fines may accrue until such time that the property owner submits an application to remediate the violation. Each day, or portion thereof, during which a violation continues or unauthorized fill or other alteration remains in place, shall constitute a separate offense. Each provision of the Bylaw, Regulations, Permits, or Administrative Orders violated shall constitute a separate offense. This Bylaw may be enforced pursuant to MGL Chapter 40 Section 21D by Conservation Commissioners, the Conservation Administrator, or other persons having police powers. In accordance with MGL Chapter 40 Section 21D, violators shall be charged a penalty. At the discretion of the Commission, a penalty may be imposed from a minimum of one day for one violation to a maximum of each day for each and every violation upon specified reasons consistent with this Bylaw as specified in Section I. The penalties for violations of this Bylaw or regulations promulgated hereunder may be assessed as follows:

<b>Violation</b>	<b>Penalty/Offense</b>		
	Buffer Zone	Wetlands Resource Areas & ACEC (excluding Buffer Zone)	Non-Compliance with a provision of this Bylaw
1st Violation	\$25	\$50	\$75
2nd Violation	\$50	\$100	\$200
3rd Violation	\$300	\$300	\$300

The Town shall be the beneficiary of all fines and penalties imposed for violations of this Bylaw or regulations of the Commission.

### **XIII. INVESTIGATIONS UNDER THE BYLAW**

The Commission, its agents, officers, and employees, may enter upon privately owned land, insofar as permitted by law, for the purpose of carrying out their duties under this Bylaw and may examine or survey as necessary.

### **XIV. CAPTIONS AND SEVERABILITY UNDER THE BYLAW**

The captions used herein are for convenience only and are expressly intended to have no legal or binding significance. The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any Order of Conditions or decisions that have previously become final, not otherwise determined to be invalid.

### **XV. APPEALS UNDER THE BYLAW**

A decision of the Conservation Commission under this Bylaw shall be reviewable in the Superior Court, in accordance with MGL Chapter 249 Section 4. The right of appeal to the Superior Court shall be in addition to any and all other existing rights of administrative appeal.

### **XVI. EMERGENCY PROJECTS UNDER THE BYLAW**

Applicants may request an emergency permit necessary for the health and safety of the public as defined by 310 CMR 10.06.

Applicants may request an emergency permit as defined by 310 CMR 10.06 for the selective trimming, cutting, or removal of trees (including diseased, damaged or dead trees) likely to cause immediate risk of substantial harm to persons or property, to cause personal damage, or to block existing driveways or roadways.

### **XVII. WAIVERS UNDER THE BYLAW**

The Commission may waive any of the submission standards of this Bylaw if, in its opinion, these standards do not apply or are not needed to reach a decision.

The Commission may, at its discretion and for good cause shown, grant waivers from the requirements of one or more of the regulations or performance standards. Such waivers are intended to be granted only in rare and unusual cases and only when resource protection would be enhanced relative to preexisting conditions.



Any request for a waiver must be submitted to the Commission in writing and the Commission shall act on the request within 21 days of receipt of all the information necessary to make the waiver decision.