

## I. Purpose

**The purpose of this Bylaw is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Hudson by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect on Resource Area values, including but not limited to the following: public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention, water quality, prevention and control of pollution, fisheries, shellfisheries, wildlife habitat, rare species habitat including rare plant and animal species, agriculture, aquaculture, recreation values, adaptation to and mitigation of impacts from climate change, and protection of biodiversity, deemed important to the community (collectively, the “Resource Area values protected by this Bylaw”).**

## II. Statutory Authority

This Bylaw utilizes the Home Rule authority of the Town of Hudson to protect the Resource Areas subject to regulation under the Wetlands Protection Act (*M.G.L. c.131, §40*) (the “Act”) to a greater degree; to protect additional Resource Areas beyond the Act recognized by the Town as significant, beyond those subject to regulation under the Act; to protect all Resource Areas for their additional values beyond those recognized under the Act; and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and its implementing regulations (310 CMR 10.00) (the “Regulations”), 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 Hudson.

## III. Jurisdiction

Except as permitted by the Conservation Commission or as provided by this Bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following Resource Areas or their Buffer Zones: any freshwater wetland; vernal pool; marsh; wet meadow; bog; swamp; spring; reservoir; lake; pond of any size; intermittent stream, brook, or creek, regardless of whether the stream, brook or creek is associated with a Resource Area or upgradient of a Resource Area; bank; beach; land under said waters; land subject to flooding; Riverfront Area. Said Resource Areas shall be protected whether or not they border surface waters.

The jurisdiction of this Bylaw shall not extend to activities and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture, including work performed for normal maintenance or improvement of land in agricultural or aquacultural uses as defined by the Wetlands Protection Act regulations, found at 310 CMR 10.04

**25-foot No Disturb Zone:** No work or disturbance, including but not limited to grading and vegetation removal, shall be permitted within twenty-five (25) feet of any Resource Area with the exception of Land Subject to Flooding, unless the applicant provides information and evidence deemed satisfactory by the Commission that the work to be performed sufficiently protects or enhances wetland interests or is otherwise exempted (see “Exemptions and

Exceptions”). This area is referred to as the “25-foot No Disturb Zone”. Water related projects such as docks and retaining walls are exempted from the restrictions of the 25-foot No Disturb Zone and may be permitted through the filing of a Notice of Intent pursuant to §V.

#### **IV. Exemptions and Exceptions**

The applications and permits required by this Bylaw shall not be required for the following activities in the 100-foot Buffer Zone or the 200-foot Riverfront Area, (including the 25-foot No Disturb Zone).

- (1) Routine mowing (including river meadows) and maintenance of lawns, gardens, and landscaped areas, in existence on the effective date of this Bylaw or which are created after such date in accordance with the terms of this Bylaw;
- (2) Maintaining and repairing existing buildings and structures provided that the footprint does not expand and that no heavy equipment or excavation is required, and there is no stockpiling within the 25-foot No Disturb Zone;
- (3) Constructing, maintaining, and repairing unpaved pedestrian walkways of three (3) feet in width or less for private use provided there is no use of fill material;
- (4) Maintaining and repairing existing stone walls;
- (5) Maintaining and constructing new fencing provided that: a) it is greater than twenty-five (25) feet from the Resource Area boundary and b) it does not constitute a barrier to wildlife movement (i.e., the fence is greater than four (4) inches from the ground surface);
- (6) Conversion of lawns to uses accessory to residential (single or multifamily) such as decks, sheds, patios, and above-ground pools, provided the activity, including any discharge pipes and any temporary disturbance, is located more than fifty (50) feet from the Resource Area boundary. The conversion of such uses, or other impervious surfaces accessory to existing single-family houses to lawn or natural vegetation is also allowed;
- (7) Activities, such as monitoring wells, exploratory borings, soil sampling, and surveying, that are temporary, have negligible impacts as determined by the Commission, and are necessary for planning and design purposes;
- (8) Planting trees, shrubs, or groundcover (excluding turf lawns) provided they are not considered to be invasive species.
- (9) Pruning of existing vistas and of tree branches or shrubs that pruning does not impact the health of the vegetation;
- (10) Utilities and roads: The applications and permits required by this Bylaw shall not be required for:

- a) 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 including wells, sewer, telephone, telegraph, or other telecommunication services, provided that notice has been given to the Commission thirty (30) days prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.
- b) Maintaining and repairing existing and lawfully located roads (excluding bridges and culverts) provided that:
  - a. There is no increase in impervious surface;
  - b. There is no additional alteration of Resource Areas
  - c. Written notice has been given to the Conservation Commission ten days prior to commencement of work; and
  - d. Erosion and sedimentation controls are used as necessary.
- c) Installation and repair of underground utilities (e.g., electric, gas, water, and sewer) within existing paved or unpaved roadways and private roadways/driveways, provided that all work is conducted within the roadway or driveway and that all trenches are closed at the completion of each workday;
- d) Installation of access road gates at public or private road entrances to existing utility right-of-way access roads and installation of guardrails and other safety features along existing roadways, provided that all vehicles and machinery are located within the roadway surface during work
- e) Vegetation cutting for road safety maintenance, limited to the following:
  - a. Removal of diseased or damaged trees or branches that pose an immediate and substantial threat to driver safety from falling into the roadway;
  - b. Removal of shrubbery or branches to maintain clear guardrails; such removal shall extend no further than six feet from the rear of the guardrail;
  - c. Removal of shrubbery or branches to maintain sight distances at existing intersections; such removal shall be no farther than five feet beyond the "sight triangles" established according to practices set forth in American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets, 2011, 6th edition, and such removal is a minimum of ten feet from a resource area, other than Riverfront Area; and
  - d. Removal of shrubbery, branches, or other vegetation required to maintain the visibility of road signs and signals. Cuttings of shrubs and branches from mature trees will be performed with suitable horticultural equipment and methods that do not further damage the trees. To prevent the possible export of invasive plants, cut vegetation should be chipped and evenly spread on site, provided the chips are

spread outside the buffer zone, and raked to a depth not to exceed three inches, clear of all drainage ways. Alternatively, all cuttings and slash shall be removed from the site and properly disposed;

- f) Installation, repair, replacement or removal of signs, signals, sign and signal posts and associated supports, braces, anchors, and foundations along existing paved roadways and their shoulders, provided that work is conducted as far from resource areas as practicable, and is located a minimum of ten feet from a resource area, any excess soil is removed from the project location, and any disturbed soils are stabilized as appropriate;
- g) Pavement repair, resurfacing, and reclamation of existing roadways within the right-of-way configuration provided that the roadway and shoulders are not widened, no staging or stockpiling of materials, all disturbed road shoulders are stabilized within 72 hours of completion of the resurfacing or reclamation, and no work on the drainage system is performed, other than adjustments and/or repairs to respective structures within the roadway;

(11) Stormwater management systems: The applications and permits required by this Bylaw shall not be required for maintenance of a stormwater control structure or system in existence at the time of adoption of this Bylaw or of one approved in accordance with the stormwater management standards, as provided in the Massachusetts Stormwater Policy. This exemption shall apply provided that the work is limited to maintenance and that said work utilizes best practical measures to avoid and minimize impacts to wetland Resource Areas outside of the footprint of the stormwater management system. Such stormwater management systems may include wetland Resource Areas created solely for the purpose of stormwater management and approved under an Order of Conditions. Stormwater management systems must conform to all local rules and regulations.

(12) Emergency projects: The applications and permits required by this Bylaw shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that 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 (including the Town of Hudson); provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within twenty-four (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 twenty-one (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 applicable 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 what is stated in this Bylaw, the exceptions provided in the Wetlands Protection Act (M.G.L.A. c. 131 § 40) and its regulations (310 CMR 10.00) shall not apply under this Bylaw.

The Conservation Commission may adopt additional exemptions and exceptions within the regulations promulgated pursuant to §VI.

## **V. Administration**

### **A. Applications**

Written application, called a Notice of Intent or NOI, shall be filed with the Conservation Commission to perform activities within or affecting Resource Areas protected by this Bylaw and activities within the 100-foot Buffer Zone. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the Resource Areas protected by this Bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this Bylaw.

The Commission in an appropriate case may accept as the application and plans under this Bylaw any application and plans filed under the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00).

Any person desiring to know whether or not a proposed activity or an area is subject to this Bylaw may file a Request for Determination of Applicability (RDA) with the Commission, including information and plans as are deemed necessary by the Commission.

### **B. Administrative Approvals**

The following activities may be permissible by administrative approval by the Commission or the Conservation Agent following consultation:

- (1) Removal of dead and dying trees or trees that are deemed to be a hazard to safety or property, as confirmed by the Conservation Agent. Confirmation may require written documentation from a certified arborist;
- (2) Maintaining and constructing new fencing provided that: a) it is greater than five (5) feet from the Resource Area boundary and b) It does not constitute a barrier to wildlife movement (i.e., the fence is greater than four (4) inches from the ground surface

### **C. Consultant Fees**

Pursuant to G.L. Ch. 44 §53G and regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects. Such funds shall be deposited with the Town Treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the cost or scope of work of the outside consultant is more expensive or extensive than originally determined 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 the applicant with written notice of the selection of a consultant, that shall include the identity of 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. Within ten (10) business days of the date notice is given, the applicant may withdraw the application 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 incomplete and lacking in information and deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and Department of Environmental Protection (DEP) of such a decision in writing.

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

#### **D. Notice and Hearings**

Any person filing a Notice of Intent (NOI) application for a permit under the provisions of this Bylaw shall at the same time:

1. Give written notice thereof, by certified mail (return receipt requested), Certificate of Mailing or hand delivery, 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.
2. 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.
3. 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.
4. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission prior to opening the hearing.

The Commission shall conduct a public meeting for any RDA and hearing on any NOI and ANRAD with written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the municipality. The Commission shall commence the public hearing or meeting as required within 21 days from receipt of a completed NOI, RDA, or ANRAD 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. The Commission may, at its option, combine the hearing under this Bylaw and the hearing conducted under the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.

### **E. Permits and Conditions**

If the Conservation Commission, after a public hearing, determines that the activities which are subject to the permit application, or the land and water uses which will result therefrom, are likely to have a significant individual or cumulative effect on the Resource Area values protected by this Bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. In rendering its decision, the Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of Protected Resource Areas throughout the Town and the watershed, resulting from past activities, permitted and exempt activities, and foreseeable future activities.

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.

Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that 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 the Buffer Zone is important to the protection of Resource Areas because activities undertaken in close proximity have a high likelihood of adverse impact, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat.

In reviewing activities within the Riverfront Area, the Commission shall presume the Riverfront Area is important to all the Resource Area values unless demonstrated otherwise, and no permit

issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this Bylaw, has proved by a preponderance of the evidence that: (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this Bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.

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

The Commission shall presume that all areas meeting the definition of “vernal pools” under §VII of this Bylaw, including the adjacent area, perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential habitat functions. Any evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act regulations.

A permit, Determination of Applicability (DOA), or Order of Resource Area Delineation (ORAD) shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one-year period, provided that a request for a renewal is received in writing by the Commission 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, 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 §V and §VI, and after a public hearing.

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

The Commission in an appropriate case may combine the decision issued under this Bylaw with the permit, DOA, ORAD, or Certificate of Compliance (COC) 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.

## **VI. Regulations**

After public notice and public hearing, the Conservation Commission shall promulgate rules and regulations to effectuate the purposes of this Bylaw. Failure of the Conservation 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 and define additional terms not inconsistent with the Bylaw.

## **VII. Definitions**

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

**Agriculture:** The term “agriculture” shall refer to the definition as provided by G.L. Ch. 128 §1A.

**Alter/Alteration:** This term 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 of trees and shrubs
- 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.
- L. Any activity that changes the ability of a resource area to adapt to climate change impacts, to provide climate resilience.

**Bank:** 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.

**Buffer Zone:** The area of land extending 100 feet horizontally outward from any Resource Area except land subject to flooding and Riverfront Area.

**No Disturb Zone:** Lands within 25 feet of any Protected Resource Area except Land Subject to Flooding.

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

**Protected Resource Area:** As defined in Section III of this Bylaw.

**Rare Species:** Without limitation, all vertebrate and invertebrate animals and all 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.

**Recreation:** Any passive leisure activity that does not conflict with or diminish wetland functions or the Resource Area values protected under this Bylaw. Examples include, but are not limited to, the following: legally licensed fishing or hunting, boating, swimming, walking and hiking, canoeing, and bird watching.

**Stream:** A body of running water, including brooks and creeks, which moves in a definite channel in the ground due to a hydraulic gradient. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (i.e., which is intermittent) and which may consist of a drainage way without a defined channel embankment, is also considered a stream.

**Vernal Pool:** 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, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.

### **VIII. 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 the Conservation Commission 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.

## **IX. 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 or its agent 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 Select Board 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:

- \$100 for the first offense
- \$200 for the second offense
- \$300 for the third and all subsequent offenses

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.

## **X. 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 effect 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.

#### **XI. Appeals**

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

#### **XII. 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.

#### **XIII. 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.

#### **XIV. Effectivity Date**

Any project which has a validly issued and existing Order of Conditions at the time of passage of this Bylaw shall be exempt from the provisions hereof unless any amendments or changes which increase the scope of the project, as determined by the Commission, are requested under the Order of Conditions in which case the provisions hereof shall govern.