

**TOWN OF TEWKSBURY**  
1009 MAIN STREET  
TEWKSBURY, MASSACHUSETTS 01876  
DEPARTMENT OF COMMUNITY DEVELOPMENT

# TOWN OF TEWKSBURY

## WETLAND PROTECTION BYLAW

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**18.04.010: Purpose**

The purpose of the Tewksbury Wetland Protection Bylaw (“Bylaw”) is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Tewksbury (“Town”) by controlling activities deemed by the Tewksbury Conservation Commission (the “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 including coastal storm flowage, water quality, prevention and control of pollution, fisheries, shellfisheries, wildlife habitat, rare species habitat including rare plant and animal species, agriculture, aquaculture, and recreation values, deemed important to the community.

This Bylaw is intended to utilize the Home Rule authority of this municipality so as to protect the resource areas under the Wetlands Protection Act (M.G.L. Ch.131 §40; the “Act”) to a greater degree, to protect additional resource areas beyond the Act recognized by the Town as significant, to protect all resource areas for their additional values beyond those recognized in the Act, and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and regulations thereunder (i.e., 310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth and other relevant Bylaws of the Town.

**18.04.020: Definitions**

The following definitions shall apply in the interpretation and implementation of this Bylaw. Except as otherwise provided herein or in the Commission’s regulations, the definitions of terms shall be as set forth in the Act and 310 CMR 10.00.

**Abutter:** means the owner of any property – including owners of land directly opposite on any public or private street or way, in addition to properties in another municipality or across a body of water – any portions of which lies within 100 feet radially from the Project Locus.

**Alter:** includes, without limitation, the following activities, whether temporary or permanent, when taken to, upon or within, or when they affect Resource Areas protected by this Bylaw:

- (1) Removing, excavating, or dredging of soil, sand, gravel, or aggregate materials of any kind;
- (2) Changing pre-existing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- (3) Draining or otherwise disturbing the ground or surface water level or water table;
- (4) Dumping, discharging, or filling with any material which may degrade water quality;
- (5) Placing or removing of fill or other material, which would alter the elevation or land surface;
- (6) Driving piles, erecting or repairing buildings (residential or commercial) or structures that causes soil disturbance;
- (7) Placing of obstructions in water, whether or not they interfere with the flow of water;

- (8) Changing water temperature, biochemical oxygen demand, or any other physical, biological, or chemical characteristics of the water;
- (9) Destroying plant life, including cutting trees and shrubs;
- (10) Conducting any work or activity which may cause or tend to contribute to pollution of any body of water or groundwater;
- (11) Applying pesticides or herbicides;
- (12) Any activities, changes or work which cause alteration of wildlife habitat;
- (13) Any activities, changes or works which pollute or cause displacement of any body of water or groundwater; and
- (14) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this Bylaw.

**Buffer Zone:** means the land located within 200 feet from the outer boundary of any potential or certified Vernal Pools and the land located within 100 feet from the outer boundary of any:

- (1) Bordering freshwater wetlands, isolated freshwater wetlands, wet meadows, marshes, swaps, or bogs;
- (2) Intermittent streams, brooks, and creeks;
- (3) Ponds and lakes; and
- (4) Banks

**Commission:** means the Tewksbury Conservation Commission.

**Department:** means the Massachusetts Department of Environmental Protection (DEP).

**No Build Zone:** means that portion of the Buffer Zone upgradient of the No Disturb Zone and extending to a line fifty feet (50') from the edge of those Resource Areas incorporated into the definition of Buffer Zone, contiguous or intermittent, with a defined dimension, subject to restriction, defined in this Bylaw.

**No Disturb Zone:** means that portion of the Buffer Zone which extends twenty-five feet (25') from the edge of those Resource Areas incorporated into the definition of Buffer Zone, continuous or intermittent, with a defined dimension, subject to restriction, defined in this Bylaw.

**Person:** means an entity which includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town Bylaws, administrative agency, public or quasi-public corporation or body, a municipality, and any other legal entity, its legal representatives, agents or assigns.

**Ponds:**

- (1) Shall include any substantially open body of fresh water with a surface area observed or recorded, within ten years prior to the date of application, of at least 5,000 square feet. Ponds may be either naturally occurring or man-made by impoundment, excavation, or otherwise. Ponds shall contain standing water except for periods of extended drought. For the purposes of this definition, extended drought shall be defined at 310 CMR 10.00 as it may be amended.
- (2) Notwithstanding the above, the following man-made bodies of open water shall not be considered ponds: swimming pools or other impervious man-made basins.

**Project Locus:** means the property boundaries of the lot(s) on which an applicant proposes to perform an activity subject to the Bylaw, or in the case of a Notice of Intent application proposing work within a public roadway or easement, Project Locus shall mean the spatial extent of proposed activities that meet the definition of Alter herein within said roadway or easement.

**Quorum:** A majority of the Commission members in office.

**Rare Species:** means, without limitations, 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.

**Resource Areas:** include any natural or created bordering/isolated freshwater wetlands, marshes, wet meadows, bogs, swamps, lakes, ponds (natural or created), rivers, streams, banks, vernal pools, Land Under Water and Waterways, Riverfront Area, and Bordering/Isolated Land Subject to Flooding. Note that section 18.04.040(5) of the Bylaw shall be deferred to regarding whether a stormwater management system by itself may constitute a jurisdictional Resource Area or Buffer Zone.

**Resource Area Values:** include public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention including coastal storm flowage, water quality, prevention and control of pollution, fisheries, shellfisheries, wildlife habitat, rare species habitat including rare plant and animal species, agriculture, aquaculture, and recreation values deemed important to the community.

**Structure:** shall mean a combination of materials assembled at a fixed location to give support or shelter such as a building, house, barn, garage, or shed. The word "Structure" shall be construed, where the context requires, as though followed by the words "or part or parts thereof". However, in reference to the No Build Zone, "Structure" shall not include fences, retaining walls, decks, patios, lawn furniture, children's toys such as sandboxes and swing-sets, rip-rapped areas, driveways, parking areas, or the like. Additionally, sheds and gazebos shall not be included in the definition of "Structure" in reference to the No Build Zone provided that they have a floor area of 120 square feet or less. This definition is not meant to be extended to how the term "Structure" is used for agricultural exemptions in Section 18.04.040 of the Bylaw.

**Vernal Pools:** means a confined depression which provides habitat for vernal pool species, whether or not certified by the Massachusetts Natural Heritage program. Vernal pool species are those vertebrate and invertebrate species listed in the January 1991 edition of Massachusetts Audubon Society's "A

Citizen's Step-by-Step guide to Protecting Vernal Pools". In addition to the scientific definitions found in the Act's regulations, any confined basin or depression not occurring in existing lawns or driveways that, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contain 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, and regardless of whether the site is contained within another resource area shall be defined as a vernal pool. The adjacent upland buffer zone resource area for vernal pools shall extend 200 feet outward from the mean annual high-water line defining the depression.

**18.04.030: Jurisdiction**

No person shall alter, dredge, fill, degrade, discharge into, and/or remove the following local Resource Areas within the Town except as permitted by the Commission:

- (1) Any bordering freshwater wetlands, isolated freshwater wetlands, wet meadows, marshes, swaps, bogs, intermittent streams, brooks, creeks, ponds, lakes, and banks (banks of streams, ponds, lakes), in addition to lands within 100-feet of said Resource Areas;
- (2) Vernal Pools, in addition to lands within 200-feet of this Resource Area;
- (3) Riverfront Area;
- (4) Land Under Waterbodies and Waterways; and
- (5) Bordering and Isolated Land Subject to Flooding;

**18.04.040: Exemptions**

- (1) Provided that written notice with suitable plans and a project narrative (if applicable) has been received and reviewed by the Commission prior to the commencement of work, the application and permit otherwise 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 building (residential/commercial) or facility used in the service of the public to provide electric, gas, water, sewer, telephone or other telecommunication services, provided said work utilizes the best practical measures to avoid or minimize impacts to Resource Areas outside the footprint of said structure or facility; and
  - b. Mosquito control projects when performed by the Commonwealth or political subdivision thereof.
- (2) The jurisdiction of the 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 by the Act's regulations, found at 310 CMR 10.04.

- (3) Minor Activities, as defined in the Commission's regulations, that occur only within the Buffer Zone and/or Riverfront Area, shall not be subject to the requirements of the Bylaw and the Commission's regulations relative to obtaining a permit.
- (4) The application and permit required by this Bylaw shall not be required for emergency projects necessary for the protection of the health or safety of the public, provided that the work is performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, and provided that all the following conditions are met:
  - a. Written notice has been given to the Commission prior to the commencement of work or within twenty-four (24) hours after commencement. In cases determined by the Commission to be extreme emergencies, verbal notice shall be provided within five (5) business days;
  - b. The Commission or its agent certifies the work as an emergency project;
  - c. The work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and
  - d. Within twenty-one (21) days of commencement of an emergency project, the Commission may require the filing of an application for permit.

Upon failure to meet these conditions, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

- (5) Notwithstanding Section 18.04.030, stormwater management systems designed, constructed, installed, operated, maintained, and/or improved in accordance with the *Stormwater Management Policy (1996)* or 310 CMR 10.05(6)(k) through (q) do not by themselves constitute Resource Areas or Buffer Zone under this Bylaw, provided that:
  - a. The system was designed, constructed, installed, and/or improved on or after November 18, 1996; and
  - b. If the system was constructed in a Resource Area or Buffer Zone, the system was designed, constructed, and installed in accordance with all applicable provisions of the Bylaw.

If this citation is applicable to a proposed project, the applicant has the burden of proving that a subject stormwater management system meets the requirements outlined in Section 18.04.040(5) of this Bylaw.

**18.04.050: Buffer Zone Limitations**

- (1) The following limitations apply to the Buffer Zone identified in this Bylaw:
- a. No Disturb Zone: Unless otherwise provided under the Bylaw herein, no alteration of Buffer Zone is permitted within 25-feet of the delineated edge of Resource Areas that are incorporated into the definition of Buffer Zone. Prohibited activities include, but are not limited to, grading, landscaping, vegetation clearing, cutting, filling excavating, road construction, and driveway construction. This standard has been adopted because the alteration of land immediately adjacent to a wetland is likely to result in the alteration of the wetland itself. Alterations typically result from extension of lawns, depositing/dumping of yard waste, over grading, siltation, deposition of construction debris, unregulated filling, and clearing of vegetation, all of which is prohibited.
  - b. No Build Zone: Unless otherwise provided under the Bylaw herein, no Structures are allowed to be built within 50-feet of the delineated edge of Resource Areas that are incorporated into the definition of Buffer Zone, with the following exceptions:
    - i. The cumulative area of Structures encroaching or within the No Build Zone of a lot is allowed to be no more than 10% of the total area representative of the No Build Zone within the lot where encroachment is proposed.
    - ii. Where the cumulative encroachment of Structures within a lot's No Build Zone is greater than 10% of the total area representative of the No Build Zone within the lot where encroachment is proposed, the Commission may approve of said encroachment provided that:
      - 1. Buffer Zone within the lot is enhanced and/or restored at a minimum ratio in square feet of 1:1 and a maximum ratio in square feet of 2:1 of Buffer Zone enhancement/restoration to areas encroaching into the lot's No Build Zone which exceeds the 10% threshold outlined in Section 18.04.050(b)(ii).
      - 2. For projects approved by the Commission under Section 18.04.050(b)(ii)(1), the Commission shall require that these areas of enhancement/restoration shall remain unaltered in perpetuity. Said requirement can be incorporated into a permit issued by the Commission and/or included as an ongoing condition upon issuance of a Certificate of Compliance.

**18.04.060: Waiver**

- (1) The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in this Bylaw or its regulations, provided that:
- a. The Commission finds in writing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations;



- b. That avoidance, minimization, and mitigation have been employed to the maximum extent feasible; and
  - c. 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.
- (2) The Commission may waive the dimensional requirements of the No Disturb Zone and the No Build Zone where the Commission specifically finds, after the applicant has presented sufficient proof, that literal enforcement of the provision would involve demonstrated substantial hardship to an applicant, the applicant has demonstrated that no practicable alternative exists to comply with the No Disturb Zone and No Build Zone setbacks, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw. The applicant has the burden of proof regarding whether their proposed project satisfies the requirements of this waiver.

**18.04.070: Applications and Fees**

- (1) Any person desiring to know whether a proposed activity or specific area is subject to this Bylaw, or whether a proposed activity will alter Resource Areas (regardless of whether the activity is proposed in a Resource Area or Buffer Zone), may in writing submit a Request for Determination of Applicability (RDA).
- (2) Unless otherwise stated herein, activities within Resource Areas or Buffer Zone that will alter or affect Resource Areas shall require a Notice of Intent (NOI) application to be submitted to the Commission.
- (3) An Abbreviated Notice of Resource Area Delineation (ANRAD) application may be filed, in writing, to the Commission to confirm the boundaries of Resource Areas within a particular location of interest.
- (4) The Commission in an appropriate case may accept as the application and plans under this Bylaw any corresponding application and plans filed under the Act and 310 CMR 10.00 but the Commission is not obliged to do so.
- (5) RDA, NOI, and ANRAD applications shall include such information and plans as are deemed necessary by the Commission to describe or confirm the location of nearby Resource Areas, the proposed activities and their effects on jurisdictional areas protected by the Bylaw, in addition to information necessary to demonstrate full compliance with the Bylaw and regulations promulgated thereunder.
- (6) At the time of an application, the applicant shall pay a filing fee specified in regulations of the Commission. The fees are in addition to that required by the Act and 310 CMR 10.00. Pursuant to M.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 requisite review is more expensive than originally calculated or where new information requires additional consultant services.

Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected shall be paid from this account, and expenditures may be made at the sole discretion of the Commission. Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission and the Commission's Agent. The Commission shall provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or delivered. The applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.

The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested consultant fee within ten (10) business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and deny the 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 selectboard, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue, or a related field. The applicant shall make such an appeal in writing, and 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.

**18.04.080: Notice and Hearings**

- (1) Any person filing a NOI or ANRAD with the Conservation Commission at the same time shall give written notice thereof, by hand delivery, certificate of mailing, and/or certified mail (return receipt requested), to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors within 100-feet radially of the Project Locus. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date if known. The notice to abutters also shall include a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters. Notice to abutters shall be made at least seven business days prior to the public hearing for the application. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission verifying that all applicable abutters were appropriately notified in accordance with the Bylaw. Said affidavit, in addition to copies of mailing receipts from abutter notifications obtained by the person filing the application, shall be provided to the Commission before the public hearing for the application.

- (2) The Commission shall conduct a public hearing on any NOI or ANRAD application 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 within 21 days from receipt of a completed NOI or ANRAD application unless an extension is authorized in writing by the applicant and the public hearing shall be advertised in accordance with M.G.L. c. 39, § 23B. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials listed in Section 18.04.100.
- (3) Within 21 days after the date of receipt of the Request for a Determination of Applicability, the Commission shall issue a Determination of Applicability (DOA). Notice of the time and place of the public meeting at which the Determination will be made shall be given by the Commission at the expense of the person making the request not less than five business days prior to such meeting, by publication in a newspaper of general circulation in the city or town in which the land is located, and by mailing a notice to the person making the request, the owner, the board of health, and the planning board of said city or town. Notice shall also be given in accordance with the open meeting law, M.G.L. c. 39, § 23B. The DOA shall be signed by a majority of the Commission.
- (4) The Commission in its discretion may combine its public meeting and/or public hearing under the Bylaw or Tewksbury Wetland Protection Regulations (TWPR) with the public meeting and/or public hearing conducted under the Act and 310 CMR 10.00.

**18.04.090: Permits and Conditions**

- (1) The following permits are issued by the Conservation Commission: an Order of Conditions (OOC) is issued for a corresponding NOI application, a DOA is issued for a corresponding RDA application, and an Order of Resource Area Delineation (ORAD) is issued for a corresponding ANRAD application.
- (2) As per Section 18.04.080(3), within 21 days after the date of receipt of the Request for a Determination of Applicability, the Commission shall issue a DOA. The DOA shall represent a written determination by the Commission as to whether a proposed activity or specific area is subject to this Bylaw, or whether a proposed activity will alter Resource Areas (regardless of whether the activity is proposed in a Resource Area or Buffer Zone).
- (3) If the Commission, after a public hearing, determines that the activities which are the subject of a NOI application are likely to have a significant or cumulative effect upon the Resource Area Values protected by this Bylaw, the Commission, within twenty-one (21) days of the close of the hearing, shall issue an OOC that approves or denies the activities requested. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect. The Commission also shall take into account any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities. If the Commission issues an OOC approving the proposed activities, the Commission shall

impose conditions which the Commission deems necessary or desirable in order to protect the Resource Area Values, and all activities shall be done in accordance with those conditions.

- (4) Notwithstanding anything stated within the Bylaw herein, the Commission is empowered to deny a NOI application for failure to:
  - a. Meet the requirements of this Bylaw;
  - b. Submit the necessary information and plans requested by the Commission;
  - c. Meet the design specifications, performance standards and other requirements in the Commission's regulations;
  - d. Avoid, minimize, or mitigate unacceptable significant or cumulative effects upon the Resource Area Values protected by this Bylaw;
  - e. Pay all required fees; and/or
  - f. Where the Commission finds no conditions are adequate to protect the Resource Area Values. The Commission shall duly consider any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.
- (5) Within twenty-one (21) days of the close of the public hearing for an ANRAD application, the Commission shall issue an ORAD that represents the Commission's determination on whether Resource Areas subject to the ANRAD application have been identified and appropriately delineated, or whether modifications are necessary for the submitted delineations.
- (6) A DOA, OOC, or ORAD issued under the Bylaw shall expire three years from the date of issuance. Upon request, the Commission, in their discretion, may extend the expiration date of said DOA, OOC, or ORAD for one or more periods of up to three years each. The request for an extension shall be made at least 30-days prior to the expiration of the DOA, OOC, or ORAD.
- (7) In reviewing activities within the Buffer Zone, the Commission shall presume the Buffer Zone is important to the protection of other Resource Areas (where Resource Areas have an associated buffer zone) 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. This presumption shall apply unless the proponent proves by a preponderance of the credible evidence that either:
  - a. The Buffer Zone does not play a role in the protection of any of the wetland values of the Bylaw or;

- b. The activity shall occur in such a manner that any potential adverse environmental impacts on any of the wetland values are avoided.
- (8) 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:
- a. There is no practicable alternative to the proposed project with less adverse effects; and
  - b. That 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.
- (9) 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.
- (10) The Commission shall presume that all areas meeting the definition of “Vernal Pools” under this Bylaw, including lands within 200-feet of Vernal Pool boundaries, 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 formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Act’s regulations.
- (11) For good cause the Commission may revoke any DOA, OOC, or ORAD, or any other order, determination, or other decision issued under this Bylaw after a notice to the holder has been provided, in addition to satisfying the same notification requirements for the application of the issued permit being revoked, as set forth in Section 18.04.080. The holder of the permit being revoked must be notified at least two (2) weeks prior to the public meeting and/or public hearing.
- (12) The Commission in an appropriate case may combine the decision issued under this Bylaw with the DOA, OOC, ORAD, Certificate of Compliance (COC), or other determinations and decisions issued under the Act or the Act’s regulations.

- (13) At the time of a RDA, NOI, or ANRAD application, the applicant or requestor shall pay an application fee in accordance with Section 18.04.070 and, if necessary, a consultant fee (also in accordance with Section 18.04.070)
- (14) Where the Bylaw states that a DOA, OOC, or ORAD be issued by the Commission, the action to issue said DOA, OOC, or ORAD shall be taken by more than half the members present at a meeting of at least a quorum. Where the Bylaw states that a DOA, OOC, or ORAD be signed by a majority of the Commission, that action is to be taken by a majority of the members then in office, who need not convene as a body in order to sign, provided they met pursuant to the open meeting law, M.G.L. c. 39, §§ 23A through 23C, when voting on the matter. Where the Bylaw states that the Commission is to receive a request, application, or notice, the Commission shall mean in this context a member of the Commission or an individual designated by the Commission to receive such request, application, or notice.
- (15) To maintain the perpetual integrity of the protected Resource Areas defined within this Bylaw and their associated Buffer Zones, the Commission may include conditions within a DOA or OOC to install permanent signage along the boundaries of said Resource Areas or within their Buffer Zones (e.g., along the No Disturb Zone or No Build Zone boundary), at the applicant's expense.

**18.04.100: Coordination with Other Boards**

- (1) The Commission may solicit the advice and opinions of appropriate boards, departments, and Town officials. Each shall be entitled to file written comments and recommendations with the Commission at least three days before the hearing. The Commission shall take these comments and recommendations into account but may not be bound by them. The applicant shall have the right to receive any such comments and recommendations and respond to them at the hearing.

**18.04.110: Modifications**

- (1) If the applicant proposes to make significant changes in the Commission's originally approved plans, the applicant shall submit the amended plans to the Commission. The Commission, in its discretion, if it deems the amendments to the plan significant, may require the filing of a new application for permit or an application to amend an existing permit. An application to amend an existing permit follows the same procedures as was necessary for the original permit application.

**18.04.120 Registry of Deeds**

- (1) No work proposed in any NOI or ANRAD shall be undertaken until the corresponding OOC 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 and furnishes the recording data pertaining thereto. If the applicant fails to perform such recording, the Commission may record the documents itself and require the Applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a COC.

- (2) COCs issued by the Commission must be recorded at the Registry of Deeds or Land Court, whichever is appropriate, by the applicant. Upon failure of the applicant to record the COC, the issuing authority may do so.

**18.04.130: Certificate of Compliance**

- (1) Upon completion of a Project managed under a OOC issued by the Commission, the applicant shall immediately request in writing a COC from the Commission. If the activities were completed in accordance with plans stamped by a registered professional architect, landscape architect, civil engineer, or land surveyor, a written notice by said professional certifying substantial completion with the plan and setting forth what deviations, if any, exist from the plan shall accompany the request for a COC.
- (2) The Commission, any of its members, or its agent may conduct an inspection to validate the completion of the Project and to determine if the Project substantially complied with the conditions of the OOC. The Commission, in its discretion, may impose conditions on the COC to assure continued operation and maintenance of permanent measures to prevent or control significant or cumulative effect upon the wetland values protected by this Bylaw.
- (3) Within twenty-one (21) days of the receipt of a request for a COC to the Commission, the Commission shall either:
  - a. Issue a COC for the entire project managed under the OOC;
  - b. Issue a COC for portions of the project managed under the OOC; or
  - c. If the Commission determines that, after review and inspection, that the proposed work has not been done in compliance with the corresponding OOC, the Commission may refuse to issue a COC. Said refusal shall be in writing and shall specify the reasons for denial.
- (4) The Commission in an appropriate case may combine the issuance of a COC under the Bylaw with the COC issued under the Act or the Act's regulations.

**18.04.140: Regulations**

- (1) After public notice and hearing(s), the Commission shall promulgate regulations to effectuate the purposes of this Bylaw. Failure by the Commission to promulgate such regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate this Bylaw. At a minimum these regulations shall reiterate the terms defined in this Bylaw, define additional terms not inconsistent with the Bylaw, impose filing and consultant fees, and establish performance standards for work within Buffer Zone and Resource Areas.

**18.04.150: Enforcement**

- (1) 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.
- (2) The 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.
  - (3) The Commission shall have authority to enforce this Bylaw, its regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, non-criminal citations under M.G.L. Ch. 40 §21D, and civil and criminal court actions, including those seeking the imposition of municipal liens. 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.
  - (4) Upon written request of the Commission, the Board of Selectmen, Town Manager and Town Counsel, may take legal action for enforcement under civil law.
  - (5) Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law.
  - (6) Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
  - (7) For good cause, the Commission may issue a cease-and-desist order, violation notice, or an enforcement order with or without prior notification to the property owner or applicant. The Conservation Administrator may generate these actions which shall remain in effect until the next regularly scheduled meeting of the Commission. At the meeting, the Commission shall vote whether to continue the action.
  - (8) The Commission may mandate the installation of temporary control measures if there is any danger of adversely affecting local Resource Areas. These measures are to remain in effect and be maintained in place until the Commission allows their removal.
  - (9) Under conditions of a cease and desist order, violation notice, or an enforcement order, another party may be retained by the Commission to complete the temporary control measures if the property owner or applicant is unable or unwilling to do the work within a reasonable time as stated in the Commission's order, and if there is an immediate hazard to the local Resource Areas, wetland values protected by this Bylaw, or public safety. The costs associated with this work shall be borne by the property owner or applicant.
  - (10) Any person who purchases, inherits or otherwise acquires land 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 forthwith comply with any order of the Commission and restore such land to its condition prior to any violation; provided, however, that no action, civil or criminal, shall be brought against such person if corrective action commences within six (6) months



following the date of acquisition of the land by such person or within the time specified in the Commission's order.

**18.04.160: Burden of Proof**

- (1) The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application for permit will not have unacceptable significant or cumulative effect upon the local Resource Areas and Resource Area Values protected by this Bylaw. Failure to provide sufficient evidence to the Commission supporting this burden shall be good cause for the Commission to deny a permit, grant a permit with conditions, or to continue the hearing to another date to enable the applicant or others to present additional evidence. However, if the applicant objects to a continuance, the hearing shall be closed and the Commission shall take action on such evidence as is then available.

**18.04.170: Relation to the Wetlands Protection Act**

- (1) This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Act and 310 CMR 10.00 thereunder.

**18.04.180: Performance Guarantee**

- (1) As part of a permit issued under the 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 thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or both of the methods described below:
  - (a) By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a COC for work performed pursuant to the permit.
  - (b) By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.
- (2) Upon completion of work required in the permit, security for the performance of which was given by bond, deposit or covenant, or upon the complete performance of the covenants with respect to the site, the applicant may request and agree on terms of release with the Commission.
- (3) Upon the Commission's receipt of request to release a bond, deposit of money, or other negotiable security for the Project, if the Commission determines that Project alterations have not been completed in compliance with the permit, the Commission shall, within forty-five (45) days, specify to the applicant in writing the details wherein said alterations fail to

comply with the permit. If the Commission determines that said alterations have been completed in compliance with the conditions of the permit, it shall release the interest of the Town in such bond and return the bond or the deposit to the person who furnished same or release the covenant, if appropriate.

**18.04.190: Appeal**

- (1) Any person aggrieved by the permit or decision of the Commission, whether or not previously a party to the proceeding, may appeal according to the Massachusetts General Laws.

**18.04.200: Amendments**

- (1) The rules and regulations of the Commission (as described in Section 18.04.140 of this chapter) may be amended from time to time by a majority vote of the Commission. Prior to taking a vote on an amendment, the Commission shall have held a public hearing on the proposed change(s).

**18.04.210: Penalties**

- (1) Any person who violates any provision of this Bylaw, the regulations promulgated hereunder, or the permits issued hereunder shall be punished by a fine as specified in the Commission's regulations which shall not exceed \$300 for each offense. The Commission, in their discretion, may consider the following as separate offenses:
  - (a) Each day the violation continues;
  - (b) Each provision of the Bylaw, regulations, or permit violated; and/or
  - (c) Each day the violation alters a local Resource Area.

**18.04.220: Severability**

- (1) 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.