

# Town of Salisbury – Natural Resource Area Protection By-Law

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# TOWN OF SALISBURY NATURAL RESOURCES AREA PROTECTION BY-LAW

## *Section 1.1 – Purpose:*

Wetland resource areas and the land immediately adjacent to them contribute a number of public values and interests and are therefore protected in this bylaw. The purpose of the Town of Salisbury's Resource Area Protection By-law is to protect the foreshores, wetlands, natural and water resource areas of the Town of Salisbury by controlling activities deemed by the conservation commission likely to have a significant individual and/or cumulative effect upon resource area values, including but not limited to the following:

- Public and private water supply
- Aquifer protection district
- Groundwater
- Flood control
- Storm damage prevention
- Water pollution
- Fisheries
- Shellfish
- Barrier beach
- Erosion and sedimentation control
- Wildlife
- Wildlife corridors
- Agriculture
- Aquaculture
- Recreation
- Climate change adaptation.

The Salisbury Conservation Commission may, from time to time, adopt such additional definitions, regulations, and performance standards which shall become effective upon publication following a public hearing.

## **Section 1.2 – Jurisdiction:**

Except as permitted by the Commission or as provided in this by-law, no person shall remove, fill, dredge, build upon, or alter the following resource areas:

1. Rivers, perennial streams, brooks, creeks and lands adjoining these resource areas within two hundred (200) horizontal linear feet, known as the riverfront area;
2. Vernal pool habitat;
3. Freshwater or coastal wetlands (both boarding and isolated), marshes, wet meadows, bogs, swamps, rivers, perennial streams, springs, banks, flats, reservoirs, lakes, ponds of any size, beaches, dunes, estuaries, the ocean, and lands adjoining these resource areas within one hundred (100) horizontal linear feet, known as the buffer zone;
4. Intermittent streams, brooks, creeks and lands adjoining these resource areas within one hundred (100) horizontal linear feet, known as the buffer zone;
5. Lands subject to flooding or inundation by groundwater or surface water and lands subject to tidal action, coastal storm flowage, or flooding;
6. Lands under water, beneath any of the water bodies listed above.
7. Any land within the Aquifer Protection District as defined in Article X – B, the Water Resource District By-Law of the Town of Salisbury.

## **Section 1.3 – Definitions:**

Except as otherwise provided in this Bylaw or the Regulations hereunder, the definitions of terms and the procedures in this Bylaw shall be as set forth in the Wetlands Protection Act (M.G.L. Ch. 131 §40) and Regulations (310 CMR 10.00), as now in effect. In addition, the following definitions shall apply in the interpretation and implementation of this By-Law:

- *Alter*: To change the condition of any area subject to protection under the Wetlands Protection Act (M.G.L.A. c. 131 § 40) and further defined in its regulations (310 CMR 10.04) and any of the following activities when undertaken to, upon, within or affecting resource areas protected by the ordinance:
  - (1) Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind.
  - (2) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics.
  - (3) Drainage or other disturbance of water level or water table.
  - (4) Dumping, discharging, or filling with any material.
  - (5) Placing of fill, or removal of material.

- (6) Driving of piles, erection of buildings, or structures of any kind, including but not limited to: foundations, buildings, decks, porches, patios, balconies, stairs and fences.
  - (7) Placing of obstructions or objects in water.
  - (8) Destructing of plant life including cutting of trees.
  - (9) Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water.
  - (10) Any activities, changes or work, which may cause or tend to contribute to pollution of any body of water or groundwater.
- **Coastal engineering structure:** A structure used to protect homes, buildings, roadways or utilities or to provide public or commercial access on or near the coast, such as seawalls, revetments, breakwaters, jetties, groins, piers, wharfs, bulkheads, stairways, access ramps, boat ramps, boardwalks and tide gates.
  - **Development:** shall include the following activities:
    - (1) Construction of a *New Building or Structure* on a vacant lot including without limitation a shed, garage, coastal engineering structure, shear wall, vertical wall or solid fence;
    - (2) Construction of a new septic system or the addition of flow to an existing or upgraded septic system;
    - (3) Clearing of land, mining, extraction, beach scraping, dredging, filling, excavation or drilling;
    - (4) Construction of new or proposed expansions of roads, driveways or parking lots, and/or paving of unpaved roads, driveways or parking lots; and
    - (5) Conversion of pervious surfaces to impermeable surfaces and/or paving of existing unpaved roads, driveways or parking lots.
  - **New development:** As used in section 1.4, shall mean the construction of a new structure or building on a vacant lot.
  - **Redevelopment:** shall include the following activities:
    - (1) Includes replacement, or expansion of existing structures, improvement of existing roads or reuse of degraded or previously developed areas.
    - (2) Any individual or cumulative increase in the footprint of a building or structure, including without limitation, a coastal engineering structure, a shear wall, vertical wall, a shed, a garage, and/or a solid fence, that would result in the sum increase of the footprints of all buildings or structures on the lot.

- (3) Conversion of porches, carports and decks to usable interior space below the first dwelling floor;
- *Redevelopment and Development*: shall not include the following activities:
    - (1) Bringing the electrical and/or plumbing system into compliance with current regulatory requirements;
    - (2) Construction, repair, or replacement of unpaved elevated pedestrian walkways supported on open pilings and designed to minimize the disturbance to the vegetative cover and traditional bird-nesting habitat and the form and volume of the coastal dune, coastal beach, or coastal bank;
    - (3) Construction, repair or replacement of sand fencing, designed to increase dune development, provided the fencing does not constitute a barrier to wildlife movement or the lateral movement of a coastal dune or coastal beach;
    - (4) Repair or replacement of open pilings for an existing Building;
    - (5) Modification, maintenance, or repair of existing Buildings or Structures within the limits of existing foundations, which do not result in any addition to, or modification of the foundation itself, or the footprint of Buildings or Structures, additionally, additions or enclosures added above the first dwelling floor shall be allowed pursuant to FEMA guidelines.
      - (1) Construction, repair, or replacement of decks on open pilings, with at least two feet above grade to allow sand transport by wind or water;
      - (2) Planting of native species that are indigenous to Salisbury and that are compatible with the natural vegetative cover excluding turf lawns;
      - (3) Conversion of impervious to vegetated surfaces, provided that erosion and sedimentation controls are implemented, and that the impervious surface removed is disposed of off-site in accordance with all applicable federal, state, and local statutes, bylaws and regulations;
      - (4) Relocating electrical, heating, ventilation, plumbing, air conditioning and other service facilities for an existing Building to prevent water from entering or accumulating during conditions of flooding;
      - (5) Construction, reconstruction, operation and maintenance of underground and overhead utilities, such as electrical distribution lines, transmission lines, communication lines, sewer pipes, water lines, and gas lines, including all structures and interconnections necessary to construct, reconstruct, operate, provide, and maintain electrical,

communication, water, sewer, and gas service;

- (6) Assessment activities that are temporary in nature, have negligible impacts and are necessary for the planning and design of otherwise permissible projects, such as the installation of monitoring wells, exploratory borings, and natural gas service;
  - (7) Temporary storage for not more than thirty days of construction and/or demolition materials on non-vegetated portions of the barrier beach, provided that best management practices are used to minimize the adverse impacts of such storage and to protect the interests identified in this Bylaw;
  - (8) Placing an existing Building on open pilings; repairing and/or replacing open pilings for an existing Building;
  - (9) Elevating above flood elevation an existing Building with a structurally sound foundation. In applying this subparagraph, the Commission may require a certification from a professional engineer or architect stating that the foundation is structurally sound;
  - (10) For only those properties that do not have an existing parking area or parking area of lesser size, construction of two parking spaces that are no more than 10 feet by 20 feet per space provided that there is no other area for parking on the property, and provided further that the surface of the parking area is pervious and that the construction complies with all the Performance Standards set forth in the Commission's Regulations and 310 CMR 10.00;
  - (11) Removal of stone groins, bulkheads, or other coastal engineering structures;
  - (12) Repair, restoration, modification or relocation of existing stone groins or jetties
- *Footprint*: the total square feet within the outermost dimensions of a building including decks, porches and staircases without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.
  - *Intermittent stream*: A body of running water, including brooks and creeks, which moves in a definite channel in the ground due to a hydraulic gradient, and which flows part of the year within, into or out of an area subject to protection under the WPA. A portion of an intermittent stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year is an intermittent stream including that portion upgradient of all bogs, swamps, vegetated wetlands, wet meadows and marshes. An intermittent stream does not have a riverfront

area but does have an associated one hundred-foot buffer zone. The outer boundary of an intermittent stream is the first observable break in slope or mean annual high water, whichever is higher

- *Isolated vegetated wetland:* Freshwater wetlands, of at least one thousand (1,000) square feet in area that do not border on creeks, rivers, streams, ponds or lakes. The types of isolated vegetated wetlands include wet meadows, marshes, swamps and bogs. Detention or retention basins or swales created for the purpose of stormwater management are not considered isolated vegetated wetlands under the ordinance and these regulations.

In addition to the minimum size requirement, isolated vegetated wetlands must also meet the definition of "bordering vegetated wetlands" (310 CMR 10.55(2)) with the exception that these wetlands do not border any creeks, rivers, streams, ponds, lakes or other water bodies.

The boundaries of isolated vegetated wetlands are the same as those for bordering vegetated wetlands as defined in 310 CMR 10.55 (2)(c).

- *No-disturbance zone:* That portion of the buffer zone which extends twenty-five (25) feet horizontally from the edge of the following wetland resource areas:

- (1) Any freshwater or coastal wetlands, marshes, wet meadows, bogs, swamps, rivers, streams, springs, banks, flats, reservoirs, lakes, ponds of any size, beaches, dunes, estuaries, and the ocean;
- (2) Intermittent streams, brooks, and creeks.

Disturbance of any kind is prohibited within this twenty-five-foot no-disturbance zone including but not limited to grading, landscaping, vegetation removal, pruning, cutting, filling, excavation, roadway construction and /or driveway construction. The buffer zone does not apply to the "vernal pool habitat" resource area which is a no-disturbance zone in its entirety as defined below

- *Person:* any individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to the town by-laws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representative, agents, or assigns.
- *Structure:* A combination of materials to form a configuration and includes, but is not limited to buildings, platforms, radio towers, storage bins, signs, swimming pools, septic systems, coastal engineering structures, and fences.
- *Substantial Improvement:* Any reconstruction, rehabilitation, addition, or

other improvement of a structure or building, the cost of which equals or exceeds 50 percent of the value of the structure or building before the "start of construction" of the improvement. This term includes Structures or Buildings which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, building or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or shall mean the total square feet within the outermost dimensions of a building including decks, porches and staircases without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.
  - (2) Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure".
- *Vernal pool habitat:* A vernal pool is typically a confined basin or depression which, at least in most years, holds water for a minimum of two (2) continuous months during the spring and/or summer, contains at least two hundred (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. Under this article, a vernal pool shall meet the certification criteria of the Massachusetts Natural Heritage and Endangered Species (NHESP) Program as outlined in the NHESP Guidelines for the Certification of Vernal Pool Habitat, March 2009, or successor guidelines. The boundary of the vernal pool habitat shall be two hundred (200) feet horizontally outward from the mean annual high-water line defining the depression or basin and shall not include lawns, gardens, landscaped areas, driveways or structures in existence or proposed under a plan approved by the commission at the time of adoption of this article.

The vernal pool habitat need not be located within another wetland resource area, or be certified as a vernal pool by the Massachusetts NHESP (or any other state or local agency) to be eligible for protection under the ordinance and these regulations; however, vernal pools certified by the Massachusetts NHESP are assumed to be vernal pools and are therefore protected under the ordinance and these regulations.

The entire vernal pool habitat as defined above is considered a no-disturbance zone.

- Wildlife corridor shall include any land, the topography, soil structure, plant community composition and structure, proximity to water bodies and waterways, and hydrologic regime of which provides food, shelter, migratory, breeding or overwintering areas for birds, mammal, reptiles, or amphibians.



### ***Section 1.4 – Barrier Beach Protection:***

In addition to any other provisions of this By-Law and any other applicable law, the following shall apply to any construction on the Primary Dune;

- (1) All construction on the Coastal Dune extending toward the shoreline shall not extend any further than structures existing on the property on the effective date of this By-Law or closer than the average of the adjacent properties when an alternatives analysis is provided to the conservation commission.
- (2) No new development shall be permitted on the Primary Dune or within a FEMA V-Zone or AO-Zone. The only exceptions to this are sand fencing, temporary walking paths and beach access walkover structures that meet the standards set forth in the Salisbury Beach Access Standards.
- (3) In all other areas of the Barrier Beach outside of the V-Zone and AO-Zone, all new buildings shall comply with State Building Code Regulations for elevation and flood proofing. All existing Buildings with Substantial Improvements, and all horizontal expansions of the existing footprint, shall comply with State Building Code Regulations for elevation and flood proofing.
- (4) In all areas of the Barrier Beach, electrical, heating, ventilation, plumbing and air conditioning and other service facilities shall be designed to avoid or minimize impacts to coastal beaches and coastal dunes.
- (5) In all areas of the Barrier Beach, no activity shall increase the elevation or velocity of flows in a floodplain.

### ***Section 2.1 – Exceptions:***

The following exemptions shall apply and no application or permit is required under this article for the following activities, provided that all such work shall be in compliance with section 2.1(b):

A. The following activities are exempt in any resource area and buffer zone:

- (1) Routine mowing (including river meadows) and maintenance of lawns, gardens, and landscaped areas, in existence on the effective date of this article or which are created after such date in accordance with the terms of this article;
- (2) Work performed for normal maintenance or improvement of land in agricultural or aquacultural use as defined by the Wetlands Protection Act Regulations at 310 CMR 10.00;

- (3) Removal of dead and dying trees which are deemed to be a hazard to public safety, as confirmed by the Salisbury Department of Public Works Tree Warden or a certified arborist and documented to the commission within thirty (30) days of removal (In such instances notification shall be provided to the commission or its agent prior to such work);
- (4) Fencing around existing vegetable gardens.

B. The following activities in the one-hundred-foot buffer zone (which includes the twenty-five-foot no-disturb zone) or the two-hundred-foot riverfront area, provided the activity is not within any other resource area; there is no regrading; no trees greater than six (6) inches diameter breast height are removed; there is no alteration to additional resource areas; and erosion and sedimentation controls are used as needed or as determined by the commission or agent of the commission:

- (1) Maintaining and repairing existing buildings and structures provided that:
  - a. The footprint remains the same;
  - b. There is no additional alteration of any resource areas; and
  - c. There is no heavy equipment or stockpiling within fifty (50) feet of resource areas;
- (2) Constructing, maintaining, and repairing unpaved pedestrian walkways for private use provided there is no use of fill material;
- (3) Maintaining and repairing existing stonewalls;
- (4) Maintaining and constructing new fencing provided that:
  - a. It is greater than fifty (50) feet from the edge of the wetland boundary or fifty (50) feet from the mean annual high-water line of a perennial stream (whichever is farther);
  - b. It does not constitute a barrier to wildlife movement (i.e., the fence is greater than six (6) inches from the ground surface);
- (5) Stacking cordwood;
- (6) Conversion of lawns to uses accessory to residential structures such as decks, sheds, patios, and pools, provided the activity, including any discharge pipes, is located more than fifty (50) feet from the mean annual high-water line within the riverfront area or from bordering vegetated wetland, whichever is farther, and erosion and sediment

controls are implemented during construction. The conversion of such uses, or other impervious surfaces accessory to existing single family houses to lawn or natural vegetation is also allowed (Consistent with 310 CMR 10.02 (b)(1)(e), mowing of existing lawns is not subject to jurisdiction under this article);

- (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 native species of trees, shrubs, or groundcover (excluding turf lawns);
- (9) Pruning of existing vistas, provided the activity is located more than fifty (50) feet from the mean annual high-water line within a riverfront area or from bordering vegetated wetland, whichever is farther.

C. *Utilities and roads:* The applications and permits required by this article shall not be required for:

- (1) 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, telephone, telegraph, or other telecommunication services, provided that notice has been given to the commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the commission.
- (2) Maintaining and repairing existing and lawfully located existing 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 fourteen (14) days prior to commencement of work; and
  - d. Erosion and sedimentation controls are used as necessary.

D. *Stormwater management systems:* The applications and permits required by this article shall not be required for maintenance of a stormwater control structure or system in existence at the time of adoption of this article 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 to maintain the stormwater management system 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.

E. *Emergency projects:* The applications and permits required by the ordinance 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 Salisbury); 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 the ordinance. 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, order restoration and mitigation measures.

Other than what is stated in this article, 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 article.

The conservation commission may adopt additional exemptions and exceptions within the regulations promulgated pursuant to section 6.1.

## **Section 2.2 - Variances, hardship and mitigation:**

Applicants may, in appropriate circumstances, request that the commission grant a variance from specifically identified requirements of the ordinance or regulations promulgated by the commission pursuant to section 6.1.

The conservation commission may, in its discretion, grant variances from the specific submission requirements and performance standards of this ordinance and regulations adopted pursuant to section 6.1. The conservation commission may grant such variances when an overriding public interest is demonstrated or when it is necessary to avoid so restricting the use of the property as to constitute an

unconstitutional taking without compensation pursuant to federal and state laws. The intent of this section is to ensure that reasonable use may be made of such property; however, the extent of use shall be limited in so far as is necessary to protect the wetland values protected by this ordinance, and to ensure that there is no foreseeable danger to the public health or safety. In all cases, the burden of proof shall be on the applicant to demonstrate maximum feasible compliance with the requirements of this ordinance. In cases where a variance is granted, the commission may require mitigation measures to be implemented to offset potential adverse impacts to the wetland resource areas.

The commission may waive the application of any performance standard herein when it finds, after opportunity for a hearing that:

- (1) There are no reasonable conditions or alternatives that would allow the project to proceed in compliance with these regulations;
- (2) Mitigating measures are proposed that will allow the project to be conditioned so as to contribute to the protection of the wetland values protected by this article; and
- (3) That the project is necessary to accommodate an overriding public interest or that it is necessary to avoid a decision that so restricts the use of property as to constitute an unconstitutional taking without compensation.

A request for a variance or waiver shall be made in writing and shall include, at a minimum, the following information:

- (a) A description of the alternatives explored that would allow the project to proceed in compliance with the performance standards in these regulations and an explanation of why each is not feasible;
- (b) A description of the mitigating measures to be used to contribute to the protection of the wetland values protected by this article;
- (c) Evidence that an overriding public interest is associated with the project which justifies modifying one (1) or more performance standards in these regulations, or evidence that the decision regarding the permit application would so restrict the use of the land that it constitutes an unconstitutional taking without compensation.
- (d) In the event a taking claim is being made, the following additional information shall be submitted:
  1. Documentation that the subject property is legally and/or equitably owned by the applicant, including the

date of acquisition. Also, identification of all property in contiguous ownership, including contiguous properties in which the applicant has a present, future or past fee interest or beneficial interest and documentation of the assessed value of the said contiguous property.

2. Documentation of the assessed value of the property subject to regulation as well as documentation of acquisition costs, proceeds received to date, expected proceeds (including copies of purchase and sales agreements, expenditures, and any other financial and economic data relevant to the waiver/variance request.

3. Documentation of the value of the loss alleged to result from compliance with the relevant performance standards from which a waiver/variance is sought.

(e) The request for waiver/variance shall be sent to the commission by certified mail or hand delivered and a copy thereof shall at the same time be sent by certified mail or hand delivered to any other parties in interest.

(f) Within twenty-one (21) days of the receipt of a request, the commission shall hold a public hearing on the request.

(g) Within twenty-one (21) days of the close of the public hearing, the commission shall issue a decision as to whether to grant the waiver/variance request. Such decision shall set forth the findings as required herein.

### **Section 3.1 – Application for Permits and Request for Determination:**

A written application ("permit application") shall be submitted to the commission to perform activities affecting resource areas protected by the bylaw. The 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 article.

A. Forms and submission requirements: Applicants submitting filings governed by this bylaw shall use the standard Wetlands Protection Act (WPA) Forms from the department of environmental protection (DEP). Applicants shall include the words: "Town of Salisbury – Natural Resource Protection Bylaw" on all applications for projects within the Town of Salisbury, subject to review under this article and Wetlands Protection Act Regulations.

1. Request for determination of applicability (RDA): Any person desiring to know whether or not a proposed activity or area is subject to this article shall submit a written request for

determination of applicability (RDA) to the commission. The application materials required shall be the same as those used in filing under the Wetlands Protection Act Regulations (310 CMR 10.00), WPA Form 1: Request for Determination of Applicability.

2. Notice of intent (NOI): A written notice of intent (NOI) shall be filed with the commission for a permit to perform activities affecting resource areas and buffer zones, protected by this article. The application materials required shall be the same as those used in filing under the Wetlands Protection Act Regulations (310 CMR 10.00), WPA Form 3: Notice of Intent. Where appropriate, under the requirements of the Wetlands Protection Act Regulations (310 CMR 10.00), the applicant may submit WPA Form 4: Abbreviated Notice of Intent. No activities shall commence without receiving, and complying with, a permit (order of conditions) issued pursuant to this article.
3. Other plan and submission requirements: Additional plan and submission requirements may be established by the commission through regulations adopted pursuant to section 3.5 of this bylaw. No application ("permit application" such as a notice of intent or request for determination of applicability) shall be deemed complete or timely without the payment of all required fees, the submission of application forms and the submission of plans in accordance with these regulations. At its sole discretion the commission may relax these requirements where such information is not necessary to make a determination on a request for determination of applicability (RDA) or notice of intent (NOI).

### ***Section 3.2. - Independent Consultants:***

The Commission may, at the expense of the applicant, retain an independent consultant for the purpose of providing the Commission with data, analysis, or other information deemed by the Commission to be reasonably necessary or appropriate to assist the Commission in reviewing the application or rendering its decision, in conformity with the provisions of M.G.L. Ch. 44 §53G and Rules and Regulations of the Commission. Failure by the applicant to pay the requested consultant fee 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 the Massachusetts Department of Environmental Protection (MA DEP) of such a decision in writing. The Commission shall not issue a

permit until all outstanding consulting fees have been paid for. The Commission shall return any unused portion or the consultant fee to the applicant unless the Commission decides at a public meeting that other action is necessary.

### ***Section 3.3 - Coordination with other Boards or Departments:***

At the discretion of the conservation commission, the commission's agent shall notify the Board of Selectmen, Zoning Board of Appeals, Board of health, Police Department, Fire Department, Department of public works, and the Building Commissioner when an application or request will be heard at a public hearing. The commission shall not take final action until the boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the commission, which the commission shall take into account but which shall not be binding on the commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the commission, prior to final action.

### ***Section 3.4. Fees:***

At the time of application, the applicant shall pay a filing fee as specified in the "Filing Fee Schedule" adopted in the Rules and Regulations of the Conservation commission, as authorized; st. 1988, c202, sec 26 which may be drawn upon by the commission as necessary to carry out the provisions of this article and its regulations. Such fee shall be in addition to that required by the Wetlands Protection Act.

### ***Section 4.1 – Notice and Hearings:***

Abutter notification requirements for all permit applications shall follow the Wetlands Protection Act (M.G.L.A. c. 131 § 40) and Regulations (310 CMR 10.00) promulgated thereunder. Abutters under the ordinance shall include property owners whose land abuts the subject land described in a plan subject to commission review including those across a traveled way, across a body of water, in another municipality and any property within one hundred (100) feet of the subject parcel(s).

The Commission shall have the authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of other local or state boards and officials. In the event the applicant objects to a continuance, the hearing shall be closed and the Commission shall take action on such information as is available.



## **Section 5.1 – Permits, Conditions, and Determinations:**

If the Commission, after a public hearing, determines that the activities which are the subject of the application are likely to affect the interests 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. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those interests, and all activities shall be done in accordance with those conditions.

The Commission is empowered to deny a permit for failure to meet the requirements of this bylaw, for failure to submit necessary information and plans requested by the Commission, for failure to meet design specifications, performance standards, and other requirements in regulations of the Commission, for failure to avoid or prevent unacceptable or cumulative effects upon the wetland values protected by this bylaw, and where no conditions are adequate to protect those values.

### **A. Activities within areas subject to protection under this by-law:**

The general performance standards for Banks, Land Under Water Bodies, Bordering Land Subject to Flooding and Isolated Land Subject to Flooding shall be as stated in 310 CMR 10.00 as amended. The general performance standards for Bordering Vegetated Wetland (BVW) and Isolated Vegetated Wetlands (IVW) shall be as stated in 310 CMR 10.55 as amended except where an alteration of BVW or IVW is proposed. The Commission will consider projects requiring the permanent alteration of up to five thousand (5,000) square feet of BVW or IVW as permitted by 310 CMR 10.55 (4)(b) as amended only if the applicant demonstrates:

- 1) no practicable alternative is available;
- 2) project scope and design minimize the amount of resource area destroyed;
- 3) in the judgment of the Commission such work will not lead to degradation of additional BVW or IVW; and
- 4) replication area is provided in a ratio of 2:1 for the BVW or IVW destroyed.

**B.** The Commission shall presume that any activity or alteration within 25 feet of any freshwater or coastal wetlands, marshes, wet meadows, bogs, swamps, springs, banks, beaches, reservoirs, lakes, ponds, and lands under water bodies, intermittent streams, brooks and creeks, and perennial rivers and streams, has a significant individual or cumulative

impact upon the resource area values protected by this Bylaw and shall be prohibited.

Disturbance of any kind is prohibited within this twenty-five-foot no-disturbance zone including but not limited to grading, landscaping, vegetation removal, pruning, cutting, filling, excavation, roadway construction and /or driveway construction. Within the no disturb zone established by the commission, no grading, planting, site work, construction, or storage of materials is allowed. Vegetation in the no disturb zone shall not be cut or trimmed in any manner unless authorized by the commission as part of regular maintenance required for man-made drainage systems (such as seasonal mowing).

Notwithstanding the above limitations, no activity which will result in the alteration of land within the presumptive no disturbance zone shall be permitted by the commission with the following exceptions:

- (a) Planting of native vegetation or habitat management techniques designed to enhance the wetland values protected by the ordinance;
- (b) Construction and maintenance of unpaved pedestrian access paths not more than four (4) feet in width;
- (c) Maintenance of existing structures, utilities, stormwater management structures and paved areas;
- (d) Construction and maintenance of water dependent structures and uses;
- (e) Vista pruning and removal of dead and diseased vegetation consistent with conservation commission standards;
- (f) Construction of new utility lines where the proposed route is the best environmental alternative;
- (g) Septic system maintenance and, if a system has failed, repair/replacement meeting state/local standards where the maximum feasible buffer is maintained;
- (h) Construction of accessory structures/uses associated with lawfully existing single family houses where the conservation commission finds that alternatives outside the buffer area are not available; the size and impacts of the proposed structure/use have been minimized; and the structure/use is located as far from the resource as possible;

Where a buffer zone is already altered such that the required

buffer cannot be provided without removal of structures and/or pavement, this requirement may be modified by the commission provided that it finds that the proposed alteration will not increase adverse impacts on that specific portion of the buffer area or associated wetland and that there is no technically demonstrated feasible construction alternative;

Where a lot is located entirely within buffer area, the commission may permit activities within the buffer area when the applicant has demonstrated that the proposed work has been designed to minimize impacts to the buffer area. As mitigation, the commission may require the applicant to plant or maintain a naturally vegetated buffer of the maximum feasible width given the size, topography, and configuration of the lot.

This presumption may be overcome where applicant can clearly demonstrate with credible evidence the proposed activity or alteration would have no individual or cumulative impact upon any of the resource area values protected by this Bylaw in accordance with the Regulations hereunder.

The following shall not be subject to this setback presumption: Routine maintenance, repairs and construction on legally preexisting structures so long as there is no expansion in the structure; **the installation of public or private utilities along or within legally existing roadways and driveways**; continuation of a legally preexisting use; or the construction and maintenance of publicly maintained trails that restrict the use of motorized vehicles. Maintenance, repairs, and construction shall be subject to all other requirements under this Bylaw and its Regulations hereunder.

C. The Commission shall presume that all areas meeting the definition of "vernal pools" shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, 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. The boundary of the resource area for vernal pools shall be the mean annual high-water line defining the depression. Except as otherwise provided in this bylaw or in associated regulations of the Conservation Commission, the definitions

of terms and the procedures in this bylaw shall be as set forth in the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00). The Commission shall presume that all areas meeting the definition of "vernal pools" above, 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 formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act regulations

Activities considered minor in scope and that would predictably have no measurable or cumulative impact upon the resource areas protected by this Bylaw, may be reviewed and permitted by the Conservation Agent. **(NEED TO DEFINE)**

An Order of Conditions (OOC), Determination of Applicability (DOA), or Order of Resource Area Delineation (ORAD) shall expire three years from the date of issuance. The Commission may extend a permit for one or more periods of up to three years each, upon written request from the applicant made at least 30 days prior to the expiration of the permit.

For good cause the Commission may revoke or modify a permit issued under this bylaw after public notice and public hearing and notice to the holder of the permit.

Amendments to any permit shall be handled in the manner set out in the Wetlands Protection Act Regulations (310 CMR 10.00) and policies thereunder.

### **Section 6.1 – Regulations:**

After public notice and public hearing, the Commission shall adopt rules and regulations. The Rules and Regulations shall include procedures to conduct hearings, issue, deny, revoke and/or modify permits and to appeal, and shall also provide guidance generally to persons seeking to conduct a Regulated Activity.

Such Rules and Regulations may also provide, as the Commission deems necessary, additional definitions and procedures not inconsistent with this bylaw and a schedule of fees and fines to be charged for applications and enforcement which may be based on estimated project cost including, but not limited to, building construction, site preparation, landscaping, all site improvements, and close out documents.

Such Rules and Regulations shall become effective when voted by the Commission and filed with the Town Clerk. Failure by the Commission to promulgate such Rules and Regulations, or a final unappealable decision by a

court of the invalidity of any part of such Rules and Regulations, shall not act to suspend or invalidate the effect of this bylaw other than in accordance with such decision.

### **Section 7.1 – Security:**

As part of a permit issued under this bylaw, in addition to any security required by any other town or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

1. By a proper bond or deposit of money or negotiable securities in an amount sufficient in the opinion of, and payable to, the Town of Salisbury.
2. By a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded (or registered; in the case of registered land) by the owner of record, running with the land to the benefit of this municipality and members of the public, whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

### **Section 8.1 – Enforcement:**

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.

The Commission shall have the authority to enforce this bylaw, its regulations, and permits issued there under by violation notices, administrative orders, and civil and criminal court actions.

Upon request of the Commission, the Board of Selectmen may request the Town Counsel to take appropriate legal action for enforcement under civil law. Upon request of the Commission the Chief of Police may take the appropriate legal action for enforcement under criminal law. Municipal boards and officers, including any police officer or other officer having police powers, shall have the authority to assist the Commission in enforcement.

Any person who violates any provision of this bylaw or regulations promulgated hereunder, or permits issued hereunder, shall be punished by a fine as determined by the rules and regulations. Any person who violates an enforcement order shall be punished by a fine as determined by the rules and regulations. Each day or portion thereof during which a violation continues shall

constitute a separate offence, and each provision of the bylaw, regulations, or permit violated shall constitute a separate offense.

In addition to the appeal provisions under M.G.L. Chapter 40, §21D, persons fined may appeal in writing to the Commission within 21 days. The Commission shall vacate fines where compliance has been established or, their issuance is inconsistent with the interests of this Bylaw. The Commission shall suspend fines as long as the person in violation demonstrates a reasonable, good faith effort toward obtaining compliance. The Commission may restore suspended fines at any time during an existing violation if reasonable progress is not achieved within 30 days of determination. This provision does not preclude the issuance of fines in conjunction with orders for restoration or mitigation.

In the alternative to criminal prosecution the Commission may elect to utilize the non-criminal disposition procedure set forth in M.G.L. C40 section 21D.

### **Section 9.1 – Burden of Proof:**

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the activities proposed in the application will not harm the interests protected by this bylaw. Failure to provide adequate evidence to the Commission supporting a determination that the proposed activities will not harm the interests protected by this bylaw shall be sufficient cause for the Commission to deny a permit.

### **Section 10.1 – Relation to the Wetlands Act:**

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, independent of the Wetlands Act, M.G.L. c131 section 40, as amended, and Regulations (310 CMR 10.00), as amended thereunder.

### **Section 11.1 – 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 or determination which previously has been issued.

End of Bylaw.