

February 11, 2015

***Proposed Revision to Wetlands Protection Bylaw---
Section-by-Section Comparison to the Current Text***

The proposed revision would replace the existing Article 54 – Wetlands Protection Bylaw - in its entirety, substituting for it the language shown in the text provided below. But first, an explanation as to what the Conservation Commission is seeking in proposing such a revision.

Rationale

Since Bedford's current by-Law was last amended in 1995, the Massachusetts Association of Conservation Commissions has issued a "model" Wetlands Protection Bylaw/Ordinance which many cities and towns, including all of the towns adjacent to Bedford, have since used to update their own local wetlands protection bylaws. The MACC model provides a logical, straightforward way of structuring and organizing such a bylaw, one which the Commission feels is easier for citizens as well as local officials to understand and apply as compared to that provided by the our current bylaw format. So the Commission's principal objective in proposing to revise the Bedford bylaw was editorial in nature, not necessarily to strengthen or weaken its existing provisions but instead to make its structure more clear, readable and user-friendly.

Key Similarities and Differences Between the Two Versions

Consistent with this objective, the language of the current bylaw has been reorganized --- in some cases relocated elsewhere within the bylaw itself ,in other cases shifted from the bylaw to the Commission's Regulations, or vice versa. Consequently this proposed revision is equally as protective of the Town's wetland resource areas as the current bylaw. It's simply intended to be easier to read and follow.

In carrying out its bylaw revision work the Commission also reviewed the current wetlands protection bylaws of eight other selected Massachusetts communities, in order to help identify innovative approaches or best practices adopted by other towns. As a result, there are five specific instances where this proposed revision adds language not currently found in the existing bylaw, all of these taken from elsewhere and intended as either clarifications or enhancements of Bedford's existing bylaw:

- Additional detail regarding the Commission's process for making Determinations of Applicability, incorporating wording from the applicable Massachusetts Department of Environmental Protection form WPA-2 [see Section 54.10(b)]
- Provision for a process of administrative approvals regarding proposed actions that would predictably have no significant or cumulative effects upon resource areas protected under the bylaw, whereby such actions could be reviewed and approved by the Conservation Administrator without the necessity of holding a public hearing [see Section 54.10(c)]
- Incorporation of the Commission's existing Tree Policy, describing the process for managing the cutting of trees within the 100 foot buffer zone of a wetland, into the wording of the bylaw itself [see Section 54.10(e)]
- Clarification that the Commission's authority to enter upon privately owned land after notification to the landowner for the purpose of performing its duties under the bylaw is subject to the protections of the United States Constitution, the Massachusetts Constitution

and the laws of the United States and the Commonwealth of Massachusetts [see Section 54.14(b)]

- Provision for a graduated scheme of penalty amounts for noncompliance with Commission orders, designed to encourage early settlement by violators by making use of the non-criminal disposition procedure set forth in M.G.L. ch. 40, Section 21D [see Section 54.14(e)]

Side-by-Side Presentation for Comparison Purposes

Current Text:

54.1 Purpose

The purpose of this bylaw is to protect the wetlands, related water resources, and adjoining land areas in the Town of Bedford by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon wetland values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution, fisheries, wildlife habitat, state-listed rare plant species, recreation, aesthetics, and agriculture values (collectively, the "wetland values protected by this bylaw").

Proposed Text

54.1 Authority

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, G.L. c. 131, Section 40 (the "Act") and its implementing Regulations 310 CMR 10.00 (the "Regulations"), which set forth minimum standards only. It uses the Home Rule authority of the Town of Bedford to afford, where appropriate, a greater degree of protection to resource areas subject to regulation under the Act and its Regulations.

Current Text

54.2 Jurisdiction

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, or alter the following resource areas: within 100 feet of any freshwater wetland, marsh, wet meadow, bog, swamp or vernal pool; within 100 feet of any bank or beach; within 100 feet of any lake, river, pond, or stream; and land under said waters; or within 100 feet of any land subject to flooding or inundation by groundwater or surface water.

Proposed Text

54.2 Purpose

The purpose of this bylaw is to maintain the quality of surface water and the quality and level of the groundwater table and water recharge areas for existing or potential water supplies; protect the public health and safety; protect the community against unwanted costs that may be incurred when development occurs in or adjacent to wetland resource areas; and provide for the reasonable protection and conservation of certain irreplaceable natural resources, features and amenities for the benefit of the present and future inhabitants of the Town of Bedford.

Accordingly, this bylaw protects the wetlands, related water resources, adjoining land areas and important wildlife habitat areas in the Town of Bedford by controlling activities deemed by the Conservation Commission (the "Commission") to have a significant immediate or cumulative effect upon resource area values including but not limited to the following:

- public or private water supply
- groundwater
- flood control
- soil erosion and sedimentation control
- storm damage prevention
- water pollution prevention and control
- fisheries
- wildlife habitat and state-listed rare plant species
- agriculture and aquaculture
- recreation
- aesthetics

Current Text

54.3 Exceptions

The applications for Determination of Applicability and Notice of Intent required by this bylaw shall not be required for 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 the structure or facility is not substantially changed or enlarged, provided that written notice has been given to the Conservation Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Conservation Commission.

The applications for Determination of Applicability and Notice of Intent required by this bylaw shall not apply to emergency projects necessary for the protection of the health or 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, provided that advance notice, oral, or written, has been given to the Conservation Commission prior to commencement of work or within 24 hours after commencement, provided that the Conservation Commission or its agent certifies the work as an emergency project, provided that the work is performed only at the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency, and provided that within 21 days of commencement of an emergency project an application for a Notice of Intent shall be filed with the Conservation Commission for review as provided in this bylaw. Upon failure to meet these and other requirements of the Conservation Commission, the Conservation Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

Other than stated in this section the exceptions provided in the Wetlands Protection Act, G.L. c. 131, Sec. 40, shall not apply.

Proposed Text

54.3 Jurisdiction

Except as permitted by the Commission or as stated in this bylaw, no person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter, nor commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter, the following resource areas:

- within 100 feet of any freshwater wetland, including isolated vegetated wetlands; marsh; wet meadow; bog; swamp; or vernal pool
- within 100 feet of any bank or beach

- within 100 feet of any lake, river, pond or stream
- land under said waterways and water bodies
- within 100 feet of any land subject to flooding or inundation by groundwater or surface water

or, collectively, the “resource areas protected by this bylaw”.

Activities outside protected resource areas are not regulated unless and until any such activity actually alters a resource area. Any person who requests the Commission to regulate activity taking place outside a resource area, including enforcement has the burden of demonstrating to the satisfaction of the Commission that the activity has altered a resource area. The presentation of such information shall be made in writing, sent to the Commission, with a copy sent to the owner of the land and the project proponent (if different than the owner of the land), and the person conducting any such activities outside a protected resource area.

Current Text

54.4 Applications for Determinations of Applicability and Notices of Intent

Written application shall be filed with the Conservation Commission to perform activities regulated by this bylaw affecting resource areas protected by this bylaw. The application shall include such information and plans as are deemed necessary by the Conservation Commission to describe proposed activities and their effects on the resource area. No activities shall commence without receiving and complying with either a negative Determination of Applicability or Order of Conditions issued pursuant to this bylaw.

Any person desiring to know whether or not proposed activity or an area is subject to this bylaw may in writing request a Determination of Applicability from the Conservation Commission. Such a request for Determination of Applicability shall contain data and plans specified by the regulations of the Conservation Commission.

The Conservation Commission in an appropriate case may accept as the application for Determination of Applicability and plans under this bylaw, the Request for Determination of Applicability and plans filed under the Wetlands Protection Act, G.L. c. 131, Sec. 40.

Any person proposing activity in a resource area regulated by this bylaw shall file in writing a Notice of Intent with the Conservation Commission. Such a Notice of Intent shall contain data and plans specified by the regulations of the Conservation Commission.

The Conservation Commission in an appropriate case may accept as the application of Notice of Intent and plans under this bylaw, the Notice of Intent and plans filed under the Wetlands Protection Act, G.L. c. 131, Sec. 40.

At the time of an application for Determination of Applicability and Notice of Intent the applicant shall pay a filing fee specified in the regulations of the Conservation Commission. This fee is in addition to that required by the Wetlands Protection Act, G.L. c. 131, Sec. 40.

The Conservation Commission may waive the filing fee and costs and expenses for an application or request filed by a government agency and shall waive them for a request for Determination of Applicability filed by a person having no financial connection with the property which is the subject of the request.

Upon receipt of a Notice of Intent or Request for Determination of Applicability under the Bylaw, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and

expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee is called the consultant fee. The specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values and impacts thereto, including wildlife habitat evaluations, hydro geological and drainage analysis, and environmental or land use law.

The Commission may require the payment of the consultant fee at any point prior to the close of the public hearing or during its deliberations prior to a final decision. The consultant fees shall be deposited into an account established pursuant to G.L. c. 44, s. 53E or s. 53E1/2, if the Town has established either account. The Commission may draw upon any such account for specific consultant services approved by the Commission at one of its public meetings.

The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision with respect to compliance with the Bylaw.

The Commission shall return any unused portion of the consultant fee to the applicant. Any applicant aggrieved by the imposition of, or size of, the consultant fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws.

The maximum consultant fee charged to reimburse the Commission for reasonable costs and expenses shall be according to the following schedule:

Project Cost		Maximum Fee
Up to -	\$100,000	No Fee
\$100,001-	\$500,000	\$2,500
\$500,001 -	\$1,000,000	\$5,000
\$1,000,001-	\$1,500,000	\$7,500
\$1,500,001-	\$2,000,000	\$10,000

Each additional \$500,000 project cost increment (over \$2,000,000) may be charged at an additional \$2,500 maximum fee per increment.

The project cost means the estimated, entire cost of the project including, but not limited to design engineering, building construction, site preparation, landscaping, and all site improvements, but excluding land acquisition. If the project has been subject to MEPA review the project cost shall be the "Approximate Cost" stated on the Environmental Notification Form. The project shall not be segmented to avoid being subject to the consultant fee. The applicant shall submit estimated project costs at the Commission's request, but the lack of such estimated project costs shall not avoid the payment of the consultant fee.

Proposed Text

54.4 Exceptions, Limited Projects and Variances

54.4.1 Exceptions

The following exceptions shall apply and no applications for Determination of Applicability or Notice of Intent are required for:

(a) **Public Utilities Maintenance, Repair or Replacement** --- 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, sewer, telephone, telegraph or other telecommunications services, or any other public utility, provided that written notice has been given to the Commission prior to commencement of work, and provided further that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

(b) **Emergency Projects** --- Undertaking emergency work necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by the Commonwealth or a political subdivision thereof; that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; that the Commission or its agent certifies the work as an emergency project; that the work is performed only for the time, place and extent certified by the Commission for the limited purposes necessary to abate the emergency; and that within 21 days of commencement of an emergency project an application for a Notice of Intent shall be filed with the Commission for review as provided in this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

Other than as stated in this section, the exceptions provided in the Wetlands Protection Act, G.L. c. 131, Sec. 40 and CMR 10.00 shall not apply.

54.4.2 Limited Projects

Notwithstanding the general and specific Performance Standards provided in the regulations for this bylaw, the Commission may issue an Order of Conditions which will protect the resource area values identified in the bylaw by permitting the following limited projects:

(a) **Public Utilities** --- The installation and/or construction of underground and overhead public utilities such as distribution, transmission, sewer, water or natural gas lines, and telephone, telegraph or other telecommunication services.

(b) **Access** --- The construction of a new roadway or driveway of minimum practical width acceptable to the Planning Board, Department of Public Works, Fire Department, and Police Department; provided there exists no alternative reasonable use of the land and no possible reasonable alternative means of access from a public way to an upland area. The Commission shall require that the proponent minimize all potential impacts to the resource areas impacted by the project.

(c) **Construction of Water Bodies** --- If a proponent proposes an activity which results in the excavation of wildlife impoundments, farm ponds or ponds for fire protection, the proponent must furnish for the Commission's consideration, prior to the excavation, the information specified in the regulations for this bylaw.

54.4.3 Variances

The Commission may waive the application of this bylaw and its regulations when it receives a written request for a variance from the proponent, and it determines that such variance is necessary to accommodate:

(a) **Overriding Public Interests** --- An overriding community, regional, state or national public interest. The proponent shall have the burden of demonstrating that there is no reasonable

alternative design of the project that would minimize any alteration of protected resource areas, and that the activity serves an overriding public interest; or

(b) Avoidance of a Taking --- In the case of an unimproved lot existing prior to the effective date of the particular bylaw or regulation provision in question, the proponent proves by a preponderance of the credible evidence that a provision of this bylaw or its regulations will deprive the proponent of any economic use of the proponent's property as a whole, including any present or former property of the proponent which previously incorporated the subject lot. The proponent shall have the burden of proving that there is no reasonable alternative design of the project or use of the lot that would result in an economic use while still complying with this bylaw and its regulations.

Current Text

54.5 Notice and Hearings

The Conservation Commission shall conduct a public hearing on any application for Determination of Applicability or Notice of Intent. Notice of the time, place and subject matter of the hearing shall be given by the Conservation Commission, at the expense of the applicant, not less than five days prior to the hearing, by publication in a newspaper of general circulation in the Town of Bedford. Notice shall be mailed to the applicant and when the applicant is other than the owner, the application, the notice of the hearing and the determination itself shall be sent to the owner.

The Conservation Commission shall commence the public hearing within 21 days from receipt of a completed application for Determination of Applicability or Notice of Intent.

The Conservation Commission shall issue its Determination of Applicability or Order of Conditions in writing within 21 days of the close of the public hearing thereon.

The Conservation Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, G.L. c. 131, Sec. 40.

The Conservation Commission shall have 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 or others, information and plans required of the applicant, deemed necessary by the Conservation Commission in its discretion, or comments and recommendations of boards and officials of the Town of Bedford. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed and the Conservation Commission shall take action on such information as is available.

Proposed Text

54.5 Definitions

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

The term **“person”** shall include 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, the Town of Bedford, and any other legal entity, its legal representatives, agents or assigns;

The term **“wetland”** shall include both bordering vegetated wetlands (wet meadows, marshes, swamps, and bogs bordering on creeks, rivers, streams, ponds or lakes) as well as isolated wetlands. Vegetated wetlands are areas where the soils are saturated and/or inundated such that they support a predominance of wetland indicator plants, the ground and surface water regime and the vegetated community for each type being as specified in M.G.L. c. 131, Section 40. An area consisting of predominantly peat/muck soils, even where no vegetation exists, shall be considered a wetland;

The term **“delineation”** shall mean the demarcation of the boundary of a bordering vegetated wetland, the delineation procedure to follow the criteria specified in 310 CMR 10.55(2)(c) and any amendments thereto as well as the associated guidance contained in *Delineating Bordering Vegetated Wetlands Under the Massachusetts Wetlands Protection Act*, Massachusetts Department of Environmental Protection, March 1995 and any revisions thereto;

The term **“alter”** shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- (a) Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind;
- (b) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics;
- (c) Drainage or other alteration of water table levels;
- (d) Dumping, discharging or filling with any material which may degrade water quality, including, but not limited to bituminous material and concrete;
- (e) Placing of fill, or removal of material, which would alter elevation;
- (f) Driving of piles, and erection or alteration of buildings or structures of any kind;
- (g) Placing of obstructions or objects in water;
- (h) Removal or destruction of plant life, including cutting of trees and shrubs, which may result in environmental damage to the resource areas protected by this bylaw;
- (i) Destruction of wildlife habitat or state-listed rare plant or animal species;
- (j) Changing water temperature, biochemical oxygen demand, or other physical, biological or chemical characteristics of any waters in protected resource areas;
- (k) Any activities or changes of work which may cause or tend to contribute to pollution of any body of water or groundwater, including, without limitation, any activity that may cause surface water runoff to be contaminated with sediments or chemicals; and
- (l) Incremental activities that have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

The term **“tree”** shall mean woody plants with a diameter of 5 inches or greater at 4 ½ feet above the ground and an overall height of 20 feet or more.

Except as otherwise provided in this bylaw or in regulations of the Commission, the definition of terms in this bylaw shall be as set forth in the Wetlands Protection Act, G.L. Ch. 131, s. 40 and the Regulations, 310 CMR 10.00.

Current Text

54.6 Determinations of Applicability and Orders of Conditions

After a Determination of Applicability public hearing, the Conservation Commission shall issue a Determination of Applicability within 21 days of the close of the hearing.

If the Conservation Commission after a Notice of Intent public hearing determines that the activities which are the subject of the application for Notice of Intent are not likely to have a significant or cumulative effect upon the wetland values protected by this bylaw, the Conservation Commission, within 21 days of the close of the hearing, shall make a determination that the proposed work will not alter the area subject to protection under this bylaw.

If the Conservation Commission after a Notice of Intent public hearing determines that the activities which are the subject of the application for Notice of Intent are likely to have a significant or cumulative effect upon the wetland values protected by this bylaw, the Conservation Commission, within 21 days of the close of the hearing, shall issue an Order of Conditions for the activities proposed. If the Conservation Commission issues an Order of Conditions, it shall impose conditions which it deems necessary or desirable to protect those values, 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 Conservation Commission; failure to meet the design specifications, performance standards, and other requirements in regulations of the Conservation Commission; failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this bylaw; and where no conditions are adequate to protect those values.

An Order of Conditions shall expire three years from the date of issuance. Any permit may be renewed once for an additional one year period, provided that a request for a renewal is received in writing by the Conservation Commission at least 30 days prior to expiration.

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

The Conservation Commission in an appropriate case may combine the Determination of Applicability or Order of Conditions issued under this bylaw with the corresponding Determination of Applicability or Order of Conditions issued under the Wetlands Protection Act, G.L. c. 131, Sec. 40.

Proposed Text

54.6 Applications and Fees

Written application shall be filed with the Commission to perform activities regulated by this bylaw affecting resource areas protected by this 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 area, including such information and plans required under this bylaw and in regulations of the Commission. No activities shall commence without receiving and complying

with either a negative Determination of Applicability or Order of Conditions issued pursuant to this bylaw.

Any person desiring to certify, for purposes of this bylaw, the boundaries of resource areas on a site shall file a written **Abbreviated Notice of Resource Area Delineation** (ANRAD). Such a filing shall include such information and plans as are deemed necessary by the Commission to describe and define the wetland resource areas, including such information and plans required under this bylaw and in regulations of the Commission.

Any person desiring to know whether or not a proposed activity or area is subject to this bylaw may file in writing a **Request for Determination of Applicability**. Such a filing for a Request for Determination of Applicability shall contain dates and plans specified by the regulations of the Commission. The Commission in an appropriate case may accept, as the application for Determination of Applicability and related plans under this bylaw, the Request for Determination of Applicability and plans filed under the Act.

Any person proposing activity in a resource area protected by this bylaw shall file in writing a **Notice of Intent** with the Commission. Such a Notice of Intent shall contain data and plans specified by the regulations of the Commission. The Commission in an appropriate case may accept, as the application for Notice of Intent, the Notice of Intent and plans filed under the Act.

At the time of an application for a Notice of Intent the applicant shall pay a **filing fee** specified in the regulations to this bylaw. This fee is in addition to that required by the Act. This fee shall not be refundable. The Commission may waive the filing fee and costs and expenses for an application or request filed by a government agency.

Upon receipt of a Request for Determination of Applicability or a Notice of Intent under the bylaw, the Commission is authorized to require an applicant to pay a fee, called a **consultant fee**, for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to assist the Commission with issuing a final decision on said application. The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision with respect to compliance with the bylaw.

These specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource values and impacts thereto, including wildlife habitat evaluations, hydro geological and drainage analyses, and relevant environmental or land use law.

In each case the maximum amount of the consultant fee charged to reimburse the Commission for reasonable costs and expenses shall be based upon the estimated, entire cost of the applicant's proposed project. These maximum fee amounts and the estimated project costs reflected, fee assessment, exemptions, the timing and method of fee payment, refund and appeal procedures, as well as procedures for managing consultants shall be as specified by the regulations of the Commission.

Current Text

54.7 Regulations

After public notice and public hearing the Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw. Failure by the Conservation Commission to promulgate

such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

As a minimum these regulations shall define key terms in this bylaw not inconsistent with this bylaw.

Proposed Text

54.7 Hearings and Notice

The Commission shall conduct a public hearing on any application for an Abbreviated Notice of Resource Area Delineation (ANRAD), Request for Determination of Applicability or Notice of Intent, except as otherwise provided by this bylaw [Sec. 54.10(c) below].

The hearing shall commence within 21 days from receipt of a completed application of an Abbreviated Notice of Resource Area Delineation, a Request for Determination of Applicability or Notice of Intent unless an extension is authorized in writing by the applicant. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Act.

Notice of the date, time, place and subject matter of the hearing shall be given by the Commission, at the expense of the applicant, not less than five days prior to the hearing, by publication in a newspaper of general circulation in the Town of Bedford. Notice shall be mailed to the applicant and, when the applicant is other than the owner, the application and the notice of the hearing shall be sent to the owner. Notice shall also be delivered or mailed in each instance to such other Town boards required by state law to receive it, also to any other Town officials as the Commission may determine to be relevant to the specific matter under consideration.

Written notice of the date, time and place of the said hearing shall be given by the applicant by certified mail (return receipt requested), not less than seven days prior to such hearing, to all abutters, including owners of land directly opposite on any public or private street or way or body of water within 100 feet of the property or lot (as determined by the most recent Assessor's records) on which the proposed activity is to take place. For purposes of this bylaw, the 100 foot measurement shall be from the property line of the property or lot on which the proposed activity is to take place. Said abutter notification shall also state where copies of the applicant's application may be examined or obtained, and the subject matter of the hearing.

The Commission shall have authority to continue any such 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 or others; information and plans required of the applicant that are deemed necessary by the Commission in its discretion; or comments and recommendations received from other boards and officials of the Town of Bedford. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available at the time, provided that such objection and resulting decision are more than 21 days after the receipt of the Notice of Intent.

Current Text

54.8 Definitions

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

The term "person" shall include 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, this municipality, and any other legal entity, its legal representatives, agents or assigns.

The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- (a) Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- (b) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- (c) Drainage or other disturbance of water level or water table;
- (d) Dumping, discharging or filling with any material which may degrade water quality, including, but not limited to bituminous material and concrete;
- (e) Placing of fill, or removal of material, which would alter elevation;
- (f) Driving of piles, erection or repair of buildings, or structures of any kind;
- (g) Placing of obstructions or objects in water;
- (h) Destruction of plant life including cutting of trees;
- (i) Destruction of wildlife habitats or state-listed rare plant species;
- (j) Changing water temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of water;
- (k) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

Except as otherwise provided in this bylaw or in regulations of the Commission, the definition of terms in this bylaw shall be as set forth in the Wetlands Protection Act, G.L. c. 131, Sec. 40, and the Regulations, 310 CMR 10.00.

Proposed Text

54.8 8 Presumptions

(a) Buffer Zone

When an activity is proposed that entails any filling, dredging, building upon, degrading, discharging into or otherwise altering the area within the 100 feet in a horizontal straight line from any resource area protected by this bylaw, i.e., in its Buffer Zone, the Commission shall presume that this activity has a high likelihood of altering that resource area unless the proponent proves by a preponderance of the credible evidence that either:

- the Buffer Zone does not play a role in the protection of any of the resource area values protected by this bylaw; or
- the activity shall occur in such a manner that any potential adverse environmental impacts on any of the resource area values are avoided

(b) Specific Resource Areas

When a proponent proposes altering a wetland, bank, land under waterways and water bodies, or land subject to flooding (bordering and isolated), the Commission shall presume that said land is significant to all the resource area values protected by this bylaw. In each case this presumption is rebuttable, and may be overcome upon the applicant proving by a preponderance of the credible evidence that the land in question does not play a role in the protection of any of the resource area values protected by the bylaw.

(c) Rare and Endangered Species

When a wildlife or plant species listed as rare, threatened, endangered or of special concern by the Massachusetts Natural Heritage and Endangered Species Program is known to inhabit or occur in a

protected resource area, the Commission shall presume that any activity proposed in that area will adversely affect the species unless the contrary is proven by a preponderance of the credible evidence presented to the Commission by the proponent.

Current Text

54.9 Security

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

- (a) By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Conservation Commission;
- (b) By a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Bedford, whereby the Order of Conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

Proposed Text

54.9 Burden of Proof

The applicant for a Determination of Applicability shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application is not within the jurisdiction of this bylaw.

The applicant for a Notice of Intent shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable, significant, or cumulative effect upon the resource area values protected by this bylaw.

Failure to provide adequate credible evidence to the Commission supporting the burden of either an application for Determination of Applicability or Notice of Intent shall be sufficient cause for the Commission to deny the application.

Current Text

54.10 Enforcement

The Conservation Commission, its agents, officers, and employees shall have authority to enter upon privately owned land after notification to the landowner 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 Conservation Commission deems necessary.

The Conservation Commission shall have authority to enforce this bylaw, its regulations, Determinations of Applicability and Orders of Conditions issued thereunder by violation notices, administrative orders, and civil and criminal court actions.

Upon written request of the Conservation Commission, the Board of Selectmen is authorized to take legal action for enforcement under civil law. Upon written request of the Conservation Commission the chief of police is authorized to take legal action for enforcement under criminal law.

Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Conservation Commission in enforcement.

Any person who violates any provision of this bylaw, regulations thereunder, Determinations of Applicability or Orders of Conditions issued thereunder, shall be punished by a fine of not more than \$300.00. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw, regulations, Determination of Applicability or Order of Conditions shall constitute a separate offense.

In the alternative to criminal prosecution the Conservation Commission may elect to utilize the noncriminal disposition procedure set forth in G.L. c. 40, Section 21d.

Proposed Text

54.10 Determinations and Orders of Conditions

(a) **Orders of Resource Area Delineation** --- The Commission shall issue an Order of Resource Area Delineation, either confirming or modifying the boundaries delineated in the ANRAD filing, within 21 days of the close of the public hearing, unless the applicant authorizes an extension in writing.

(b) **Determinations of Applicability** --- The Commission shall issue a written Determination of Applicability within 21 days after receipt of the Request for Determination, unless the applicant authorizes an extension in writing.

The Commission shall make specific determinations as to (1) whether the area of proposed work is an area subject to the jurisdiction of the Act; (2) whether the boundaries of the affected resource areas are accurately delineated; (3) whether the Act applies to the work proposed within a wetland resource area or its buffer zone; (4) whether the affected area or proposed work is subject to the jurisdiction of this bylaw; and (5) whether the project also requires review under the Massachusetts Rivers Protection Act .

The Commission shall issue a **Negative Determination** if the area of proposed work is not an area subject to protection under the Act or this bylaw (including the buffer zone); or if the work is in an area subject to protection under the Act but the work will not remove, fill, dredge or alter that area; or if the work is within the buffer zone as defined in the Regulations, but will not alter an area subject to protection under the Act or this bylaw and does not require the filing of a Notice of Intent, subject to conditions as may be determined by the Commission; or the work is not within an area subject to protection under the Act (including the buffer zone) and does not require the filing of a Notice of Intent unless and until such work alters an area subject to protection under the Act; or the area is subject to protection under the Act but the work proposed is exempt as specified either in the Act or its Regulations and no Notice of Intent is required; and if the area and/or the work is not subject to review and approval by the Commission under this bylaw.

The Commission shall instead issue a **Positive Determination** if the area is an area subject to protection under the Act or the buffer zone, and thus removing, filling, dredging or altering the area requires the filing of a Notice of Intent; the boundary delineations of the specific resource area either are confirmed and are afterwards binding as to all decisions rendered pursuant to the Act and its Regulations for as long as this Determination is valid, or are not confirmed; the work proposed is within an area subject to protection under the Act and will remove, fill, dredge or alter the area, requiring the filing of a Notice of Intent; the work is within the buffer zone and will alter an area subject to protection under the Act, requiring the filing of a Notice of Intent; and/or the area or the work or both are subject to review and approval by the Commission under this bylaw. When the person requesting this determination is other than the owner, notice of the determination shall be sent to the owner as well as to the requestor by certified mail (return receipt requested).

The Commission may in an appropriate case combine the Determination of Applicability issued under this bylaw with the corresponding Determination of Applicability issued under the Act.

(c) **Administrative Approvals** --- Proposed activities considered minor in scope and that would predictably have no significant or cumulative effect upon the resource areas protected by this bylaw may be reviewed and approved by the Conservation Administrator, without a public hearing. The Conservation Administrator shall inform the Commission on a regular basis of all such administrative approvals issued, upon request by either the applicant or the Commission, these approvals may be reviewed by the Commission and subject to change at its discretion. The Commission may identify examples of proposed activities that may be subject to administrative approval in its regulations.

(d) **Notices of Intent** --- If the Commission after a Notice of Intent public hearing determines that the activities which are the subject of an application for Notice of Intent are likely to have a significant or cumulative effect upon the resource areas values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue an Order of Conditions. If the Commission issues an Order of Conditions, it shall impose conditions which it deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

The Commission may in an appropriate case combine the Order of Conditions issued under this bylaw with the corresponding Order of Conditions issued under the Act.

No work proposed in any application for Notice of Intent shall be undertaken until the Order of Conditions issued by the Commission with respect to such work has been recorded in the Middlesex (South) Registry of Deeds or, if the land affected is registered land, in the registry section of the land court for the Middlesex (South) Registry of Deeds, and until the holder of the Order of Conditions certifies in writing to the Commission that these documents have been recorded.

Where no conditions are adequate to protect the affected resource area values, the Commission is empowered to deny an Order of Conditions for failure to meet the requirements of this bylaw. The Commission may also deny an Order of Conditions for:

- failure to submit necessary information and plans requested by the Commission;
- failure to meet the design specifications, performance standards and other requirements in regulations of the Commission; or
- failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this bylaw

An Order of Conditions shall expire three years from the date of issuance. Any permit may be renewed for one or more periods of up to three years each, provided that a request for renewal is received in writing by the Commission at least 30 days prior to expiration.

For good cause the Commission may revoke or modify an Order of Conditions issued under this bylaw after public notice and public hearing, and written notice to the holder of the Order of Conditions. Good cause for such revocation or modification shall include but not be limited to the following:

- failure by the applicant or his successors to comply with the terms of the Order of Conditions;
- receipt of new information relating to the project which indicates that previous information presented to the Commission was inaccurate;
- changes to the project after completion of the Commission's review

(e) **Trees** --- If a tree does not pose an immediate safety hazard, e.g., to a house or garage, driveway, power line, children's play area or flower garden, a Request for Determination of Applicability and, possibly, a Notice of Intent must be filed with the Commission before cutting any such tree can occur in a wetland or within the 100 foot buffer zone.

If a tree in such resource areas does pose an immediate safety hazard, the property owner can have the tree removed without filing a Request for Determination of Applicability or Notice of Intent, provided that a Massachusetts-certified arborist examines the tree and confirms the immediate safety hazard, and the property owner then notifies the Commission in writing within 30 days of the removal of the tree, such notification including a photograph of the tree and a letter from the arborist testifying to the hazard.

Alternatively, a property owner can seek an Emergency Certification for removal of immediately dangerous trees under the Massachusetts Wetlands Protection Act. The property owner must first request a public agency, such as the Bedford Department of Public Works or the Bedford Fire Department, to declare the situation an emergency in writing, then submit an application for emergency certification including such declaration from a public agency to the Bedford Conservation Commission.

Current Text

54.11 Burden of Proof

The applicant for a Determination of Applicability shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application is not within the jurisdiction of this bylaw.

The applicant for a Notice of Intent shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable, significant, or cumulative effect upon the wetland values protected by this bylaw.

Failure to provide adequate credible evidence to the Conservation Commission supporting the burden of either an application for Determination of Applicability or Notice of Intent shall be sufficient cause for the Conservation Commission to deny the application.

Proposed Text

54.11 Coordination with Other Town Boards or Officials

Other Town of Bedford boards and officials shall be entitled to file written comments and recommendations with the Commission regarding any requested decisions covered under Sections 54.10(a), (b) and (d) applications above, at least three business days prior to the scheduled public hearing where these are to be discussed. The Commission shall take such comments and recommendations into account during its deliberations but shall not be bound by them. The applicant shall have the right to receive copies of any such comments and recommendations before the public hearing.

Current Text

54.12 Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and Home Rule statutes, independent of the Wetlands Protection Act, G.L. c. 131, Section 40, and regulations thereunder.

Proposed Text

54.12 -Security

As part of an Order of Conditions issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the following methods:

- by a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in amount and type in the opinion of the Commission; and/or
- by a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Bedford, as may be deemed to be sufficient in the opinion of the Commission.

Current Text

54.13 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.

Proposed Text

54.13 Regulations

After public notice and public hearing the Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

As a minimum, these regulations may define key terms in this bylaw not inconsistent with this bylaw.

Proposed Text

54.14 Enforcement

(a) Authority --- The Commission and its agent shall have authority to enforce this bylaw, its regulations, Determinations of Applicability and Orders of Conditions issued thereunder by letters, telephone calls, electronic communication and other informal methods, and/or violation notices, non-criminal citations under G.L. c 40, Section 21D, and civil actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, may be fined, or both.

(b) Entry --- The Commission, its agents, officers, and employees shall, subject to and in compliance with the United States Constitution and Massachusetts Constitution and laws of the United States and the Commonwealth of Massachusetts, have authority to enter upon privately owned land after notification to the landowner for the purpose of performing their duties under

this bylaw and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.

(c) Legal Action --- Upon written request of the Commission, the Board of Selectmen is authorized to take legal action for enforcement under civil law. Upon written request of the Commission, the chief of police is authorized to take legal action for enforcement under criminal law. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

(d) Fines and Penalties --- Any person, who violates any provision of this bylaw, regulations thereunder, Determinations of Applicability or Orders of Conditions issued thereunder, may be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw, regulations, Determination of Applicability or Order of Conditions shall constitute a separate offense.

(e) Alternative to Criminal Prosecution --- In an alternative to criminal prosecution the Commission may elect to utilize the non-criminal disposition procedure set forth in G.L. c. 40, Section 21D, in which case the penalty shall be as follows: First Offense \$75; Second Offense \$150; Third and subsequent offenses \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw regulations, Determination of Applicability or Order of Conditions shall constitute a separate offense.

(f) Appeals --- A decision of the Commission shall be reviewable in the superior court in an action filed within 60 days thereof, in accordance with G.L. c. 249, Section 4 as amended. In addition to the appeal procedures under G.L. c. 40, Section 21D, persons fined may appeal in writing to the Commission within 21 days. The Commission may vacate fines where compliance has been established, or their issuance is inconsistent with the resource area values protected by this bylaw. The Commission may 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.

Proposed Text

54.15 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.