

## **ARTICLE XV** (attorney general approval 1-12-06)

### **NON-ZONING WETLANDS BYLAW**

#### **Section 1: Purpose**

The purpose of this Bylaw is to maintain the quality of the surface water, the quality and level of the groundwater table and water recharge areas for existing, or potential water supplies; to protect the public health and safety; to protect persons and property against the hazards of flood water inundation, and to provide for the reasonable protection and conservation of certain irreplaceable natural features, resources and amenities for the benefit and welfare of the present and future inhabitants of the Town of South Hadley.

Accordingly, this Bylaw protects the wetlands, water resources, and adjoining land areas in the Town of South Hadley by providing prior review and control of activities deemed by the Conservation Commission (hereinafter the "Commission") to have significant or cumulative detrimental effect upon the following resource area values. These values (collectively, the "resource area values protected by this Bylaw") include, but are not limited to:

- protection of public or private water supply,
- protection of groundwater,
- flood control,
- erosion and sedimentation control,
- storm damage prevention,
- prevention of water pollution,
- protection of fisheries and wildlife habitat, and rare species habitat including rare plant species,
- recreation and agriculture values.

This Bylaw is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, with additional standards and procedures to augment those of the Wetlands Protection Act, (G.L. Ch. 131, Sec. 40) and Regulations hereunder (310 CMR 10.00).

#### **Section 2: Jurisdiction**

In accordance with this purpose, no person shall commence to remove, fill, dredge, build upon, degrade, pollute, discharge into, or otherwise alter, the following resource areas: any freshwater wetlands (including marshes, wet meadows, bogs and swamps); vernal pools; banks; the water column of and the land under lakes, ponds, reservoirs, creeks, rivers, and streams; lands within 100 feet of any of the aforesaid resource areas (the Buffer Zone); isolated and bordering lands subject to flooding or inundation by groundwater or surface water; and the 200-foot Riverfront Areas, without a permit from the Commission, or as provided in this Bylaw. Said resource areas shall be protected whether or not they border surface water.

Any activity proposed or undertaken within the aforesaid one-hundred (100) foot Buffer Zone is subject to regulation under this Bylaw. Buffer Zones are vital in protecting the resource area values of the Bylaw in many ways, including but not limited to:

- a) Slowing water flow, thereby decreasing water velocities, allowing infiltration, providing flood control and reducing the erosion potential of storm water runoff;
- b) Trapping sediment and other insoluble pollutants, thereby decreasing or preventing pollution of the wetlands and water bodies;
- c) Reducing nutrient overloading by filtering nutrients bound to sediment in the surface flow, and removing nutrients from groundwater through uptake in vegetation;
- d) Providing permeable soils that contribute to groundwater recharge;
- e) Producing leaf litter and biomass which increases the humus content of the soil and increase in absorption and infiltration;
- f) Scattering sunlight and providing shade thereby lowering water temperature within wetlands and water bodies;
- g) Providing essential habitat for wetland-associated species; and
- h) Providing a visual separation between wetlands and developed environments.

Lands within 100 feet of specific resource areas are presumed to be important to the protection of these resources because activities undertaken in close proximity to wetlands and other resources have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater, degraded, poor water quality, and loss of wildlife habitat.

Intermittent streams are important for storm damage prevention, flood control, ground water protection, wildlife habitat, and recreation values. During the spring, summer and fall these streams disperse snow melt and storm runoff across the landscape, thereby preventing dangerous volumes and flows from spilling over roadways and property. This broad dispersal also allows for larger volumes of water to infiltrate into the ground, recharging groundwater supplies. Intermittent streams are an essential source of food and water for wildlife and are often the only source of water in higher elevations in town. During all seasons, but especially in winter and spring, intermittent streams act as essential corridors for animal movement, especially when food is scarce. Accordingly, this Bylaw protects intermittent streams and their associated bordering vegetated wetlands.

The Commission shall presume that all areas meeting the definition of “vernal pools” under Section 12 of this Bylaw, and the adjacent upland 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 vernal pool habitat functions. Any formal evaluation should be performed by an individual meeting the qualifications under the wildlife habitat section of the Wetlands Protection Act Regulations.

### **Section 3: Conservation Zone**

The Commission shall require that a fifty (50) foot wide strip of undisturbed vegetation, called the Conservation Zone, be maintained adjacent to any freshwater wetland, bank, or water body, but not including lands subject to flooding or inundation by groundwater or surface water, and the 200-foot Riverfront Area. No work, structures or alterations will be allowed within the Conservation Zone, except for minor activities, such as mowing, gardening, and pruning within

existing lawn, garden or landscaped areas, as described in the Regulations adopted by the Commission. The Conservation Zone shall not apply to artificially created storm water management structures such as detention and retention basins, artificially lined ponds, and constructed wastewater treatment lagoons.

The Conservation Zone for vernal pools will be based on the size of the basin; with a twenty-five (25) foot setback of undisturbed vegetation for vernal pools less than 10,000 square feet, and a fifty (50) foot setback of undisturbed vegetation for vernal pools 10,000 square feet or greater in size.

Where the Conservation Zone is already altered in such a manner that the presumed protection offered by the Buffer Zone is not being met, the Commission may issue an Order of Conditions for a project, provided that it finds that the proposed alterations will not increase adverse impacts on that specific portion of the Conservation Zone or associated wetland resource areas, and that there is no technically feasible construction alternative. In such cases the Commission may modify the scope and detail of the proposed project to minimize impact on or improve protection of the values protected by the Bylaw.

#### Section 4: Exemptions and Exceptions

The application and permit required by this Bylaw shall not be required for maintaining, repairing, remodeling, but not substantially changing or enlarging an existing and lawfully located single family residential structure or customary appurtenance thereto, as long as the footprint of any proposed addition is not any closer to the wetland or other resource areas than the existing structure, and there is no reasonable alternate location on the owner's property for the new structure that is further from the resource areas, as determined by the Commission.

The Commission may issue a generic or on-going permit for maintaining, repairing, or replacing an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, steam, water, telephone, telegraph or other telecommunication services, storm drainage, and sewer, provided that the structure or facility is not substantially changed or enlarged, as determined by the Commission, and provided that written application has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in Regulations adopted by the Commission. These standards and specifications shall conform to the best management practices in the Commonwealth of Massachusetts. This on-going permit may apply to other institutions in town with facilities and structures, for normal maintenance activities within the buffer zone, as determined by the Commission. Examples include but are not limited to educational institutions, fire districts, golf courses, and residential retirement communities.

The application and permit 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 Commission prior to commencement of work or within 24 hours after commencement of the emergency project, and 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. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and

public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

The application and permit required by this Bylaw shall not be required for work performed for normal maintenance or improvement of land which is lawfully in agricultural use, as defined in the Wetlands Protection Act Regulations 310 CMR 10.04, at the time the work takes place.

The Commission, at its sole and reasonable discretion, may issue a permit for the Limited Projects identified in 310 CMR 10.53(3), with the same or additional performance standards, such as limits on road width or location or multiple driveway crossings. Proposed activities that qualify as Limited Projects per 310 CMR 10.53 (e.g. maintenance of public roadways, water dependent uses, public water supply exploration and access driveways) must be reviewed by the Conservation Commission, which has the discretion to permit with conditions to ensure that the interests of the Wetlands Protection Bylaw are protected.

The application and permit required by this Bylaw shall not be required for Minor Activities within the 100-foot buffer zone and 200-foot Riverfront Area, as defined in the Wetlands Protection Act Regulations 310 CMR 10.02(2)(b), including the “Simplified Review” process. Such Minor Activities include but are not limited to, unpaved pedestrian walkways, fencing, (provided it does not constitute a barrier to wildlife), vista pruning, and planting of native plant species of trees, shrubs or groundcover. Under this Bylaw they will also include maintaining and repairing existing roads and driveways (excluding bridges and culverts) provided there is no additional alteration of resource areas, maintaining and repairing existing buildings and structures provided the footprint remains the same and there is no additional alteration of resource areas, mowing of existing lawns, and normal maintenance of trees and shrubs.

### **Section 5: Application for Permits and Requests for Determination**

Where this Bylaw and the Wetlands Protection Act, G.L. Ch. 131, Sec. 40, and Regulations 310 CMR 10.00 have concurrent jurisdiction the Commission may accept the Notice of Intent, Abbreviated Notice of Intent, Request for Determination of Applicability, Abbreviated Notice of Resource Area Delineation and other forms and plans filed under the Wetlands Protection Act as the permit application and plans under this Bylaw. The Commission may amend what forms it accepts and issues in their Bylaw Regulations.

The Commission shall develop a set of pre-submission requirements for the assistance of persons making application to the Commission, a current copy of which shall be on file with the Commission. Any person filing an RFD or other permit application with the Commission shall complete the filing in accordance with such of those requirements which are reasonable and necessary as determined by the Commission or its staff. The Commission reserves the right to ask for any additional information it deems reasonable and necessary to evaluate the project.

Written application in the form of a Notice of Intent or Abbreviated Notice of Intent shall be filed with the Commission to perform activities affecting resource areas and the inner fifty (50) feet of the Buffer Zone protected by this Bylaw. The permit application shall include such information and plans as are deemed reasonable and necessary by the Commission and as specified in the Bylaw and its Regulations to describe proposed activities and their effects on the

resource areas protected by this Bylaw. No activity shall commence without receiving and complying with a permit issued pursuant to this Bylaw.

Any person desiring to know whether proposed work or an area is subject to this Bylaw, or proposing work in the outer fifty (50) feet of the Buffer Zone, may in writing request a determination of applicability from the Commission. Such a Request for Determination of Applicability (RFD) shall include information and plans as are deemed reasonable and necessary by the Commission.

Any person desiring to certify, for purposes of this Bylaw, the limits of resource areas on a site may submit as application an Abbreviated Notice of Resource Area Delineation (ANRAD) for Commission confirmation. Such an ANRAD shall include such information and plans as deemed reasonable and necessary by the Commission to describe and define the wetland resources areas. The Commission will also accept the ANRAD as an application for a Simplified Review as defined in the Wetlands Protection Act Regulations 310 CMR 10.02(2)(b)2.

At the time of the permit application or RFD, the applicant shall pay a filing fee according to the schedule in the associated regulations adopted by the Commission. This fee is not refundable and is only for applications where a filing fee is not already required by the Wetlands Protection Act, G.L. Ch. 131 Sec. 40, and Regulations 310 CMR 10.00. The Commission may waive the filing fee for an application or request filed by a government agency, or if the applicant can prove financial hardship, or other extenuating circumstances.

### **Section 6: Notice and Hearings**

A permit application or RFD shall be hand delivered or sent by certified mail to the Commission. Any person requesting a determination or making written application to perform work or certify resource boundaries regulated by this Bylaw shall at the same time give written notice thereof, by mailing by certified mail, return receipt requested, or by hand delivery, to all abutters according to the most recent records of the Board of Assessors, including those across a traveled way or across a body of water (excluding the Connecticut River) from the parcel which is the subject of this application. The notice shall include a copy of the application or request, with plans, or shall state where copies may be examined. If the person filing an RFD or other application is not the owner of the area subject to the request or application, the applicant shall also give written notice of the request or application and hearing to the owner of the parcel. The person providing such notices to abutters or other property owners shall file an affidavit affirming that notification was done, with a copy of the notice, with the Commission.

The Commission shall conduct a public hearing on any permit application or RFD after written legal notice, given at the expense of the applicant, has been published at least five working days (not including Saturdays or Sundays) prior to the hearing, in a newspaper of general circulation in South Hadley. The Commission shall commence the public hearing on any permit application or RFD within 21 days from receipt of the properly completed application, unless an extension is authorized in writing by the applicant.

Whenever possible the Commission shall combine its hearing under this Bylaw with the hearing conducted under the Wetlands Protection Act, M.G.L. Ch. 131, Sec 40, and Regulations 310 CMR 10.00, and may combine the public notices thereof.

The Commission shall have the authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include the receipt of additional information from the applicant or others deemed reasonable and necessary by the Commission in its discretion, or comments and recommendations of the Department of Public Works, Planning Board, Board of Health, and Building Inspector. In the event that the Commission determines that snow cover, ice, or other weather conditions prevent the verification of the wetland boundary line, the Commission shall continue the hearing to a date certain when the determination can be made.

### **Section 7: Coordination with Other Boards**

At the time of filing the permit application with the Commission, the applicant shall be required to submit six (6) complete copies of the application and all of its accompanying data. Upon receipt of the application, the Conservation Commission or their staff will distribute copies to the following departments: Board of Health, Planning Board, Building Inspector, and Department of Public Works. Town boards and officials shall be entitled to file written comments and recommendations with the Commission at or before the hearing. The Commission shall take any such comments and recommendations into account but shall not be bound by them. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

### **Section 8: Burden of Proof**

The applicant for a permit shall have the burden of proving, by a preponderance of credible evidence, that the work proposed in the permit application will not have unacceptable significant or cumulative effect upon the resource area values protected by this Bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

### **Section 9: Permits, Determinations and Conditions**

If the Commission, after a public hearing, determines that the activities which are the subject of the RFD or permit application are likely to have a significant individual or cumulative effect upon the resource area values protected by this Bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems reasonable and necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

Where no conditions are adequate to protect those resource area values, the Commission is empowered to deny a permit for failure to meet the requirements of this Bylaw. It may also deny

a permit for failure to 1) submit necessary information and plans requested by the Commission; 2) meet the design specifications, performance standards and other requirements in the regulations of the Commission; or 3) avoid or prevent unacceptable significant or cumulative adverse effects upon the resource area values protected by this Bylaw. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

The Commission shall have the right to deny or delay a permit if a previous permit on the same property or on contiguous properties under the same or affiliated ownership has not been complied with or has not received a Certificate of Compliance.

When the applicant requesting a determination, permit, certification, amendment or extension is not the owner of the area subject to the request or application, the Commission shall send the Determination, Orders or other action to the owner as well as to the person making the request.

Permits and determinations shall expire three years from the date of issuance. At the discretion of the Commission, any permit may be renewed for up to three additional years, provided that the Commission receives a request for an extension in writing prior to expiration of the permit, with sufficient time for the Commission to issue an extension prior to the permit expiration. Applicants are advised to submit requests for extensions at least 30 days prior to the permit expiration date. Said request shall include the expected completion date and the reasons for the requested extension.

Violations to this bylaw, submission of false or erroneous information, new information that substantially alters the likely impact of the project on wetland resources or values, or clear evidence that an error has been made may cause the commission to revoke or modify any permit, determination or resource area boundary confirmation issued under this bylaw, after notice to the permittee and holding a public meeting.

The Commission in an appropriate case, may combine the permit orders or determination issued under this Bylaw with the Determination of Applicability, Order of Conditions, Order of Resource Area Delineation, Certificate of Compliance, or other forms issued under the Wetlands Protection Act, G.L. Ch. 131 Sec. 40, and Regulations 310 CMR 10.00.

No work in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the registry of deeds, or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded. Such certification shall include the book and page or instrument number and date. Recording is not necessary for RFDs.

To prevent wetland loss, the Commission shall require applicants to avoid all wetlands alteration wherever feasible; shall minimize wetlands alteration; and where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, or professional design, a 2:1 replacement ratio, and monitoring to insure success, because of the high likelihood of failure of replication.

## **Section 10: Waivers**

Strict compliance with the Bylaw may be waived when, in the judgment of the Commission, such action is in the public interest and is consistent with the intent and purpose of the Bylaw. Any request for a waiver must be submitted to the Commission in writing and presented at the time of filing along with a written justification stating why a waiver is desired or needed, is in the public benefit, and is consistent with the intent and purpose of the Bylaw. The waiver is intended to be employed only in rare and unusual cases.

Waivers may be granted on a case-by-case basis by the Commission allowing work within the Conservation Zone when it can be demonstrated by the applicant to the satisfaction of the Commission that work or alterations within the Conservation Zone

- (1) will not have a significant detrimental impact to the resource area values specified under this Bylaw, or
- (2) that any impact is offset by the need to accommodate a public benefit such as public health and safety, handicapped accessibility, or community enhancement relative to its cultural, environmental, educational, or recreational interests, or
- (3) that the project will result in a long-term improvement to the natural capacity of a resource area to protect the resource area values of the Bylaw, while minimizing any adverse impacts with a carefully considered and environmentally sensitive design, or
- (4) avoid a decision that so restricts the use of property that it constitutes an unconstitutional taking without compensation.

In such cases the Commission may modify the scope and detail of the proposed project to minimize impact on the values protected by the Bylaw. Nothing herein shall preclude the maintenance of an existing structure located within the Conservation Zone.

### **Section 11: 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. Public notice shall be given at least three (3) weeks prior to such hearing by publication in a newspaper of general circulation in South Hadley and by posting with the Town Clerk. At a minimum these regulations shall define key terms in this Bylaw not inconsistent with this Bylaw.

### **Section 12: Definitions**

Except as otherwise provided in this Bylaw or Regulations of the Commission, the definitions of terms in this Bylaw shall be as set forth in the Wetlands Protection Act, which terms, as used herein, shall include the provisions of MGL Ch. 131, Sec. 40, and in the Regulations hereunder, 310 CMR 10.00 et seq. The following terms shall apply in the interpretation and implementation of this Bylaw.

*Alter - The following actions, without limitation, when undertaken in resource areas subject to this bylaw:*

- a. Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- b. Changing of pre-existing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- c. Drainage or other disturbance of water level or water table;

- d. Dumping, discharging or filling with any material which may degrade water quality;
- e. Placing of fill or removal of material which would change elevation;
- f. Driving of piles, erection, or expansion of buildings, or structures of any kind;
- g. Placing of obstructions or objects in water or waterways;
- h. Destruction of plant life including cutting of trees;
- i. Changing water temperature, biochemical oxygen demand or other physical, biological, or chemical characteristics of any waters;
- j. Any activities, changes or other work which may cause or tend to contribute to pollution of any body of water or groundwater;
- k. Incremental activities that have or may have a cumulative adverse impact on the resource areas protected by this bylaw.

**Appurtenance** – Any structural adjunct or incidental construct to a single family residential structure or on any parcel of land, such as a septic system, garage, shed, deck, dock, porch, patio, or swimming pool.

**Buffer Zone** – Lands within 100 feet of any wetland resource area or water body, except bordering land subject to flooding, isolated land subject to flooding that is not vernal pool habitat, and Riverfront Area.

**Cumulative Effect** – An effect that is significant when considered in combination with other activities that have occurred, are going on simultaneously, or that are likely to occur, whether such other activities have occurred or are contemplated as a separate phase of the same project, such as the build-out of a subdivision or an industrial park, or unrelated but reasonably foreseeable actions, including other development projects that are currently under construction, under review, or that may be expected to come forward.

**Isolated Land Subject to Flooding** - An isolated depression or closed basin at least 500 square feet in size, which serves as a ponding area for run-off or high ground water which has risen above the ground surface. These may include vernal pools. Not included are swimming pools, artificially lined ponds or pools, or wastewater lagoons, the construction of which may be regulated, but do not themselves constitute resource areas protected under this Bylaw.

**Maintenance** – Routine and/or periodic activity undertaken to prevent, stop, or to correct deterioration of an existing condition, facility or structure so that, after completion, the condition, facility, or structure is as near as possible to that which originally existed.

**Permit Application** – Any application for a permit of action under the Massachusetts Wetlands Protection Act, MGL Ch. 131 Sec 40, or the South Hadley Non-Zoning Wetlands Bylaw. Examples include, but are not limited to, a Notice of Intent, Abbreviated Notice of Intent, Abbreviated Notice of Resource Area Delineation, or request for an Amendment to a Notice of Intent or Extension to an Order of Conditions.

**Person** - 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 agencies, public or quasi-public corporations or bodies, Town of South Hadley, and any other legal entity, its legal representatives, agents, or assigns.

**Pond** – Any open body of fresh water, either naturally occurring or manmade, which is never without standing water due to natural causes except during periods of extended drought. Notwithstanding the above, the following are not protected as Ponds under this Bylaw: swimming pools or other basins lined with impervious material, wastewater treatment lagoons, and water bodies excavated from upland within active gravel pits or quarries.

**Rare Species** – All vertebrate and invertebrate animal and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

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

**River or Perennial Stream** – A naturally flowing body of water that empties into any ocean, lake, pond, or other river and which normally flows throughout the year. The Commission may by Regulations set criteria for determining whether a particular stream or section of stream flows throughout the year.

**Riverfront Area** – The area of land between a river's mean annual high water line and a parallel line measured horizontally 200 feet away. The Riverfront Area may include or overlap other resource areas or their buffer zones. Further definition of Riverfront is in 310 CMR 10.58.

**Stream** – Any body of running water, including brooks and creeks, which moves in a definite channel in the ground, due to hydraulic gradient, and which flows within, into or out of an area subject to protection under MGL Ch. 131, Sec. 40. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of water which does not flow throughout the year is intermittent. Streams may be perennial (see River) or intermittent. For the purposes of this Bylaw, only those streams shown on a map created for the Regulations associated with this Bylaw, shall be protected under this Bylaw.

**Substantially changing or enlarging** – As pertaining to Section 4 of this Bylaw, limited to no more than a one thousand (1000) square foot footprint addition in the Conservation Zone.

**Vernal Pool** - In addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131, Sec. 40, and Regulations there under, 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, in at least most years, holds water for a minimum of two continuous months during the spring and/or summer, is at least 500 square feet in size 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 whether the site has been certified by the Massachusetts Natural Heritage & Endangered Species Program. The buffer zone for vernal pools shall extend 100 feet from the mean annual high water line defining the depression, but shall not extend over existing lawns, gardens, landscaped or developed areas. For the purposes of this Bylaw, only certified vernal pools, and potentially certifiable vernal pools as shown on a map created for the Regulations associated with this Bylaw, shall be protected, if they meet the certification standards.

### **Section 13: Security**

The intent of this section is to secure against the potential of significant environmental damage. 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 (including conditions requiring mitigation work) 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 Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.
- 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 South Hadley 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. This method shall be used only with the consent of the applicant.

The bond or covenant shall, in the case of the bond, be given to the Town, and in the case of a covenant, be recorded in the Registry of Deeds at least 10 business days before the start of any work under the permit.

### **Section 14: Enforcement**

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this Bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this Bylaw.

The filing of a permit application or RFD shall constitute the consent of the owner and grant the authority for the Commission and its agents, officers and employees, with proper identification, to enter upon privately owned land for the purpose of performing their duties under this Bylaw. The Commission may make or cause to be made such examinations, surveys or sampling as the Commission deems reasonable and necessary, subject to the laws of the United States and the Commonwealth.

The Commission shall have the authority to enforce this Bylaw, its regulations, and permits issued there under by violation notices, non-criminal citations under MGL Ch. 40, Sec. 21D, administrative orders, and civil and criminal court actions. Any person who violates provisions of this Bylaw may be ordered to restore the property to its original condition and/or take other action deemed reasonable and necessary to remedy such violations, or may be fined, or both.

Upon request of the Commission, the Board of Selectmen shall direct the Town Counsel to take legal action for enforcement under civil law. Upon request of the Commission the Chief of Police shall take legal action for enforcement under criminal law.

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

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

remove the violations along with evidence that sufficient progress is being made to correct the violation, then the violator shall be punished by a fine of \$100.00 per offense. Beginning ten business days after the date of the Notice of Violation each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

In addition to any fine, the Town shall be entitled to reimbursement for all expenses, including legal fees, incurred in prosecuting said violation, either civilly or criminally.

### **Section 15: Appeals**

A decision of the Conservation Commission may be appealed by the following persons: the applicant, the owner if not the applicant, any person aggrieved by a Determination or Order, any owner of land abutting the land on which the work is to be done, or any ten residents of the town, in the following manner(s):

A) Local Administrative Appeal: Any Commission decision shall become final ten (10) days after the Commission mails notice thereof to the applicant unless the applicant, or other persons listed above, after mailing and before the expiration of ten (10) days requests in writing an appeal through a local administrative review. The appeal shall be heard by a committee appointed by the Selectboard, and consisting of: two members of the Planning Board, a Selectboard member, a representative from the Board of Health, and a representative from the Department of Public Works. This committee shall be appointed annually in advance of any appeal request. The request for a local administrative appeal shall state with reasonable specificity the issues the applicant requests the committee to consider.

Within ten (10) days of receipt of the request for a local administrative appeal, the Chair of the Selectboard shall call a meeting of the committee, and written notice shall be made to the applicant, the Conservation Commission, and to all committee members. The scope of review shall be to determine if there was an error of law or abuse of discretion as measured by the arbitrary and capricious standard. After hearing all the evidence provided by the appellant and the Conservation Commission, said committee shall, by majority vote, render a written opinion within fourteen (14) days of the close of the presentations by both sides.

The Commission shall hold a public meeting to review the opinion of the local administrative appeal committee. Within twenty-one (21) days of delivery of the opinion of the committee to the appellant and the Commission, the Commission shall issue a further decision, which decision shall be final upon issuance and mailing to the appellant.

No request for local administrative appeal under this Bylaw shall affect the finality of or appeal deadlines applicable to any decision making of the Commission under the Wetlands Protection Act, G.L. Ch. 131, Sec. 40, and Regulations, 310 CMR 10.00.

B) Legal Appeal: A decision of the Commission shall be reviewable in the Superior Court in an action filed within sixty (60) days thereof, in accordance with M.G.L., Ch. 249, Sec. 4.

### **Section 16: Relation to the Wetlands Protection Act**

This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40, and the Regulations, 310 CMR 10.00, there under.

### **Section 17: Severability**

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision or phrase thereof, nor shall it invalidate any permit, which previously has been issued.

### **Section 18: Effective date**

The Effective Date of this Bylaw is the date after the Bylaw has been approved by the Attorney General and published by the Town Clerk as set forth in MGL Ch 40 Sec. 32. The Bylaw shall not, however, apply to:

- a) Any structure or activity lawfully in existence or lawfully begun prior to the Effective Date;
- b) Any structure or activity which is the subject of a pending Notice of Intent, ANRAD, or Request for Determination of Applicability filed under the Massachusetts Wetlands Protection Act (MGL Ch. 131, Sec. 40) prior to the Effective Date;
- c) Any structure or activity which has an Order of Conditions, Order of Resource Area Delineation, or Determination of Applicability or other Commission decision filed under the Massachusetts Wetlands Protection Act (MGL Ch. 131, Sec. 40) and that is still in effect prior to the Effective Date. These Orders or Determinations shall expire at the end of their legally regulated term, which is usually three years from date of issuance, after which any new work will be subject to the provisions of this Bylaw;
- d) Any structure or activity for which any extensions of or modifications or amendments to a current Order of Conditions or Notice of Intent were approved prior to the Effective Date. These extensions, modifications and amendments shall remain in effect until the end of their legally regulated term, which is usually three years from date of issuance, after which any new work will be subject to the provisions of this Bylaw;
- e) Any lot or other areas included within a Definitive Subdivision Plan, Special Permit Plan, Site Plan, or Form H Subdivision Plan which has been submitted to the South Hadley Planning Board and/or has been approved by the South Hadley Planning Board prior to the Effective Date pursuant Section 5.00 of the Subdivision Regulations in regard to a Definitive Subdivision Plan, Section 6.00 of the Subdivision Regulations in regard to a Form H Subdivision Plan, Section 9 of the Zoning Bylaw in regard to a Special Permit Plan, and Section 12 of the Zoning Bylaw in regard to a Site Plan. In the event the Planning Board fails to endorse the Definitive Subdivision Plan or Form Subdivision Plan before November 8, 2006, the provisions of this Bylaw shall be deemed to apply to the subject property. If the Planning Board approval of any such Definitive Subdivision Plan, Special Permit Plan, Site Plan, or Form H Subdivision Plan expires or lapses and is not renewed or extended by the Planning Board, the provisions of this Bylaw shall be deemed to apply to the subject property. Any new work beyond that shown on the above referenced plans that is within a resource area regulated by the Wetlands Bylaw shall be subject to the Bylaw.