

### **III. PROCEDURES**

#### **A. Time Periods**

All time periods of ten days or less specified in the Bylaw and in these Regulations shall be computed upon business days only. In the case of a Determination or Permit, such period shall commence on the first day after the date of issuance and shall end at the close of business on the tenth business day thereafter. All other time periods specified in the Bylaw and these Regulations shall be computed on the basis of calendar days, unless the last day falls on a Saturday, Sunday, or legal holiday, in which case the last day shall be the next business day following.

#### **B. Abutter Notification**

Concurrent with the filing of a Request for Determination, Notice of Intent, or Abbreviated Notice of Resource Area Delineation the Applicant also shall provide notification to all abutters and any property owners within 300 feet of the property line of the land where the delineation or activity is proposed, including properties separated from that land by a public or private street or a body of water. An Applicant who proposes work solely within a lot with an area greater than 50 acres, is required to provide notification only to abutters whose lot is within 300 feet of the property boundary. An Applicant proposing a linear-shaped project greater than 1,000 feet in length is required to provide notification only to abutters whose lot is within 1,000 feet from the project location. Project location includes access roads where improvements are proposed. The Applicant shall provide notification at the mailing addresses shown on the most recent applicable tax list from the municipal assessor (Certified Abutters List). Notification of abutters shall be at the Applicant's expense. The notification shall state where copies of the permit application may be examined or obtained and must include the date, time, and location of the public hearing/meeting and brief description of the project or permit purpose. The Applicant shall notify abutters by certified mail (return receipt requested), or certificates of mailing. Hand delivery is permitted and requires a signature and date of recipient. Mailing of abutter notification is required at least seven days prior to the public hearing. The Applicant shall present the certified mail, certificates of mailing receipts, or proof of hand delivery with recipient signature and date for all abutters prior to, or at the beginning of the public hearing/meeting. The presentation of the receipts for all abutters identified on the Certified Abutters List shall constitute compliance with abutter notification requirements. The Conservation Commission shall determine whether the Applicant has complied with abutter notification requirements and reserves the right to not open a hearing until requirements have been satisfied.

#### **C. Actions by Conservation Commission**

Where the Bylaw states that a particular action (except receipt of a Request for Determination or Application for Permit) is to be taken by the Commission, that action is to be taken by more than half the members present at a meeting of at least a quorum. Where the Bylaw states that a permit or notification shall be issued by the Commission, that action is to be taken by a majority of the members then in office, who need not convene as a body in

order to sign said permit or determination, provided they met pursuant to the Open Meeting Law (G.L. Ch. 39 Sec. 23A-23C) when voting on the matter. Voting procedures shall also follow the Mullin Rule MGL Ch.39, Section 23D.

#### **D. Requests for Determination/Determinations of Applicability**

1. Any person who desires a Determination as to whether the Bylaw applies to an area or activity may submit to the Commission by certified mail or hand delivery two hard copies and an electronic copy of a Request for Determination of Applicability, WPA Form 1. The Request for Determination shall include such data and plans as are required by the Commission.
2. Any person filing a Request for Determination with the Commission shall comply with the abutter notification requirements as discussed in Section III. B of these regulations.
3. Any person who wishes to request waiver of the abutter notification requirements may do so in writing with an associated plan and narrative description of the proposed work. The waiver request must be submitted to the Conservation Commission prior to submitting the Request for Determination application. The Commission may at its discretion grant waivers of abutter notification requirements on a case-by-case basis based on the following criteria: (1) whether the proposed work is likely to impact abutters, (2) whether the proposed work is jurisdictional under the Bylaw Regulations only and (3) whether the proposed work is negligible in scope and Resource Area impact.
4. The Amherst Conservation Commission may require at its discretion stormwater best management practices to be implemented on any site where it is deemed necessary to protect Areas Subject to Protection under the Bylaw. This includes test pits, geotechnical borings, documentation on depths to groundwater, hydrologic calculations documenting pre and post development peak flows, and water quality characteristics of any drainage discharge from a point source (whether closed or open channel).
5. A Request for Determination shall include a written certification that the owner of the area subject to the request, if the person making the request is not the owner, has been notified that a Determination is being requested under the Bylaw.
6. Notice of the time and place of the public hearing/meeting at which the Determination will be made, shall be given by the Commission at the expense of the person making the Request not less than five business days prior to such meeting, by publication in a newspaper of general circulation in the Town, and provided electronically to the Town Engineer, Board of Health, Planning Board, and Building Commissioner. Notice shall be given in accordance with the open meeting law, M.G.L.c. 39 sec 23A-23C.
7. If the Commission or its agent determines that an application is incomplete, it shall notify the Applicant.
8. Unless otherwise granted an extension by the applicant, when a complete Request for Determination of Applicability application is received, the Commission shall convene to consider a Determination of Applicability within 21 days of receipt of a complete application.

9. The Determination must be signed by a majority of the Commission present at a meeting and shall be sent by the Commission to the person making the Request and the owner of the Property if different than the person making the Request.
10. A Determination shall be valid for three years from the date of issuance.
11. In the event of a positive Determination a Notice of Intent shall be required for any activity subject to Conservation Commission jurisdiction and all of the procedures set forth in Section III relative to such applications shall apply.

#### **E. Notices of Intent (NOI)/Orders of Conditions (OOC)**

1. Any person who proposes work that will remove, fill, dredge, build upon, and/or alter any resource area and/or buffer zone subject to protection under the Bylaw and these regulations shall submit a Notice of Intent and other application materials in accordance with the submittal requirements set forth in Sections III and V of these regulations.
2. The Applicant shall have the burden of proving by a preponderance of credible evidence that the work proposed in the Notice of Intent will not have significant or cumulative effect upon the resource area values and interests protected by the Bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit.
3. If the Commission or its agent determines that an application is incomplete, it shall notify the Applicant within 21 days of the date of receipt. The Commission or its agent may:
  - a. return the application, restarting all time periods for application processing;
  - b. require additional information or materials be submitted within a specified period of time which shall be no later than the date of the scheduled public hearing;
  - c. continue the public hearing, at the Applicant's expense, for a period to be determined by the Commission.
4. Applications submitted to the Conservation Commission must meet the submittal requirements under both the Wetlands Protection Act (G.L. c. 131, Section 40 and 310 CMR 10.00, et seq.) and the Town of Amherst Wetland Protection Bylaw, and Regulations. All applications will be considered separately under both the Act and the Bylaw and Regulations.

Any person filing a Notice of Intent with the Commission shall comply with the abutter notification requirements as discussed in Section III. B of these regulations. When a person filing an application is other than the owner, the owner, or a legally authorized representative of the owner must sign the application or provide separate written permission.
5. The Amherst Conservation Commission may require at its discretion stormwater best management practices to be implemented on any site where it is deemed necessary to protect Areas Subject to Protection under the Bylaw. This includes test pits, geotechnical borings, documentation on depths to groundwater, hydrologic calculations documenting pre and post development peak flows, and water quality characteristics of any drainage discharge from a point source (whether closed or open channel).
6. If the Commission determines that an activity outside of a Resource Area has altered an Area(s) Subject to Protection under the Bylaw it shall be considered a violation and may result in Enforcement Action. An Enforcement Order or other directive from the Commission will outline remedial actions necessary which may include submission of an

after-the-fact permit application, plans, supporting calculations, and other documentation as are necessary to describe the entire activity resulting in the violation.

Within 21 days of the close of the public hearing the Commission shall issue an approval or denial permit decision.

- a. Approved permits shall impose conditions as are deemed necessary for the protection of the interests identified in the Bylaw. The permit shall prohibit any activity or portion thereof that cannot be conditioned to protect said interests.
- b. If the Permit is denied, it shall be for one or more of the following reasons:
  - i. for failure to meet specified requirements of the Bylaw;
  - ii. for failure to submit necessary information or plans requested by the Commission;
  - iii. for failure to meet design specifications, performance standards, or other requirements in these Regulations;
  - iv. for failure to avoid or prevent unacceptable significant or cumulative effects upon the Resource Area values protected by the Bylaw; or
  - v. where no conditions are adequate to safeguard the wetland values protected by the Bylaw.
7. Unless extended, an Order of Conditions shall expire three years from the date of issuance.
8. The Permit shall be signed by a majority of the Commission and shall be mailed, provided electronically (return receipt) or hand delivered to the Applicant, his agent, or the owner of record.
9. A hard copy and an electronic copy of application and permit materials shall be kept on file by the Conservation Commission and shall be made available to the public upon receipt of a public records request.
10. Any Order of Conditions shall be recorded in the Hampshire County Registry of Deeds for recorded land or the Hampshire County Land Court District for registered land. Certification of recording shall be sent to the Commission. If work is undertaken without the applicant first recording the Permit, the issuing authority may issue an Enforcement Order.
11. For failure to comply with conditions stated in a Permit, the Commission may revoke or modify said Permit.

## **F. Public Hearings**

1. A public hearing shall be held by the Commission within 21 days of receipt of an application which meets the minimum submittal requirements set forth in Sections III and IV. Notice shall be advertised at the expense of the Applicant at least five business days prior to the hearing in a newspaper of general circulation in the Town and in accordance with the requirements of the Open Meeting Law (G.L. c. 39, Sec. 23B). Notice of the hearing shall be communicated by the Commission or its representative to the Applicant.
2. It is standard practice for the Commission to combine its hearings under the Bylaw with the hearing conducted under the Wetlands Protection Act (G.L. c. 131, Sec. 40) and Regulations (310 CMR 10.00).
3. Public hearings may be continued as follows:
  - a. without the consent of the applicant to a date, announced at the hearing, within 21 days, of receipt of the Notice of Intent;

- b. with the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing; or
- c. 3. with the consent of the applicant for a period not to exceed 21 days after the submission of a specified piece of information or the occurrence of a specified action. The date, time and place of said continued hearing shall be publicized in accordance with M.G.L. c. 131, § 40, and notice shall be sent to any person at the hearing who so requests in writing.

### **G. Coordination with Other Boards and Offices**

1. The Commission or its representative shall provide access to electronic versions of permit applications to the Planning Board, Board of Health, Town Engineer, and the Building Commissioner.
2. The boards and offices referred to in Section G.1 above may file written comments and recommendations with the Commission. Any such written comments and recommendations will be provided to the Applicant and owner when they are filed with the Commission. The Applicant and owner shall have the right to respond to such written comments and recommendations at a hearing of the Commission prior to final action.

### **H. Security**

As part of a permit or variance issued under the Bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or both of the methods described below:

1. by a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission. Such bond or surety, if required to be filed or deposited, shall be approved as to form and manner of execution by Town Counsel, and as to sureties by the Town Treasurer, and shall be contingent upon the satisfaction of such conditions within the time frame of the permit and extension. Such bonds shall be approved by the Commission prior to the close of the public hearing.
2. by acceptance of 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, whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed (such method to be used only with the consent of the applicant).

### **I. Extension of Permit**

1. The Commission may extend an Order of Conditions or Order of Resource Area Delineation one or more times, for periods of up to three years each. Requests for extension shall be made in writing to the Commission at least 30 days prior to the expiration of the Permit.
2. Extensions require the following:

- a. A site visit to visually confirm that resource area boundaries have not changed.
  - b. Resource Area flagging/marking must be present and complete as approved on the original permit approval on the subject site in order to confirm there are no changes in the boundaries.
  - c. Site must be in full compliance with existing permit and there may be no outstanding Enforcement Orders on the property.
  - d. Changes in resource areas or their boundaries shall require a new Notice of Intent filing or (if changes are minor) an Amendment to an existing Order of Conditions.
3. The Commission may deny the request for an extension and require the filing of a new Application for a Permit for the remaining work under the following circumstances:
- a. where no work has begun on the project, except where such failure is due to an unavoidable delay, such as appeals, in the obtaining of other necessary permits;
  - b. where new information, not available at the time the Permit was issued, has become available and indicates the permit is not adequate to protect the interests identified in the bylaw;
  - c. where incomplete work is causing damage to the interests identified in the bylaw;
  - d. where work has been done in violation of the Permit or these Regulations.
4. If issued by the Commission, the Extension Permit shall be approved and signed by a majority of the Commission.
5. The Extension Permit shall be recorded in the Hampshire Registry of Deeds or Land Court District, whichever is appropriate. Certification of recording shall be sent to the Commission. If work is undertaken without the applicant so recording the Extension Permit, the Commission may issue an Enforcement Order.

## **J. Enforcement**

1. The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land at reasonable times for the purpose of performing their duties under the Bylaw and may make or cause to be made such examinations, surveys, or samplings as the Commission deems necessary, subject to the constitution and laws of the United States and the Commonwealth of Massachusetts, under the following circumstances:
  - a. With the permission of the landowner.
  - b. After a permit has been received, as part of the review process.
  - c. Throughout the duration of an active permit.
2. The Commission shall have authority to enforce the Bylaw, its Regulations, and permits and variances issued thereunder by violation notices, enforcement orders, and civil and criminal court actions.
3. Upon request of the Commission, the Town Council may authorize Town Counsel to take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law.
4. As an alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure set forth in G.L., Ch. 40 Sec. 21D. For purposes of non-criminal disposition, enforcing persons shall be the Conservation Director and/or Police Officers, and the penalty for each such violation shall be \$300.00. Each day or portion thereof during which the violation continues shall constitute a separate offense, and each

provision of the bylaw, regulations, permit, or variance violated shall constitute a separate offense.

5. When the Commission determines that an activity is in violation of the Bylaw or a permit issued under the Bylaw, the Commission may issue an Enforcement Order and/or take other action necessary to achieve compliance.
6. Violations include, but are not limited to:
  - a. failure to comply with a Final Order, Final Determination, Emergency Declaration, or Emergency Certification, such as failure to observe a particular condition or time period specified in the Order, Declaration, or Certification;
  - b. failure to complete work described in a Final Order or Final Determination, Emergency Declaration, or Emergency Certification when such failure causes damage to the interests identified in M.G.L. c. 131, § 40 and these bylaw regulations;
  - c. failure to obtain a valid Final Order or Extension Permit prior to conducting an Activity Subject to Regulation under M.G.L. c. 131, § 40 as defined in 310 CMR 10.02(2) and these Bylaw Regulations;
  - d. making any false, inaccurate, or misleading statements in any certification filed under 310 CMR 10.00, and these bylaw regulations including any certification that the requirements of 310 CMR 10.02(2)(b)2. and these bylaw regulations will be met.
  - e. failure to comply with any certification on project plans or eligibility under 310 CMR 10.02(2)(b)2.
  - f. leaving in place unauthorized fill or otherwise fail to restore illegally altered land to its original condition, or the continuation of any other activity in violation of M.G.L. c. 131, § 40 and the Bylaw. The conservation commission, its members and agents, and Department employees may enter upon privately owned land for the purpose of performing their duties under M.G.L. c. 131, § 40, subject to constitutional limitations.
7. An Enforcement Order issued by the Commission shall be signed by a majority of the Commission. In a situation requiring immediate action, the Order may be signed by a single member or an agent of the Commission. Such an Order must be ratified by a majority of the members at the next scheduled meeting of the Commission.
8. Any person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of the provisions of the Bylaw or in violation of any Permit issued pursuant to the Bylaw shall forthwith comply with any order to restore said land to its pre-violation condition; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three years following the recording of the deed or the date of the death by which such real estate was acquired by such person.

## **K. Certificate of Compliance**

1. Upon completion of the work described in a Final Order of Conditions, but not later than the three year term of an Order of Resource Area Delineation or any extension thereunder, the applicant shall request in writing the issuance of a Certificate of Compliance stating that the work has been satisfactorily completed.
2. Upon written request by the applicant, a Certificate of Compliance shall be issued by the issuing authority within 21 days of receipt thereof, and shall certify on Form 8 that the

activity or portions thereof described in the Notice of Intent and plans has been completed in compliance with the Order.

3. If issued by the Conservation Commission, the Certificate of Compliance shall be signed by a majority of the commission. A copy of the Certificate of Compliance shall be sent to the DEP.
4. Prior to the issuance of a Certificate of Compliance, a site inspection shall be made by the issuing authority, in the presence of the applicant or the applicant's agent.
5. If the issuing authority determines, after review and inspection, that the work has not been done in compliance with the Order, it may refuse to issue a Certificate of Compliance. Such refusal shall be issued within 21 days of receipt of a request for a Certificate of Compliance, shall be in writing and shall specify the reasons for denial.
6. If a project has been completed in accordance with plans stamped by a registered professional engineer, architect, landscape architect or land surveyor, a written statement by such a professional person certifying substantial compliance with the plans and setting forth what deviation, if any, exists from the plans approved in the Order shall accompany the request for a Certificate of Compliance.
7. If the final order contains conditions which continue past the completion of the work, such as maintenance or monitoring, the Certificate of Compliance shall specify which, if any, of such conditions shall continue. The Certificate shall also specify to what portions of the work it applies, if it does not apply to all the work regulated by the Order.
8. The Certificate of Compliance shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the issuing authority on the form at the end of Form 8. Upon failure of the applicant to so record, the issuing authority may do so.

#### **L. Appeal**

Any person aggrieved by a decision of the Commission may appeal to a court of competent jurisdiction pursuant to G.L. c. 249, Section 4.

#### **M. Emergencies**

1. Unless authorized by a Severe Weather Emergency Declaration issued by the Commissioner of DEP pursuant to 310 CMR 10.06(8), any person requesting permission to do an emergency project shall specify why the project is necessary for the protection of the health or safety of the citizens of the Commonwealth and what agency of the Commonwealth or subdivision thereof is to perform the project or has ordered the project to be performed.
2. If the project is certified to be an emergency, the certification shall include a description of the work which is to be allowed and shall not include work beyond that necessary to abate the emergency.
3. A site inspection shall be made prior to certification.
4. An emergency certification shall be issued only for the protection of public health or safety.
5. The time limitation for performance of emergency work shall not exceed 30 days.
6. A copy of an emergency certification shall be sent to DEP.



7. The Department may, on its own motion or at the request of any person, review:
  - a. an emergency certification issued by a conservation commission and any work permitted thereunder;
  - b. a denial by a conservation commission of a request for emergency certification;
  - c. or the failure by a conservation commission to act within 24 hours of a request for emergency certification.
  - d. Such review shall not operate to stay the work permitted by the emergency certification unless DEP specifically so orders.
  - e. DEP's review shall be conducted within seven days of: issuance by a conservation commission of the emergency certification;
  - f. denial by a conservation commission of the emergency certification;
  - g. or failure by a conservation commission to act within 24 hours of a request for emergency certification.
  - h. If certification was improperly granted, or the work allowed thereunder is excessive or not required to protect the health and safety of citizens of the Commonwealth, the Department may revoke the emergency certification, condition the work permitted thereunder, or take such other action as it deems appropriate.
8. Any person requesting an Emergency Certification to complete an emergency project shall provide advanced written notice, to the Commission, or its representative, that includes the following:
  - a. Who is doing the work (ex. contractor, homeowner)
  - b. What work is being proposed (in detail, including erosion & sediment controls, proposed work, and final stabilization measures)
  - c. Where the work is proposed (address, where on the property, what resource areas in jurisdiction are located on the property)
  - d. When (dates, including the duration of the work proposed)
  - e. Why is the project an emergency (ex. Threat to public health & safety)
9. For Agricultural Emergencies the provisions of 310 CMR 10.06 (6) shall apply.
10. Emergencies (including Agricultural Emergencies) where work is proposed within an area identified by Natural Heritage & Endangered Species Program (NHESP) as being in Estimated and/or Priority Habitats requires separate permission from NHESP.

## **N. Severability**

1. The invalidity of any Section or provision of these Regulations shall not invalidate any other Section or provision thereof, nor shall it invalidate any permit or determination previously issued.
2. If any Court of the Commonwealth shall invalidate any provision of the Bylaw or these regulations, the Commission may promulgate additional regulations, or present amendments to the Bylaw or Regulations designed to comply with any court decision.

## **O. Effective Date**

These regulations shall become effective upon passage by the Commission, and the provisions of these Regulations shall apply to all work performed after that date.

**P. Conjunction with State Regulation**

Unless otherwise stated in the Bylaw and these Regulations, the definitions, procedures, and performance standards of the Wetlands Protection Act (G.L., Ch. 131 Sec. 40) and associated Regulations (310 CMR 10.00) as promulgated April 1, 1983, and as most recently amended, shall apply.