

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 the Request for Determination or the Notice of Intent, 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. The applicant shall provide notification at the mailing addresses shown on the most recent applicable tax list from the municipal assessor. Notification shall be at the applicant's expense. The notification shall state where copies of the Request for Determination or the Notice of Intent may be examined or obtained and where information on the date, time, and location of the public hearing may be obtained. The applicant shall notify abutters by certified mail (return receipt requested), or certificates of mailing, or hand delivery. Mailing at least seven days prior to the public hearing shall constitute timely notice. The applicant shall present the certified mail or certificates of mailing receipts for all abutters at the beginning of the public hearing. The presentation of the receipts for all abutters identified on the tax list shall constitute compliance with abutter notification requirements. The Conservation Commission shall determine whether the applicant has complied with abutter notification requirements.

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 notification, provided they met pursuant to the Open Meeting Law (G.L. Ch. 39 Sec. 23A-23C) when voting on the matter.

D. Determination of Applicability

1. Request for Determination of Applicability
 - a. 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 copies of a Request for Determination of Applicability. The Request for Determination shall include such data and plans as are required by the Commission.
 - b. Any person filing a Request for Determination with the Commission shall at the same time give written notice thereof, by certified mail (return receipt requested), or certificates of mailing, or hand delivery, to all parties in interest, including abutters

- (including owners of land directly opposite any public or private street or way) and abutters to the abutters within 300 feet of the property line of the applicant (including any in another municipality or across a body of water). The notice shall enclose a copy of the Request with plans, or shall state where copies of plans may be examined and obtained by parties in interest. Any person filing a Request for Determination shall also comply with the Notice requirements in Sec. III.F.
- c. When a person requesting a Determination is other than the owner, the Request, the notice of the hearing, and the Determination itself shall be sent by the Commission to the owner as well as to the person making the Request, and the applicant shall supply the Commission with the name and current address of the owner.

2. Determination of Applicability

a. Within 21 days after the date of receipt of a completed Request for Determination of Applicability, the Commission shall hold a public hearing on the Request. Notice of the time and place of the public hearing 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 hearing, by publication in a newspaper of general circulation in the Town.

b. At the public hearing the Commission will determine:

Positively: that the area or activity is subject to the jurisdiction of the bylaw; or Negatively: that the area or activity is not subject to the jurisdiction of the bylaw.

c. The Determination shall be signed by a majority of the Commission and shall be sent by the Commission to the person making the Request and the owner within 21 days of the close of the public hearing or any continuance thereof.

d. A Determination shall be valid for three years from the date of issuance.

e. In the event of a positive Determination, an Application for Permit shall be filed for any activity subject to jurisdiction of the bylaw, and all of the procedures set forth in Section III relative to such applications shall apply.

f. Public hearings may be continued as follows:

i. with the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing; or

ii. 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 the bylaw, and notice shall be sent to any person at the hearing who so requests in writing.

E. Application for Permit (Notice of Intent, or NOI)

1. Any person who proposes work that will remove, fill, dredge, build upon, or alter any resource area shall submit an Application for Permit and other application materials in accordance with the submittal requirements set forth in Sections III and V of these regulations.

2. The applicant for a Permit shall have the burden of proving by a preponderance of the 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 the 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.

3. If the Commission determines that an application is incomplete or improper, it shall notify the applicant within 21 days of the date of receipt. The Commission may:

a. return the application, in which case all required time periods for application processing will be terminated;

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. The Commission may accept as the application and plans under the bylaw the Notice of Intent and plans filed under the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.
5. The person making an Application for Permit shall send by certified mail (return receipt requested), or certificates of mailing, or delivery by hand notice of the time and place of the public hearing or state where this information may be obtained to the owner, to all parties in interest, including abutters (including owners of land directly opposite any public or private street or way) and abutters to the abutters within 300 feet of the property line of the applicant (including any in another municipality or across a body of water) at least seven days prior to the hearing date. The notice shall state where copies of the Application may be examined and obtained by parties in interest.
6. 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 condition prior to said violation.
7. When a person filing an application is other than the owner, the application, the notice of the hearing, and the findings themselves shall be sent by the Commission to the owner as well as to the person filing the application, and the applicant shall supply the Commission with the name and current address of the owner confirmation of notification by certified mail.
8. Upon receipt of the application materials referred to in subsection D.1 above, the Commission shall issue a file number for the application. The designation of a file number shall not imply that the plans and supporting documents have been judged adequate for the issuance of a Permit but only that the minimum submittal requirements have been filed.
9. In the event that only a portion of a proposed activity lies within a Resource Area, all aspects of the activity shall be described in the detail called for, including without limitation a description and calculation of peak flow and estimated water quality characteristics of any drainage discharge from a point source (whether closed or open channel) outside a Resource Area.
10. Notwithstanding the foregoing, if the Commission determines that an activity outside a Resource Area has in fact altered a Resource Area, it may require an application including such plans, supporting calculations, and other documentation as are necessary to describe the entire activity.

F. Public Hearing on Application for Permit (NOI)

1. A public hearing on an Application for Permit shall be held by the Commission within 21 days of receipt of the minimum submittal requirements set forth in Sections III and IV

and 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., Ch. 39 Sec. 23B). Notice of the hearing shall be mailed by the Commission to the applicant and to the owner if other than the applicant.

2. The Commission may combine its hearing under the bylaw with the hearing conducted under the Wetlands Protection Act (G.L., Ch. 131 Sec. 40) and Regulations (310 CMR 10.00 et seq.).
3. Public hearings may be continued as follows:
 - a. without the consent of the applicant to a certain date, 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 or others deemed necessary by the Commission at its discretion, or comments and recommendations of other local or state boards or officials;
 - b. with the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing; or
 - c. 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 the bylaw, and notice shall be sent to any person at the hearing who so requests in writing.
4. Public hearings must be continued to a future date in the absence of a DEP number.

G. Coordination with Other Boards and Offices

1. Any person filing a Permit Application or Request for Determination with the Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested), or certificates of mailing, or hand delivery, to the planning board, health inspection, town engineer, building inspector, and zoning board.
2. The boards and offices referred to in Section G.1 above may file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. Any such written comments and recommendations that are not privileged 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. Permit Regulating the Work

1. Within 21 days of the close of the public hearing the Commission shall issue or deny the Permit or issue a Notice of Non-Significance if the Commission determines that the area on which the proposed work is to be done is not significant to any interest identified in the bylaw.

2. If the Permit is issued, it shall impose such conditions as are deemed necessary for the protection of one or more of the interests identified in the bylaw. The permit shall prohibit any activity or portion thereof that cannot be conditioned to protect said interests.
3. The Permit shall impose conditions upon an activity or the portion thereof that will in the judgment of the Commission result in removing, dredging, filling, building upon, or altering a Resource Area. The Permit shall impose conditions setting limits on the quantity and quality of discharge from any point source (whether closed or open channel) when said limits are appropriate to protect the interests identified in the bylaw. The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.
4. If the Permit is denied, it shall be for one or more of the following reasons:
 - a. for failure to meet the requirements of the bylaw;
 - b. for failure to submit necessary information or plans requested by the Commission;
 - c. for failure to meet design specifications, performance standards, or other requirements in these Regulations;
 - d. for failure to avoid or prevent unacceptable significant or cumulative effects upon the Resource Area values protected by the bylaw; or
 - e. where no conditions are adequate to safeguard the wetland values protected by the bylaw.
5. A Permit shall expire three years from the date of issuance.
6. The Permit shall be signed by a majority of the Commission and shall be mailed or hand delivered to the applicant, his agent, or the owner of record.
7. A copy of the plans describing the work and the Permit shall be kept on file by the Commission and shall be available to the public at reasonable hours.
8. Prior to the commencement of any work permitted or required by the Permit, the Permit shall be recorded in the registry of Deeds or the land court for the district in which the land is located within the chain of title of the affected property. In the case of recorded land, the Permit shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the Permit shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. Certification of recording shall be sent to the issuing authority. If work is undertaken without the applicant first recording the Permit, the issuing authority may issue an Enforcement Order.
9. For good cause the Commission may revoke or modify a Permit issued under the bylaw after public notice and public hearing, and notice to the holder of the Permit.

10. The Commission may combine the Permit or other action on an application issued under the bylaw with the Order of Conditions issued under the Wetlands Protection Act (G.L., Ch. 131 Sec. 40).

I. 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 the 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).

J. Extension of Permit

1. The Commission may extend a Permit once for an additional one-year period. Requests for extension shall be made to the Commission in writing at least 30 days prior to the expiration of the Permit.
2. The issuing authority may deny the request for an extension and require the filing of a new Application for Permit for the remaining work in 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.
3. If issued by the Commission, the Extension Permit shall be signed by a majority of the Commission.

4. The Extension Permit shall be recorded in the Registry of deeds or land Court, whichever is appropriate. Certification of recording shall be sent to the issuing authority. If work is undertaken without the applicant so recording the Extension Permit, the Commission may issue an Enforcement Order.

K. 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.
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 Board of Selectmen and the Town Counsel shall take legal action for the enforcement under the civil law. Upon request of the Commission, the Chief of Police shall 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 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:
 - a. issue an Enforcement Order; and/or
 - b. hold an Administrative Hearing to consider whether the landowner should be fined for the violation.
6. Violations include, but are not limited to:
 - a. failure to comply with a Permit, such as failure to observe a particular condition or time period specified in the Permit;
 - b. failure to complete work described in a Permit, when such failure causes damage to the interests identified in the bylaw; or
 - c. failure to obtain a valid Permit prior to conducting an activity subject to regulation under the bylaw.
7. An Enforcement Order issued under the Wetlands protection Act (G.L., Ch. 131 Sec. 40) will constitute a warning that an Administrative Hearing and possible fine may result. In

the appropriate case, the Commission may issue an Enforcement Order in lieu of or in addition to an Administrative Order.

8. 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 agent of the Commission. Such an Order must be ratified by a majority of the members at the next scheduled meeting of the Commission.
9. If a fine or an adjustment of fine for a violation is contemplated, the Commission shall hold an Administrative Hearing to discuss the violation and to give the owner or owner's representative an opportunity to respond to the evidence and circumstances. The owner must be given at least forty-eight (48) hours' notice in writing of the date, time, and place of an Administrative Hearing, by certified mail return receipt requested or hand delivery. If a majority of the Commission present at the Hearing finds a preponderance of the evidence that a violation has occurred, the owner shall be fined not more than \$300 per violation. The amount of the fine per violation will be determined by the Commission at the Administrative Hearing.
10. An owner may apply in writing for a continuance of the Administrative Hearing stating in full the reason for the request. The Commission may grant a continuance for compelling and/or environmentally sound reasons.
11. The Commission shall take into account the nature of the violation as follows:
 - a. in the case where restitution is possible, each day or portion thereof during which a violation continues or is repeated shall constitute a separate offense, and each provision of the bylaw or permit violated shall constitute a separate offense;
 - b. in the case where restitution is impossible or inadvisable, the Commission will decide what procedural or legal remedies to take, in the case of destruction of vegetation perhaps requesting that all activity on the site cease until the vegetation has reemerged, grown, or otherwise replenished itself to the Commission's satisfaction.
12. The notice of a fine or fines and explanation thereof, including the date from which daily violations may be counted, will be sent in writing to the responsible owner(s) by certified mail return receipt requested or hand delivery. The fine or fines are payable to the Town of Amherst within 21 days of the date of issuance of the notice.
13. The Town Collector may record in the registry of Deeds a conservation lien for non-payment of accumulated fines. The lien shall be against all property in the Town of Amherst held by the owner at the time of the violation which is contiguous to the area of the violation. The Commission shall hold an Administrative Hearing, to which the owner is given written notice as described above, in order to decide the amount of the lien, which may not exceed the amount of accumulated fines to date.
14. The Commission reserves the right to adjust a fine in response to new information or new circumstances at an Administrative Hearing to which the owner will be given notice as above. A written notice of the adjustment of fine shall be sent to the owner by certified mail or hand delivered.

15. The Commission may accept a written plan with timetable for full restitution of the violation and may then withhold sending the notice of fine(s) for a specified time period. If satisfactory restitution is not made in a timely manner, the notice of fines is retroactive.
16. Unless otherwise stated in the bylaw and regulations promulgated under the bylaw, 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.

L. Certificate of Compliance

1. Upon completion of the work for which a Permit was issued, the applicant may request in writing a Certificate of Compliance, certifying that the activity or portions thereof described in the application and plans has been completed in compliance with the Permit. If issued by the Commission, the Certificate of Compliance shall be signed by a quorum of the Commission.
2. Prior to the issuance of a Certificate of Compliance, a site inspection shall be made by members or agents of the Commission in the presence of the applicant or the applicant's agent.
3. If the Commission determines, after review and inspection, that the work has not been done in compliance with the Permit, it may refuse to issue a Certificate of Compliance. Such refusal shall be issued in writing within 21 days of receipt of a request for a Certificate of Compliance, specifying the reasons for denial.
4. 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 compliance with the plans and setting forth what deviation, if any, exists from the plans approved in the Permit shall accompany the request for a Certificate of Compliance.
5. If the activity or portions thereof described in the Application for Permit and plans has been completed in compliance with the Permit, a Certificate of Compliance shall be issued by the Commission within 21 days of receipt thereof.
6. If the Permit contains conditions which continue past the completion of 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 work regulated by the Permit.
7. The applicant shall submit the Certificate of Compliance to the Registry of deeds or Land Court, whichever is appropriate, to be recorded, and shall send proof of the recording to the Commission.

M. Appeal

Any person may appeal the decision of the Commission under provisions of G.L., Ch. 249 Sec. 4. Such appeal shall be made within 21 days of the date of issuance of the Commission's decision. Notice of said appeal and a copy of the complaint shall be sent, by certified mail return receipt requested or hand delivery, to the Commission and the Town Counsel so as to be received within said 21 days.

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 shall promulgate additional regulations, or present amendments to the bylaw or regulations designed to comply with any court decision invalidating such provision or regulation at the next Town Meeting after such invalidation.

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.