

Chapter XV

Wetlands Ordinance**Section 1. Purpose**

The purpose of this Wetlands Ordinance (“Ordinance”) is to protect the wetlands, water bodies, adjoining land areas and related resources of the City known as the Town of Watertown (“Watertown” or “Town”) by regulating activities deemed by the Watertown Conservation Commission (“Commission”) to have significant or cumulative effect upon their values and interests, including, but not limited to, the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, fisheries and wildlife habitat, and recreational, aesthetics, agricultural, historical, archeological or educational values. These values and interests are collectively known herein as the “interests” protected by this Ordinance.

This Ordinance is intended to utilize the Town’s Home Rule authority to protect additional resource areas for additional interests with additional standards and procedures that are more stringent than those of the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and the regulations promulgated thereunder.

Section 2. Jurisdiction

Except as permitted by the Conservation Commission and as provided by this Ordinance, no person shall remove, fill, dredge, alter or build upon, degrade or discharge into any of the following resource areas:

- any river (including perennial streams), lake or pond;
- any wetland, marsh, wet meadow, bog, swamp or vernal pool;
- any bank;
- any lands bordering on any lake, pond, intermittent stream, spring, brook or creek;
- any land under said waters;
- any land subject to flooding or inundation by groundwater or surface water that substantially promotes the purposes of this Ordinance;
- any land in the 100 year floodplain as delineated pursuant to the regulations of the Commission;
- any land within 200 feet of any river (including perennial streams) (known as the “riverfront area”); or
- any land within 150 feet of any wetland, marsh, wet meadow, bog, swamp, bank, lake, pond or non-perennial stream(known as the “buffer zone”).

Said “buffer zone” resource areas shall be protected regardless of whether they border surface waters. The 150 foot buffer zone set forth in this Ordinance is necessary because land is a limited resource in Watertown. The vast majority of Watertown’s land has been previously developed. Because of this level of development, a natural riparian buffer is absent. There is a high percentage of impervious surfaces, which causes a greater amount of runoff, and there is less opportunity for natural recharge and natural processes to attenuate pollutants in the runoff.

Thus, this buffer zone is needed to help further mitigate activities that may be detrimental to the resource areas.

Without limiting the foregoing, and as an additional local requirement, no person shall build or enlarge any structure, parking lot or impervious surface upon or within fifty (50) feet of any wetland, marsh, meadow, bog or swamp; any bank; any lake, river, pond, stream, spring, brook or creek; or any land under said waters. The 50 foot no-build zone is in place to protect the habitat of riverine or wetland biota that are identified as protected interests under this Ordinance. This 50 foot no-build prohibition applies to the redevelopment of an existing development, unless the redevelopment significantly improves the existing conditions of the developed site so as to substantially promote the interests of this Ordinance.

Section 3. Exceptions

The permit and application required by this Ordinance shall not be required for maintaining, repairing or replacing an existing and lawfully located structure, facility or right-of-way used in the service of the public to provide electric, gas, water, telephone, transportation or other telecommunication services, provided that (a) the structure or facility is not substantially changed, enlarged, or altered, (b) written notice has been given to the Conservation Commission prior to the commencement of work, and (c) the work conforms to performance standards detailed in the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40, the regulations promulgated thereunder, and design specifications acceptable to the Commission.

The application and permit required by this Ordinance shall not be required for work performed for normal maintenance or improvement of land in agricultural use as defined by the Wetlands Protection Act Regulations at 310 CMR 10.04(4).

The permit and application required by this Ordinance shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that (a) the work is to be performed by or has been ordered by an agency of the Commonwealth of Massachusetts or a political subdivision thereof, (b) advance notice, oral or written, has been given to the Commission prior to the commencement of work or within 24 hours after the commencement, (c) the Commission's duly authorized designee certifies the work as an emergency project, and (d) the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency. Within 21 days of the commencement of an emergency project, a permit application for said work shall be filed with the Commission for review as provided in this Ordinance. Upon failure to meet these and other requirements of the Commission, or upon the Commission's decision not to certify the work as an emergency project, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures, as appropriate.

Other than as stated in this section, the exceptions provided in the most recently revised Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and the regulations promulgated thereunder shall not apply.

Section 4. Application for Permits and Requests for Determinations; Fees

Any person wishing to perform work regulated by this Ordinance shall file a written application for a permit (“Application”) with the Commission. The Application shall include such data and plans as are deemed necessary by the Commission to describe proposed activities and their effects on resource areas and interests protected by this Ordinance. The Commission is hereby authorized to request information from an applicant after the initial application is filed, including, but not limited to, resource area delineations and flood-plain delineations based on current, site specific, data. The Commission may, in its discretion, continue the hearing to a date certain, to be announced at the hearing, pending the receipt of information requested by the Commission, or it may deny an application due to incomplete information. The Commission is authorized to continue the hearing without the consent of the applicant for the purpose of requesting further information; for purposes of Section 5 of this Ordinance, no application shall be deemed complete until all information requested by the Commission has been submitted. No work shall commence until a permit has been issued by the Commission or the Commission has issued a finding pursuant to this Ordinance that such a permit is not required.

A denial of an application “with prejudice” shall be the Commission’s final decision. If the Commission denies an application with prejudice, the applicant may not submit a new application for the same property for one (1) year.

The Commission may at its discretion accept as the Application and plans under this Ordinance the Notice of Intent and plans filed under the Massachusetts Wetlands Protections Act, M.G.L. Chapter 131, Section 40.

Any person desiring to know whether or not proposed work or an area is subject to this Ordinance may, in writing, request a determination of applicability of this Ordinance (“Request for Determination”) from the Commission. The Request for Determination shall include such data and plans as are deemed necessary by the Commission.

Any resource area delineation set forth in either a Request for Determination or an Application shall expire three (3) years after the date that the Commission takes action on such Request for Determination or Application.

Any person filing an Application or Request for Determination shall, at the time of the filing, pay a filing fee in accordance with the filing fee schedule contained in the current regulations promulgated by the Commission in addition to the fee required by the Massachusetts Wetlands Protections Act, M.G.L. Chapter 131, Section 40.

The Commission may waive the filing fee for an Application or Request for Determination filed by a government agency, for a Request for Determination filed by a person having no financial connection with the subject property, for any projects whose sole effect is to substantially enhance a resource area, or for other reasonable grounds as determined by the Commission at its discretion.

A. Consultant Fees

Pursuant to Massachusetts General Laws Chapter 44, Section 53G, the Commission may, upon receipt of an Application or Request for Determination, or at any point during the hearing process, impose reasonable fees upon applicants for the purpose of securing outside consultants, including engineers, wetlands scientists, wildlife biologists or other experts, in order to aid in the Commission's review of proposed projects. Such funds shall be deposited with the Watertown Treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be imposed where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

The consultant fees collected for the Commission's review of a specific Application or Request for Determination may be used only for consulting work done in connection with that Application or Request for Determination, and expenditures may be made at the sole discretion of the Commission.

Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission. The Commission shall provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or hand-delivered. The applicant may withdraw the Application or Request for Determination within five (5) days of the date notice is given without incurring any costs or expenses.

The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested consultant fee within ten (10) business days of the request for payment shall be cause for the Commission to declare the Application or Request for Determination administratively incomplete and to deny the permit, except in the case of an appeal. The Commission shall inform the applicant and the Massachusetts Department of Environmental Protection of such a decision in writing.

The applicant may appeal the selection of an outside consultant to the Town Council, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a closely-related field. The applicant shall make such an appeal in writing, which must be received within ten (10) days of the date that request for consultant fees was made by the Commission. Such appeal shall extend the applicable time limits for action upon the Application or Request for Determination.

Filing Fees

Project Size	Fees
Less than 1,000 sq. ft	\$50.00
1,000 sq. ft. to less than 2,000 sq. ft.	\$100.00
2,000 sq. ft. to less than 3,000 sq. ft.	\$150.00
3,000 sq. ft. to less than 4,000 sq. ft.	\$200.00
4,000 sq. ft. to less than 5,000 sq. ft.	\$250.00
5,000 sq. ft. to less than 6,000 sq. ft.	\$300.00
6,000 sq. ft. to less than 10,000 sq. ft.	\$400.00
10,000 sq. ft. to less than 15,000 sq. ft.	\$500.00
15,000 sq. ft. to less than 20,000 sq. ft.	\$650.00
20,000 sq. ft. to less than 30,000 sq. ft.	\$750.00
30,000 sq. ft. to less than 50,000 sq. ft.	\$850.00
50,000 sq. ft. or greater	\$1000.00

Section 5. Notice and Hearings

Any person filing an Application or Request for Determination with the Commission shall give written notice thereof, at the same time, by certified mail, return receipt requested, or hand delivery, to all parties in interest. For purposes of this section, “parties in interest” shall include all abutters as determined from the most recent records of the Town Assessors, all owners of land directly across a body of water, including those persons in another municipality, and all abutters to abutters or other persons within 300 feet of the property line.

The notice shall be on a form supplied by the Commission and shall state where copies of the Application or Request for Determination and accompanying plans may be examined and obtained by abutters. An affidavit of the person providing such notice with a copy of the notice, mailed or delivered, shall be filed with the Commission, prior to or at the first public hearing held by the Commission. When a person filing a Request for Determination is other than the owner, that person shall ensure that the Request for Determination, the notice of the hearing and the determination itself shall be sent to the owner as well as to the person filing the Request for Determination.

The Commission shall commence a public hearing and issue a decision on any Application or Request for Determination within twenty-one (21) days of its receipt of the completed Application or Request for Determination, unless an extension is authorized in writing by the applicant. Notice of the time and date of the hearing shall be given by the Commission, at the expense of the person filing the Application or Request for Determination, by publication in a newspaper of general circulation in Watertown not less than five (5) working days prior to the hearing, and by posting it in the office of the Town Clerk for not less than five (5) working days prior to the hearing.

The Commission at its discretion may combine its hearing under this Ordinance with the hearing conducted under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and may combine the public notices thereof.

For the reasons announced by the Commission at the hearing, the Commission shall have authority to continue the hearing to a certain date to be announced at the hearing. Such reasons may include the receipt of additional information offered by the applicant or others, or information or plans required from the applicant or others, deemed necessary by the Commission at its discretion, or comments and recommendations of boards and officials listed in Section 6 of this Ordinance. In the event that the applicant objects to a continuance, the Commission may, in its discretion, close the hearing and take action on such information as is available. The Commission may also continue the hearing without the consent of the applicant pending the submission of requested information, or to a date, announced at the hearing, within twenty-one (21) days of receipt of a completed notice of intent.

The Commission may continue the public hearings with the consent of the applicant, which may be given in writing or orally at the hearing, as follows:

1. to an agreed-upon date, which shall be announced at the hearing; or
2. 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.

A Notice of Intent shall be presumed to have expired two (2) years after the date of filing unless the applicant submits information showing that (a) good cause exists for the delay of proceedings under 310 CMR 10.00; and (b) the applicant has continued to pursue the project diligently in other forums in the intervening period; provided, however, that unfavorable financial circumstances shall not constitute good cause for delay.

Section 6. Coordination with Other Boards and Offices

Anyone filing an Application for Permit or Request for Determination of Applicability with the Commission shall provide a Notice to Town Departments form at the same time, by certified mail or hand delivery, to the offices of the Town Council, Town Planning Board and Board of Appeals, Town Board of Health, Town Building Inspector, Town Manager, Town Department of Public Works and the Conservation Commissions of any adjoining municipalities of projects proposed along the borders or within 300 feet of those municipalities.

The Commission shall not take final action until such boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. 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.

Section 7. Permits, Determinations of Applicability and Conditions

If the Commission, after a public hearing, determines that the area and activity that are the subject of an application or the water or land uses which will result therefrom are likely to have a significant individual or cumulative effect on the interests protected by this Ordinance, it shall issue or deny a permit for the work requested within twenty-one (21) days of the close of the hearing. If the Commission issues a permit, it may impose conditions which it deems necessary or desirable to protect the interests of the Ordinance, and all activities shall be done in accordance with those conditions. The conditions may include, but are not limited to, a condition that portions of the land shall not be altered or built upon. The Commission shall take into account the cumulative, adverse effects of loss, degradation, isolation and replication of protected resource areas throughout the community and watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

The Commission shall give due consideration to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation. This provision will not authorize a variance that would conflict with the Wetlands Protection Act.

The Commission is authorized to deny a permit for failure to meet the requirements of this Ordinance or its regulations; for failure to submit all necessary information or plans requested by the Commission; for submission of substantially inaccurate or false information; for failure to avoid or prevent significant cumulative impacts upon the interests protected by this Ordinance; or where no conditions can be imposed that would adequately protect the interests protected by this Ordinance.

In reviewing activities within the buffer zone, the Commission shall presume the buffer zone is important to the protection of other resource areas because activities undertaken in close proximity have a high likelihood of adverse impact, 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 recharge, poor water quality, and loss of wildlife habitat. The Commission may establish, in its regulations, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of such lands, including without limitation strips of continuous, undisturbed vegetative cover, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the interests protected by the Ordinance.

In reviewing activities within the riverfront area, the Commission shall presume the riverfront area is important to all the resource area interests unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the

otherwise applicable requirements of this Ordinance, has proved by a preponderance of the evidence that (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or interests protected by this Ordinance. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.

To prevent resource area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication.

The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless the type of resource area or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 C.M.R. 10.60).

The Commission shall presume that all areas meeting the definition of "vernal pools" under Section 10 of this Ordinance, including the adjacent area, perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act regulations.

If in its consideration of an Application or Request for Determination, the Commission determines in its discretion that the area is deemed not likely to be significant to the interests protected by this Ordinance; the Commission shall inform the applicant in writing that the work does not require a permit.

In acting on a Request for Determination, the Commission may impose conditions on its determination, and the determination shall be contingent on compliance with those conditions.

Permits shall expire on the date specified by the Commission, not later than three (3) years from the date of issuance. Any permit may be extended for one year at the Commission's discretion, provided that a request for an extension is received in writing by the Commission thirty (30) days prior to expiration of the original form. Notwithstanding the above, a permit may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until

permanent protection is in place, and shall apply to all present and future owners of the land.

For good cause the Commission may revoke or modify any permit, Determination Of Applicability, or Order of Resource Area Delineation (ORAD) or any other order, determination or other decision issued under this Ordinance after notice to the holder, the public, abutters, and town boards, pursuant to Section 5 and Section 6, and after a public hearing.

No work proposed in any application shall be undertaken until the applicant has recorded the permit, or ORAD issued by the Commission with respect to such work 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 document has been recorded. If the applicant fails to perform such recording, the Commission may record the documents itself and require the Applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a Certificate of Compliance.

The Commission may at its discretion combine the permit or determination or other action on an Application or Request for Determination under this Ordinance with the order of conditions or determination or other action issued under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40.

Section 8. Amendments to Permits

The Commission may amend the conditions contained in the permit issued under the provisions of Section 7 of this Ordinance. Amendments that may be approved by the Commission shall be limited to the following:

1. Perfecting amendments, including, but not limited to, the correction of typographical errors and errors of reference,
2. Other amendments approved following notice and public hearing.

The Commission shall not approve any amendments to permit conditions for work that has been completed in accordance with the provisions contained in the original permit.

The Commission may revoke or modify a permit issued under the Ordinance if the applicant and/or his/her successors fail(s) to comply with the terms of the permit.

No revocation or substantial modification shall be voted until after the Commission has conducted a public hearing on the matter with notice to the permit holder and any other entity entitled to notice under the original permit Application.

Section 9. Regulations

After public notice and hearing, the Commission may promulgate rules and regulations to effectuate the purposes of this Ordinance. The regulations will be effective when voted by the Commission and filed with the Watertown Clerk. Failure of the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law may not suspend or invalidate the effects of this Ordinance. Any regulations in effect as of the date of the enactment of this Ordinance may remain in effect until new regulations are issued, except that any existing regulations that are inconsistent with this Ordinance may be superseded by this Ordinance.

Public notice of any public hearing on such rules and regulations may be given at least three (3) weeks prior to such hearing by publication in a newspaper of general circulation in Watertown and by posting in the office of the Watertown Town Clerk.

At a minimum, these regulations may define key terms in this Ordinance not inconsistent with the Ordinance and procedures governing the amount and filing of fees. If the regulations do not contain a definition for a term used in this Ordinance, the definition of such term contained in 310 CMR 10.00 may apply.

Section 10. Definitions

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

The term “person” shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town ordinances, administrative agency, public or quasi-public corporation or body, the Town of Watertown, and any other legal entity and its legal representatives, agents, or assigns.

The term “alter” shall include, without limitations, the following actions when undertaken to, upon within or affecting resource areas protected by this Ordinance:

- a. Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- b. Changing of existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- c. Drainage or other disturbance of water level or water table;
- d. Dumping, discharging or filling with any material that may degrade water quality;
- e. Placing of fill, or removal of material, that would alter elevation;
- f. Driving of piles, or erection or expansion of buildings or structures of any kind;

- g. Placing of obstructions or objects in water;
- h. Destruction of or significant injury to vegetation, including cutting or trimming of trees and shrubs;
- i. Changing water temperatures, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
- j. Any activities, changes or work that may cause or contribute to pollution of any body of water or groundwater;
- k. Application of pesticides or herbicides;
- l. Destruction or alteration of wildlife habitat; and
- m. Incremental activities that have, or may have, a cumulative adverse impact on the interests protected by this Ordinance.

“Parties of Interest” shall include all abutters as determined from the most recent records of the Assessors, all owners of land directly across a body of water including those persons in other municipalities, and all abutters to abutters within 300 feet of the property line.

The term “pond” shall follow the definition of 310- CMR 10.04 except that the size threshold of 10,000 square feet shall not apply.

The term “bank” shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

The term “vernal pool” shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be the mean annual high-water line defining the depression.

Except as otherwise provided in this Ordinance or in associated regulations of the Conservation Commission, the definitions of terms and the procedures in this Ordinance shall be as set forth in the Wetlands Protection Act (M.G.L.C.131 Section 40) and regulations (310 CMR 10.00).

Section 11. Performance Guarantee

As part of a permit under this Ordinance, in addition to any security required by any other municipal or state board, agency of 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 more 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, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.
2. By accepting a conservation restriction, easement, of other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land of 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. This method shall be used only with the consent of the applicant.

Section 12. Enforcement

No person shall remove, fill, dredge, build upon, degrade or otherwise alter resource areas protected by this Ordinance, 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 Ordinance.

The Commission and its agents, officers and employees shall have authority to enter upon privately owned land at reasonable times to the extent consistent with constitutional authority for the purpose of performing their duties under this Ordinance, and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.

The Commission shall have authority to enforce this Ordinance, its regulations, and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions. The Commission may order any person who violates provisions of this Ordinance to restore the property to its original condition and take other action deemed necessary by the Commission to remedy such violations, including, but not limited to, delineating the resource area boundary as it existed prior to the alteration, or may be fined, or both. Municipal boards and officials, including any police officer or other officer having police powers, shall have authority to assist the Commission in such enforcement.

Upon request of the Commission, the Town Manager and the Town Attorney shall take legal action for enforcement under the civil law. Upon request of the Commission, the chief of police shall take legal action for enforcement under the criminal law.

In the alternative to criminal prosecution, the Commission may elect to use the non-criminal disposition procedure set forth in M.G.L. Chapter 40, Section 21D, which has been adopted by the Town in Section 7 of its General Ordinances.

Any person who violates any provision of this Ordinance, regulations promulgated thereunder, or any permit or finding issued thereunder, shall be punished by fine of not more than \$300.00 for each offense. Each day or portion thereof during which the violation continues shall constitute a separate offense, and each provision of the Ordinance, regulations, permit or findings violated, shall constitute a separate offense.

Section 13. Burden of Proof for a Permit

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the Application will not have a significant or cumulative effect on the interests protected by this Ordinance. Failure to provide adequate evidence to the Commission supporting that burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

Section 14. Relation to the Wetlands Protection Act

This Ordinance is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, independent of the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and regulations thereunder. The Ordinance is intended to provide a greater degree of protection to the listed resource areas, values and interests than the Wetlands Protection Act or regulations thereunder.

Section 15. Severability

The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision of this Ordinance or of any permit, condition or determination previously issued.

Section 16. Effective Date

This Ordinance shall take effect immediately upon its adoption by vote of the Town Council. It shall apply to all Applications and Requests for Determination filed on or after the first publication of a notice of public hearing of the Town Council to consider the adoption of this Ordinance.

Section 17. Appeals

A final decision of the Commission shall be reviewable in the Superior Court in accordance with M.G.L. Chapter 249, Section 4.