

## ARTICLE XIV

### ENVIRONMENT

#### 1.0 Wetlands Protection Bylaw

##### 1.1. Purpose

The purpose of this Bylaw is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Burlington by controlling activities deemed by the Conservation Commission likely to have a significant effect on resource area interests deemed important to the community (collectively, the “resource area interests protected by this Bylaw”). These include but are not limited to the following:

- public or private water supply
- groundwater supply
- flood control
- erosion and sedimentation control
- storm damage prevention including water quality
- prevention and control of pollution
- fisheries
- wildlife habitat
- rare species habitat including rare plant and animal species
- recreational and educational values

This Bylaw is intended to utilize the Home Rule authority of Burlington so as to protect the resource areas under the Wetlands Protection Act (M.G.L. Ch.131 §40; the Act) to a greater degree, to protect additional resource areas beyond the Act recognized by the Town as significant, to protect all resource areas for their additional values beyond those recognized in the Act, and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and regulations thereunder (310

CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth and other relevant Bylaws of the Town of Burlington. This Bylaw shall not be applicable to projects for which a Determination of Applicability, Order of Conditions, Order of Resource Area Delineation or other permit under the Massachusetts Wetlands Protection Act has been issued and is valid or if an application for one of the foregoing is pending at the effective date of this Bylaw. The Bylaw provisions in effect prior to the effective date of this Bylaw shall apply to a project for which such approval has been issued or for which such application is pending.

##### 1.2. Jurisdiction

Except as permitted by the Conservation Commission no person shall remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas as defined in the Burlington Wetland Bylaw Regulations: any freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; springs; banks; reservoirs; lakes; ponds; beaches; lands under water bodies; lands subject to flooding by groundwater or surface water; or lands adjoining these resource areas out to a distance of 100 feet, known as the buffer zone. The Commission may establish performance standards for work within the buffer zone to protect the aforementioned resource areas, however, the buffer zone itself is not a resource area.

Except as permitted by the Conservation Commission, no person shall remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: streams; brooks; creeks; rivers; lands adjoining these waterways out to a distance of 200 feet, known as the riverfront area. Said 200-foot riverfront resource area shall apply to all streams shown on the map “Regulatory Streams of Burlington” to be adopted and incorporated in regulations, whether the stream is perennial or intermittent.

All said resource areas (collectively the “resource areas protected by this Bylaw”) shall be protected whether or not they border surface waters.

### 1.3. Exemptions and Exceptions

The applications and permits required by this Bylaw shall not be required for work performed for normal maintenance or improvement of land in agricultural and aquacultural use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04.

The applications and permits required by this Bylaw shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Conservation Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

The applications and permits required by this Bylaw shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this Bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

Other than stated in this Bylaw or in regulations adopted by the Commission, subsequent exemptions created under the Wetlands Protection Act (M.G.L. Ch. 131 §40) and regulations (310 CMR 10.00) shall not apply under this Bylaw.

### 1.4. Applications and Fees

A written permit application shall be filed with the Conservation Commission to perform activities with the potential to affect resource areas protected by this Bylaw. The Commission may accept digital electronic copies in lieu of paper copies. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this Bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this Bylaw.

The Commission, in an appropriate case, may accept as the application and plans under this Bylaw any application and plans filed under the Wetlands Protection Act (M.G.L. Ch. 131 §40) and regulations (310 CMR 10.00), but the Commission is not obliged to do so.

Any person desiring to know whether or not a proposed activity or an area is subject to this Bylaw may in writing request a determination from the Commission. Such a Request for Determination of Applicability (RDA) or Abbreviated Notice of Resource Area Delineation (ANRAD) filed under the Act shall include information and plans as are deemed necessary by the Commission.

At the time of an application, the applicant shall pay a filing fee specified in regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act and regulations.

Additionally, pursuant to M.G.L. Ch. 44 §53G and regulations promulgated by the Commission, the Commission may 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 review of proposed projects. Such funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

Only costs relating to consultant work done in connection with a project for which a consultant fee has been

collected shall be paid from this account, 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 delivered. The applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.

The entire fee, at a mutually agreed upon amount, 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 administratively incomplete and deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and Department of Environmental Protection (DEP) of such a decision in writing.

The applicant may appeal the selection of an outside consultant to the selectboard, 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 related field. The applicant shall make such an appeal in writing, and must be received within fifteen (15) business 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.

#### 1.5. Notice and Hearings

Any person filing any application permit other than an RDA, shall at the same time give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 100 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date if known. The notice to abutters also shall include a copy of the application or request, with plans, or shall state where copies 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. 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.

The Commission shall conduct a public hearing on any permit application (or public meeting for an RDA) with written notice given at least seven days prior to the hearing at the expense of the applicant, in a newspaper of general circulation in the municipality. The Commission shall commence the public hearing or public meeting within 21 days from receipt of a completed permit application, RDA, or ANRAD unless an extension is authorized in writing by the applicant. The Commission shall have authority to continue the hearing, with the applicant's consent, to a specific date announced at the hearing or meeting, for reasons stated at the hearing or meeting, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials listed in §1.6.

The Commission shall issue its permit, in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant. The Commission in an appropriate case may combine its hearing under this Bylaw with the hearing conducted under the Wetlands Protection Act (G.L. Ch.131 §40) and regulations (310 CMR 10.00).

#### 1.6. Coordination with Other Boards

Any person filing a permit application, other than an RDA, with the Conservation Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested) or hand delivery, to the Board of Selectmen, Planning Board, Board of Health, and Engineering Department. Digital electronic copies may be submitted in lieu of paper copies. A copy shall be provided in the same manner to the Commission of the adjoining municipality, if the property for which the application has been filed is within 100 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be

filed with the Commission. The Commission shall not take final action until the above boards and officials have had 10 calendar 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. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing or meeting of the Commission, prior to taking final action.

#### **1.7. Permits and Conditions**

If the Conservation Commission, after a public hearing or meeting, determines that the activities which are subject to the permit application, or the land and water uses which will result therefrom, are likely to have a significant effect on the resource area values protected by this Bylaw, the Commission, within 21 days of the close of the hearing or meeting, shall issue or deny a permit for the activities requested. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect.

If a permit is issued, the Commission shall impose conditions deemed necessary or desirable to protect said resource area values, and all activities shall be conducted in accordance with those conditions. Where no conditions are adequate to protect said resource area values, the Commission is empowered to deny a permit for failure to meet the requirements of this Bylaw. The Commission may also deny a permit:

- for failure to submit necessary information and plans requested by the Commission;
- for failure to comply with the procedures, design specifications, performance standards, and other requirements in regulations of the Commission; or
- for failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values protected by this Bylaw.

Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. The Commission 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.

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 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 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 values protected by the Bylaw.

In reviewing activities within the riverfront area, the Commission shall presume the riverfront area is important to all the resource area values 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 Bylaw, 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 values protected by this Bylaw. 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 establish, in its regulations, design specifications, performance standards, and/or other measures and safeguards, including the establishment of thresholds and limitations on amounts of permissible alteration of resource areas. 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. Because of the uncertainty of the long-term viability of created wetlands, the Commission may, in its regulations, establish replication to fill ratio requirements exceeding 1:1.

If wetland resource areas are to be altered, the Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever a resource area alteration is proposed that exceeds thresholds established in regulations. 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 CMR 10.60).

A permit shall expire three years from the date of issuance. At the discretion of the Commission, any permit may be renewed for additional three-year periods, provided that requests for renewals are received in writing by the Commission prior to each expiration. 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 any permit issued under this Bylaw after notice to the holder, the public, abutters, and town boards, pursuant to §1.5 and §1.6, and after a public hearing.

Amendments to permits shall be handled in the manner set out in the Wetlands Protection Act regulations and policies thereunder.

The Commission in an appropriate case may combine the decision issued under this Bylaw with the permit issued under the Wetlands Protection Act and regulations.

No work proposed in any application shall be undertaken until the permit, issued by the Commission with respect to such work, has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the document has been recorded.

The resource area "vernal pools", as defined in the regulations, includes all vegetated habitats within one-hundred feet of the seasonal high water of said pools. The Commission shall presume that both the inundated and adjacent upland areas provide 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 pool or adjacent upland does not provide essential habitat functions. Any formal evaluation shall be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60).

#### **1.8. Regulations**

At a public meeting and in accordance with the Open Meeting Law, the Conservation Commission may promulgate rules and regulations to effectuate the purposes of this Bylaw, effective when voted and filed with the town clerk. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw. At a minimum these regulations shall reiterate the terms defined in this Bylaw, define additional terms not inconsistent with the Bylaw, and establish filing and consultant fees.

#### **1.9. Definitions**

Except as otherwise provided in this by-law or in regulations of the Commission, the definitions of terms in this

Bylaw shall be as set forth in the Wetlands Protection Act, MGL c. 131, § 40, and regulations, 310 CMR 10.00, thereunder.

#### **1.10. Security**

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

- (a) By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, 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 COC for work performed pursuant to the permit.
- (b) By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Burlington 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.

#### **1.11. Enforcement**

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

The Conservation Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this Bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

The Commission shall have authority to enforce this Bylaw, its regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, non-criminal citations under M.G.L. Ch. 40 §21D, the Town of Burlington Bylaws, Article 1, General Provisions, §4, and civil and criminal court actions. Any person who violates provisions of this Bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Upon request of the Commission, the Board of Selectmen and Town Counsel may 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. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of this Bylaw, or regulations, permits, or administrative orders issued thereunder, may be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the Bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

As an alternative to criminal prosecution in a specific case, the Commission may issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in M.G.L. Ch. 40 §21D, which has been adopted by the Town in the General Bylaws, Article 1, §4.

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this Bylaw, or in violation of any order issued under this Bylaw, shall forthwith comply with any such order or restore such land to its condition prior to any such violation; provided, however, that no action, civil or criminal, may be brought against such person unless such action is commenced within three years

following the recording of the deed of the date or the death by which such real estate was acquired by such person.

The Board of Selectmen may, upon request of the Conservation Commission, instruct Town Counsel to take such legal action as may be necessary to restrain a violation of this Bylaw and enforce the orders of the Conservation Commission hereunder, and the Town Counsel shall forthwith comply with such instructions.

#### **1.12. Burden of Proof**

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 this Bylaw. Failure to provide adequate evidence to the Conservation Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

#### **1.13. Appeals**

A decision of the Conservation Commission may be reviewable in the superior court in accordance with M.G.L. Ch. 249 §4.

#### **1.14. Relation to the Wetlands Protection Act**

This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) thereunder. In the event of an ambiguity or conflict as to the meaning of any “resource area” or other definitions, the definitions in this Bylaw or regulations promulgated under this Bylaw shall control. It is the intention of this Bylaw that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Wetlands Protection Act and regulations.

#### **1.15. Severability**

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

Note: Adopted Art. 23 TM 5/20/13. App. A.G. July 29, 2013 Posted: 8/1 – 11/1/13

### **2.0 Litter Control**

#### **2.1 Definitions**

2.1.1 Litter is any quantity of uncontainerized paper, metal, plastic, glass or miscellaneous solid waste which may be classed as trash, debris, rubbish, refuse, garbage or junk.

2.1.2 Public property includes, but is not limited to, the following exterior locations: streets, street medians, roads, road medians, catch basins, sidewalks, strips between streets and sidewalks, lanes, alleys, public rights-of-way, public parking lots, school grounds, municipal housing project grounds, municipal vacant lots, parks, beaches, playgrounds, other publicly-owned recreation facilities, and municipal waterways and bodies of water.

2.1.3 Private property includes, but is not limited to, the following exterior locations owned by private individuals, firms, corporations, institutions, churches or organizations: yards, grounds, tops of buildings, driveways, entranceways, passageways, parking areas, working areas, storage areas, vacant lots and recreation facilities.

2.1.4 Containers are metal, heavy duty paper or plastic receptacles used for the disposal and storage of solid waste.