**Town of West Newbury**

**Conservation Commission**

**DRAFT 12/27/2023**

**WETLANDS PROTECTION BYLAW**

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**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 West Newbury by regulating activities deemed by the Conservation Commission (“Commission”) likely to have a significant or cumulative adverse effect on resource area values deemed important to the community (collectively, the “resource area values protected by this bylaw”), including but not limited to the following:

* 1. Public or private water supply;
	2. Groundwater supply;
	3. Flood control;
	4. Erosion and sedimentation control;
	5. Storm damage prevention including coastal storm flowage;
	6. Water quality;
	7. Prevention and control of water pollution;
	8. Agriculture;
	9. Fisheries, including aquaculture;
	10. Wildlife habitat;
	11. Rare species habitat, including rare plant and animal species; and
	12. Recreation.

This bylaw is 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 West Newbury.

This bylaw is intended to utilize the Home Rule authority of West Newbury to protect the resource areas under the Wetlands Protection Act (G.L. c.131, §40; the Act) to a greater degree, to protect additional resource areas beyond those protected in the Act recognized by the Town as significant, to protect all resource areas for their additional values beyond those identified in the Act, and to impose, in local regulations and permits, Orders of Conditions, and Determinations of Applicability additional standards and procedures in addition to those of the Act and regulations thereunder (310 CMR 10.00).

**2. Jurisdiction**

Except as permitted by the Commission or as provided in Section 3 of this bylaw, no person shall remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas (collectively the “resource areas protected by this bylaw”):

* 1. Any freshwater or coastal wetlands, isolated wetlands, marshes, wet meadows, bogs, swamps and adjoining land extending out to a distance of 100 feet, known as the Buffer Zone;
	2. Any freshwater or coastal bank or beach bordering on any lake, pond, reservoir, river, stream, brook, or creek and adjoining land extending out to a distance of 100 feet, known as the Buffer Zone;
	3. Any perennial rivers, streams, brooks and creeks and lands adjoining these resource areas out to a distance of 200 feet, known as the Riverfront Area;
	4. Any land under the aforementioned waterbodies and waterways;
	5. Any vernal pools and adjoining land extending out 100 feet, known as the Vernal Pool Habitat;
	6. Any lands subject to flooding;
	7. Any lands subject to tidal action; and
	8. Any lands subject to coastal storm flowage.

Said resource areas shall be protected whether or not they border surface waters.

**3. Exemptions and Exceptions**

The following exemptions shall apply:

 **3.1** Minor activities in the Buffer Zone and Riverfront Area Pursuant to 310 CMR 10.02(2)(b)(2.)(a)–(q), and

as may be Amended by the Massachusetts Department of Environmental Protection (“MassDEP”)

The exemptions provided in the Wetlands Protection Act (G.L. c. 131 §40, the Act) and regulations (310 CMR 10.00) shall apply under this bylaw provided that advance notice, oral or written, of at least 72 hours has been given to the Commission or its agent before the commencement of work and provided that the work also conforms to any performance standards and design specifications as written in the Act and regulations.

 **3.2** Emergency Projects

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 and provided that advance notice, oral or written, has been given to the Commission or its agent before the commencement of work or within 24 hours after the commencement and provided that the Commission or its agent certifies the work as an emergency project and provided that the work is performed only for the time and place certified by the Commission or its agent for the limited purposes necessary to abate the emergency. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

 **3.3** Agriculture

Work performed for normal maintenance or improvement of land in agricultural and/or aquacultural use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04.

 **3.4** Utilities and Roads

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 is provided to the Commission or its agent at least 72 hours before the commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

 **3.5** Routine Mowing and Maintenance of Lawns, Gardens, and Landscaped Areas

These activities shall be exempt from this bylaw provided that these areas were lawfully in existence on the effective date of this bylaw or were created after such date in accordance to any performance standards and design specifications in regulations adopted by the Commission.

**4. Definitions**

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

The term "agriculture" shall refer to the definition provided by G.L. c. 128, §1A.

The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within, or affecting resource areas protected by this bylaw:

1. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
2. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
3. Drainage, or other disturbance of water level or water table;
4. Dumping, discharging, or filling with any material which may degrade water quality;
5. Placing of fill, or removal of material, which would alter elevation;
6. Driving of piles, erection, or expansion of buildings or structures of any kind;
7. Placing of obstructions or objects in water;
8. Destruction of plant life including but not limited to cutting or trimming of trees, shrubs, and other vegetation;
9. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
10. Any activities, changes, or work that may cause or tend to contribute to pollution of any body of water or groundwater; and/or
11. Incremental activities which have, or may have, a cumulative adverse effect on the resource areas protected by this bylaw.

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 break in the slope observed in the field or the mean annual high water line, whichever is higher.

The term “cumulative adverse effect” shall mean the adverse effects of activities regulated under this bylaw

which may be individually insignificant to the interests and values under this bylaw, but when considered in relation to other past or present activities in a given area may be significant to said interests and values in the aggregate.

The term “interests” shall mean the resource area values and resource areas protected by this bylaw.

The term “isolated wetlands” means freshwater wetlands not bordering on a water body and at least 1,000 square feet in surface area.

The term “land subject to coastal storm flowage” shall mean land subject to any inundation by any tidally influenced river, stream, creek, and/or brook caused by coastal storms up to and including that caused by the 100-year storm, surge of record or storm of record, whichever is greater.

The term “land subject to tidal action” shall mean land subject to the periodic rise and fall of any tidally influenced river, stream, creek, and/or brook, or of a coastal water body, including spring tides.

The term “permit” shall mean a document issue by the Commission solely under this bylaw or regulations promulgated hereunder.

The term "pond" shall follow the definition of 310 CMR 10.04, and as may be amended, except a size threshold of 5,000 square feet shall apply.

The term "rare species" shall include, without limitation, all vertebrate and invertebrate animals and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, the United States Fish and Wildlife Service, and/or the National Oceanic and Atmospheric Administration regardless of whether the habitat in which they occur has been previously identified and/or mapped by the Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program.

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 which have been found in the basin or depression. The boundary of the vernal pool is the mean annual high-water line defining the depression. A vernal pool may be subject to jurisdiction hereunder regardless of whether it has been certified by the Massachusetts Division of Fisheries and Wildlife’s Natural Heritage and Endangered Species Program.

The term “written notice” shall include notice by electronic mail.

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

**5. Burden of Proof**

The applicant for a permit, Notice of Intent, or Request for Determination of Applicability shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have significant or cumulative adverse effects on the interests protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or Order of Conditions or grant a permit, Order of Conditions, or Determination of Applicability with conditions, or, at the Commission’s discretion and with the applicant’s permission, to continue a public hearing or meeting to another date to enable the applicant or others to present additional evidence upon such terms and conditions the Commission deems reasonable.

**6. Applications, Fees, & Outside Consultants**

 **6.1** Application

A written application shall be filed with the Commission to perform activities that may impact resource areas protected by this bylaw. No activities under the jurisdiction of this bylaw shall commence without receiving and complying with a permit, Order of Conditions, or Determination of Applicability issued pursuant to this bylaw.

The application shall include such information and plans deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. The Commission may accept as the application and plans under this bylaw any application and plans filed under the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00) where they are sufficient to meet the requirements of the bylaw and any regulations promulgated thereunder. The Commission may require additional materials or information in addition to the plans and specifications required to be filed by an applicant under the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00), in order to fulfill the requirements of this bylaw.

 **6.2** Request for Determination of Applicability (RDA)

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may request, in writing, a Determination of Applicability from the Commission. The Commission shall accept a Request for Determination of Applicability (RDA) under the Wetlands Protection Act (G.L. c. 131 §40) as a request under this bylaw. Such RDA shall contain information and plans specified by the regulations of the Commission. Any person desiring only to confirm delineations of resource area(s) on site shall file an Abbreviated Notice of Resource Area Delineation (ANRAD).

 **6.3** Abbreviated Notice of Resource Area Delineation (ANRAD)

Any person desiring to confirm, for purposes of this bylaw, the limits of resource areas on a site may file an Abbreviated Notice of Resource Area Delineation (ANRAD). This application shall include such information and plans as are set forth in the regulations of the Commission to describe and define the wetland resource areas. The Commission shall accept an ANRAD under the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00) as an ANRAD under this bylaw.

 **6.4** Fees

At the time of an application, the applicant shall pay a filing fee specified in the regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00).

 **6.5** Fee Waiver

The Commission may waive fees specified in the regulations of the Commission for applications filed by a government agency, including a municipal department, board, or committee. The Commission may also waive fees specified in the regulations of the Commission for applications filed for projects the Commission finds have a net benefit to wetland resources and a primary purpose of restoring wetland ecological functions.

 **6.6** Consultants

The Commission may, at the expense of the applicant and in accordance with the provisions of G.L. c. 44 §53G and regulations promulgated by the Commission, impose reasonable fees upon applicants to secure outside consultants including engineers, wetlands scientists, wildlife biologists, or other experts to aid in the review of proposed projects presenting technical issues requiring additional expertise to assist the Commission in protecting resource areas. 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 initially calculated or new information requires additional consultant services. This is intended to apply only to assist in reviewing projects deemed by the Commission to be large or complex.

**7. Notice, Public Hearings, and Public Meetings**

 **7.1** Abutter Notification

Any person filing a Notice of Intent or Abbreviated Notice of Resource Area Delineation, or for an amendment to an Order of Conditions shall follow the abutter notification requirements set forth in the Wetlands Protection Act (M.G.L. c. 131 §40) and regulations, 310 CMR 10.05(4), and as may be amended by the MassDEP.

 **7.2** Public Notice

The Commission shall provide written notice given at the expense of the applicant at least five business days prior to the public hearing or public meeting by publication in a newspaper of general circulation in West Newbury or in any other manner approved by the MassDEP. Where applicable, notice given for public meetings and public hearings under this bylaw may be combined with notice given for public meetings and public hearings under the Wetlands Protection Act (G.L. c. 131, §40) and regulations (310 CMR 10.00).

 **7.3** Public Hearings & Public Meetings

The Commission shall commence a public hearing on any permit application, Notice of Intent, Abbreviated Notice of Resource Area Delineation, or request to amend a final Order of Conditions, or a public meeting on any Request for Determination of Applicability, within 21 days from receipt of a complete application, unless an extension is authorized in writing by the applicant.

The Commission shall have authority to request that an applicant agree to continue the public hearing or public meeting 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 or plans required of the applicant or others as deemed necessary by the Commission. In the event that the applicant objects to a continuance or postponement, the hearing or meeting shall be closed and the Commission shall take action on such information as is available.

The Commission may combine its public hearing or public meeting under this bylaw with the public hearing or public meeting conducted under the Wetlands Protection Act (M.G.L. c. 131 §40) and Regulations (310 CMR 10.00).

**8. Decisions and Conditions**

 **8.1** Decision

The Commission shall issue its decision as a permit, Order of Conditions, denial, Order of Resource Area Delineation, or Determination of Applicability within 21 calendar days of the close of the public hearing or public meeting, unless the applicant authorizes an extension in writing. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any adverse effect to the interests of this bylaw. Each case will be considered on its own merits. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing or public meeting. The Commission may, in an appropriate case, combine the permit, Order of Conditions, Order of Resource Area Delineation, or Determination of Applicability issued under this bylaw with the Order of Conditions, Order of Resource Area Delineation, or Determination of Applicability issued under the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00).

 **8.2** Waivers

Upon written request, the Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in this bylaw or regulations, provided that:

1. 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 bylaw or regulations; and
2. That avoidance, minimization and mitigation have been employed to the maximum extent feasible; and
3. The project, when considered in its entirety, would result in a net benefit of resource areas values; and
4. 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.

 **8.3** Approvals

The Commission is authorized to approve a permit or Order of Conditions when proposed work meets all applicable design specifications, performance standards and other requirements under this bylaw and in regulations of the Commission and where the work will not result in significant or cumulative adverse effects upon the interests protected by this bylaw, as determined by the Commission. Any permit or Order of Conditions issued under this bylaw may differ from any such permit or Order of Conditions issued by the Commission under the provisions of the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00) (the “Act”), where the bylaw and regulations of the Commission are more protective of any resource area(s) than the Act.

 **8.4** Conditions

The Commission is authorized to impose conditions on any approved permit, Order of Conditions, or Determination of Applicability that the Commission deems necessary to protect the interests of this bylaw or to ensure that a project or activity proceeds in accordance with any design specifications, performance standards and other requirements in regulations of the Commission. If an approved permit Order of Conditions, or Determination of Applicability contains conditions, all activities shall be conducted in accordance with those conditions.

A permit or Order of Conditions may include conditions with 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. These conditions may remain in full force and effect after issuance of a Certificate of Compliance if so noted on the Certificate of Compliance.

 **8.5** Denials

The Commission is empowered to deny a permit or Order of Conditions or issue a positive Determination of Applicability for the following reasons:

1. Failure to meet the requirements of this bylaw;
2. Failure to submit necessary information and plans requested by the Commission;
3. Failure to meet the design specifications, performance standards and/or other requirements in regulations of the Commission;
4. Failure to avoid or prevent significant or cumulative adverse effects upon the interests protected by this bylaw;
5. The refusal to authorize entry of the Commission to a property in connection with review of an application for a permit, Notice of Intent, RDA or ANRAD; and/or
6. Where no conditions are adequate to protect the interests of this bylaw, as determined by the Commission in its sole discretion as the issuing authority.

Any denial issued under this bylaw may differ from any such permit, Order of Conditions, denial, or Determination of Applicability issued by the Commission under the provisions of the Act, where the bylaw and regulations of the Commission are more protective of any resource area(s) than the Act.

 **8.6** Amendments

An applicant may request an amendment to a Order of Conditions. Any request for an amendment to an OOC shall comply with MassDEP Wetlands Program Policy 85-4, and as may be modified or amended by MassDEP.

 **8.7** Expiration

A permit, Order of Conditions, Determination of Applicability, or Order of Resource Area Delineation shall expire three years from the date of issuance unless otherwise specified by the Commission at the time of issuance.

 **8.8** Extensions

Notwithstanding the above, the Commission in its discretion may extend a permit, Order of Conditions, or Order of Resource Area Delineation for one or more periods of up to three years each, upon written request from the applicant made at least 30 days prior to the expiration of the permit Order of Conditions, or Order of Resource Area Delineation.

 **8.9** Revocation

For good cause the Commission may revoke or modify any permit, Order of Conditions, Order of Resource Area Delineation, or other decision issued under this bylaw after notice to the holder, the public, abutters, and after a public hearing.

 **8.10** Recordation of Order of Conditions or Permit

No work proposed in any application shall be undertaken until the permit, Order of Conditions, or amended Order of Conditions issued by the Commission with respect to such work has been recorded in the Southern Essex District Registry of Deeds or, if the land affected is registered land, in the registry section of the Land Court for the Southern Essex District Registry of Deeds, and until the holder of the permit, Order of Conditions, or amended Order of Conditions certifies in writing to the Commission that the document has been recorded or registered.

**9. Security**

As part of a permit or Order of Conditions issued under this 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, a 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 Certificate of Compliance for work performed pursuant to the permit.
2. 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 West Newbury Conservation Commission whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method of accepting a conservation restriction, easement, or other covenant shall be used only with the consent of the applicant.

**10. Appeals**

Any decision of the Commission issued under this bylaw and any regulations promulgated hereunder, shall be reviewable in the Essex County Superior Court in accordance with G.L. c. 249, §4.

**11. Enforcement**

 **11.1** Scope

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

 **11.2** Entry

The Commission, its agents, officers, and employees shall have authority to request authorization to enter upon privately owned land to perform their duties under this bylaw subject to the constitutions and laws of the United States and the Commonwealth. They 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 refusal to authorize entry in connection with review of an application for a permit, Notice of Intent, Request for Determination of Applicability, or Abbreviated Notice of Resource Area Delineation shall be grounds for denial of that application.

 **11.3** Enforcement

The Commission, its agents, officers, and employees shall have authority to enforce this bylaw, its regulations, permits, Orders of Conditions, Orders of Resource Area Delineation, and Determinations of Applicability issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, enforcement orders, non-criminal citations under G.L. c. 40 §21D, 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.

 **11.4** Legal Action

Upon request of the Commission, the Select Board may authorize town counsel to take legal action for enforcement of this bylaw under civil law. Upon request of the Commission, the chief of police may take legal action for enforcement of this bylaw 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.

 **11.5** Fines

As an alternative to criminal prosecution the Commission may, in its sole discretion, issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in G.L. c. 40 §21D, which West Newbury has adopted in §XXVIII of the Bylaws of the Town of West Newbury. Any person who violates any provision of this bylaw, or regulations, permits, Orders of Conditions, Orders of Resource Area Delineation, Determinations of Applicability, enforcement order, or other administrative orders issued thereunder, shall be punished by a fine set by the Commission at $300 per violation. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations, permit, or administrative orders violated shall constitute a separate violation.

As long as any person in violation demonstrates, in the sole judgement of the Commission, a reasonable, good faith effort to comply with this bylaw, the Commission may refrain from issuing fines. However, the Commission may resort to issuing fines when the violator ceases to demonstrate a reasonable, good faith effort toward achieving compliance. This provision does not preclude the Commission from exercising its prosecutorial discretion to issue fines or preclude the Commission from simultaneously ordering mitigation and/or restoration of the affected resource areas.

 **11.6** Appeals

In addition to the appeal provisions under G.L. c. 40, §21D, persons fined may appeal in writing to the Commission within 21 days of issuance. The Commission may vacate fines where compliance has been established or where the issuance of fines is inconsistent with the interests of this bylaw. The Commission may suspend fines as long as the person in violation demonstrates a reasonable, good faith effort toward obtaining compliance. The Commission may restore suspended fines at any time during an existing violation. This provision does not preclude the issuance of fines in conjunction with orders for restoration or mitigation.

**12. Regulations**

The Commission may promulgate regulations after public notice and a public hearing to effectuate the purposes of this bylaw, effective when voted by the Commission and filed with the town clerk. At a minimum, these regulations shall reiterate the terms defined in this bylaw, define additional terms and requirements not inconsistent with the bylaw, impose filing and consultant fees, and include design specifications and performance standards which provide for undisturbed vegetative buffers extending from the edge of resource areas. Failure by the Commission to promulgate such regulations or a legal declaration of their invalidity, in whole or in part, by a court of law shall not act to suspend or invalidate the effect of this bylaw.

**13. 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. c. 131 §40) and regulations (310 CMR 10.00) thereunder. 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 more protective than those of the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00).

**14. 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, Order of Condition, Order of Resource Area Delineation, Determination of Applicability, enforcement or other administrative orders which previously has been issued.

**15. Effective Date**

The effective date of this bylaw shall be the first day of the month following the approval of the bylaw by the Attorney General. This bylaw shall not be applicable to activity that is the subject of a Notice of Intent, Request for Determination of Applicability, or Abbreviated Notice of Resource Area Delineation filed with the Commission pursuant to the provisions of the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00) before the effective date of this bylaw. This bylaw shall not be applicable to activity that has been issued a permit, Order of Conditions, Order of Resource Area Delineation, or Determination of Applicability pursuant to the provisions of the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00) before the effective date of this bylaw.