

Meeting Minutes

By-law and Charter Review Committee

July 15, 2013

7:00 pm at Town Hall

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Committee Members

In Attendance:

David Surprenant  
Henry Whittier  
Lou Ciavarra  
Glenn Coulter

Absent:

Richard Hersom

1. Article 13 Sutton Wetland and Riverfront District Administration Bylaw

The Committee and Mark Brigg, Chair and Joyce Smith, Co-Chair of the Conservation Commission were present to discuss some changes to the bylaw.

2. Next meeting(s) scheduled for Wednesday, July 24th at 7:00 pm

Meeting adjourned at 9:15 pm.

Respectfully submitted,  
Laura Caruso

**ARTICLE 13. SUTTON WETLAND AND RIVERFRONT DISTRICT  
ADMINISTRATION BYLAW**

**SECTION 13.1 PURPOSE**

The purpose of this Wetland and Riverfront District Administration Bylaw (hereinafter the Bylaw) is to conserve, to protect, and to preserve for the common good all natural resource area(s) in the Town of Sutton. This Bylaw is intended to be administered as a mandate unto itself and an adjunct to MGL c.131 Section §40, Chapter 258 of the Acts of 1996 their Regulations and 310 CMR 10.00 (the Rivers Protection Act Regulations), and as they may be amended from time to time. Where the Bylaw differs from or exceeds State law, it is by inference to aid in the consistent and effective implementation, regulation and enforcement by way of further definition, explanation, specification, illustration and example. The authority of the Bylaw rests in the Home Rule statutes of the Constitution of the Commonwealth of Massachusetts. The Bylaw shall function as the vehicle by which the Conservation Commission (the "Commission") may control work and activities likely to have a significant or cumulative effect upon resource area(s), the environment, and their interests, including but not limited to, public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality and level water pollution control, fisheries, wild and aquatic life habitats, all ~~¶~~Rare and ~~¶~~Endangered ~~¶~~Species habitat, agriculture, aquaculture, ~~¶~~Recreation and aesthetic values important to the Town.

**SECTION 13.2 JURISDICTION**

2.1 Application of Jurisdiction

Except as permitted by the ~~Conservation~~ Commission, and/or as provided in this Bylaw, no ~~¶~~Person shall commence to ~~¶~~Alter (as defined in Section 9.15) in any manner, remove, fill, dredge, build upon, degrade, discharge or dump into any of the following areas: any freshwater wetland, perched wetland, marsh, wet meadow, bog, swamp, ~~¶~~Vernal ~~¶~~Pool, ~~¶~~Bank, reservoir, flat, lake, pond of any size, river, all perennial and ~~¶~~Intermittent ~~¶~~Streams, creek, beach, estuary, land under water bodies, land subject to flooding or inundation by groundwater ~~¶~~ or surface water, and any abutting ~~¶~~Adjacent ~~¶~~Upland ~~¶~~Resource ~~¶~~Area(s) as defined in Section 9.12 of this Bylaw. Said resource areas shall be protected whether or not they border waters and if provided they are within: a) ~~within~~ 100 feet of the resource area(s), ~~or~~ b) ~~of~~ the 100 year storm line, ~~or~~ c) 200 feet if within a Riverfront District.

This Bylaw shall not apply to any Emergency Project as defined in MGL c.131 Section §40.

The provisions of this section shall not apply to work performed for normal maintenance or improvement of land in agriculture use, or in maintaining, repairing, remodeling but not substantially changing, or enlarging an eExisting lawfully located structure or facility.

However if any pPerson intends to aAlter any resource area(s), as defined herein, they then shall file written application to do so. No work or activity whatsoever shall begin until all required information is presented and a permit is issued pursuant to this Bylaw. Violation of any provision of this Bylaw may result in the issuance of a Violation Notice or Enforcement Order to cease and desist all work activity, to appear before the Commission, and to restore all affected areas to their natural condition prior to such an issuance, including the removal of any and all structures or topographical alterations.

## 2.2 Jurisdiction Over Presumption of a Vernal Pool Habitat

The Bylaw presumes vVernal pPool habitat exists if a wetlands' physical characteristics conform with those defined for vVernal pPools in the Wetlands Protection Act, MGL c.131 Section §40 and Regulations, 310 CMR 10.00, except that State certification as such is not required.

~~The term "vernal pool" shall include, any confined basin or depression nor occurring in existing lawns, gardens, orchards, 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, containing 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 Wildlife and Fisheries. This presumptive definition for vernal pools is based on systematic field observations in the Town of Sutton, by the Sutton Conservation Commission showing that virtually all basins that possess the above characteristics actually host or can host breeding vernal species. Undoubtedly this is a particular consequence of Sutton's semi-rural character and enduring woodlands and wetlands.~~

The presumption of vVernal pPool habitat may be overcome, however, with the presentation of credible evidence, which in the judgement of the Conservation Commission demonstrates that the wetland does not provide, or cannot provide, vVernal pPool habitat functions:

### 2.2.1 Demonstrating that a Ponding Area is Not a Vernal Pool

For the purposes of overcoming the presumption of vVernal pPool habitat the Commission will consider:

- 2.2.1.1) Evidence that the ponding area does not hold water for at least two continuous months in most years. ~~As rule of thumb~~ The term "most years" shall mean three out of five *of the most recent* consecutive years.

- 2.2.1.2) Evidence that ~~v~~Vernal ~~p~~Pool ~~s~~Species do not breed, or have not bred, in the ponding area. The ~~Conservation~~ Commission shall provide explicit guidelines for this evidence.
- 2.2.1.3) Evidence that the ponding area could not be a viable breeding or habitat site for ~~v~~Vernal ~~p~~Pool ~~s~~Species due to incompatible physical, chemical, biological or other permanent conditions at the site in most years. Such evidence could include, without limitations, several months of pH and dissolved oxygen measurements yielding values incompatible with amphibian and reptile brooding and/or invertebrate survival.

### 2.2.2 Timing of Evidence Collection

Many of the indicators of ~~v~~Vernal ~~p~~Pool ~~s~~Species habitat are seasonal. ~~For example, certain salamander egg clusters are only found between late March and late May. Wood frog chorusing only occurs between late March and May, and then only at night.~~ Consequently, failure to find evidence of breeding must be tied explicitly to those periods during which the evidence is most likely to be available.

Accordingly, in the case of challenges to the presumption of ~~v~~Vernal ~~p~~Pool habitat the ~~Conservation~~ Commission may require that the determination be postponed until the appropriate time period is consistent with the evidence being presented. The Commission may also require its own site visits as necessary to confirm the evidence and information.

### 2.3 Jurisdiction Over Intermittent Streams

Intermittent ~~s~~Streams are important for storm damage prevention, flood control ground water protection, wildlife habitat, and ~~r~~Recreation values. ~~During spring, summer, and fall these streams disperse snow melt and storm runoff across the landscape thereby preventing dangerous volumes and flows from spilling over roadways and property. This broad dispersal also allows for larger volumes of water to infiltrate into the ground, recharging groundwater supplies.~~

~~Intermittent sStreams are an essential source of food and water for wildlife and are often the only source of water in higher elevation areas of town. The moist soils that border intermittent are significantly rich in herbs and flowering/fruiting plants—the base tropic level of food—those in surrounding upland areas. During all seasons, but especially in winter and spring, iIntermittent sStreams act as essential corridors for animal movement especially when food is scarce. Some animals such as pickerel frogs and eastern spotted newts, rely heavily on iIntermittent sStreams for movement. For these reasons the upland areas surrounding iIntermittent sStreams are heavily utilized by wildlife for living space, breeding, reproduction, feeding, migrating, dispersal and security.~~

Accordingly, this Bylaw protects ~~i~~Intermittent ~~s~~Streams of all forms (~~Section 9-9~~) and the ~~a~~Adjacent ~~u~~Upland ~~r~~Resource ~~a~~Area(s) and associated bordering vegetated wetlands within 100 feet of those streams, within 200 feet in a Riverfront District, and any bordering vegetated wetlands, regardless of whether or not they appear on USGS maps.

## 2.4 Jurisdiction Over Wetlands In General

2.4.1 All those resource areas, including the 100 foot buffer zone, 200 feet in a Riverfront District or aAdjacent uUpland rResource aArea(s) and/or any perched wetlands, any bordering vegetated wetlands, ~~are~~ and those areas related to water, the water table or column, and/or subject to isolated or bordering floods, and all area(s) under water, and which are defined and protected under the regulative jurisdiction of the Wetlands Protection Act, MGL c.131 ~~Section~~ §40, Regulations, and the Rivers Protection Act, 310 CMR 10.00, as they may be amended from time to time, and this Bylaw.

2.4.2 All those abutting and adjacent area(s) that are related to erosion or sedimentation control to prevention of water pollution and to the raising and/or lowering the level of a watershed's water table or column or its aquifer.

## **SECTION 13.3 CONDITIONAL EXCEPTION**

### 3.1 Exception for Existing Structures

The application and permit required by this Bylaw shall not be required for maintaining, repairing, remodeling, or enlarging an ~~e~~Existing lawfully located single family residential structure or ~~a~~Appurtenance thereto unless said filing is otherwise required by State or Federal law.

~~The intent of this partial exemption is to allow owners of single family homes, built prior to this Bylaw, to continue to live and work according to the rules, regulations, and assumptions under which they originally purchased their homes or received a signed Building Permit.~~

~~Any property owner, irrespective of when the property was developed, has the legal right to challenge any provision of this Bylaw at any time. However, those whose properties were developed prior to this Bylaw might face an undue burden under this Bylaw, because the configuration of their lot and associated development were determined without prior knowledge of this Bylaw. In contrast, single family residences built after this Bylaw could be appropriately planned around restrictions in order to minimize constraints.~~

#### ~~3.1.1 Definition and Application of the Term Existing (See also Section 9.4)~~

~~The term “existing” refers to structures for which an occupancy permit has been issued prior to the Effective Date of the Bylaw, that date following the date on which the Office of the Attorney General approves the Bylaw and on such date that the Town Clerk duly posts the Bylaw and refers to both the single family structure and any aAppurtenance or existing house foundation claiming exemption.~~

~~Therefore, the application and permit required by this Bylaw shall apply to work associated with entirely new structures (those that are not simply replacing antecedents of record) placed in service with the issuance of a Building Permit on or after the Effective Date of the Bylaw, that date following the date on which the Office of the Attorney General approves the Bylaw and on such date that the Town Clerk duly posts the Bylaw whether or not they would be considered appurtenant.~~

~~In those instances where a State or Federal filing is required for projects associated with existing single family residences, the full application and permit required by the Bylaw does also apply. The above notwithstanding there are a number of other special rules and exemptions pertaining to single family residences that existed prior to the Effective Date of the Bylaw, that date following the date on which the Office of the Attorney General approves the Bylaw and on such date that the Town Clerk duly posts the Bylaw such as delineation of certain aAdjacent uUpland rResources Area(s) that might still apply.~~

### 3.2 Agricultural Practices

Those practices are defined by and pursuant to Rules and Regulations promulgated by the Department of Environmental Protection and as they may be amended from time to time.

## **SECTION 13.4 APPLICATIONS AND FEES**

Written application shall be filed with the ~~Conservation~~ Commission to perform all related activities affecting all wetland and aAdjacent uUpland rResource aArea(s), in the 100 foot buffer zone, or the 200 foot Riverfront District, which are protected by ~~and in the interests of~~ this Bylaw. The permit application shall contain such plans and analysis as are deemed necessary by the Commission, as specified in this Bylaw and its Rules and Regulations, to describe proposed activities and their effects on the resource areas protected by this Bylaw. All applications shall contain a full written project description in sufficient detail to describe the entire scope of work and/or alteration(s) associated with ~~and consequential to~~ the application.

Such application may be identical in form to the Notice of Intent filed pursuant to ~~MGL c.131 Section~~ §40, and shall be sent by certified mail to the ~~Sutton Conservation~~ Commission, as well as to the Boards of Selectmen, *Board of Health* and *Planning Board*, accompanied with the appropriate filing fee(s), as outlined herein and thereby, payable to the Town of ~~Sutton~~. Any such application must be filed concurrently with any application(s) for variances and approvals required by any other Town Board or Commission or their Regulations, or after such are issued, if the Commission so decides to waive this requirement.

No activities shall commence without receiving and complying with a permit processed and issued pursuant to this Bylaw.

Where this Bylaw and the Wetlands Protection Act, MGL c.131 Section §40, and Regulations, 310 CMR 10.00, have concurrent jurisdiction the Conservation Commission shall accept the Notice of Intent and plans filed under the Wetlands Protection Act as the permit application and plans under this Bylaw for those parts of the project where precise overlap exists. ~~provided all pertinent areas and activities subject to the jurisdiction of this Bylaw and all information required by this Bylaw and its Rules and Regulations are addressed.~~

Any ~~p~~Person desiring to know whether or not a proposed activity or an area will be subject to this Bylaw may ~~in writing r~~Request a ~~d~~Determination of Applicability (RDA) from the Conservation Commission. Such a Request for Determination (RFD) shall *be in writing* and include all information and plans as are deemed necessary by the Commission. Within 21 days of ~~such a Request submitting a RFD~~, the Commission shall make a written determination as to whether this Bylaw is applicable to any land or work thereon. When the ~~p~~Person requesting a determination is other than the owner, notice of the determination shall be sent to the owner as well as the requesting ~~p~~Person.

At the time of the permit application, the ~~a~~Applicant shall pay a filing fee according to the following schedule: *Conservation Commission's Fee Schedule.*

- ~~a) \$25 for a single minor project i.e. house addition, tennis court, swimming pool deck, or other accessory residential activity~~
- ~~b) \$250 for a new single family dwelling with only one wetlands crossing (driveway); plus \$250 for each additional subsequent crossing~~
- ~~c) \$500 plus \$2 per linear foot of road sideline within the resource area for a subdivision roadway or street and/or utilities easement~~
- ~~d) \$500 plus \$2 per cubic feet of drainage, dDetention/rRetention bBasin within a resource area~~
- ~~e) \$500 plus \$100/unit for a multiple dwelling structure which is within the resource area~~
- ~~f) \$500 plus \$1 per square foot of disturbance in an undeveloped resource area in a commercial or industrial project~~
- ~~g) Double the above fee for an application filed after issuance of an Enforcement Order and as secured by Section 10, Security, of this Bylaw, because the review process is not only for the application but monitoring also the terms and conditions required for final dissolution of said Enforcement Order~~
- ~~h) No charge for a Determination of Applicability~~
- ~~i) \$1,000 per project for remediation of a contaminated site or enhancement of a degraded resource area (excluding any violations)~~
- ~~j) \$2,500 per project for remediation of a contaminated site wherein applicant has been adjudicated of violating prevailing Environmental Laws concerning Hazardous Materials i.e. all hazardous, toxic, and/or environmentally or statutorily controlled materials and as secured against "risk" by Section 10, Security, of this Bylaw.~~

The filing fee is in addition to that required by the Wetlands Protection Act, MGL c.131 Section §40, and Regulations, 310 CMR 10.00. Town, county, State, and Federal projects are exempt from the filing fee. ~~The fee for an application for a modification of a permit will be the excess of the fee for the modified project as calculated above over the filing fee paid for the original permit, but in no instance will it be less than \$25.~~

The ~~conservation~~ Commission shall have the ability to accept all or part of these filing application fees but not less than those amounts required under M.G.L. The Commission shall have the discretion to refund, waive or decrease certain filing fees. These fees as charged shall not exceed in the aggregate the actual cost(s) incurred by the Commission and its Agents or Representatives in administering, fulfilling and servicing applications filed under this Bylaw. Any excess fee collected shall be refunded to the Applicant.

#### 4.1 Single Minor Project With Significant Adverse Impact

For the purposes of fee determination, work to ~~alter~~, remove debris and hazardous materials from wetlands, including wetland restoration projects, and similar projects for improving the natural capacity of a wetland resource to protect, remediate or enhance wetland values shall be considered a single minor project with the potential of significant ~~adverse impact~~ and be subject to a wetlands filing fee of \$1,000 *as specified in the Commission's Fee Schedule* because of the consequentially heightened analysis and monitoring required. The ~~applicant~~ may be required to replicate all areas so disturbed in or as a result of the process.

#### 4.2 Subdivision Roadway Fees

For the purposes of fee determination the term 'roadway' in the case of subdivision(s) shall include all common and private driveway(s) associated with new lot construction. Therefore driveway sidelines that fall within the ~~adjacent upland resource area(s)~~ and bordering vegetated wetlands shall be added to the overall roadway sideline calculation pertinent to fees for roadway construction in the ~~adjacent upland resource area(s)~~.

In those instances, where driveways for new lots are not included in the subdivision application, the pertinent driveway sidelines charge shall be imposed when the specific lot plan is submitted for permit *as specified in the Commission's Fee Schedule*. ~~Where the base \$500 wetlands filing fee for roadways then entering into the 100 foot buffer zone and/or wetlands crossing, has already been paid, as is required as part of the subdivision application, this fee shall also cover the fee for subsequent driveway plans in the subdivision or common driveway, unless the proposed work shall again enter into the 100 foot buffer zone and/or require a wetlands crossing, in which case a separate \$500 filing fee shall be required for each entering and/or crossing.~~

#### 4.3 Drainage Structure Fees

~~A \$500 fee~~ *as specified by the Commission's Fee Schedule* will apply to each independent, or each network or hydraulically connected ~~detention basin(s), retention basin(s), catch basin(s), or combination of swale(s), infiltration pit(s), and dissipation field(s)~~ that:

- a) is located in whole or in part in an ~~adjacent upland resource area(s)~~ and bordering vegetated wetlands, and/or
- b) discharges into an ~~adjacent upland resource area(s)~~ and/or bordering vegetated wetland(s), directly or indirectly and/or
- c) requires, in the discretion of the ~~Conservation~~ Commission substantial review of pre- and post-drainage calculations analyses.

Swales, infiltration pits, and dissipation fields networked with ~~d~~Detention, ~~r~~Retention, or catch basins will not be assessed an additional fee. The above notwithstanding, the wetlands filing fee for projects involving drainage structures shall be ~~at a minimum~~ \$500. *specified in the Commission's Fee Schedule.*

4.4 Disturbed Adjacent Upland Resources for Commercial and Industrial Projects

The fee ~~of \$1.00~~ *as specified in the Commission's Fee Schedule*, per square foot of disturbed ~~a~~Adjacent ~~u~~Upland ~~r~~Resource ~~a~~Area shall pertain to area(s) not previously or presently under industrial or commercial use.

4.5 Consultant Fee

- 4.5.1 Upon receipt of a Permit Application or ~~RFD~~ RDA, or at anytime during the hearing process, the ~~Conservation~~ Commission is authorized to require an ~~a~~Applicant to pay a fee for all reasonable costs, at competitive commercial rates, and for direct expenses borne by the Commission of and for an independent, third-party, expert ~~q~~Qualified ~~p~~Professional(s), who in the Commission's sole discretion can provide the specific services deemed necessary by the Commission to come to a final objective decision on the application; the "consultant fee",
- 4.5.2 The Commission shall provide the ~~a~~Applicant with the Consultant Fee Schedule, which shall also act as the contractual fee schedule for said Consultant. Such Consultant Fee Schedule may be amended from time to time in light of contemporary, competitive rates. The Consultant Fee Schedule shall be made available upon request. Any unused portions of the fee shall be returned to the ~~a~~Applicant following the issuance of a Finding or issuance of a final Certificate of Compliance, unless the Commission at a public hearing decides that additional services will be required. Procedures for the hiring and payment of outside consultant(s) for their services shall be in accordance with ~~MGL Ch c.44 Section~~ §53G and rules promulgated by the Commission in accordance therewith.
- 4.5.3 The specific consultant services may include, but are not limited to, resource area survey and delineation, analysis of resource area functions and values, including wildlife and aquatic habitat evaluations, hydrogeologic, soils and drainage analysis, and environmental or land use law,
- 4.5.4 A project may not be segmented to avoid being subject to a "consultant fee",
- 4.5.5 This consultant fee is over and above any other required fees,
- 4.5.6 The minimum fee charged to reimburse the Commission for reasonable costs and expenses shall be ~~according to the following schedule:~~ *as specified by the Commission's Fee Schedule.*

	<u>Project Cost</u>	<u>Minimum Fee</u>
Up to	\$100,000	\$1,250
	\$100,001 - \$500,000	\$2,500
	\$500,001 - \$1,000,000	\$5,000
	\$1,000,001 - \$1,500,000	\$7,500

~~\$1,500,001~~ ~~\$2,000,000~~ ~~\$10,000~~

~~Each additional \$500,000 project cost increment (over \$2,000,000) shall be charged an additional \$2,500 maximum fee per increment.~~

~~The project cost means the estimated, Based on the projects estimated~~ entire cost of the project including, but not limited to, building construction, site preparation, landscaping, and all site improvements. The ~~e~~Consultant fee shall be paid pro-rata for that portion of the project costs applicable to those activities with resource area(s) protected by this Bylaw. The ~~a~~Applicant shall submit estimated costs at the time of application to the Commission. Such costs shall be subject to review and appeal, as provided hereunder, but the ~~a~~Applicant shall nonetheless bear the burden of proof as to their justification. The lack of such estimated project costs shall not avoid the payment of the "consultant fee," when the Commission in its reasonable and considered judgement so decides that it needs the information, which only a consultant or ~~e~~Qualified ~~p~~Professional can provide, in order to come to a final objective decision.

#### 4.6 Payment of Fees

All fees that are shared with the State of Massachusetts, when paid, shall be placed and held in the Sutton Wetlands Protections Fund, so constituted, pursuant to ~~MGL c.43 Section~~ §218 of the Acts of 1997 (Amending ~~MGL c.131 Section~~ §40). Fees required solely under this Bylaw shall be deposited in a 'revolving fund' pursuant to ~~MGL c.44 Section~~ §531/2. These fees shall include all application fees, related and any prorated fees, fees of any kind, including the "consultant fee", required under this Bylaw,

### **~~SECTION 13. 5 NOTICE, AND HEARINGS AND FILINGS~~**

The Commission shall hold a public hearing on a permit application within twenty (21) days of its receipt. Notice of the time and place of the hearing shall be given by the Commission, at the expense of the ~~a~~Applicant, not less than five days *prior to* ~~of~~ the hearing in a newspaper in general circulation in Sutton and by mailing a notice to the ~~a~~Applicant and owner, the Board of Selectmen, *Board of Health and Planning Board*, and to such other ~~p~~Persons as the Commission may ~~by regulation~~, determine.

The Commission, its agents, officers, members and employees may enter, without being deemed of trespassing, upon privately owned land, *which is the subject of application*, for the purpose of performing their duties under this Bylaw.

### **~~6 COORDINATION WITH OTHER BOARDS~~**

As appropriate, the ~~Conservation~~ Commission may choose to solicit the advice and opinions of other Town Boards and Commissions and officials in the course of its deliberations. Town Boards and officials shall be entitled to file written comments and recommendations with the

Commission at or before the public hearing. The Commission shall take any such comments and recommendations into account but shall not be bound by them. The Applicant shall have the right to receive any comments and recommendations and to respond to them at a hearing of the Commission, prior to final action or determination.

## ~~7~~SECTION 13.6 PERMITS AND CONDITIONS

If, after a public hearing, the ~~Conservation~~ Commission determines that the area, which is the subject of permit application, is ~~significant to the interests~~ protected by this Bylaw, the Commission within twenty one (21) days of such hearing, shall issue or deny a permit for the work requested. If the Commission issues a permit after making such determination, it shall impose such ~~Order of~~ Conditions (or lack thereof) as it determines necessary or desirable for the protection of those interests, and all work shall be performed in accordance with those conditions.

Permits shall expire one year from the date of issuance, unless renewed prior to expiration, and all work shall be completed prior to expiration.

The Applicant shall have and bear the burden of proving (the “burden of proof”) by a preponderance of credible evidence that the work proposed in the application will not harm the interests protected by the Bylaw. Failure to provide adequate evidence or information to the Commission supporting a determination that the work will not harm the interests protected by this Bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, ~~or, in the Commission's discretion,~~ to continue the hearing to another mutually acceptable date to enable the Applicant or others to present additional related information or evidence.

### 7.6.1 Performance Standards and Design Criteria for Adjacent Upland Resources

As stated in the Bylaw, Section 7, Permits and Conditions, lands within 100 feet of wetlands resource areas, 200 feet within a Riverfront District and as may be hydrologically extended:

are presumed important to the protection of these areas as resources because activities undertaken in close proximity to wetlands and other adjacent or bordering resources have a high likelihood of ~~Adverse~~ Impact upon the wetland or other resource, either immediately, as a consequence of construction, or work, or over time as a consequence of daily operation or existence of the activities. These ~~Adverse~~ Impacts from construction or work and use can include without limitations, erosion and siltation, loss of groundwater recharge capability, poor water quality, and harm to wildlife habitat.

The ~~Conservation~~ Commission therefore may require that the Applicant maintain a strip of continuous, undisturbed vegetative cover in part or all of the 100 foot buffer zone resource area and set other conditions on this area, unless the Applicant provides

evidence deemed sufficient by the Commission that the area or part of it may be disturbed without potential harm to the functions and values protected by this Bylaw.

In certain circumstances, some types of activities, when properly conditioned, may be acceptable in ~~a~~Adjacent ~~u~~Upland ~~r~~Resource ~~a~~Area(s). Under other circumstances, even ~~a~~Adjacent ~~u~~Upland ~~r~~Resource *Area(s)* disturbance may have serious harmful effects on resource area values and functions. When the presumption of significance is questioned, the actual determination of impact shall be made on a project and site specific basis yet without waiving the burden of proof. And in this respect the actual impact of proposed ~~a~~Adjacent ~~u~~Upland ~~r~~Resource *Area(s)* work or activities on wetland values and functions can often be reduced substantially, and thus made permissible, when appropriate conditions are imposed.

However, any work or activity which differs, significantly or not, from that plan approved in the Order of Conditions, shall be subject to remediation or restoration of ~~e~~affected resource area(s) to ~~there~~ *their* prior ~~to~~ undisturbed condition. This may include removal of all structures or ~~a~~Appurtenances so constructed. After determining 'good cause', the Commission may revoke or modify a permit or determination issued under this Bylaw following notice to the permit holder, any abutters within 300 feet, Town boards and the public at-large, pursuant to Sections 5 ~~and 6~~ of this Bylaw. ~~Therefore the traditional approach of "all or nothing" adjacent upland resource restrictions unnecessarily creates conflicts between property use and resource protection.~~ Accordingly the Bylaw gives the ~~Conservation~~ Commission broad discretion to permit, condition, and prohibit work within the ~~a~~Adjacent ~~u~~Upland ~~r~~Resource ~~a~~Area(s) and bordering vegetated wetlands as the specific situation warrants.

However, the ~~Conservation~~ Commission shall be entitled to consider requests for variances from these performance standards and design criteria, if for good and valuable consideration the ~~a~~Applicant provides other forms of resource areas, such as but not necessarily limited to the setting of ~~Conservation~~ Restriction(s), formerly known as a "conservation easement(s)", pursuant to MGL c.184 ~~Sections~~ §31-33.

Furthermore the ~~Conservation~~ Commission shall consider proposals for work in the ~~a~~Adjacent ~~u~~Upland ~~r~~Resource ~~a~~Area(s) in terms of four broad forms of disturbance areas. This approach is intended to allow maximum flexibility for property use while maintaining adequate levels of resource protection by the creation of:

#### ~~7~~ 6.1.1 No Disturbance Area

This is an area where no activities or work, other than passive passage are permitted. No vegetation may be disturbed or cut, leaf litter and debris remains in place, no trees taller than 20 feet or greater than ~~40~~ 5 inches in diameter may be felled. The no disturbance area should remain unchanged from its pre-project status. The Commission shall have sole, discretion in establishing the limit(s) of a strip(s) of continuous undisturbed vegetative cover. Value, for the purposes of the Bylaw, increases the closer any disturbance is to wetlands.

#### 7 6.1.2 Temporary Disturbance Area

This is an area in the ~~Adjacent Upland Resource~~ *Area(s)* where temporary disturbance for a limited period of time is permitted, such as for regrading or travel by heavy machinery. Once the activity is completed, however, the area will be allowed to return to natural vegetation and function. Any subsequent disturbance or activity shall require a new filing. The ~~Conservation~~ Commission shall establish specific time frames and guideline conditions for allowing temporary disturbances as well as setting criteria for assessing the successful return of the ~~Adjacent Upland Resource~~ *Area(s)* to natural functions.

#### 7 6.1.3 Limited Disturbance Area

This is an area in the ~~Adjacent Upland Resource~~ *Area(s)* where a limited set of activities and work is permitted in perpetuity. For example, ~~Recreational~~ and work activities like understory clearing of poison ivy might be allowed, but no clearing of overstory and no planting of lawn. Unlimited (sustainable) harvesting of wood, composting of brush etc., and storing of firewood are other examples of limited activities allowed.

#### 7 6.1.4 Permanent Disturbance Area

This is an area in the ~~Adjacent Upland Resource~~ *Area(s)* in which most, if not all, legal activities and permanent disturbances are permitted: houses, garages, sheds, porches, driveways, gardens, swimming pools, and lawns in the ~~Adjacent Upland Resource~~ *Area(s)* represent permanent disturbance areas.

Nevertheless, within the context of permanent disturbance the ~~Conservation~~ Commission may set specific standards and conditions in prohibiting or restricting those forms of work and activities in the ~~Adjacent Upland Resource~~ *Area(s)* deemed potentially harmful to overall resource area functions and values, such as, but not limited to, the use of herbicides and pesticides, use of interceptor drains, installation of in-ground sprinkler systems for irrigating areas in the ~~Adjacent Upland Resource~~ *Area(s)*, or any work that results, or may result in significant or ~~Adverse~~ *Impact(s)* on and/or net loss of wetlands.

#### 7.2 6.2 Considerations in Setting Disturbance Restrictions.

~~A growing body of research evidence suggests that even "No Disturbance" areas reaching 100 feet from wetlands may be insufficient to protect many important wetland resource characteristics, functions and values. Problems of nutrient runoff, water pollution siltation, erosion, raising or lowering of the water table, vegetation change, and habitat destruction and loss of wetlands are greatly exacerbated by activities within 100 feet of wetlands.~~

Thus, ~~i~~n general, work and activity within 100 feet of wetlands is to be avoided and discouraged and all reasonable alternatives pursued. The Commission's mission is to lessen and regulate any or all potential ~~Adverse~~ *Impact(s)*.

Accordingly, the ~~Conservation~~ Commission shall begin with the presumption that lands within the ~~Adjacent~~ ~~Upland~~ ~~Resource~~ ~~Area(s)~~ of a wetlands resource are best left in an undisturbed and natural state.

However the Commission shall designate areas of the ~~Adjacent~~ ~~Upland~~ ~~Resource~~ ~~Area(s)~~ to be suitable for temporary, limited, or permanent disturbance, as it deems appropriate, when the ~~Applicant~~ can demonstrate to the Commission's satisfaction that the proposed work or activity will not affect wetland values, singularly or cumulatively, and that reasonable alternatives to the proposed work or activity do not exist. In considering designation of ~~Adjacent~~ ~~Upland~~ ~~Resource~~ ~~Area(s)~~ ~~being~~ ~~disturbed~~, the types of work and activities allowable and conditions to apply, the ~~Conservation~~ Commission shall consider:

#### 7 6.2.1 Values and Functions of the Resource Area

The quantity and quality of resource area values and functions shall be considered explicitly in placing conditions on ~~Adjacent~~ ~~Upland~~ ~~Resource~~ ~~Area(s)~~ work. Some isolated land subject to flooding, for example, may serve for temporary flood storage only. Minimal ~~Adjacent~~ ~~Upland~~ ~~Resource~~ ~~Area(s)~~ restrictions within several feet of the outer resource area might be necessary to prevent erosion.

Other isolated land subject to flooding might provide ~~Vernal~~ ~~Pool~~ habitat. It might also provide important flood storage capacity and intersect ground water. In this instance, far stronger ~~Adjacent~~ ~~Upland~~ ~~Resource~~ ~~Area(s)~~ restrictions would be appropriate, because a larger number of functions are involved, and some functions, such as habitat, are more sensitive to ~~Adjacent~~ ~~Upland~~ ~~Resource~~ ~~Area(s)~~ activity and require greater protection. If rare or endangered species, such as blue spotted salamanders, or spotted turtles, were found at the site, then still greater levels of measures and restrictions would be appropriate.

#### 7 6.2.2 Pro-project Characteristics

The site ground slope, soil conditions, vegetation, and prior disturbances are just a few of the site specific characteristics that shall be considered in setting conditions for work in the ~~Adjacent~~ ~~Upland~~ ~~Resource~~ ~~Area(s)~~.

For example land that slopes toward a wetland demands greater restrictions on work and activity and larger no-disturbance ~~Distances~~ to prevent pollution and silt from stormwater runoff, and from harming wetlands characteristics functions and values. Larger or greater slopes imply greater restrictions.

#### 7 6.2.3 Wildlife Habitat and Rare Species

The near-upland and bordering vegetated areas around wetland resources often play important roles in determining and maintaining the wildlife habitat functions and values of associated wetlands. While it is common to think of the protective or "buffering" value of ~~Adjacent~~ ~~Upland~~ ~~Resource~~ ~~Area(s)~~ in terms of area undisturbed, habitat values may be equally affected by the

configuration of the ~~Adjacent Upland Resource~~ *Area(s)* perimeter. The inclusion or exclusion of specific topographical and ecological features such as an abutting sandy knoll or the tree canopy, etc. may be taken into consideration.

Therefore, where significant wildlife habitat functions and values are present, delineation of non-disturbance areas within the ~~Adjacent Upland Resources~~ *Area(s)* shall, as is reasonable, maximize the perimeter length of the area to be left undisturbed, exclude fingers, islands, or other upland projections or indentations of the non-disturbance zone, and in general avoid delineating oddly shaped, or hard to access non-disturbed areas. The Commission shall give special attention to inclusion inside the no disturbances area of those topographical and ecological features that it deems important for maintaining the wildlife habitat value and integrity of the resource.

The potential presence of rare or endangered species and their specific sensitivity to ~~Adjacent Upland Resource~~ *Area(s)* activity shall be considered in determining ~~Adjacent Upland Resource~~ *Area(s)* restrictions. Evidence of the presence of such species, or evidence including timeliness of likely habitat shall be considered by the ~~Conservation~~ Commission.

Prior designation of rare or endangered species habitat by the Division of Fisheries and Wildlife Natural Heritage Program is not necessary. The Commission may consult with the Division of Fisheries and Wildlife Natural Heritage Program, other authorities or experts as it deems necessary for guidance and recommendations.

~~7.2.4~~ 6.2.4 No Significant Adverse Impact on Wildlife or Aquatic Habitat  
Wildlife and aquatic-life habitat serve a variety of functions in support of wild and/or aquatic-life. Food, water, breeding/brooding space, shelter, security, movement and migration space, and connections to other habitat areas are all equally important. All of these wildlife habitat functions are presumed to exist in all resource areas.

Therefore in accordance with the Bylaw's fundamental purposes (see Section 1) no project may have a significant ~~Adverse i~~mpact, either project specific or cumulative, on wildlife habitat for more than two growing seasons. For wildlife habitat purposes, a significant adverse project-specific impact is defined as an impact caused by work in a resource area that would under reasonable assumptions:

- a) result in a measurable decrease in the extant wildlife populations or biological composition, structure or richness on the site or in the vicinity exclusive of the present or future state of adjacent and nearby properties,  
or

- b) impair damage, destroy or reduce in value for wildlife purposes certain specific habitat features and characteristics, and/or
- c) result in a net loss of wetlands.

~~Wildlife studies have shown that direct impacts from work—filling, grading, vegetation removal construction of barriers to movement, etc. in resource areas can severely harm wildlife populations. For example low stone walls bisecting a resource area can prevent amphibians that live in upland areas from reaching breeding pools, marshes, hummocks, and streams, intermittent and otherwise. Or, removal of large snags (dead trees) can virtually eliminate nesting by barred owls pileated woodpeckers, mink, etc.~~

~~Accordingly, tThe Commission shall prohibit the placement of walls, fences or other barriers to wildlife movement within and between resource areas and the destruction of specific habitat features. Examples of protected habitat features include (but are not limited to):~~

- ~~Large cavity trees~~
- ~~Turtle nesting areas~~
- ~~Existing nest trees for birds that reuse nests (e.g., great blue herons, osprey)~~
- ~~Beaver dams, dens and lodges~~
- ~~Mink, muskrat or otter dens~~
- ~~Vernal pools~~
- ~~Vertical sandy banks~~
- ~~Migration corridors that provide connectivity between wildlife habitats, sphagnum hummocks, and pools suitable to serve as nesting habitat for salamanders and turtles.~~

~~But indirect impacts, the effects of human activities near wildlife habitat, can have equally harmful effects. Therefore the Commission shall take into account indirect effects on a project by project basis. So, for example, no work within resource areas shall be permitted within 100 feet of existing beaver, mink, muskrat or otter dens, or within 200 feet of existing osprey or great blue heron nesting areas.~~

~~As clearly stated in Section I I of the Sutton Wetlands and Riverfront District Administration *this* Bylaw, the purpose of this Bylaw is to preserve for future generations of residents the natural resources and open space amenities, including wild and aquatic life habitat(s), that are presently enjoyed in Sutton. The Bylaw protects future functions and values as well as current ones.~~

~~Therefore, the Commission will be especially cognizant of the likely cumulative impact of work or activity within all wetlands related resource areas.~~

~~For wildlife habitat purposes a significant cumulative adverse impact is defined as an impact that would under reasonable assumptions result in a measurable~~

~~decrease in the extant wild and aquatic life populations or biological structure, composition, or richness on the site or in the vicinity, taking into account the projected impacts of future projects that could be proposed in the vicinity, with similar comparable, or other significant impacts and disturbance(s).~~

~~This method for assessing cumulative impacts avoids the pitfall of placing an unreasonable burden of resource protection on subsequent applicants/projects in the vicinity while subsidizing those who are first to develop land. It allows the Commission to regulate the marginal impact of all proposed (and potential) projects in the vicinity while ensuring appropriate protection, present and future, of the functions and values and interests protected by this Bylaw.~~

#### 7 6.2.5 Projects to Enhance or Benefit Wildlife and Aquatic, Habitat

The ~~Conservation~~ Commission may, as part of the permitting process, require at its discretion any project that proposes to ~~Alter~~ the extant wildlife populations or biological composition, structure or richness of an area as a wildlife benefit to have that permit's plan(s) approved by the Massachusetts Division of Fisheries and Wildlife.

#### 7 6.2.6 The Character of the Work or Activities Proposed and Alternatives

The ~~Applicant~~ shall carry the burden of proof for demonstrating to the ~~Conservation~~ Commission's satisfaction that the proposed work or activities in the ~~Adjacent Upland Resource Area(s)~~ are necessary and that reasonable alternatives, including reducing the wale and scope of the project, do not exist using best management practices and scientific techniques.

The Commission shall consider the specific characteristics of the work proposed for immediate and cumulative impact on the wetland resource. For example, understory clearing and shrub landscaping in sensitive sections of the ~~Adjacent Upland Resource Area(s)~~ might be appropriate, where a lawn might not due to concerns about nutrient runoff. Similarly, clearing a flat section of the ~~Adjacent Upland Resource Area(s)~~ to establish a vegetable garden might not threaten adjacent wetland values and functions. However, construction of a tennis court or swimming pool with extensive impervious surface on the same site and covering the same area might not be acceptable.

The ~~Conservation~~ Commission may offer suggestions and advice for altering plans and proposals to reduce impact on wetlands values and functions toward the goal of modifying the project to make it acceptable and less impactful. However, the Commission is not obligated to do so and shall not be bound in its decision-making by any prior advice or suggestions offered to ~~Applicants~~.

#### 7 6.3 Subdivision Roadways

The construction of impervious surfaces such as road and driveways in watersheds can significantly ~~Alter~~ the quantity and quality of stormwater runoff and affect important

ground water characteristics. ~~Impervious surfaces reduce surface infiltration, potentially worsening flooding problems by increasing stormwater runoff volumes and by redirecting flows within a watershed. The increase in surface flows from impervious surfaces may create new erosion or flooding problems, where storm flows are directed and discharged. Impervious surfaces increase the opportunities for various pollutants to mix in water flows. Roadways, for example, shall retain a surface coating of petroleum and combustion byproduct pollutants that will flush during the early stages of a storm. Roof runoff can pick up a variety of chemicals used in fertilizers, pesticides, and herbicides as it transverses lawns and landscape areas. Impervious surfaces that direct water flows into wetlands may inundate sensitive resources and thereby destroy vital vegetative and wildlife characteristics, reduce pre-existing flood storage capacity, and contaminate ground water recharge areas.~~

Conversely, impervious surfaces may direct traditional water flow patterns away from wetlands and thereby destroy the necessary hydrological conditions needed to maintain wetland functions and values.

~~Therefore, for purposes of flood control, erosion control, water quality protection, and wildlife habitat preservation~~ ~~†The Conservation Commission shall review all road and driveway construction plans for impact, immediate and cumulative, on wetlands functions and values.~~

In particular, the ~~Conservation~~ Commission shall enforce and regulate the following general performance standards:

#### 7 6.3.1 No Net Change in Runoff Volumes or Net Loss of Wetlands

Pre-project and post-project hydrology should remain fundamentally the same as it pertains to protecting wetland functions and values. Of course some minor degree of change in hydrology is inevitable in any engineering/construction project and within reasonable limits the Commission shall permit such variation, when in its judgment, such changes will not produce a significant impact of wetlands functions and values, including but not limited to, the infiltration of water, increase in sedimentation and total suspended solids, diminishing recharge ground water capability and/or water table lowering. Erosion control may require limiting stormwater discharge volumes and velocities.

Therefore, the Commission may require the construction of such stormwater control structures, and specify particular engineering and design details, as it deems necessary to protect wetland resource functions and values while providing for no net loss of wetlands or resource areas.

#### 7 6.3.2 Minimizing Change in Runoff Water Quality

The physical chemical and biological qualities of stormwater runoff are altered by encounters with impervious surfaces, especially roadways and related structures. Increases in water temperature, reduction in pH, chemical and

nutrient contamination, and transport of silt are just a few of the degrading shifts that may occur. Where such waters are likely to contact wetland resources or ~~a~~Adjacent ~~u~~Upland ~~r~~Resources Area(s), the Commission shall impose conditions that in its judgment reduce undesirable water quality changes to levels that will not harm wetland functions or values, initially or cumulatively. The Commission may require the construction of specific structures to improve stormwater runoff quality, such as, but not limited to, ~~w~~Wet ~~d~~Detention ~~b~~Basins for pollutant removal, dry wells, and broad riprap swales for aeration. The Commission may also require the use of a slow-release, 15-0-5, zero phosphate fertilizer in sensitive resource areas, particularly in and around ~~v~~Vernal ~~p~~Pools, ponds, all streams, lakes and rivers.

### 7 6.3.3 Requirements for Hydraulic Calculations

In accordance with the above, the ~~Conservation~~ Commission shall require as part of the permit application complete hydrological calculations for the one, two, five, ten, twenty-five, fifty and one hundred year storm events. Such calculations shall include:

- 7 6.3.3.1) Runoff from all impervious surfaces associated with the project including individual lot construction and proposed structures as well as;
- 7 6.3.3.2) Both pre- and post-project calculations for discharge volumes, concentration times, discharge velocities, and other relevant quantities and qualities that the Commission may require for complete information.

### 7 6.4 Site Visits

As stated in Section 7 6, Permits and Conditions, the ~~Conservation~~ Commission may deny a permit if the ~~a~~Applicant fails to provide all the information requested by this Bylaw or any Regulations adopted by the ~~Conservation~~ Commission under Section 8 of this Bylaw, or any other information which the Commission determines is necessary to its review of the application. "Information" in this instance may include site visits by the Commission and its staff or representatives for the purposes of directly observing pre-project and post-project plans and conditions on the property, at seasonally appropriate times.

### 7 6.5 Replications

Considering that the history of wetland replication is mixed, scientific reviews conclude that for the most ~~part~~ part replications fail to reproduce the range of functions and values in quantity and of the wetlands they ostensibly replace. In particular, difficulties in replicating proper hydrological and anaerobic soil conditions in a consistent and enduring fashion seem to be the source of the problem.

Accordingly, the ~~Conservation~~ Commission strongly discourages any plan that requires replication. In those instances where replication is approved by the Commission the following conditions must be met:

- 7 6.5.1 The replicated wetland must be constructed in full and conditionally approved prior to construction of any structures or ~~a~~Appurtenances.

- 7 6.5.2 At minimum the replicated wetland must reproduce all the values and functions of the original wetland as determined by the ~~Conservation~~ Commission. Site conditions permitting, the Commission may require that additional values and functions be incorporated into the replication design. In particular, in circumstances where replacement of specific functions and values would require substantial amounts of time before being completely replicated (for example, those provided by large mature trees, over twenty feet tall and/or greater than ten inches in diameter, growing in the resource area) the Commission may require additional compensation of area, functions, values, etc. beyond those required in other sections of this Bylaw and its Rules and Regulations.
- 7 6.5.3 At the discretion and decision of the ~~Conservation~~ Commission the area of replication may be even as much as twice as large as the area of the original resource that will be destroyed. The actual area ratio of replacement shall be decided on a case by case basis in accordance with 7.5.2 above.
- 7 6.5.4 In most instances the replication of wetland resource areas will result in the destruction of ~~Adjacent Upland Resource Area(s)~~ and bordering vegetated wetlands. In such instances replication of ~~now Adjacent Upland Resources Area(s)~~ and bordering vegetated wetlands shall follow 7.5.2 and 7.5.3 above.
- 7 6.5.5 The top 12 inches of soil from the original wetland must be transplanted with soil structure especially lamination and density profile-intact to the replication area, not simply piled then relocated at later date. This procedure is intended to preserve plant, invertebrate, and plankton communities of the wetland and inhibit the blossoming of invasive species.
- 7 6.5.6 Any replication or restoration work that creates a resource on abutting properties shall require an easement from the abutting property owner covering the full extension said work.
- 7 6.5.7 A bond may be required to be posted that will enable the Commission to complete the replication should the ~~Applicant~~ fail to fulfill obligations set forth in the Order of Conditions.
- 7 6.5.8 All replication shall be conducted at minimum on a "one for one" basis, insuring complete coverage with indigenous species and/or approved nursery stock and shall be placed in as similar a setting as possible to its previously undisturbed state, including at the same ground water table level.
- 7 6.5.9 All replication plans must be 75% complete and sustained within two growing seasons. If not, at the Commission's discretion, the replicated area(s) are to be restocked with more appropriate, heartier nursery stocks.
- 7 6.5.10 It is incumbent upon all permittees of replication area(s) to provide water and nurture to any approved replication to ensure greater chances of survival.

Standards for the replication shall be specified and varied in terms of functions and values, and actual performance. Technical and engineering specifications used for design and construction shall be considered approximate. Criteria for acceptance and approval shall be based solely on function and performance as specified in the Order of Conditions. In other words, replications will be evaluated on what they are expected to do, not how closely actual construction matched the plan.

For example, although elevations may be used for design and planning of a pond the standards shall be set in terms of volume and depth of water over the course of a year. In ~~v~~Vernal ~~p~~Pool replication the pool must be capable of sustaining full development of ~~v~~Vernal ~~p~~Pool ~~s~~Species, regardless of design, elevations or siting.

Replications that do not properly perform the approved functions and values as specified in the ~~e~~Order of ~~e~~Conditions will not be deemed acceptable no matter how closely they adhere to approved engineered plans.

The Commission may set and regulate other conditions on a project/site specific basis.

#### 7.6.6 Orders of Conditions for Violation Permits

Orders of Conditions for permits associated with violations shall include explicit dates for milestones and completion of work

#### 7.7 6.7 Riverfront District Protection

The protection afforded to the Town of Sutton Riverfront District as created herein, and River Front areas created by the 1998 amendment to the Massachusetts Wetlands Protection Act Regulations, 310 CMR 10.00, shall apply to all those areas which extend 200 feet from the ~~b~~Bank of any perennial or an ~~i~~Intermittent ~~s~~Stream within a Riverfront District, or river, as they are defined under State Law, or from a Great Pond as defined under this Bylaw. Protection of the Riverfront District shall take into consideration the standards and restrictions of all relevant Sections of this Bylaw, or act or do anything in relation thereto.

#### 7.8 6.8 Storm Water Runoff Best Management Practices

All storm water runoff systems shall at minimum conform to best management practices as specified by the Massachusetts Department of Environmental Protection's Best Management Practices Standards and the Department's Regulations and Policies. The Commission may impose more stringent conditions where resource values and functions warrant it.

The Commission may require the ~~a~~Applicant to submit a maintenance plan for the storm water management system for the Commission's approval. The Commission may require that the ~~a~~Applicant provide a means of ensuring that the approved maintenance plan will be followed. This may be secured in the form of a bond or surety, or through a duly formed homeowners association containing covenants and/or other such instruments of guaranty, running with the land, that satisfy the interests of the Bylaw.

#### 7.9 6.9 Alternative Analysis

The Sutton Wetlands and Riverfront District Administration Bylaw clearly states that proposed projects and associated disturbances should be located outside of any resource area(s) that falls under the Jurisdiction, Rules and Regulation, of this Bylaw, including all ~~a~~Adjacent ~~u~~Upland ~~r~~Resource ~~a~~Area(s). Practical alternatives to locate the project outside

these areas must be investigated and should one or more prove feasible the plan must be amended to relocate or redesign such activities accordingly.

The Commission shall consider, as practical alternatives, options that were available to the Applicant but appear to be precluded due to self-imposed hardships and constraints (e.g., lot, roadway, and drainage layouts engineered or constructed without prior regard to impact on resource areas protected by this Bylaw.)

If, in the Commission's view, there are no practical alternatives, project impact(s) must be minimized and mitigated so there are no Adverse Impacts to the resource area(s). If the Commission determines that the project will have significant Adverse Impact(s) on the resource area(s) then the project shall be denied.

#### 7.6.10 Signature of Building and/or Other Permits

The ~~Conservation~~ Commission will not sign or be required to sign or place its seal on any permit, Building Permit or otherwise, unless and until one or more of the following requirements, when and if the Commission so requests, are met:

- 1) For any proposed work or activity in uplands areas or otherwise, having first provided the Commission a signed, notarized Affidavit from a qualified wetlands scientist or an equally qualified licensed professional stating that there are no wetlands on the entire parcel and if there are wetlands, their ratio of the required lot area be not less than 60% upland and/or more than 40% wetlands and/or contiguous bordering vegetated wetlands and adjacent resource area(s), and that the proposed work or activity will be conducted entirely beyond the 100 foot buffer zone, or 200 foot Riverfront District, (as described on an accompanying, wet signed and sealed topographic plan, complete and drawn to scale) which qualify for wetlands protection within and/or without said parcel
- 2) And, if the conditions stated above are not overcome, then for any proposed work or activity on any parcel of land containing wetlands, a filing of a Notice of Intent is required, as is the subsequent recording of a valid Order of Conditions with the Registry of Deeds.

### **8 SECTION 13.7 RULES AND REGULATIONS**

Each of the provisions of this Bylaw, as referenced and defined herein, or inferred therefrom, by section are subject to regulation by the ~~Conservation~~ Commission.

The ~~Conservation~~ Commission shall regulate all work and/or activity in its Jurisdiction, and it shall impose qualitative and quantitative determinations and establish appropriate performance standards as ruled and governed by the interests of this Bylaw. The terms of regulation, as defined in this Bylaw, and not inconsistent with this Bylaw, and its provisions, shall govern the amount and filing of fees.

After due notice and public hearing, the Commission may promulgate rules and regulations to effectuate the purposes of this Bylaw effective when voted on 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 and action(s) required by this Bylaw.

## **SECTION 13.8 DEFINITIONS**

### 9 8.1 Appurtenance

The term ~~a~~Appurtenance shall mean any structural adjunct or incidental construct to a single family residential structure or on any parcel of land, such as a septic system, garage, shed, deck, dock, porch, patio, swimming pool, tennis courts, driveway, or sidewalk. Items not considered to be ~~a~~Appurtenances include, without limitations, lawns, landscaping, orchards, gardens, and in-ground sprinkler systems.

### 9 8.2 Direct ~~d~~Discharge

Direct ~~d~~Discharge includes, without limitation, any out fall of water that empties into the resource area or ~~a~~Adjacent ~~u~~Upland ~~r~~Resource ~~a~~Area(s) and bordering vegetated wetlands, including infiltration.

### 9 8.3 Distance

All ~~d~~Distances noted in the Bylaw (excluding depth), such as ~~a~~Adjacent ~~u~~Upland ~~r~~Resource ~~a~~Area(s) and mean high-water line ~~d~~Distances, are planar ~~d~~Distances measured along a single elevation. Consequently, on steeply sloped topography the measured over-ground ~~d~~Distance may not accurately reflect the ~~d~~Distances specified in the permits and conditions specified by the Bylaw. In particular the 100 foot ~~a~~Adjacent ~~u~~Upland ~~r~~Resource Area(s), 200 feet in a Riverfront District, on steeply sloped land will measure considerably more than 100 feet, or 200 feet in a Riverfront District, when measured over ground on site.

### 9 8.4 Existing

The term ~~e~~Existing as used in the Bylaw shall mean ~~e~~Existing in full as of the Effective Date of the Bylaw. ~~that date following the date on which the Office of the Attorney General approves the Bylaw and on such date that the Town Clerk duly posts the Bylaw unless specified otherwise in this Bylaw or when this Bylaw becomes effective.~~

Existing house foundation refers to the foundation of single family house where the house was not fully constructed prior to the Effective Date of the Bylaw, ~~that date following the date on which the Office of the Attorney General approves the Bylaw and on such date that the Town Clerk duly posts the Bylaw~~ and an occupancy permit issued.

### 9 8.5 Discharges Into Wetlands

Discharges ~~i~~nto ~~w~~Wetlands, as listed under Section 2, shall include, without limitations, any discharges from the project or any structure that flows to a wetland resource or ~~a~~Adjacent ~~u~~Upland ~~r~~Resource ~~a~~Area(s) through now or ~~e~~Existing drainage structures, including ~~e~~Existing road drainage pipes, that empties into wetland resources or ~~a~~Adjacent

~~Upland Resource Area(s)~~, regardless of the ~~Distance~~ between the project site and the wetlands resources or ~~Adjacent Upland Resource Area(s)~~.

#### 9 8.6 Recreation

The term ~~Recreation~~ connotes passive ~~Recreation~~ activities that do not conflict with or diminish other wetland fractions and value. Examples include, but are not limited to bird watching, and other nature studies, walking and hiking, canoeing, horse-back riding, and as permitted, legally licensed fishing, trapping, hunting, etc.

#### 9 8.7 Wet Detention Basin

A ~~Wet Detention Basin~~ is a ~~Detention Basin~~ designed to hold water for at least two continuous months during the spring/summer, where the ponding area covers at least one-third of the basin floor to an average depth of six inches of water, which supports wetland vegetation, and which meets the other design requirements set by the ~~Conservation~~ Commission.

For the purposes of this Bylaw a ~~Wet Detention Basin~~ shall be considered a constructed wetland and not acceptable as part of a wetland replication area or plan. As a constructed wetland, a ~~Wet Detention Basin~~ shall "be presumed to serve resource functions and values, including but not limited to pollution attenuation, flood control wetland and/or aquatic and wildlife habitat." The ~~Adjacent Upland Resource Area(s)~~ for ~~Wet Detention Basins~~ shall extend two feet beyond the break in slope of the ~~Detention Basin~~ unless the basin wetland attains dimensions consistent with jurisdiction under the Massachusetts Wetlands Protection Act in which case a full 100 foot ~~Adjacent Upland Resource Area(s)~~ shall apply.

#### 9 8.8 ~~Volume of a Detention/Retention Basin~~

Basin volume shall be calculated as that volume contained between the basin's 100 year flood elevation and the lowest elevation of the basin floor, except in the case of a ~~Wet Detention Basin~~ 50% of the calculated volume shall be used for any fee determination purposes.

#### 9 8.9 Intermittent Stream

Intermittent Stream is a defined channel with a hydraulic gradient through which water flows during most years and which either flows out of, into, or within a wetland resource area under this Bylaw. A portion may flow through a culvert or under a bridge.

#### 9 8.10 Vernal Pool

The term ~~Vernal Pool~~ and criteria for such shall include, in addition to that already defined under the Wetlands Protection Act, MGL c.131 ~~Section~~ §40 and Regulations thereunder, 310 CMR 10.00, and in Section 2, Jurisdiction, of this Bylaw, any confined basin or depression not occurring in ~~Existing~~ lawns, gardens, orchards, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring/summer, contains at least 200 cubic feet of water at some time during most years, is free of predatory fish populations, and provides essential

breeding and rearing habitat functions for amphibian, reptile, or other ~~v~~Vernal ~~p~~Pools ~~s~~Species, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. The presumption of essential habitat value may be overcome by the presentation of credible evidence, which in the judgment of the Commission, demonstrates that the basin or depression does not provide the habitat functions as specified by this Bylaw or its Rules and Regulations.

The ~~a~~Adjacent ~~u~~Upland ~~r~~Resource ~~a~~Area(s) for ~~v~~Vernal ~~p~~Pools shall extend 100 feet from the mean annual high-water line defining the depression, or one half of the ~~d~~Distance between the ~~v~~Vernal ~~p~~Pool and any ~~e~~Existing house foundation, whichever is smaller. In either case, the ~~a~~Adjacent ~~u~~Upland ~~r~~Resource ~~a~~Area(s) for ~~v~~Vernal ~~p~~Pools shall not extend over ~~e~~Existing lawns, gardens, orchards, landscaped or developed areas or those already under Permit.

#### 9 8.11 Vernal Pool Species

Any species of reptile, amphibian or invertebrate, or any other ~~r~~Rare ~~o~~r ~~a~~nd ~~e~~Endangered ~~s~~Species, plant or animal that breeds, grows or resides in a ~~v~~Vernal ~~p~~Pool these species may be obligate or facultative.

#### 9 8.12 Adjacent Upland Resource Area(s)

The term, ~~a~~Adjacent ~~u~~Upland ~~r~~Resource ~~a~~Area(s), shall include all lands within 100 feet of wetlands, including but not limited to any watershed containing freshwater wet land, and bordering vegetation associated with and including marshes, wet meadows, bogs, swamps, ~~v~~Vernal ~~p~~Pools (~~as defined herein and in Section 9.10~~), ~~b~~Banks, reservoirs; lakes, all perennial and ~~i~~Intermittent ~~s~~Streams, creeks, rills, springs, lands under water bodies, lands subject to flooding by ground water, surface water, or storm flow, collectively and/or separately. For all perennial streams, ~~g~~Great ~~p~~Ponds and rivers, it extends for 200 feet from the top of the ~~b~~Bank. For ~~v~~Vernal ~~p~~Pools ponds under 10,000 square feet in area, and in isolated land subject to flooding, occurring within or without that two hundred feet, it extends 100 feet.

#### 9 8.13 Rare and Endangered Species

The term ~~r~~Rare and ~~e~~Endangered ~~s~~Species' shall include, without limitations all invertebrate and vertebrate animal and plant species listed as endangered, threatened, or of special concern, by the Commonwealth of Massachusetts, and the Division of Wildlife and Fisheries, regardless of whether the site in which they occur has been previously identified by the Division.

#### 9 8.14 Qualified Professional

A ~~p~~Person having earned a college degree(s) in an area of study directly related to wetlands science and having a demonstrable minimum of 10 years experience actual hands-on, field experience in delineating, assessing, analyzing, wetlands and their hydrologic soil(s) and biological characteristics, functions and values, and having a current working knowledge of all facets of the Wetlands Protection Act and Regulations,

Waterways and Riverways Regulations, Department of Environmental Protection  
Wetlands Program Policies and Section 401 Water Quality Certification.

9 8.15 Alter

The term ~~a~~Alter shall include without limitation, the following actions or alteration(s) when undertaken in areas subject to this Bylaw:

- a) Removal, excavation or dredging of soil, sand, gravel or aggregate materials or alteration of any kind
- b) Changing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, and flood retention characteristics,
- c) Drainage or disturbance of water level or water table,
- d) Dumping, discharging or filling with any material which may degrade water quality,
- e) Driving of piles, erection of buildings or other structures of any kind,
- f) Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water,
- g) Placing of obstructions or objects in wetlands and water bodies,
- h) Destruction of plant life including cutting of trees,
- i) Any activities, changes, or work which may cause or tend to contribute to erosion, pollution or sedimentation of any body of water or to affect the level of ground water,
- j) Application of pesticides and herbicides,
- k) Incremental activities which have a cumulative ~~i~~Adverse ~~i~~Impact on the resource area(s) protected by this Bylaw, even if proposed alteration may in and of itself be minor,
- l) And/or storage of flood waters and stormwater runoff waters in wetlands is prohibited unless the ~~Conservation~~ Commission deems such action would enhance wetland functions and values.

9 8.16 Adverse Impact

That effect a proposed project or phase of such project, which by its area, scope, and/or duration, appears to represent more than a minimal change or modification, often cumulative, to the natural undisturbed and unencumbered characteristics, functions and values of any freshwater wetland(s), ~~a~~Adjacent ~~u~~Upland ~~r~~Resource ~~a~~Area(s), bordering vegetated wetland(s), watershed, or water body that may indicate significance to the interests of this Bylaw.

9 8.17 Riverfront District Resource Area

That area of land situated between the ~~b~~Bank of a reservoir, a perennial stream, or a ~~g~~Great ~~p~~Pond, or a river's mean annual high-water line and a parallel line located 200 feet away, measured outward horizontally from the ~~b~~Bank or river's mean annual high-water line. This 200 feet shall be of equal interest and shall receive the same consideration(s) as those for wetlands and ~~a~~Adjacent ~~u~~Upland ~~r~~Resource ~~a~~Area(s).

9 8.18 Person

Person as referred to herein, 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 Bylaws,

administrative agencies, public or quasi-public corporations or bodies, the Town of Sutton and any other legal entity, and their legal representatives, assigns or agents.

#### 9 8.19 Bank

The term ~~h~~Bank shall include the land area which normally abuts and confines a body of water, or water channel, 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.

#### 9 8.20 Great Pond

All bodies of water in excess of 10 acres, calculated at and from the natural, ~~e~~Existing or historic high water mark, shall be considered a Great Pond.

### **~~10~~SECTION 13.9 SECURITY**

#### ~~10~~ 9.1 Orders of Conditions and Bonding

The Commission may require; as a permit condition, that performance or other continual Orders of Conditions be secured by one or both of the following measures:

1. By posting a bond or deposit of money or negotiable securities in an amount determined by the Commission to be sufficient to satisfy complete performance and payable to the Town of Sutton and/or
2. By requesting a ~~Conservation~~ Restriction (pursuant to ~~MGL c.184 Sections~~ §31-33), easement or other agreed-upon covenant running with the land, duly executed and properly recorded, (or registered, in the case of registered land.) if the parcel of land under application is not already properly recorded (or registered).

In the specifying of an Order of Conditions and the setting of a performance bond, the ~~Conservation~~ Commission may, at its discretion, take into account the prior history of a ~~a~~Applicant and the ~~a~~Applicant's representatives, consultants, builders, or other contractees; when in the Commission's opinion, prior instances showing disregard for Orders of Conditions, Massachusetts Department of Environmental Protection Enforcement Orders, Violations of the Sutton Wetlands and Riverfront Administration Bylaw or Regulations or Enforcement Order(s) issued pursuant thereto, for practices known to threaten wetlands values and functions, or for failures to fulfill legal obligations pursuant to wetlands or environmental protection raise questions about the ~~a~~Applicant's willingness or ability to abide by permit requirements (the "risk"); the Commission can set additional conditions and financial requirements, including Betterment Escrows to ensure adherence to permit requirements and continued performance standards under best management practices and in the interests of this Bylaw. These measures shall not be in lieu of any required filing fees but to insure complete performance and continued adherence to Orders of Conditions.

#### ~~10~~ 9.2 Permitting - In the Context of Outstanding Violations

No permit shall be issued for any project to an Applicant who has an outstanding Violation Notice under this Bylaw or any outstanding Enforcement Order on the parcel or any adjacent parcel owned by the Applicant, under application for which either (a) no corrective Order of Conditions has been recorded at the Registry of Deeds, or (b) which is docketed under legal appeal.

#### **11 SECTION 13.10 ENFORCEMENT**

The enforcement of the Rules and Regulations or any provision of the Sutton Wetlands and Riverfront District Administration Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act and the Rivers Protection Act. Upon request of the Commission, the Board of Selectmen, ~~and Town Counsel shall~~ *may* take legal action as may be necessary to enforce this Bylaw and any permits issued pursuant to it. Whereas:

1. *Following any filing or to serve and administer an Enforcement Order, ~~The Conservation~~ Commission, its agents, officers, and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under the 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 of Massachusetts,*
2. *If any of the provisions of this Bylaw are violated, the Commission may issue a cease and desist, stop-work order. Each and every day, or portion thereof following issuance of a Violation Notice or Enforcement Order shall constitute a separate offense, allowing that there could be more than one offense occurring simultaneously,*
3. *The Commission shall have the authority to enforce the Bylaw, its Rules and Regulations and permits issued thereunder by:*
  - a) *Violation Notices in ticket form*
  - b) *an Administrative Order of Enforcement ("Enforcement Order") and/or*
  - c) *initiation of civil and criminal court actions,*
4. *In addition to any other remedies available hereunder any law, State or Federal or the Bylaw, any Person who violates any provision of this Bylaw, its Rules and Regulations, permits, and/or Administrative Order of Enforcement issued thereunder may be fined not more than \$300 (now as so Amended) per offense per day. Whereas, each and every day, or portion thereof during which a violation(s) continues, or unauthorized fill and/or other alteration remains in place, shall constitute severally and individually, a separate offense,*
5. *In a specific case, the ~~Conservation~~ Commission or its agent, ~~Town Administrator~~ *Manager, Board of Selectmen, Chief of Police, or any other town official having police powers pursuant to MGL c.40 Section §21D, under the noncriminal disposition procedure established by the Town of Sutton may issue Violation Notices in ticket form**

When so enforced, the penalties or fines for violations of any type in the interests of the Bylaw shall be:

- |   |         |
|---|---------|
| a) First Offense                          | Warning |
| b) Second Offense                         | \$200   |
| c) Third and All<br>Subsequent Offense(s) | \$300   |

6. Pre-acquisition Violation-Any ~~p~~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 permit issued pursuant to the Bylaw, shall forthwith comply with any such order or restore such land to its condition prior to any such violation. No action, civil or criminal, shall be brought against such ~~p~~Person provided that that such ~~p~~Person files a Notice of Intent and receives and records a duly issued Order of Conditions.

### **12 SECTION 13.11 RELATION TO THE WETLANDS PROTECTION ACT AND RIVERS 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 and Regulations thereunder. Except as is otherwise provided for by and in this Bylaw, the definition of terms in this Bylaw shall be set forth in the Wetlands Protection Act, c. 131, Section 40, and Rivers Protection Act, 310 CMR 10.00 and their Regulations, and as may be amended from time to time.

And pursuant to the above, hereby and hereunder a Riverfront District Bylaw (hereunto the Bylaw) is created and duly constituted in and for the Town of Sutton, whose presumptions and performance standards meet or exceed those interests defined in the Rivers Protection Act and by the enactment of the Sutton Wetlands and Riverfront District Administration Bylaw.

### **13 SECTION 13.12 APPEALS**

- 1.) A decision of the ~~Conservation~~ Commission may be appealed by any ~~p~~Person claiming to be aggrieved thereby in the following manner(s):

Such ~~p~~Person may, in consort with any other so-called aggrieved party or would-be appellate or abutter within 300 feet of any surveyed property line, within 10 days of the decision, request that the matter be settled through a mediation process conducted by a licensed mediator and/or a disinterested qualified environmental professional, who is mutually agreed upon by the Commission and the so-called aggrieved party or appellate.

If no such ~~q~~Qualified ~~p~~Professional can be agreed upon, then one shall be appointed by the Conservation Law Foundation. Once the aggrieved party and the Commission agree to such procedure the results thereof shall be binding on both parties. An ~~a~~Applicant whose application involves a total parcel size of less than two acres (including all ~~a~~Adjacent ~~u~~Upland ~~r~~Resource ~~a~~Area(s) not under the jurisdiction of the Commission) and an abutter to the property which is the subject of the application may require that the Commission agree to such procedure. Such qualified mediator and/or professional shall render a decision within 30 days of the commencement of the mediation proceedings, unless the ~~q~~Qualified ~~p~~Professional if any, requests additional information not in the control of either party. The mediator shall determine how the costs of the proceeding shall be allocated between the parties. The decision of the mediator shall constitute a final decision which may be enforced in any court of competent jurisdiction with the costs of such enforcement procedures to be borne by the party who has refused to comply with such final decision order. Such procedures shall comply with the rules of the American Arbitration Association to the extent not otherwise agreed upon; or

- 2.) The decision shall be ~~renewable~~ *reviewable* in the Superior Court in an action filed within 60 days thereof in accordance with ~~MGL c.249 Section §4~~; or
- 3.) To contest a non-criminal disposition Violation Notice and its proceeding(s) shall be by written request to the Clerk Magistrate of the District Court for hearing.

#### **14 SECTION 13.13 SEVERABILITY AND APPLICABILITY**

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

This Bylaw shall not apply if a court of competent jurisdiction determines that such application will result in a taking without compensation.

*Adopted: June 1, 1983*

*Amended: 1/85, 5/8/00, 10/16/00, 5/10/04, 5/11/09, 5/9/11*