

**Article XVII**  
**General Wetlands By-Law**  
**As adopted at Town Meeting April , 2010**

**Section I. Purpose**

1.1 The purpose of this By-Law is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Manchester-by-the-Sea ("Town") by controlling initiatives and activities deemed by the Town Conservation Commission ("ConCom") likely to have a significant effect, immediate or cumulative, on the: protection of public or private water supply; protection of groundwater supply; flood control; erosion and sedimentation control; storm damage prevention, including coastal storm flowage; water quality; avoidance of water pollution; protection of fisheries; protection of land containing shellfish; protection of wildlife habitat and rare species habitat; agriculture; aquaculture; and other resource area values deemed important to the Town.

1.2 Subject to the rights and benefits accorded to agricultural uses and agricultural structures of all kinds under the laws of the Commonwealth of Massachusetts ("Commonwealth") and other relevant By-Laws of the Town, this By-Law is intended to utilize the Home Rule authority of the Town to:

- 1.2.1 protect salt marshes, freshwater wetlands, streams, and coastal banks to a greater degree than under the Wetlands Protection Act, M.G.L. Ch.131 §40, *et. seq.* ("Act");
- 1.2.2 protect vernal pools as an additional resource area recognized by the Town as significant, but not included in the Act;
- 1.2.3 protect all resource areas for their additional values beyond those recognized in the Act; and
- 1.2.4 impose, through local regulations and permits, additional standards and procedures stricter than those of the Act and its implementing regulations, 310 C.M.R. 10.00, *et.seq.* ("Regulations").

## **Section 2. Definitions**

2.1 Except as otherwise provided in this By-Law or in the regulations promulgated hereunder, the definitions of terms and the procedures in this By-Law shall be as set forth in the Act and Regulations. The following definitions shall apply in the interpretation and implementation of this By-Law.

2.1 “Agriculture” shall include the activities defined and described in 310 C.M.R. 10.04.

2.2 “Alter” shall mean, without limitation, the following activities when undertaken in, to, upon, within or affecting resource areas protected by this By-Law:

- 2.2.1 Grading, removal, excavation, filling or dredging of soil, sand, gravel, or aggregate materials of any kind;
- 2.2.2 Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- 2.2.3 Drainage, to or from, or other disturbance of, water level or water table;
- 2.2.4 Dumping, depositing or discharging of, or filling with, any solid or liquid;
- 2.2.5 Placing of fill, or removal of material, which would change elevation;
- 2.2.6 Construction, erection, demolition, expansion or repair of buildings or structures of any kind;
- 2.2.7 Fabrication, pouring or installation of building or structural foundations;
- 2.2.8 Driving or removal of piles;
- 2.2.9 Placing of obstructions or objects in water;
- 2.2.10 Destruction of plant life including cutting or trimming of trees and shrubs;

- 2.2.11 Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
- 2.2.12 Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater; and
- 2.2.13 Any incremental activities, changes or work which have, or may have, a cumulative adverse impact on the Resource Areas protected by this By-Law.

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

2.4 “By-Law” shall mean the General Wetlands By-Law of the Town.

2.5 “Person” shall mean 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 agency, public or quasi-public corporation or body, the Town, and any other legal entity, its legal representatives, agents, or assigns.

2.6 “Pond” shall mean the definition as provided by 310 CMR 10.04, except that the size threshold shall be 5,000 square feet.

2.7 “Practicable Alternative” shall mean that which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.

2.8 “Stream” means a body of running water, including brooks and creeks, whether naturally occurring, artificially created or artificially modified, which moves in a definite channel in the ground due to a hydraulic gradient, and which flows within, into, or out of, a Resource Area. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does

not flow throughout the year (*i.e.* which is intermittent) is a stream except for that portion upgradient of all bogs, swamps, wet meadows and marshes.

2.9 “Vernal Pool” shall mean, in addition to scientific definitions found in the Regulations, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which:

2.9.1 in most years holds water for a minimum of two continuous months during the spring and/or summer;

2.9.2 contains at least 200 cubic feet of water at some time during most years;

2.9.3 is free of adult predatory fish populations; and

2.9.4 provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.

2.9.5 The boundary of the Resource Area for vernal pools shall be the 100 feet perpendicular to the mean annual high-water line defining the depression.

### **3. Regulations**

3.1 After public notice and public hearing, the ConCom may promulgate rules and regulations to effectuate the purposes of this By-Law, effective when voted and filed with the Town Clerk.

3.2 The ConCom may establish in its rules and regulations design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, maintenance of strips of continuous undisturbed vegetative cover, landscaping and other features, and other work limits for protection of Resource Area Buffer Zones [as hereinafter defined].

3.3 Failure by the ConCom to promulgate rules or regulations, or a legal declaration by a court of law of the invalidity of such rules or regulations, shall not act to suspend or invalidate the effect of this By-Law.

#### 4. Jurisdiction and Presumption

4.1 Except as permitted by the ConCom pursuant to this By-Law or as otherwise allowed by this By-Law, no person shall commence to alter the following areas ("Resource Areas"):

4.1.1 any freshwater or coastal wetland; salt marsh; wet meadow; bog; swamp; vernal pool; spring; bank; reservoir; lake; pond; river or stream; beach; dune; estuary; coastal bank; lands under any water body; land subject to flooding or inundation by groundwater or surface water; land subject to tidal action; coastal storm flowage or flooding; and

4.1.2 lands within 200 feet of any river or perennial stream, brook or creek ("Riverfront Area").

4.2 Except as permitted by the ConCom pursuant to this By-Law or as otherwise allowed by this By-Law, no person shall commence to alter lands within 100 feet of any: freshwater or coastal wetland; salt marsh; wet meadow; bog; swamp; vernal pool; spring; bank; reservoir; lake; pond; stream; beach; dune; estuary; coastal bank; lands under any water body; or land subject to tidal action ("Resource Area Buffer Zone(s)")

4.3 A Resource Area, where isolated and of a size of 5,000 square feet or greater, shall be protected whether or not it borders surface waters.

4.4 Unless the applicant demonstrates by clear and convincing evidence that a significant adverse effect will not occur, it shall be presumed that significant adverse effects will result from any alteration within:

4.4.1 a Resource Area, other than land subject to flooding or inundation by groundwater, or surface water or coastal storm flowage or flooding;

4.4.2 30 feet of the edge of any salt marsh, freshwater wetland or vernal pool; or

4.4.3 30 feet of the top of coastal bank, or the top of the bank of any stream.

4.5 The jurisdiction of this By-Law shall not extend to uses and structures of agriculture, including work performed for normal maintenance or improvement of land in agricultural or aquacultural uses.

## 5. Exemptions and Exceptions

5.1 A Notice of Intent (“NOI”) or permit not is required to be issued prior to commencing an emergency project necessary for the protection of the health and safety of the public, provided that:

- 5.1.1 the work is to be performed by, or has been ordered to be performed by, an agency of the Commonwealth, a political subdivision thereof, or the Town;
- 5.1.2 advance notice, oral or written, has been given to the ConCom prior to commencement of work or within 24 hours after commencement;
- 5.1.3 the ConCom or its agent certifies the work as an emergency project;
- 5.1.4 the work is performed only for the time and place certified by the ConCom for the limited purposes necessary to abate the emergency; and
- 5.1.5 within twenty one (21) calendar days of commencement of an emergency project, a NOI shall be filed with the ConCom for review as provided by this By-Law.
- 5.1.6 Upon failure to meet these and other requirements of the ConCom, the ConCom may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

5.2 A NOI or permit is not required for maintaining, repairing, or replacing, but not significantly changing or enlarging, an existing and lawfully located

structure or facility used in the service of the public to provide electric, gas, water, telephone, or other telecommunication services, provided that:

5.2.1 written notice has been given to the ConCom prior to commencement of work; and

5.2.2 the work conforms to any performance standards and design specifications in regulations adopted by the ConCom.

5.3 A NOI or permit shall not be required for work performed for normal maintenance or improvement of land in agricultural and aquacultural use as defined by this By-Law or the rules and regulations promulgated hereunder.

5.4 Other than as stated in this Section 5, all work that is exempted from regulation under the Act or the Regulations is subject to this By-Law. A NOI and a permit may be required by this By-Law whether or not an Order of Conditions (“OOC”) is also required under the Act.

## **6. Applications and Fees**

6.1 Except as provided in Section 5 hereof, a written NOI application shall be filed with the ConCom to prior to performing any activity affecting a Resource Area. The NOI shall include such information and plans as are deemed necessary by the ConCom to describe proposed activities and their effects on the Resource Area or Resource Area Buffer Zone. No activities shall commence without receiving and complying with a permit issued pursuant to this By-Law.

6.2 The ConCom may, in its discretion, accept as the application and plans under this By-Law, the application and plans filed under the Act or Regulations, but the Commission is not obliged to do so.

6.3 Any person desiring to know whether or not a proposed activity or an area is subject to this By-Law may request, in writing, a determination from the ConCom through a Request for Determination of Applicability (“RDA”) or Abbreviated Notice of Resource Area Delineation (“ANRAD”) as authorized under

the Regulations, and shall include information and plans as are deemed necessary by the ConCom.

6.4 At the time of a NOI, the applicant shall pay a filing fee specified in the rules and regulations of the ConCom. The fee is in addition to that required by the Act and Regulations. The Fee is not refundable.

6.5 Pursuant to M.G.L. Ch. 44 §53G, and any rules and regulations promulgated by the ConCom hereunder, the ConCom may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects (“Consultant Fee(s)”). Any consultant hired under this provision shall be selected by, and report exclusively to, the ConCom.

6.6 The Consultant Fee shall be deposited with the Town Treasurer, who shall create an account specifically for this purpose. Additional Consultant Fees may be requested where the requisite review is more expensive than originally anticipated, or where new information requires additional consultant services.

6.7 Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected shall be paid from this account, and expenditures may be made at the sole discretion of the ConCom.

6.8 The ConCom shall provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or delivered and the applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.

6.9 The entire Consultant Fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested Consultant Fee within five (5) business days of the request for payment shall be cause for the ConCom to declare the NOI administratively incomplete and deny the permit

without prejudice, except in the case of an appeal. The ConCom shall inform the applicant and Department of Environmental Protection (DEP) of such a decision in writing.

6.10 The applicant may appeal the selection of an outside consultant to the Town Board of Selectmen, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue, or a related field. The applicant shall make such an appeal in writing, and must be received within five (5) business days of the date that request for Consultant Fees was made by the ConCom. Such appeal shall extend the applicable time limits for action upon the NOI.

## **7. Notice and Hearings**

7.1 Any person filing a NOI, RDA, ANRAD or other request with the ConCom shall, at the same time, give written notice thereof, by certified mail (return receipt requested), certificate of mailing, certification of delivery, or by hand delivery to:

- 7.1.1 all abutters at their mailing addresses as shown on the most recent applicable tax list of the assessors;
- 7.1.2 owners of land directly opposite the applicant's property on any public or private street or way; and
- 7.1.3 abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water.

7.2 The notice required in Section 7.1 shall:

- 7.2.1 state a brief description of the project or other proposal;
- 7.2.2 the date of any ConCom hearing or meeting date, if known;
- 7.2.3 include a copy of the NOI or request, with plans, or shall state that a copy of the NOI or request, with plans, may be examined at the ConCom offices during regularly scheduled business hours.

7.3 An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the ConCom. When the person requesting a determination is not the owner, the request, the notice of the hearing and the determination itself shall be sent by the applicant to the owner.

7.4 The ConCom shall conduct a public hearing on any NOI, RDA, or ANRAD, with written notice given at the expense of the applicant, at least five (5) business days prior to the hearing, in a newspaper of general circulation in the Town.

7.5 The ConCom shall commence the public hearing within twenty one (21) calendar days from receipt of a completed NOI, RDA, or ANRAD, unless an extension is authorized in writing by the applicant. The ConCom shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, including, but not limited to:

7.5.1 the need for additional information from the applicant, or others, as deemed necessary by the ConCom in its discretion;

7.5.2 failure of the applicant to timely supply information deemed necessary by the ConCom;

7.5.3 based on comments and recommendations of the boards and officials listed in Section 8 hereof; or

7.5.4 at the request of the applicant.

7.6 The ConCom, in its discretion, may combine its hearing under this By-Law with the hearing conducted under the Act and Regulations.

7.7 The ConCom shall issue a permit, other order or determination in writing, within twenty one (21) calendar days of the close of the public hearing thereon, unless an extension is authorized in writing by the applicant.

## **8. Coordination with Other Boards**

8.1 Any person filing a NOI, RDA, or ANRAD with the ConCom, or any amendment thereto, shall provide a copy thereof, together with any accompanying plans, within five (5) calendar days after filing with the ConCom,

by certified mail (return receipt requested), certificate of mailing, certification of delivery, or hand delivery, to the Town Planning Board, Board of Health and Building Inspector and such other Town Boards and officials as the ConCom or its Administrator may request.

8.2 If the NOI, RDA or ANRAD pertains to property within three hundred (300) feet of an adjoining city or town, a copy shall be provided in the same manner to the Conservation Commission of the adjoining municipality or town.

8.3 An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the ConCom. The ConCom shall not take final action until the boards and officials of Section 8.1 have had fourteen (14) calendar days from receipt of notice to file written comments and recommendations with the ConCom, which the ConCom shall consider, but which shall not be binding on the ConCom. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the ConCom, prior to final action.

## **9. Permits and Conditions**

9.1 If the ConCom, after a public hearing, determines that the activities which are the subject(s) of a NOI, or the land and water uses which will result therefrom, are likely to have an adverse effect, immediate or cumulative, upon a Resource Area, the ConCom shall, within twenty one (21) calendar days of the close of the hearing, issue or deny a permit for the activities requested.

9.2 When making its decision as to the issuance or denial of a permit, the ConCom shall consider the:

9.2.1 extent to which the applicant has avoided, minimized and mitigated any such immediate or cumulative effect; and

9.2.2 cumulative adverse effects of loss, degradation, isolation, replacement or replication of Resource Areas in the Town and the watershed, resulting from past activities, permitted and exempt, the proposed activities, and foreseeable future activities.

9.3 Where the ConCom determines that the activities which are the subject of a NOI may have an adverse effect, immediate or cumulative, within fifty (50) feet of a Resource Area, the ConCom shall not permit such activity unless the applicant demonstrates, by a preponderance of credible evidence, that there is no practicable alternative to the proposed activity which would have a materially less adverse effect on the Resource Area.

9.4 If the ConCom issues a permit, it may impose conditions which it deems necessary or appropriate to protect the Resource Area(s), and all activities authorized by a permit issued by the ConCom shall be conducted in accordance with the conditions of such permit.

9.5 Where no conditions are adequate to protect said Resource Area(s), the ConCom is empowered to deny a permit for failure to meet the requirements of this By-Law. The ConCom may also deny a permit for failure to:

- 9.5.1 submit necessary information and plans requested by the ConCom;
- 9.5.2 comply with the procedures, design specifications, performance standards, and other requirements in the rules and regulations promulgated hereunder; or
- 9.5.3 avoid, minimize or mitigate unacceptable significant or cumulative effects upon the Resource Areas.

9.6 Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. The ConCom may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in this By-Law or the rules and regulations promulgated hereunder, provided that:

- 9.6.1 the ConCom finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations;
- 9.6.2 avoidance, minimization and mitigation have been employed to the maximum extent feasible; or

9.6.3 the waiver is necessary to accommodate the public interest, or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

9.7 In reviewing activities within a Resource Area Buffer Zone, the ConCom shall presume a Resource Area Buffer Zone is important to the protection of the Resource Area(s) because activities undertaken in the Resource Area Buffer Zone have a high likelihood of adverse impact upon the Resource Area(s), either immediately, as a consequence of the activities, or over time, as a consequence of daily operation or existence of the activities. Adverse impacts from such activities and use can include, without limitation, erosion, accretion, siltation, loss of groundwater recharge, degradation of water quality, excess nitrogen and phosphorous loading and loss of wildlife habitat.

9.8 In reviewing activities within the Riverfront Area, the ConCom shall presume the Riverfront Area is important to all the Resource Areas unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this By-Law, has proved by a preponderance of credible evidence that:

9.8.1 there is no practicable alternative to the proposed project with less adverse effects; and

9.8.2 such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this By-Law.

9.9 The ConCom may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication.

9.10 The ConCom may require a wildlife habitat study of a project area, to be paid for by the applicant, whenever it deems appropriate, regardless the type of Resource Area or the amount or type of alteration proposed. The decision shall

be based upon the ConCom's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife corridors in the area, or actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Regulations.

9.11 The ConCom shall presume that vernal pools, including the adjacent area, perform essential habitat functions. This presumption may be overcome by the applicant only by a demonstration to the ConCom, by a preponderance of credible evidence, that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Regulations.

9.12 A permit, Determination of Applicability ("DOA"), or Order of Resource Area Delineation ("ORAD") shall expire three (3) years from the date of issuance. The ConCom may, however, in its discretion:

9.12.1 issue a permit expiring five (5) years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the ConCom;

9.12.2 allow the renewal of a permit once, for an additional one (1) year period, provided that a request for a renewal is received in writing by the ConCom not less than thirty (30) calendar days prior to expiration;

9.12.3 identify permit 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.

9.13 The ConCom may, for good cause, revoke any permit, DOA, or ORAD or any other order, determination or other decision issued under this By-Law after

notice to the holder, the public, abutters and town boards, pursuant to Sections 7 and 8 hereof, and after a public hearing.

9.14 Amendments to permits, DOAs, or ORADs shall be handled in the manner set out in the Regulations and policies thereunder.

9.15 The ConCom in an appropriate case may combine the decision issued under this By-Law with the permit, DOA, ORAD, or COC issued under the Act and Regulations.

9.16 No work proposed in any NOI shall be undertaken until the permit, or ORAD issued by the ConCom 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 district wherein the land lies, and until the holder of the permit certifies in writing to the ConCom that the document has been recorded. If the applicant fails to perform such recording, the ConCom may record the documents and require the Applicant to pay or reimburse the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a COC.

## **10. Security**

10.1 As part of a permit issued under this By-Law, and in addition to any security required by any other municipal or state board, agency or official, the ConCom may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured in whole, or in part, by one or both of, the:

10.1.1 posting of a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the ConCom, to be released in whole or in part upon issuance of a COC for work performed pursuant to the permit; and/or

10.1.2 imposition and acceptance of a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly

recorded by the owner of record, running with the land to the benefit of the Town, whereby the permit conditions shall be performed and observed before any parcel may be conveyed, other than by mortgage deed.

10.2 The use of a conservation restriction, easement or other covenant described in Subsection 10.1.2 above shall only be used with the consent of the applicant.

## **11. Enforcement**

11.1 No person shall alter a Resource Area, 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 By-Law.

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

11.3 The ConCom shall have authority to enforce this By-Law, its rules and regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, non-criminal citations under M.G.L. Ch. 40 §21D, and civil and criminal court actions. Any person who violates provisions of this By-Law 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 Upon request of the ConCom, the Board of Selectmen and Town counsel may take legal action for enforcement under civil law. Upon request of the ConCom, the Chief of Police may take legal action for enforcement under criminal law.

11.5 Town boards and officers, including any police officer or other officer having police powers, shall have authority to assist the ConCom in enforcement.

11.6 Any person who violates any provision of this By-law or any rules and regulations promulgated hereunder, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than three hundred dollars (\$300). Each day or portion thereof during which a violation continues, or unauthorized activity or other alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

11.7 As an alternative to criminal prosecution in a specific case, the ConCom may request the issuance of citations with specific penalties pursuant to the non-criminal disposition procedure set forth in M.G.L. Ch. 40 §21D, which has been adopted by the Town in Article I, Section 4 of the General By-Laws.

## **12. Burden of Proof**

12.1 Except where a higher burden of proof is specified in this By-Law or any rules and regulations promulgated hereunder, the applicant shall have the burden of proving by a preponderance of credible evidence that the work proposed in the NOI will not have adverse effects, immediate or cumulative, upon the Resource Area.

12.2 Failure by the applicant to meet and satisfy the applicable burden of proof shall be sufficient cause for the ConCom to deny a NOI, permit or to impose conditions sufficient to prevent any adverse effects on the Resource Area.

## **13. Appeals**

A decision of the ConCom shall be reviewable in a court of competent jurisdiction in accordance with M.G.L. Ch. 249 §4.

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

This By-Law is adopted under the Home Rule Amendment of the Constitution of the Commonwealth and the Home Rule statutes, independent of the Act and Regulations. It is the intention of this By-Law that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Act and Regulations.

#### **15. Severability**

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