

The Town of Amesbury

IN THE YEAR TWO THOUSAND AND EIGHT

SPONSORED BY: Thatcher W. Kezer III, BILL 2008-050

At the meeting of the Amesbury Municipal Council held on July 8, 2008, in the Town Hall Auditorium the following action was taken:

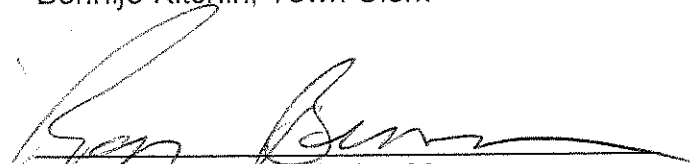
AN ORDINANCE TO ADOPT A LOCAL WETLANDS PROTECTION ORDINANCE

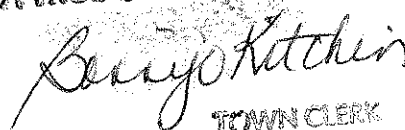
Councilor Lavoie moved that the Council vote to amend and restated in its entirety the current local Wetlands Protection Ordinance by replacing Article 34 of the current Town Bylaws also known as the "Wetlands Protection Bylaw" which was inserted by Article 15 of the November 13, 1995 Town meeting with the document entitled **Amesbury Wetlands Protection Ordinance** which is date stamped June 26, 2008 to be governed by the Amesbury Conservation Commission as amended and to dispense with any requirement, if any, that the Master Plan Implementation and Oversight Committee have spoken on this. Councilor McMilleon seconded.

Roll Call – Unanimous (9-Members present)

Witness my hand and seal for the Town of Amesbury this 14th day of July, 2008


Bonnijo Kitchin, Town Clerk


Roger S. Benson, Acting Mayor

A TRUE COPY ATTEST

TOWN CLERK

Be it ordained by the Municipal Council assembled, and by the authority of the same as follows:

AMESBURY

WETLANDS PROTECTION ORDINANCE

I. PURPOSE

The purpose of this Ordinance is to protect and preserve the wetlands, related water resources, and adjoining land areas in Amesbury by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, ground water, flood control, erosion and sedimentation control, storm damage prevention including coastal storm flowage, water quality, water pollution control, fisheries, shellfish, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, and recreational values, deemed important to the community (collectively, the "resource area values protected by this Ordinance"). This Ordinance is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act, G.L. Ch. 131, 40 and Regulations thereunder, 310 CMR 10.00.

II. JURISDICTION

Except as permitted in writing by the Conservation Commission or as provided in this Ordinance, no person shall engage in the following activities: removal, filling, dredging, discharging into, building upon, or otherwise altering or degrading the wetland resource areas described in the following sentence. Amesbury's wetland resource areas consist of:

1. any freshwater wetland bordering on any creek, river, stream, pond or lake;
2. any bank, beach, dune, flat, marsh, wet meadow, bog or swamp;
3. any isolated vegetated wetland;
4. any vernal pool;
5. any coastal wetland bordering on any ocean, estuary, creek, river, stream, pond or lake;
6. any 100-foot buffer zone on wetland areas 1–5 listed above;
7. land under any of the wetland areas 1–5 listed above;
8. any land subject to tidal action, storm flowage, flooding by groundwater or surface water;
9. and the 200-foot riverfront area.

These resource areas are, collectively, the resource areas protected by this Ordinance.

The following water bodies and contiguous 200-foot zones on either side of the water body in Amesbury have been identified by the Commission as riverfront areas: Merrimack River, Powwow River, Back River, Goodwin Creek, Presbus Creek and any unnamed perennial stream as defined under 310 CMR 10.58(2), as amended.

The wetland resource areas listed in 1-9 above are protected in addition to the wetland resource areas under the Massachusetts Wetlands Protection Act M.G.L. Chapter 131, Section 40 ("the Act") and its accompanying regulations 310 CMR 10.00. The Commission shall not grant such permission without receiving written notice of the intention to conduct such activity and without issuing written permission to do all in compliance with the provisions of this Ordinance.

III. EXEMPTIONS AND EXCEPTIONS

The application and permit required by this Ordinance shall not be required for the following activities but shall for all others:

1. Maintaining, repairing, or replacing, but not substantially changing or enlarging an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
2. The application and permit required by this Ordinance shall not be required for work performed for normal maintenance or improvement of land which is lawfully in agricultural and aquacultural use as defined by the Massachusetts Wetlands Protection Act Regulations at 310 CMR 10.04, as amended. Prior to the commencement of work, written notice shall be submitted to the Commission, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
3. Maintenance and repair of existing public ways provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
4. The application and permit required by this Ordinance shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposed necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this Ordinance. Upon failure to meet these and other requirements of the

Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures. Other than stated in this section, the exceptions provided in the Wetlands Protection Act, G.L. Ch. 131, 40, and Regulations, 310 CMR 10.00, shall not apply under this Ordinance.

5. Work within an isolated vegetated wetland resource area or its buffer zone if the isolated vegetated wetland was created by the negligent acts of Amesbury or third parties other than the owner(s) of the real property on which the isolated vegetated wetland exists.

Other than stated in this Ordinance, the exceptions provided in the Wetlands Protection Act (G.L. Chapter 131, Section 40) and Regulations (310 CMR 10.00) shall not apply under this Ordinance.

IV. APPLICATIONS TO PERFORM WORK & INFORMATION REQUIRED

All applications to perform activities in Amesbury's resource areas shall be either in the form of a Request for Determination of Applicability or a Notice of Intent, or both. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected under this Ordinance. No activities shall commence without receiving and obtaining a permit issued pursuant to this Ordinance. The Commission, in an appropriate case, may accept, as the permit application and plans under this Ordinance, the Notice of Intent and plans filed under the Wetlands Protection Act, G.L. Ch. 131, 40, and Regulations, 310 CMR 10.00. At the time of the submission of a permit application, the applicant shall pay a filing fee specified in Regulations of the Commission and in accordance with the provisions of G.L. c.40, s.22F. The fee is in addition to that required by the Wetlands Protection Act, G.L. Ch. 131, 40, and Regulations, 310 CMR 10.00. The date which serves to commence the Commission's deliberation period is the date of receipt of the application at its offices, during regular business office hours. In order to comply with the provisions of the Ordinance, each application must be complete as filed and must comply with the rules set forth herein. Amesbury's Conservation Agent shall be granted the power to make determinations of completeness for applications submitted the Commission and reject within two (2) business days, those applicants that do not meet the minimum submittal requirements of this Ordinance. In order to provide sufficient review time the Commission may continue a public hearing or public meeting if new information is submitted by the applicant, or its representative less than seven (7) business days prior to the scheduled public hearing or meeting.

No such application shall be accepted as complete before all permits, variances, and approvals required by this Ordinance or Ordinances of Amesbury with respect to the proposed activity, at the time such Notice have been applied for or obtained. Such application shall also include any information submitted in connection with such permits, variances, and approvals that is necessary to describe the effect of the proposed activity on the resource areas. Notwithstanding the foregoing, and where the Board of Appeals requires the applicant to submit a permit application to the Commission, the Commission may, in its sole and absolute discretion, accept an application for a proposed development filed with the Board of Appeals pursuant to G.L. c.40B, s.20-23.

Amesbury hereby accepts the provisions of the G.L. Ch. 44, 53E for purposes of administering jointly the filing fee and the consultant fee provisions of this Ordinance.

Pursuant to G.L. Chapter 44, Section 53G and regulations promulgated by the Conservation Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetland scientists, wildlife biologists or other experts in order to aid in the review of proposed projects, including, but not limited to resource area survey and delineation, analysis of resource area values, including wildlife habitat evaluations, on-site environmental monitoring during construction, hydro-geologic and drainage analysis, and environmental or land use law. Such funds shall be deposited with the Treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected shall be paid from this account, and expenditures may be made at the sole discretion of the Commission. Any consultant or legal counsel hired under this provision shall be selected by, and report exclusively to, the Commission. The Commission shall provide applicants with written notice of the selection of a consultant or legal counsel, identifying the consultant, the amount of the fee to be charged to the applicant, and request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or delivered. The applicant may withdraw the applications or request within five (5) business days of the date of notice given without incurring any costs or expenses. The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested consultant fee within ten (10) business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and the Massachusetts Department of Environmental Protection (MA DEP) of such a decision in writing. The Commission shall not issue a permit until all outstanding consulting fees have been paid for. The Commission shall return any unused portion or the consultant fee to the applicant unless the Commission decides at a public meeting that other action is necessary.

The applicant may appeal the selection of an outside consultant or legal counsel to the Municipal Council 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 (3) or more years of practice in the field at issue, or a related field. The applicant shall make such appeal in writing, and must be received within ten (10) business days of the date that request for consultant fees was made by the Commission. Such appeal shall extend the applicable time limits for action upon the application.

V. NOTICE AND HEARINGS

A) Combination with State Law Hearing:

The Commission, in its discretion, may hear any oral presentation under this Ordinance at the same public hearing required to be held under the provisions of G.L. Chapter 131,

Section 40. Notice of the time and place of such hearing(s) shall be given as required below.

B) Notice:

Any person filing a permit application with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred (300) feet of the property line of the applicant, including any in another municipality. The notice to abutters shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. Mailing at least seven (7) calendar days prior to the public hearing shall constitute as timely notice.

The applicant shall also post a legal advertisement in the Newburyport Daily News at least seven (7) calendar days prior to the public hearing. All publications and notices shall contain the name of the applicant, a description of the area where the activity is proposed by street address or map(s) and parcel number(s), the date, time and place of the public hearing, the subject matter of the hearing and the nature if the action or relief requested, if any.

C) Hearing:

The Commission shall commence the public hearing within twenty-one (21) days from receipt of a completed permit application or request for determination unless an extension is authorized in writing by the applicant.

D) Proof:

The applicant shall have the burden of providing by a preponderance of credible evidence that the activity proposed in the Notice of Intent or Request for Determination of Applicability will not cause adverse impacts to any of the interests and values sought to be protected by this Ordinance. Failure to provide to the Commission adequate evidence for it to determine that the proposed activity does not cause adverse impacts shall be sufficient cause for the Commission to deny permission or to grant such permission with such conditions as it deems reasonable, necessary or desirable to carry out the purpose of this Ordinance; or to postpone or continue the hearing to another date certain to enable the applicant and other to present additional evidence, upon such terms and conditions as seem to the Commission to be reasonable.

The Commission shall presume the buffer zones are important to the protection of other resource areas because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact to these resources, either immediately, as a consequence of construction, or over time, as a consequence of daily operations. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover within this area, unless the applicant demonstrates to the satisfaction of the

Commission that the area or part of it may be disturbed without harm to the values protected by the Ordinance.

The Commission shall presume the riverfront area is important to all the resources area values unless demonstrated otherwise, and no permit issued there under shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this Ordinance, has proved by a preponderance of the evidence that:

1) There is no technically demonstrated feasible alternative to the project with less adverse effects and that;

2) Such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this Ordinance. The closer an activity is proposed to a resource area, the more scrutiny will be given to the potential impacts of a proposed project.

The Commission shall regard as practicable an alternative which is reasonable available and capable of being done after taking into consideration the proposed property used, overall project purpose (e.g., residential, institutional, commercial or industrial), logistics, existing technology, costs of the alternatives and overall project costs.

To prevent resource area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and where alteration is unavoidable and has been minimized, to provide full mitigation to a 2:1 ratio. Specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success shall be required due to the high likelihood of failure of replication areas. The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless the type of resource area or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering, but not limited to, such factors as proximity to other resource areas suitable for wildlife, importance of wildlife "corridors" in the area, or actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act Regulations (310 CMR 10.60).

The Commission shall presume that all areas meeting the definition of "vernal pools" shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be the mean annual high-water line defining the depression. Except as otherwise provided in this Ordinance or in associated regulations of the Conservation Commission, the definitions of terms and the procedures in this Ordinance shall be as set forth in the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00).

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

Alteration of resource areas protected by this Ordinance shall not be permitted except that the Conservation Commission is authorized to permit, in its discretion, wetland alteration necessary for water dependent uses, public projects, or the construction and maintenance of utilities. Where such alteration is unavoidable, it shall be minimized and the Conservation Commission shall require mitigation sufficient to ensure the protection of the wetland values in this Ordinance. In order to promote the wetland values and interests of this Ordinance, no wetland alteration shall be mitigated by or compensated for in any way by the creation of a substitute or artificial freshwater wetland, coastal wetland, marsh, meadow, bog, swamp, pond or any land subject to tidal action, coastal storm flowage or flooding.

Any activity proposed or undertaken outside of the resource areas protected by this Ordinance, as specified above, shall not be subject to jurisdiction of the Conservation Commission unless in the judgment of the Conservation Commission, said activity will result or has resulted in the alteration of a resource area protected by this Ordinance.

Due consideration shall be given to possible effects of the proposal on all interests and values to be protected under this Ordinance and to any demonstrated hardship on the petitioner by reason of a denial, as brought forth at the public hearing.

E) Continuances

The Commission shall have the authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant deemed necessary by the Commission in its discretion, or comments and recommendations of other Amesbury boards and officials, as appropriate. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

F) Investigations:

The Commission and its agent(s) may enter upon privately owned land for the purposes of carrying out its duties under this Ordinance and may make or cause to be made such examination or survey as deemed necessary.

VI. ORDERS AND DECISIONS

A) All Orders and Decisions:

If the Commission determines that the proposed activity does not require imposition of

conditions to preserve and protect the interest of this Ordinance, the applicant shall be so notified in writing.

If after the close of the public hearing, the Commission determines that the activities which are subject to the permit application are likely to have a significant or cumulative effect upon the resource area values protected by this Ordinance, the Commission may vote to issue written Orders of Conditions or Determination of Applicability within 21 days of the close of the public hearing. The Commission shall impose conditions, safeguards and limitations on the time and use upon such activity, which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

The Commission is empowered to deny a permit for failure to meet the requirements of this Ordinance for failure to submit the necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this chapter; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

The Commission, in an appropriate case, may combine the permit or determination issued under this chapter with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act, G.L c. 131, § 40, and Regulations, 310 CMR 10.00.

B) Duration of Orders and Determinations

A permit shall expire three (3) years from the date of issuance. Notwithstanding the above, the Commission, in its discretion, may issue a permit expiring three (3) 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 Commission. Any permit may be renewed for an additional one-year period, provided that a request for renewal is received in writing by the Commission thirty (30) days prior to expiration. The Commission may not renew a permit unless request for it is received in writing by the Commission thirty (30) days prior to expiration. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place.

No activity governed by an Order of Conditions shall be performed unless and until all permits, approvals and variances required by the Ordinances of Amesbury have been obtained; such Order of Conditions or notification shall have been recorded or registered at the Essex South District Registry of Deeds, and all applicable appeal periods have expired.

C) Modifications, Amendments and Revocations:

For good cause, the Commission may revoke, amend or modify a permit or determination issued under this Ordinance after notice to the holder of the permit or determination, notice to the public, abutters and other boards, pursuant to this Ordinance, and a public hearing.

In revoking an Order of Conditions the Commission shall officially notify the interested parties through certified mail and hold a public hearing within 21 days of the notification date. In the case of an amendment to the Order of Conditions, the Commission shall have the discretion to decide if a public hearing is warranted. This decision shall be based on the potential impact of proposed work and its effect on the ability of the identified wetland resource areas to protect those interests as defined under the Act and Ordinance. No public hearing is required for a modification to an Order of Conditions. Written notification to the applicant by certified mail is required in all cases where the Commission initiates a modification, amendment or revocation of an Order of Conditions.

D) Certificate of Compliance

The Commission shall, upon receiving written request and weather permitting, inspect the resource area(s) and the overall completed project for compliance with the Order of Conditions (or Partial Certificate of Compliance) to the owner of the property, applicant or applicant's representative, in a form suitable for recording or registering. The Commission shall act to approve or disapprove a request for a Certificate of Compliance within sixty (60) days of receipt thereof. By written authorization from the party requesting the Certificate of Compliance, said sixty (60) day period may be extended. If the Commission fails to approve or disapprove a request for a Certificate of Compliance within said sixty (60) day period and where said period has not been extended by written agreement, the Clerk shall issue a signed certificate, suitable for recording with the Registry of Deeds, that the Commission has constructively approved the requested Certificate of Compliance by virtue of its failure to act within the required period of time.

E) Responsibility for Compliance

After recording the Order of Conditions, or issuance of a Violation Notice or Enforcement Order, any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this Ordinance or in violation of any order issued under this Ordinance shall forthwith comply with any such Order or restore such land to its pre-existing condition, provided, however, no action, civil or criminal, shall be brought against such person unless such action is commenced within three (3) years following the recording of the deed or the date of the death by which such real estate was acquired by such person.

VII. REGULATIONS

After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this Ordinance. Notice shall be given at least two (2) weeks prior to the public hearing by publication in a newspaper of general circulation in Amesbury and by posting with Amesbury's Clerk. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a Court of law shall not act to suspend or invalidate the effect of this Ordinance.

At a minimum, these regulations shall define key terms in this Ordinance, not inconsistent with the Ordinance and procedures governing the amount and filing of fees.

After due notice and public hearing, the Conservation Commission may promulgate policy guidelines in the form of additional rules, regulations and definitions consistent with the provisions and objectives of this Ordinance and designed to clarify and implement its purpose. Notice shall be given at least two (2) weeks prior to such hearing by publication in a newspaper of general circulation in Amesbury and by posting with Amesbury's Clerk. The Conservation Commission, by regulation, duly advertised and heard, may set fees for services performed, subject to the provisions of G.L. c.40, s.22F. No fees shall be in excess of demonstrated true costs to Amesbury of the services performed by the Commission.

VIII. DEFINITIONS

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

The term "AGRICULTURE" shall refer to the definition as provided by G.L. Ch. 128 §1A.

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

- A. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind,
- B. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- C. Drainage, or other disturbance of water level or water table;
- D. Dumping, discharging, or filling with any material, which may degrade water quality;
- E. Placing of fill, or removal of material, which would alter elevation;
- F. Driving of piles, erection or repair of buildings or structures of any kind;
- G. Placing of obstructions or objects in water;
- H. Destruction of plant life including cutting of trees;
- I. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
- J. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or ground water;
- K. Application of pesticides or herbicides;
- L. Incremental activities, which have, or might have, a cumulative adverse impact on the resource areas protected by this Ordinance.

The term "BANK" shall include the land area which normally abuts and confines a water

body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

The term "FRESHWATER WETLANDS" shall include all wetlands whether or not they border on a water body. For the purposes of this Ordinance, all bordering vegetated wetlands, as well as all isolated vegetated wetlands encompassing at least 500 sq. ft. in area, shall be regulated by this Ordinance.

The term "PERSON" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Amesbury Ordinances, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

The term "POND" shall follow the definition of 310 CMR 10.04 except that the size threshold of 10,000 square feet shall not apply.

The term "RARE SPECIES" shall include, without limitation, all vertebrate and invertebrate animals and plant species listed as endangered, threatened, or of special concern, by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

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

Except as otherwise provided in this Ordinance or in regulations of the Commission, the definitions of terms in this Ordinance shall be set forth in the Wetlands Protection Act, G.L. Ch. 131, 40, and Regulations, 310 CMR 10.00.

IX. SECURITY

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

A. By the deposit of money sufficient to complete the work as proposed, to secure performance of the conditions and observance of the safeguards of such Order of Conditions.

Such security, if filed or deposited, shall be approved as to form and manner of execution by Amesbury's Counsel or Amesbury's Treasurer. The performance bond shall be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit;

B. By 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 this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

X. ENFORCEMENT, INVESTIGATIONS AND VIOLATIONS

In accordance with the provisions of G.L. Chapter 40, Sections 21D and 31 as well as every other authority and power that may have been or may hereafter be conferred upon it, Amesbury may enforce the provisions of this Ordinance, restrain violations thereof and seek injunctions and judgments to secure compliance with its Order of Conditions.

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

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

The Commission shall have authority to enforce this Ordinance, its regulations, and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions. Any person who violates provisions of this Ordinance may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both. Upon request of the Commission, the mayor and city solicitor shall take legal action for enforcement under civil law.

Any person, who violates any provision of this Ordinance, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine pursuant to Massachusetts General Laws, Chapter 40, Section 21. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the Ordinance, regulations, permits, or administrative orders violated shall constitute a separate offense.

In accordance with G.L. Chapter 40, Section 21D, violators shall, at the discretion of the enforcement authorities, be charged a penalty. The penalties for violations of the Ordinance or regulations promulgated hereunder may be assessed as follows:

| <u>Violation</u> | <u>Penalty per Day for each Violation</u> |
|---|---|
| Alteration of any wetland resource area identified in this Ordinance | \$100 |
| Violation of any Order of Condition | \$100 |
| Depositing any refuse, debris, yard waste or construction material in a wetland or water body | \$100 |
| Alternation of any stream or water body | \$100 |
| Any violation of any section of this Ordinance that occurs in the Powwow River Water Resource Protection District, as defined in section XVI of the Amesbury Zoning Ordinance | \$100 |

In the event of a violation of this Ordinance or of any order issued thereunder, the Commission or its agent may issue a stop work order to the owner, the applicant or applicant's agent by certified mail, return receipt requested, or by posting the same in a conspicuous location on said site. Any person who shall violate the provisions of a stop work order shall be deemed in violation of this Ordinance, but the failure of the Commission to issue a stop work order for any reason shall not prevent Amesbury from pursuing any other legal remedy at law or in equity to restrain violations of this Ordinance or promulgated regulations and to secure compliance with its Orders.

XII. BURDEN OF PROOF

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

XIII. APPEALS

A decision of the Commission shall be reviewable by the Superior or Land Court in an action filed within sixty (60) days thereof, in accordance with G.L. c. 249, § 4.

XIV. RELATION TO THE WETLANDS PROTECTION ACT

This Ordinance is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, G.L. Ch. 131, 40, and Regulations, 310 CMR 10.00, thereunder. It is the intention of this Ordinance that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Wetlands Protection Act and Regulations.

XV. SEVERABILITY

The invalidity of any section or provision of this Ordinance by a Court or Agency of competent jurisdiction shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination, which previously has been issued.