

## Shutesbury General Wetlands Protection Bylaw

Voted by Shutesbury Conservation Commission on January 20, 1987  
Bylaw passed by Shutesbury Town Meeting on May 2, 1987, Article 14  
Amended by Shutesbury Town Meeting on May 5, 1990, Article 11  
Replaced as follows by Shutesbury Special Town Meeting on January 23, 2024

### SECTION 1: Purpose

The purpose of this Bylaw is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Shutesbury by controlling activities deemed by the Conservation Commission (hereafter, “the Commission”) likely to have a significant or cumulative effect upon Resource Area Values, including but not limited to the following (collectively, the “Resource Area Values protected by this Bylaw” or “Values”):

- A. public or private water supply and quality,
- B. groundwater supply and quality
- C. surface water supply and quality,
- D. flood control and storage,
- E. erosion and sedimentation control,
- F. storm damage prevention,
- G. prevention and control of pollution,
- H. protection of biodiversity,
- I. mitigation of adverse effects from climate change,
- J. carbon/greenhouse gas storage and sequestration (i.e. carbon/greenhouse gas mitigation),
- K. localized cooling,
- L. protection of fisheries,
- M. plant and wildlife habitat,
- N. recreation,
- O. agriculture,
- P. aquaculture, and
- Q. rare species habitat including rare plant and animal species.

All of the foregoing Values are climate adaptation and resilience interests.

This Bylaw is intended to utilize the Home Rule authority of this municipality so as to protect the Resource Areas under the Wetlands Protection Act (M.G.L. Chapter 131 §40; hereafter, the “WPA”) to a greater degree, to protect additional Resource Areas beyond the WPA recognized by the Town as significant, to protect all Resource Areas for their additional Values beyond those recognized in the WPA, and to impose in local Regulations and permits additional standards and procedures stricter than those of the WPA and Regulations thereunder (310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth and other relevant Bylaws of the Town of Shutesbury. Activities that may not require review or permitting under the WPA, the Rivers Protection Act (Chapter 258 of the Acts of 1996) , or other federal, state, or local statutes are not automatically exempt from this Bylaw.

### SECTION 2: Jurisdiction

Except as permitted by the Commission or as otherwise provided in this Bylaw or its Regulations, no person shall remove, fill, dredge, discharge into, build upon, degrade, or otherwise alter the following areas protected by this Bylaw, hereafter referred to as the "Resource Areas":

- A. any freshwater wetland, marsh, wet meadow, vernal pool, spring, bog, swamp, brook, creek, river, stream (including intermittent and perennial), pond, lake, or reservoir;
- B. any bank to the aforementioned waterways and water bodies;
- C. any land under the aforementioned waterways and water bodies;
- D. any adjoining land extending out one hundred (100) feet of any Resource Area listed in 2a through 2c above, hereafter referred to as the Adjacent Upland Resource Area (AURA);
- E. any adjoining land extending out two hundred (200) feet of any perennial stream, creek, brook, or river, hereafter referred to as Riverfront Area;
- F. any land subject to inundation, storm flowage, or flooding by groundwater, surface water, whether bordering or isolated.

The aforementioned Resource Areas shall be protected under this Bylaw, whether or not they border surface waters.

### **SECTION 3: Exemptions and Exceptions**

The jurisdiction of this Bylaw shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture, including work performed for normal maintenance or improvement of land in agricultural or aquacultural uses as defined by the WPA Regulations, found at 310 CMR 10.04.

The provisions of this Bylaw shall not apply to any mosquito control work done under the provisions of M.G.L. Chapter 40 §5 or M.G.L. Chapter 252.

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

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

Other than stated in this section promulgated under this Bylaw, the exceptions provided in the WPA and its Regulations at 310 CMR 10.00 shall not apply. This Bylaw does not exempt those activities cited in 310 CMR 10.02(2)(b), as may be amended, unless specifically cited in the Bylaw's Regulations as adopted by the Commission.

### **SECTION 4: Small Projects**

Certain projects may be permitted under the Bylaw as a Small Project where proposed work involves minimal activity and/or alteration and are located within the outer fifty (50) feet of the Adjacent Upland Resource Area or at least fifty (50) feet from the identified Mean Annual High Water Line (MAHWL) in Riverfront Area. The Commission may consider and permit such projects as they may be defined in the Bylaw Regulations and any Small Permit Application, where in the opinion of the Commission review under a Request for Determination of Applicability (RDA) or Notice

of Intent (NOI) would be unnecessary to protect the Values of the Bylaw.

All Small Projects must be designed and executed in a manner so as to reduce the potential for any adverse effects on the Resource Area during construction. Factors to consider when measuring the potential for adverse effects on Resource Areas include the extent of the work, the proximity to the Resource Area, the need for erosion controls, and the measures employed to prevent adverse effects to Resource Areas during and following the work.

The following performance standards shall apply to all Small Projects: erosion and sediment controls must be installed and inspected prior to construction; all exposed soils and work areas must be stabilized following construction; and there shall be no stockpiling of materials within the inner fifty (50) feet of the AURA or Riverfront Area.

Applicants seeking a Small Project Permit shall submit a written application to the Commission at least twenty-one (21) days prior to the commencement of any planned construction, with a description of the project and all information required by the Small Project Permit application, as it may be amended.

In its review of the activity, the Commission may require a site inspection and that the applicant provide additional detailed information to further determine the extent of any Resource Areas that may be impacted by the activity. Projects that meet the requirements listed in this Section and in the Regulations of the Commission, and that comply with the requirements found in the Small Project Permit application, shall be issued an approval by the Commission after review at a public meeting.

Regardless of the foregoing, the Commission in an appropriate case may deny a Small Project Permit application if it determines that the proposed activity is significant enough to require review under an RDA or NOI.

Small Project Permits shall lapse one year from the date of issuance and may not be extended.

Small Project Permits may include conditions or safeguards as seen appropriate by the Commission or its designee in order to protect the Values of the Bylaw.

The fee for a Small Project Permit shall be defined in the Commission's Bylaw Regulations.

### **SECTION 5: Applications and Fees**

Written application shall be filed with the Commission to perform activities affecting Resource Areas protected by this Bylaw. 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, including the potential impacts upon the ability of the Resource Areas to protect the Values identified in this Bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this Bylaw.

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

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

At the time of an application or request, the applicant shall pay a filing fee specified in the Regulations of the Commission. This fee is in addition to that required by the WPA (M.G.L. Chapter 131 §40) and its Regulations (310 CMR 10.00).

Pursuant to M.G.L. Chapter 44 §53G and Regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

### **SECTION 6: Notice and Hearings**

Any person filing a permit or other application for RDA or ANRAD with the Conservation Commission under this Bylaw at the same time shall give written notice thereof, by USPS Certified Mail Return Receipt, USPS Certificates of Mailing or hand delivery, 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 one hundred (100) feet of the property line of the applicant, including any in another municipality or across a body of water. The notice shall state a brief description of the project or other proposal, and the date and location of the Commission public hearing date if known. The notice to abutters also shall include a brief description of the project or other proposal and shall state where copies of the application and plans may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person requesting a Determination of Applicability (DOA) is other than the owner, the RDA, the notice of the hearing, and the DOA itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any permit application, 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 municipality. No public hearing or notice shall be required for a Small Project Permit, but such application shall be reviewed at a public meeting.

Under this Bylaw, the Commission shall commence the public hearing within twenty-one (21) days from receipt of a completed permit application, RDA, or ANRAD unless an extension is authorized in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials listed in §7.

Under this Bylaw, the Commission shall issue its permit approval or denial, other order, or Determination of Applicability (DOA) in writing within twenty-one (21) days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant. 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. The Commission in an appropriate case may combine its hearing under this Bylaw with the hearing conducted under the WPA (M.G.L. Chapter 131 §40) and Regulations (310 CMR 10.00).

#### **SECTION 7: Coordination with Other Boards**

Any person filing a permit application, RDA, or ANRAD with the Commission shall provide a copy thereof at the same time (by USPS Certified Mail with Return Receipt requested, by personal delivery in hand, or by other means deemed acceptable to the Commission in its Regulations) to the Shutesbury Select Board, Planning Board, Zoning Board of Appeals, Board of Health, and Franklin County Building Inspector. A copy shall be provided in the same manner to the Commission of the adjoining municipality if the application or RDA pertains to property within one hundred (100) feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission.

The Commission shall not take final action until the above boards and officials have had fourteen (14) days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account, but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

#### **SECTION 8: Permits, Determinations, and Conditions**

##### **A. Approvals and Denials**

The Commission in an appropriate case, may combine the decision issued under this Bylaw with the Order of Conditions, Determination of Applicability (DOA), Order of Resource Area Delineation (ORAD), or Certificate of Compliance (COC) issued or other action on an application issued under the WPA and its Regulations (310 CMR 10.00).

If the Commission, after a public hearing, determines that the activities which are the subject of the application, or the land and water uses which will result therefrom, are likely to have a significant individual or cumulative effect upon the Resource Area Values protected by this Bylaw, the Commission, within twenty-one (21) days of the close of the hearing, shall issue or deny a permit for the activities requested. The Commission shall take into account the extent to which the applicant has avoided, minimized, and mitigated any such effect. The Commission also shall take into account any loss, degradation, isolation, and replacement or replication of such protected Resource Areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities.

If it issues a permit approving a project, the Commission shall impose conditions which the Commission deems necessary or desirable to protect said Resource Area Values, and all activities shall be done in accordance with those conditions.

Where no conditions are adequate to protect Resource Area Values, the Commission is empowered to deny a permit for failure to meet the requirements of this Bylaw. It may also deny a permit:

1. for failure to pay the filing fee, or failure to provide fees for peer-review consulting services;
2. for failure to meet the requirements of the Bylaw;
3. for failure to submit necessary information and plans requested by the Commission;
4. for failure to comply with the procedures, design specifications, performance standards, and other requirements in Regulations of the Commission; or
5. for failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the Resource Area Values protected by this Bylaw.

In the event of a denial of an application, the Commission shall set forth the reasons for the denial and shall send notice of such action to the Applicant by USPS Certified Mail (Return Receipt Requested), to the address stated on the application.

No work proposed in any application shall be undertaken until the OOC or ORAD, issued by the Commission with respect to such work or application, has been recorded in the Franklin County Registry of Deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the document has been recorded. Amended OOCs and ORADs shall also be duly recorded at the Franklin County Registry of Deeds within thirty days of issuance.

#### B. Waivers

Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its Regulations, provided that: the Commission finds in writing after said public hearing that the hardship is not self-imposed and that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said Regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

#### C. Presumptions and Performance Standards

When making a decision to approve or deny a permit, the Commission shall consider whether proposed activities are likely to have a significant individual or cumulative adverse effect on the Values of the Bylaw, including the Values pertaining to climate resilience and greenhouse gas mitigation (such as local temperature regulation, biodiversity, and carbon sequestration and storage), under climate conditions predicted for the lifespan of the project. The Commission's decision to approve or deny a permit shall consider the Applicant's avoidance, minimization and/or mitigation measures to address climate change resilience and adaptation. In reviewing

AURA and other Resource Area impacts, the Commission shall consider loss of biodiversity, loss of climate change resilience and climate change adaptation in evaluation of adverse effects from development.

To prevent Resource Area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may 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.

In reviewing activities within the AURA, the Commission shall presume the AURA is important to the protection of other Resource Areas because activities undertaken in close proximity have a high likelihood of adverse effects, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse effects from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission may establish, in its Regulations, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of such lands, including without limitation strips of continuous, undisturbed vegetative cover, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the Values protected by the Bylaw.

In reviewing activities within the Riverfront Area, the Commission shall presume the Riverfront Area is important to all the Resource Area Values unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless: (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant or cumulative adverse effect on the Resource Areas or Values protected by this Bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs. Adverse effects 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 the 200-foot Riverfront Area.

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 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 WPA Regulations (310 CMR 10.60).

The Commission shall presume that all areas meeting the definition of "Vernal Pools" under §10 of this Bylaw, 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 WPA Regulations.

The Commission may impose additional or more stringent conditions as a result of a public hearing conducted by it pursuant to the provisions of this Bylaw than it may impose pursuant to the WPA (M.G.L. Chapter 131 §40) and its Regulations (310 CMR 10.00).

#### D. Amendments

Amendments to permits, DOAs, or ORADs shall be handled in the manner set out in the WPA Regulations and policies thereunder unless otherwise specified in the Commission's Regulations.

#### E. Permit Time Limits and Extensions

A permit, DOA, or ORAD shall expire after no more than three years (3) from the date of original issuance. The Commission in its sole discretion may issue a permit for less than three (3) years.

Notwithstanding the above, the Commission in its sole discretion may issue a permit expiring five (5) years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of the time and location of work is given to the Commission.

A permit may be extended for an additional one-year period, provided that the request to extend a permit is received in writing by the Commission not less than 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, and shall apply to all present and future owners of the land.

For good cause the Commission may revoke or modify an OOC, DOA, or other permit issued under this Bylaw after notice to the holder, the public, abutters, and a public hearing. Good cause shall include, but is not limited to, failure of the applicant to comply with the conditions of the permit or order.

The Commission may deny a request to extend a permit and require a new NOI be filed if the applicant wishes to conduct the work when:

1. no work has begun on the project;
2. new information, not available at the time the permit was issued, has become available and indicates that the permit is not adequate to protect the Resource Area Values protected by this Bylaw;
3. substantive changes to the proposed work are proposed;
4. incomplete work is causing damage to the Resource Area Values protected by the Bylaw; or
5. work has been done in violation of the permit.

F. Certificates of Compliance (COC)

Upon completion of the work described in a permit or amended permit, the applicant shall file with the Commission a written request for a Certificate of Compliance (COC). The COC shall be issued or denied within twenty-one (21) days of receipt thereof, and shall certify, if it so determines, that the activity, or portions thereof, described in the application and permit have been completed in compliance with the Order. If the Commission determines, after review and inspection, that the work has not been done in compliance with the permit, it may refuse to issue a COC or issue a partial certification. If approved by the Commission, the COC shall be signed by a majority of the Commission. In an appropriate case, the Commission may issue a COC with ongoing conditions as provided in the original permit or Order.

## **SECTION 9: Regulations**

After public notice and public hearing and as may be amended from time to time, the Commission shall promulgate rules and Regulations to effectuate the purposes of this Bylaw, effective when approved by the Commission and filed with the Town Clerk. At a minimum these Regulations shall define key terms in this Bylaw not inconsistent with this Bylaw, impose filing and consultant fees, and include performance standards, design specifications, setbacks (including no-disturb and no-build areas), maintenance of strips of continuous undisturbed vegetative cover, landscaping requirements, and other rules to accomplish the purposes of this Bylaw. Failure by the Commission to promulgate such Regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.

## **SECTION 10: Definitions**

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

The term “abutter” shall mean the owner of any lot that is adjacent to (sharing property lines with) the project locus; the owner of any lot directly opposite on any public or private street or way; the owner of any lot within one hundred (100) feet of the property line where the activity is proposed; the owner of any of the above who may be in another

municipality or across a body of water; the owner of any of the above whose mailing addresses are shown on the most recent tax assessors' records. When work is in land under water bodies and waterways or on a tract of land greater than 50 acres, then written notification must be given only to abutters within one hundred (100) feet of the project site.

The term "activity" shall mean any activities on or in any area subject to protection by this Bylaw and its Regulations, including any form of draining, dumping, dredging, damming, discharging, excavating, filling, or grading; the erection, reconstruction, or expansion of any building or structure; the driving of pilings or erection of walls; the construction or improvement of roads and other ways; the changing of site hydrology or runoff characteristics; the intercepting, withdrawing, or diverting of groundwater or surface water; the installation of drainage, sewage, and water systems; the discharging of pollutants; the destruction or significant alteration of plant life; the cutting of 20% or more of the growth or limbs of trees or vegetation, or any other alteration of the physical characteristics of land, or of the physical, biological, or chemical characteristics of water.

The term "adaptation" shall mean measures designed or intended to protect Resource Areas from the adverse effects of climate change and to protect the ability of Resource Areas to mitigate the adverse effects of climate change through providing the Resource Area Values protected by this Bylaw.

The term "Adjacent Upland Resource Area" or AURA shall mean the land one hundred (100) feet horizontally laterally from the boundary of any freshwater wetland, isolated wetland, marsh, wet meadow, vernal pool, spring, bank, bog, swamp, stream (intermittent or perennial), brook, creek, river, lake, pond, or reservoir protected under this Bylaw in §2.

The term "adverse effect" shall mean a greater-than-negligible, unacceptable effect on the Resource Area, one of its characteristics, or on factors that diminish the Resource Area's ability to protect to the Values. "Negligible effect" shall mean an effect small enough to be disregarded.

The term "agent" shall mean any Conservation Commissioner or municipal staff who is appointed agent by a majority vote of the Conservation Commission at a regularly scheduled meeting of the Conservation Commission, and if applicable, upon written approval of the Shutesbury Select Board. (M.G.L. Chapter 40 § 8C).

The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within or affecting Resource Areas protected by this Bylaw:

1. Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
2. Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
3. Drainage or other disturbance of water level or water table;
4. Dumping, discharging, or filling with any material which may degrade water quality;
5. Placing of fill, or removal of material, which would alter elevation;
6. Driving of piles, erection or repair of buildings, or structures of any kind;
7. Placing of obstructions or objects in water;
8. Destruction of plant life, including but not limited to cutting of trees;
9. Placing of leaves, grass clippings, or brush within a Resource Area protected by the Bylaw;
10. Application of pesticides and herbicides;
11. Changing temperature, biochemical oxygen demand, or other physical or chemical characteristics of surface water or groundwater;
12. Any activities, changes, or work, which may cause or tend to contribute to pollution of any body of water or groundwater;



13. Any activity, change, or work that adversely affects groundwater and drinking water supply and quality;
14. Decreasing the capacity of Resource Areas to respond to the adverse effects of climate change, including but not limited to, changes in: the timing, intensity and amount of precipitation; temperatures; and intensity and/or frequency of storms, extreme weather events, or droughts;
15. Incremental activities which have, or may have, a cumulative adverse effect on the Resource Areas protected by this Bylaw.

The term “applicant” shall mean the person filing a Request for Determination of Applicability (RDA), Abbreviated Notice of Resource Area Delineation (ANRAD), Notice of Intent, Emergency Certification, Small Project Permit (SPP) Application, or other request for permit.

The term “area subject to the protection under the Bylaw” shall mean the Resource Areas as defined in §2 above.

The term “bank” shall mean any land area that 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 “bordering” shall mean touching. A Resource Area is bordering on a water body protected this Bylaw and its Regulations if some portion of the Resource Area is touching another Resource Area, some portion of which is, in turn, touching the water body.

The term “Commission” shall mean the Town of Shutesbury Conservation Commission as lawfully appointed pursuant to M.G.L. Ch. 40, § 8C.

The term “conditions” shall mean those requirements set forth in a written permit, determination, or administrative order, Certificate of Compliance, or other order issued by the Conservation Commission for the purpose of permitting, regulating, or prohibiting any activity that removes, fills, dredges, discharges into, builds upon, degrades, or otherwise alters an area subject to protection under this Bylaw.

The terms "consultant(s)" or "consulting services" include, but are not limited to, architects, biologists and other environmental experts, chemists, engineers, geologists, landscape architects, lawyers, sanitarians, and surveyors.

The term “cumulative effect” shall mean an effect that is significant when considered in combination with other activities that have occurred, that are occurring simultaneously, or that are reasonably foreseeable, whether such other activities are contemplated as a separate phase of the same project or arise from unrelated but reasonably foreseeable future projects. Future activities within a site, district or institutional area identified within an annual budget, capital spending plan, Master Plan, Planned Development Agreement or equivalent document approved by the Town of Shutesbury, or any other government agency are specifically considered to be reasonably foreseeable future projects for the purposes of this Bylaw. Future effects of inland flooding or other future climate change effects are included among cumulative effects.

The term “determination” shall mean:

1. Determination of Applicability. A written finding by the Commission as to whether a site or the work proposed thereon is subject to the jurisdiction of the Bylaw.
2. Determination of Significance. A written finding by the Commission that the area on which the proposed work is to be done or which the proposed work will alter is significant to one or more of the Resource Area Values identified in and protected by the Bylaw and its Regulations.
3. Notification of Nonsignificance. A written finding by the Commission that the area on which proposed work is to be done, or which the proposed work will alter, is not significant to any of the Resource Area Values of the Bylaw.

The term “flood control” shall mean the prevention or reduction of flooding and flood damage, both as currently expected to occur and as projected based on the best available data regarding the impacts of climate change.

The term “freshwater wetlands” shall mean wet meadows, marshes, swamps, bogs, hillside seeps, springs, and vernal pools. These include bordering vegetated wetlands (i.e., bordering on freshwater bodies such as on creeks, rivers, streams, ponds, reservoirs, and lakes), and isolated vegetated wetlands which do not border on any permanent water body. Freshwater vegetated wetlands are areas where soils are saturated and/or inundated such that they support wetland indicator plants. The groundwater and surface water hydrological regime, soils, and the vegetational community which occur in each type of freshwater wetlands, including both bordering and isolated vegetated wetlands, are defined under this Bylaw based on the WPA (M.G.L. Chapter 131 §40) and its Regulations (310 CMR 10.00.)

The term “isolated vegetated wetland” shall mean a freshwater wetland, of at least five hundred (500) square feet in area that does not border on creeks, rivers, streams, ponds or lakes.

The term “permit” shall mean the document or Order issued by the Commission pursuant to this Bylaw which allows work in accordance with conditions set by the Commission necessary to protect the Values and Resource Areas under the Bylaw. Permits may include but are not limited to Orders of Conditions, Small Project Permits, or other Orders.

The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business, organization, trust, estate, the Commonwealth or political subdivisions thereof to the extent subject to Town Bylaws, administrative agency, public or quasi-public corporation or body, the Town of Shutesbury, and any other legal entity, its legal representatives, attorneys, agents, heirs, successors 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 “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.

The term "prevention of pollution" shall mean the prevention or reduction of chemicals (e.g., nutrients, hydrocarbons, solvents, metals, vapors) known or suspected of causing harm to humans, plants, or animals via exposure to any media (air, water, soil, sediment).

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

The term “recreation” shall mean any leisure activity or sport taking place in, on, or within a Resource Area, AURA or Riverfront Area, which is dependent on the Resource Area and its Values directly or indirectly for its conduct and enjoyment. Recreational activities include, but are not limited to, the following: noncommercial fishing, hunting, boating, swimming, walking, painting, birdwatching, and aesthetic enjoyment. Structures and activities in the AURA of a Resource Area or Riverfront Area shall not have a significant or cumulative effect on public recreational Values. Notwithstanding this definition, new or expanded recreational activities shall not have a significant or cumulative effect on the other Values protected by this Bylaw.

The term “resilience” shall mean the ability to minimize the negative or adverse effects of climate change and other natural hazards; to build capacity of a Resource Area to minimize negative or adverse effects of climate change.

The term “river” shall mean any natural flowing body of water that empties to any ocean, lake, pond, or other river and which flows throughout the year. Rivers include perennial streams (see 310 CMR 10.04: Stream) that are perennial because surface water flows within them throughout the year. Occasionally, a body of running water which does not flow throughout the year may be perennial because the dryness is due to drought, impoundment, or other unusual or unnatural circumstances.

The term “storm damage prevention” shall mean the prevention of damage caused by water from storms, as currently occurs and is predicted by best available data to occur from the impacts of climate change, including but not limited to erosion and sedimentation, damage to vegetation, property or buildings or damage caused by flooding, waterborne debris or waterborne ice.

The term “vernal pool” shall include, in addition to that already defined under the WPA (M.G.L. Ch. 131 §40) and Regulations thereunder (310 CMR 10.00), any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years with normal or above normal spring season water tables, 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 Wildlife and Fisheries. The presumption of vernal pool habitat may be overcome, however, with the presentation of credible evidence which in the judgment of the Commission demonstrates that the wetland does not provide, or cannot provide, vernal pool habitat features. The AURA for vernal pools shall extend one hundred (100) feet from the maximum observed or recorded water line defining the depression, or one half of the distance between the Vernal Pool and any existing house or commercial foundation, whichever is smaller. Climate changes, such as increased drought, may impact whether or not an area appears to meet the vernal pool presumption in any given year. The Commission shall take into consideration whether the spring vernal pool season is one with normal or above normal water tables and/or precipitation, or whether the spring vernal pool season has lower than normal water tables and/or precipitation, when determining the validity of any given season's Vernal Pool documentation. If the spring vernal pool season has had lower than normal water tables and/or precipitation, the Commission may require provision of scientifically valid data/information, from a time period when normal or above normal hydrologic conditions are present, before an area presumed to be a Vernal Pool is disqualified as such.

The Commission may adopt additional definitions not inconsistent with this Bylaw in its Regulations promulgated pursuant to §9 of this Bylaw.

Except as otherwise provided in this Bylaw or in associated Regulations of the Commission, the definitions of terms and the procedures in this Bylaw shall be as set forth in the WPA (M.G.L. Ch. 131 §40) and its Regulations (310 CMR 10.00).

#### **SECTION 11: Security**

As part of a permit issued under this Bylaw, in addition to any security required by any other municipal or state board, agency or official, the 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 of the methods described below:

- A. By a proper bond, deposit of money, or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the Commission to be released in whole or in part upon issuance of a COC for work performed pursuant to the permit.
- B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record in the Franklin County Registry of Deeds, 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.

#### **SECTION 12: Enforcement**

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

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

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this Bylaw or in violation of any permit issued pursuant to this Bylaw shall forthwith comply with any such order or restore such land to its condition prior to any such violation; provided, however, that

no action, civil or criminal, shall be brought against such person unless commenced within three (3) years following date of acquisition of the real estate by such person.

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

Upon request of the Commission, the Shutesbury Select Board and Town Counsel, or Commission's Counsel, may take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement. The Conservation Commission shall inform the Chief of Police prior to any involvement with outside law enforcement.

Any person who violates any provision of this Bylaw, Regulations thereunder, permits, or administrative orders issued thereunder, shall be punished by a fine of one hundred dollars (\$100.00) for the first offense and three hundred dollars (\$300.00) every offense thereafter. Each day or portion thereof, during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the Bylaw, its Regulations, permits, or administrative orders violated shall constitute a separate offense.

As an alternative to criminal prosecution in a specific case, the Commission may issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in M.G.L. Chapter 40 §21D, which has been adopted by the Town of Shutesbury in its General Bylaws. For purposes of non-criminal enforcement procedures pursuant to M.G.L. Chapter 40 §21D, each of the following actions, omissions or occurrences shall be considered a separate offense. Each day or portion thereof during which a violation continues may constitute a separate offense. Each such offense shall be punished by a fine of \$50.00:

- A. activities that alter, as defined in §10 of this Bylaw, any Resource Area protected by this Bylaw;
- B. failure to file a written application with the Commission for permission to perform activities regulated by this Bylaw affecting Resource Areas described in §2 above; or
- C. failure to follow any or all conditions of a permit issued by the Commission for activities within a Resource Area as described above.

### **SECTION 13: 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 application, will not have unacceptable significant or cumulative effect upon the Resource Area Values protected by this Bylaw. Failure to provide adequate evidence which is, in the opinion of the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

### **SECTION 14: Appeals**

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

Any appeal of the Commission's decision pursuant to this Bylaw must be filed within sixty (60) days from the issuance of a permit or decision. Failure to do so shall constitute a waiver of such judicial review.

### **SECTION 15: Relation to the WPA**

This Bylaw is adopted Under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the WPA (M.G.L. Chapter 131 §40) and its Regulations at 310 CMR 10.00.

It is the intention of this Bylaw that the purposes, jurisdiction, authority, exemptions, Regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the WPA and Regulations thereunder.

**SECTION 16: 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.

**SECTION 17: Effective Date**

This Bylaw shall not apply to those projects and activities for which a Notice of Intent has been filed on or before January 16, 2024, for which a Final Order of Conditions is ultimately issued by the Commission or the Massachusetts Department of Environmental Protection (MassDEP), and to those projects for which an Order of Conditions is issued approving the project on or before January 16, 2024. The Bylaw shall apply to all other projects and activities.