

October 2, 2020

TOWN OF SOUTHAMPTON

SPECIAL TOWN MEETING WARRANT

with SUMMARIES & MOTIONS

**Saturday, October 17, 2020
10:00 A.M.**



**LABRIE FIELD
STRONG ROAD
SOUTHAMPTON, MASSACHUSETTS**

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WARRANT FOR THE SPECIAL TOWN MEETING

October 17, 2020

HAMPSHIRE, ss.

To either of the Constables of the Town of Southampton in said County:

GREETINGS:

In the name of the Commonwealth of Massachusetts, you are hereby directed to notify and warn the inhabitants of the precincts of the Town of Southampton, County of Hampshire, qualified to vote in elections and Town affairs to meet in the **Labrie Field, Strong Road, Southampton, Massachusetts**, on

Saturday, October 17, 2020 at 10:00 a.m.,

then and there to act on the following articles:

FINANCIAL ITEMS

ARTICLE 1 PEG ACCESS BROADCAST EQUIPMENT FOR THE TOWN

To see if the Town will vote to transfer/appropriate \$50,000.00 from Public, Educational, and Government (PEG) Access Capital Fund to the Town's PEG Access Designee, Easthampton Media, to fund the replacement, upgrade and installation of the PEG TV broadcasting, streaming, and recording equipment at the Town Hall First Floor Meeting Room and Norris Elementary School Library, or take any other action relative thereto. (Speaker: Town Administrator/Select Board)

SUMMARY: *This article will provide funding to upgrade the cameras, microphones, production switcher, workstation, recording and streaming devices to broadcast meetings from the Town Hall First Floor meeting room live on Public Access TV channel 191. Additionally, the funds will be used to purchase and install a committee camera in the Norris School Library to be used by the School Committee. The money comes from a capital grant from Charter Communications paid to the Town, to be used for PEG Access equipment and facilities and not for the general fund.*

MOTION: Move that the Town vote to transfer/appropriate \$50,000.00 from Public, Educational, and Government (PEG) Access Capital Fund to the Town's PEG Access Designee, Easthampton Media, to fund the replacement, upgrade and installation of the PEG TV broadcasting, streaming, and recording equipment at the Town Hall First Floor Meeting Room and Norris Elementary School Library. ***Simple Majority***

Finance Committee: Recommends

ARTICLE 2 FUNDING FOR FORD F550 (OR EQUIVALENT) HIGHWAY PLOW/DUMP TRUCK

To see if the Town will vote to appropriate the sum of \$140,000.00 to purchase a new Ford F550 (or equivalent) Dump Truck with plow and sander body for the Highway Department, and to authorize the Treasurer, with the approval of the Select Board, to borrow the sum of \$140,000.00 for said appropriation under applicable sections of Chapter 44 Sections 7 and 8 of the General Laws or any other enabling authority and to issue bonds and notes therefor, provided, however, that the appropriation authorized hereunder shall be contingent on the approval by the voters of the town of a so-called Proposition 2-1/2 debt exclusion under General Laws c. 59, section 21C, and authorize the Treasurer with the approval of the Select Board, to issue any bonds or notes that may be necessary for that purpose, as authorized by General Laws Chapter 44, Section 7 (9), or any other general or special law; and, in accordance with Chapter 44, Section 20, any premium received by the Town upon the sale of any bonds or notes thereunder, less any premium applied to the payment of the costs of issuance of such bond or notes, may be applied to pay project costs and the amount authorized to be borrowed for such project shall be reduced by the amount of any such premium so applied that may be necessary for that purpose, as authorized by General Laws Chapter 44, Section 7 (9), or any other general or special law, or take any other action relative thereto.

(Speaker: Highway Superintendent)

SUMMARY: *This article will provide funding and authorize the Treasurer, with the approval of the Select Board, to borrow the sum of \$140,000.00 for said appropriation to purchase a replacement Highway Department Dump Truck equipped with plow and sander. The vehicle it would replace is a 1995 Ford L9000 Dump Truck which has a heavily rusted body and frame. The usual useful life of this type of truck is ten to fifteen years. The portion of the requirement for the Debt Exclusion part of this funding approval has already been on the September 1, 2020 Annual Town Election Ballot as a Question and was passed.*

MOTION: Move that the Town vote to appropriate the sum of \$140,000.00 to purchase a new Ford F550 (or equivalent) Dump Truck with plow and sander body for the Highway Department, and to authorize the Treasurer, with the approval of the Select Board, to borrow the sum of \$140,000.00 for said appropriation under applicable sections of Chapter 44 Sections 7 and 8 of the General Laws or any other enabling authority and to issue bonds and notes therefor, and, in accordance with Chapter 44, Section 20, any premium received by the Town upon the sale of any bonds or notes thereunder, less any premium applied to the payment of the costs of issuance of such bond or notes, may be applied to pay project costs and the amount authorized to be borrowed for such project shall be reduced by the amount of any such premium so applied that may be necessary for that purpose, provided, however, that the appropriation authorized hereunder shall be contingent on the approval by the voters of the town of a so-called Proposition 2-1/2 debt exclusion under General Laws c. 59, section 21C, and authorize the Treasurer with the approval of the Select Board, to issue any bonds or notes therefor, and, in accordance with Chapter 44, Section 20, any premium received by the Town upon the sale of any bonds or notes thereunder, less any premium applied to the payment of the costs of issuance of such bond or notes, may be applied to pay project costs and the amount authorized to be borrowed for such project shall be

reduced by the amount of any such premium so applied that may be necessary for that purpose, as authorized by General Laws Chapter 44, Section 7 (9), or any other general or special law.

2/3rds Majority

Finance Committee: Recommends

ARTICLE 3 FUNDING FOR REPLACEMENT SECURITY SYSTEM AT EDWARDS LIBRARY

To see if the Town will vote to transfer \$5,800.00 from the Capital Stabilization Fund to the Edwards Library Capital Budget to fund the replacement and expansion of the security system at the Library; or take any other action relative thereto.

(Speaker: Library Director)

SUMMARY: *This article will provide funding to replace the security system at the Southampton Edwards Library. The new system would also provide upgrades over the current system in that it would provide two internal security zones so that one zone in the main part of the Library may be utilized and turned on and a separate second zone in the outer area of the Library where the Conference Room is would be able to be on its own Zone and could be left turned off to accommodate meetings in that Conference Room when the Library is closed. Currently the whole Library security system must remain off in order to accommodate after hour meetings in the Conference Room. The new system would also add and incorporate exterior cameras to view the parking lot and driveway that leads to the Library and into Conant Park.*

MOTION: Move that the Town vote to transfer \$5,800.00 from the Capital Stabilization Fund to the Edwards Library Capital Budget to fund the replacement and expansion of the security system at the Library.

2/3rds Majority

Finance Committee: Recommends

ARTICLE 4 FUNDING FOR A WIDE FORMAT SCANNER FOR THE BUILDING DEPARTMENT

To see if the Town will vote to transfer \$7,000.00 from the Capital Stabilization Fund to the Building Department Capital Budget to fund the purchase and installation of a Wide Format Scanner; or take any other action relative thereto.

(Speaker: Building Commissioner)

SUMMARY: *This article will provide funding for a wide format scanner for the Building Department to utilize to scan and electronically record the large building plans that are submitted to them. This scanner would also be able to be utilized by the Highway Department to scan and electronically record street and road plans as well as be utilized by the Planning Board and Conservation*

Commission or any other department to scan the large plans and documents which are submitted to them.

MOTION: Move that the Town vote to transfer \$7,000.00 from the Capital Stabilization Fund to the Building Department Capital Budget to fund the purchase and installation of a Wide Format Scanner.

2/3rds Majority

Finance Committee: Recommends

ARTICLE 5 FUNDING FOR REPLACEMENT OF 6 DESKTOP PCs

To see if the Town will vote to transfer \$7,600.00 from the Capital Stabilization Fund to the Town Hall IT Capital Budget to fund the purchase and installation of 6 Desktop PCs and software and operating systems; or take any other action relative thereto. **(Speaker: Town Administrator)**

SUMMARY: *This article will provide funding to replace six desktop PCs for town departments in various town offices. This will also cover new operating system software and new Microsoft Office software for the PCs as well as their installation. The current PCs and their software are from five to seven years old.*

MOTION: Move that the Town vote to transfer \$7,600.00 from the Capital Stabilization Fund to the Town Hall IT Capital Budget to fund the purchase and installation of 6 Desktop PCs and software and operating systems.

2/3rds Majority

Finance Committee: Recommends

ARTICLE 6 TRANSFER FUNDING FOR ELECTION/REGISTRATION WAGES

To see if the Town will vote to transfer the sum of \$3,500.00 to the Election/Registration Wage account, said sums shall be taken from these accounts; \$2,000.00 from Peg Programming account line, \$500.00 from Certification Stipend account line, \$500.00 from BOS Minutes account line and \$500.00 from the Building Department Gas & Plumbing Expenses account line; or take any other action related thereto. **(Speaker: Town Clerk/Town Accountant)**

SUMMARY: *This article will provide the transfer of funding for Election/Registration Wages to cover the various elections held during FY 2021. During the preceding fiscal year, the federal government informed the town that the Election/Registration associated wages should be paid from a specified Wage account and not from an Expense account as was previously done in the past.*

MOTION: Move that the Town vote to transfer the sum of \$3,500.00 to the Election/Registration Wage account, said sums shall be taken from these accounts; \$2,000.00 from Peg Programming account line, \$500.00 from Certification Stipend account line, \$500.00 from BOS Minutes account line and \$500.00 from the Building Department Gas & Plumbing Expenses account line.

Simple Majority

Finance Committee: Recommends

COMMUNITY PRESERVATION PROJECTS

ARTICLE 7 FUNDING FOR PARK COMMISSION TO CONSTRUCT TWO NEW PICKLEBALL COURTS IN CONANT PARK

To see if the Town will vote to transfer the sum of One Hundred-Fifteen Thousand Dollars (\$115,000) from Community Preservation Funds to the Park Commission for the construction of two (2) new Pickleball Courts in Conant Park, said funds to be transferred from Community Preservation Surcharges-Undesignated Account; or take any other action relative thereto.

(Speaker: Community Preservation Committee/Park Commission)

SUMMARY: *This article will provide funding from the Community Preservation – Undesignated Account to design, bid, and construct two new pickleball courts in Conant Park. This Article is recommended by and brought forward by the Southampton Community Preservation Committee at the request of the Park Commission.*

MOTION: Move that the Town vote to transfer the sum of One Hundred-Fifteen Thousand Dollars (\$115,000) from Community Preservation Funds to the Park Commission for the construction of two (2) new Pickleball Courts in Conant Park, said funds to be transferred from Community Preservation Surcharges-Undesignated Account. ***Simple Majority***

Finance Committee: No Recommendation, Not in their purview

By-Laws

ARTICLE 8 WETLANDS PROTECTION BY-LAW

To see if the Town will adopt the following Wetlands Protection By-Law:

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- 5. Application for Permits**
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- 18. Relation to the Wetlands Protection Act**
- 19. Effective Date**
- 20. Associate Members of the Commission**

1. Preface

The Wetlands Protection Bylaw (hereinafter referred to as the "Bylaw") is promulgated by the Town of Southampton Conservation Commission (hereinafter the "Commission") pursuant to the authority granted by the Town of Southampton. The Wetlands Protection Bylaw was adopted to protect additional Resource Areas, with additional standards and procedures to augment those of the Wetlands Protection Act, (M.G.L. (Massachusetts General Laws) Chapter 131, Section 40) and Regulations thereunder (310 CMR (Code of Massachusetts Regulations) 10.00).

2. Purpose

The purpose of this Bylaw is to aid in the consistent and effective implementation of the Wetland Protection Act M.G.L Chapter 131, Section 40 by way of further definition. The Bylaw is to maintain the quality of the surface water, the quality and level of the groundwater table and water recharge areas for existing or potential water supplies; to protect the public health and safety; to protect persons and property against the hazards of flood water inundation, and to provide for the reasonable protection and conservation of certain irreplaceable natural features, resources and amenities for the benefit and welfare of the present and future inhabitants of the Town of Southampton.

Accordingly, this Bylaw protects the wetlands, water resources, and adjoining land areas in the Town of Southampton by providing prior review and control of activities deemed by the Commission to have significant or cumulative detrimental effect upon the following resource area values. These values (collectively, the "Resource Area Values protected by this Bylaw") include, but are not limited to:

1. Protection of public water supply.
2. Protection of groundwater.
3. Flood control.
4. Erosion and sedimentation control.
5. Storm damage prevention.
6. Prevention of water pollution.
7. Protection of fisheries and wildlife habitat, and rare species habitat including rare plant species.
8. Recreation, agriculture and aquaculture.

3. Definitions

Except as otherwise provided in this Bylaw, the definitions of terms in this Bylaw shall be as set forth in the Wetlands Protection Act, which terms, as used herein, shall include the provisions of M.G.L. Chapter 131, Section 40, and in 310 CMR 10.00.

Resource Area - any freshwater wetlands; marshes; wet meadows; bogs; swamps; lakes; ponds; rivers; streams; creeks; banks; beaches; vernal pools; isolated wetlands; lands under water bodies; lands subject to flooding or inundation by groundwater or surface waters; riverfront area as stated in Wetlands Protection Act M.G.L Chapter 131, Section 40, and in Regulations 310 CMR 10.58 (2).

Alter - includes the following actions, without limitation, when undertaken to, upon, within or affecting Resource Area Values 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, 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 change elevation.
6. Driving of piles, erection, or expansion of buildings, or structures of any kind.
7. Dredging or filling of land under water bodies.
8. Placing of obstructions or objects in water or waterways.
9. Destruction of plant life including cutting of trees.
10. Changing water temperature, biochemical oxygen demand or other physical, biological, or chemical characteristics of any waters.
11. Any activities, changes or other work which may cause or tend to contribute to pollution of any body of water or groundwater including, without limitation, any activity that may cause surface water runoff contaminated with sediments, chemicals, or animal wastes.
12. Application of pesticides or herbicides.
13. Storage of flood waters and storm water runoff waters.
14. Incremental activities that have or may have a cumulative adverse impact on the Resource Area Values protected by this bylaw.

4. Jurisdiction

4.1 Resource Areas

Except as permitted by the Commission or as provided by the Bylaw, no Person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise Alter any Resource Area or Conservation Zone.

4.2 Buffer Zones

Any activity proposed or undertaken within one-hundred (100) feet of a Resource Area shall be referred to as a Buffer Zone and shall be subject to regulation under this Bylaw. Buffer Zones are vital in protecting the Resource Area of the Bylaw in many ways, including but not limited to:

- 1) Slowing water flow, thereby decreasing water velocities, allowing infiltration, providing flood control and reducing the erosion potential of storm water runoff.
- 2) Trapping sediment and other insoluble pollutants, thereby decreasing or preventing pollution of the wetlands and water bodies.
- 3) Reducing nutrient overloading by filtering nutrients bound to sediment in the surface flow, and removing nutrients from groundwater through uptake in vegetation.
- 4) Providing permeable soils that contribute to groundwater recharge.

- 5) Producing leaf litter and biomass which increases the humus content of the soil and increase in absorption and infiltration.
- 6) Scattering sunlight and providing shade thereby lowering water temperature within wetlands and water bodies.
- 7) Providing essential habitat for wetland-associated species.
- 8) Providing a visual separation between wetlands and developed environments.

Lands within a Buffer Zone are deemed by the Commission to be important to the protection of these Resource Areas. Activities undertaken in close proximity to Resource Areas have a higher likelihood, than those activities distanced from Resource Areas, of adverse impact upon Resource Areas, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater, degraded, poor water quality, and loss of wildlife habitat.

4.3 Conservation Zone

Land within a Buffer Zone is deemed by the Conservation Commission to be significant to wildlife, public and private water supply, and to the prevention of pollution. The natural vegetation plant communities and indigenous soils provide important shelter, nesting, feeding, and migratory areas for wildlife associate with the adjacent wetlands. Forested upland vegetation provides an important buffer that maintains air temperatures, light regimes, and habitat quality within the Resource Area. These areas provide key function in the attenuation and uptake of pollutants that would otherwise be discharged to water bodies or wetlands. These areas act as filters which prevent erosion and decrease the non-point source loading of contaminant that may alter the water quality of wetlands and other surface waters. An activity that disturbs the vegetation and/or soil which occurs within a Buffer Zone is likely to result in the alteration of the wetland through siltation, over grading or deposition of construction debris.

Based on this information, the Conservation Commission shall require that a 25-foot-wide strip of undisturbed vegetation within a Buffer Zone, called the Conservation Zone, be maintained adjacent to any Resource Area but not including lands subject to flooding or the 200-foot Riverfront Area. No work, structures or alterations will be allowed within the Conservation Zone unless permitted by the Commission, except for minor activities, such as mowing, gardening, and pruning within existing lawn, garden or landscaped areas, currently occurring at the time of the adoption of this Bylaw (insert adoption date here date). The Conservation Zone shall not apply to artificially created storm water management structures such as detention and retention basins, artificially lined ponds, and constructed wastewater treatment lagoons.

The Conservation Zone for vernal pools will be based on the size of the basin; with a twenty-five (25) foot setback of undisturbed vegetation for vernal pools less than 10,000 square feet, and a fifty (50) foot setback of undisturbed vegetation for vernal pools 10,000 square feet or greater in size.

Where the Conservation Zone is already altered in such a manner that the presumed protection offered by the Buffer Zone is not being met, the Commission may issue an Order of Conditions for a project, provided that it finds that the proposed activities will not increase adverse impacts on that specific portion of the Conservation Zone or associated Resource Areas, and that there is no technically feasible alternative. In such cases the Commission may modify the scope and detail of the proposed project to minimize impact on or improve protection of the values protected by the Bylaw.

4.3.1 Local Stream (Intermittent)

A Local Stream is defined as any ditch, channel, swale or naturally occurring depression that conveys any type of water for thirty (30) or more days within a calendar year. Local Streams are important for storm damage prevention, flood control, ground water protection, wildlife habitat, and recreation values. During the spring, summer and fall these streams disperse snow melt and storm runoff across the landscape, thereby preventing dangerous volumes and flows from spilling over roadways and property. This broad dispersal also allows for larger volumes of water to infiltrate into the ground, recharging groundwater supplies. Local Streams are an essential source of food and water for wildlife and are often the only source of water in higher elevations in town. During all seasons, but especially in winter and spring, Local Streams act as essential corridors for animal movement, especially when food is scarce. Accordingly, this Bylaw protects Local Streams, their associated bordering vegetated wetlands (if present) and the adjacent Buffer Zone within one-hundred (100) feet of the bank of those streams.

4.3.2 Rivers (Perennial Streams)

For the purpose of the Bylaw, the protections afforded to Riverfront Areas under the 1996 amendment to the Massachusetts Wetlands Protection Act shall extend the reach of jurisdiction two-hundred (200) feet from the Mean Annual High Water Line (MAHWL) of a stream or river as specified by the Act.

4.3.3 Vernal Pools

Vernal pools are temporary pools of water that provide habitat for distinctive plants and animals. They are considered to be a distinctive type of wetland usually devoid of fish, and thus allow the safe development of natal amphibian and insect species unable to withstand competition or predation by fish.

The Commission shall presume that all areas meeting the definition of “Vernal Pools” of this Bylaw, and the adjacent upland 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 Vernal Pool habitat functions. Any formal evaluation should be performed by an individual meeting the qualifications under the Wildlife Habitat section of the Wetlands Protection Act Regulations.

4.3.4 Isolated Wetlands

Isolated Wetlands are areas of wetland vegetation which are subject to flooding and consist of isolated depressions or closed basins which serve as a ponding area for run-

off or high ground water. Such areas must be at least 400 square feet in area and may include kettle holes and bogs.

5. Application for Permits

Within one-hundred (100 feet) horizontally outward from the edge of a Resource Area, two-hundred (200) feet horizontally outward from the Mean Annual High Water Line (MAHWL) of a perennial stream, any activity proposed or undertaken, which, in the judgment of the Commission, alters any area subject to protection under the Bylaw, is subject to regulation under the Bylaw and requires the filing of a Notice of Intent (NOI). If the applicant is in any doubt as to whether an activity is subject to regulation, a Request for a Determination of Applicability (RDA) should be filed.

5.1 Commission Quorum

More than half of the members of the Commission in office must be present to conduct business and to hold a public meeting.

5.2 Timeframes for Submission of Documentation

All documentation including plans, maps, tables, charts, consultant reports, etc. to be considered by the Commission for Permit filing must be submitted to the Commission no later than two weeks before the Commission meeting date. The Commission meets once or twice a month (dates are subject to change; meeting agendas are posted in Town Hall).

An Administrative Review will be conducted upon submission which includes fees, plans, documents, maps, wetland delineation data, drainage studies, required for the submission. The Administrative Review will last up to 5 days. Only after said review has determined that the application is complete will the Public Hearing date be scheduled and a Public Notice will be issued. The Commission shall have 21 days to hold a public hearing from the date a completed application is received.

The Commission, in an appropriate case, may combine its hearing under this Bylaw with the hearing conducted under the Wetlands Protection Act, MGL C. 131, § 40, and Regulations 310 CMR 10.00.

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 Town 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.

5.3 Requests for Determination of Applicability (RDA, WPA Form 1)

The purpose of the Request for Determination of Applicability (RDA) is to allow the Commission to determine whether a project will Alter or change a Resource Area and if this is the case, a Notice of Intent (NOI) will have to be filed. The RDA shall be submitted on a WPA Form 1 and shall include such additional information and plans as are deemed reasonably necessary by the Commission.

5.4 Notice of Intent (NOI, WPA Form 3)

Any person who proposes to do work that will remove, fill, dredge, build upon, or Alter any Resource Area shall submit a Notice of Intent (NOI) consisting of application materials required under Notice of Intent (M.G.L. Chapter 131, Section 40 and 310 CMR 10.00). The NOI shall be submitted on a WPA Form 3 and shall include such additional information and plans as are deemed reasonably necessary by the Commission.

5.5 Notice of Intent (NOI) Permit

Within twenty-one (21) days of the close of the public hearing, the Commission shall issue a Permit approving the project, or deny approval of the project. The written decision shall be signed by more than half of the Commissioners in office. The signed Permit will be issued by certified mail or hand delivery to the applicant or the applicant's representative. If the project is approved, the commission shall impose conditions as are necessary for the protection of the interests of the Bylaw.

Before work can commence on the project:

- a) The Order of Conditions has become final and then recorded in the Registry of Deeds of Hampshire County or the Land Court, within the chain of title of the affected property. A copy of such filing shall be sent to the Commission, including the Book and Page or Document Reference Number. The applicant is responsible for such recording of the Order of Conditions.
- b) A pre-construction site visit shall be conducted with the applicant or representative, builder and Commission members to review all Order of Conditions including inspection and approval of all erosion control measures.

If work commences before the above conditions are met, an Enforcement Order may be issued by the Commission.

Any change made or intended to be made in the plans shall require the applicant to file an Amended Notice of Intent or to inquire in writing of the Commission whether the change is so substantial as to require a new filing. The applicant shall not proceed with any changes until the Commission issues its written approval.

Under the Bylaw, a Permit shall prohibit any work or portion thereof that cannot be conditioned to protect said interests. If the Permit is denied, it shall be for one of the following reasons:

1. For failure to meet the requirements of the Bylaw.
2. For failure to provide necessary information and plans requested by the Commission.
3. For failure to avoid or prevent unacceptable or cumulative effects upon the Resource Area Values protected by the Bylaw.
4. Where no conditions are adequate to safeguard the Resource Area Values protected by the Bylaw.

A Permit shall be valid for three (3) years.

6. Exemptions and Exceptions

The Application and Permit required by this Bylaw shall not be required for maintaining, repairing, remodeling, but not substantially changing or enlarging, an existing and lawfully located single family residential structure or customary appurtenance thereto, as long as the footprint of any proposed addition is not any closer to the wetland or other Resource Areas than the existing structure, and there is no reasonable alternate location on the owner's property for the new structure that is further from the Resource Areas, as determined by the Commission.

The Commission may issue a generic or on-going Permit for maintaining, repairing, or replacing 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, storm drainage, and sewer, provided that the structure or facility is not substantially changed or enlarged, as determined by the Commission, and provided that written application has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications adopted by the Commission. These standards and specifications shall conform to the best management practices in the Commonwealth of Massachusetts. This on-going Permit may apply to other institutions in town with facilities and structures for normal maintenance activities within the Buffer Zone, as determined by the Commission. Examples include but are not limited to educational institutions, fire districts, golf courses, spraying for aquatic plant management and residential retirement communities.

The Application and Permit required by this Bylaw shall not apply to emergency projects necessary for the protection of the health or 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 of the emergency project, and 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. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

The Application and Permit required by this Bylaw shall not be required for work performed for normal maintenance or improvement of land which is lawfully Land in Agricultural Use, as defined in the Wetlands Protection Act Regulations 310 CMR 10.04, at the time the work takes place.

Exceptions clearly stated in the Wetlands Protection Act and Regulations thereunder are not extinguished by the Bylaw.

7. Extensions

The Commission can extend a Permit twice for an additional one-year period. Request for Extensions shall be made in writing to the Commission with the filing fee (see Filing Fee section) at least thirty (30) days prior to the expiration of the Permit.

The Extension Permit shall be recorded in the Registry of Deeds of Hampshire County or the Land Court. A copy of such filing shall be sent to the Commission, including the Book and Page or Document Reference Number. The applicant is responsible for recording of such Extension Permit. If work commences without the applicant so recording the Extension Permit, an Enforcement Order may be issued by the Commission.

If the applicant does not request an Extension for his/her project at the end of the three (3) year period of the Orders of Condition, any work on the project must stop until a new Notice of Intent has been filed with the Commission, and a new Order of Conditions duly issued and recorded.

8. Certificate of Compliance (WPA Form 8B)

Upon completion of the work described herein, the applicant shall submit a written Request for a Certificate of Compliance; WPA Form 8A. The Commission shall act upon the Request within twenty-one (21) business days.

For projects completed according to plans stamped and signed by a Professional Engineer or other registered professional, the Request must include written indication (usually in the form of a letter) from such professional that the work was completed in compliance with the Permit and to explain any deviations, if any. As built plans are to be submitted if the project has changed from the original project plans.

Prior to the issuance of the Certificate of Compliance, a site visit by the Commission is to be made in the presence of the applicant or a representative of the applicant.

If the Commission finds that all general and specific conditions have been met, and the project has proceeded according to the approved plans, a Certificate of Compliance is issued.

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 Certificate of Compliance. A partial Certificate of Compliance can be issued for a portion of the project, as long as all work and mitigation for that portion have been completed.

If the Permit contains conditions which continue past the completion of work, such as maintenance or monitoring, the Certificate of Compliance shall certify which, if any, of such conditions shall continue. The Certificate shall also specify to what portions of the work it applies, if it does not apply to all the work regulated by the Permit.

The Certificate of Compliance (including any continuing conditions) will be recorded by the applicant in the Registry of Deeds or the Land Court of Hampshire County, within the chain of title of the affected property. A copy of such filing shall be sent to the Commission, including the Book and Page or Document Reference Number. The applicant is responsible for recording of such Certificate of Compliance.

9. Filing Fees

The following pertains to the filing fees:

1. Any person filing an Application for Request for Determination of Applicability (RDA) or Notice of Intent (NOI) pursuant to the Bylaw shall, at the same time, pay a filing fee in accordance with the Filing Fee Schedule.
2. Filing fees should be made payable to the Town of Southampton.
3. The filing fee does NOT include the cost of the Public Legal Notice in the local newspaper.
4. All recording costs at the Hampshire County Registry of Deeds or the Land Court are the responsibility of the applicant.
5. Applicant shall agree, in writing, to pay the reasonable fees, cost and expenses of any expert consultant deemed necessary by the Commission
6. Town of Southampton, County, State, Federal and Legal Nonprofit Organization projects are exempt from these fees.

10. Regulations

After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this chapter. Notice shall be given at least one (1) week prior to the public hearing by publication in a newspaper of general circulation in the Town and by posting with the Town Clerk. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this chapter. At a minimum, these regulations shall define key terms in this chapter not inconsistent with the bylaw and procedures governing the amount and filing of fees.

11. Consultation/Peer Review

The Southampton Conservation Commission hereby adopts the following rules in accordance with the authority of MG.L. Chapter 44, Section 53G.

When reviewing an application for, or when conducting inspections in relation to, Request for Determination of Applicability [RDA], Notice of Intent [NOI], an Abbreviated Notice of Intent, [ANOI] or an Abbreviated Notice of Resource Area Delineation [ANRAD], the Southampton Conservation Commission may determine that the assistance of outside consultants is warranted due to the size, scale, technical or scientific complexity of a proposed project, because of the project's potential impact on Resource Area(s) or the Southampton Conservation Commission lacks the necessary expertise to perform the work related to the approval and definition of Order of Conditions.

If the Commission determines that such assistance of outside consultant(s) is warranted, it may require the applicant(s) to pay a "project review fee" consisting of the reasonable costs incurred by the Commission for the employment of outside consultants engaged by the Commission to assist in the review of a proposed project.

In hiring outside consultant(s) the Commission may engage engineers, planners, lawyers, urban designers or any other appropriate professional who can assist the Commission in analyzing the project and to ensure compliance with all relevant laws, ordinance/bylaws, and regulations. Such assistance may include, but is not limited to, analyzing an application, monitoring or

inspecting a project or site for compliance with Commission's Bylaw or decision, or inspecting a project during construction or implementation.

Funds received by the Commission pursuant to these rules shall be deposited with the Town of Southampton's Treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Commission without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been or will be collected from the applicant. Accrued interest may also be spent for this purpose. Failure of an applicant to pay a review fee shall be grounds for denial of the approval of the project.

At the completion of the Commission's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or applicant's successor in interest. For the purpose of this rule, any person or entity claiming to an applicant's successor in interest shall provide the Commission with documentation establishing such succession in interest.

Any applicant may take an administrative appeal from the selection of the outside consultant to the Select Board. Such appeal must be made in writing and may be taken only within 20 days after the Commission has mailed, by first class mail, or hand-delivered notice to the applicant of the selection. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. The required time limit for action upon an application by the Commission shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Select Board within one month following the filing of the appeal, the selection made by the Commission shall stand.

12. Enforcement Order (WPA Form 9)

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 (WPA Form 9) issued pursuant to this Bylaw.

The filing of a Permit Application or Request for Determination of Applicability (RDA) shall constitute the consent of the owner and grant the authority for the Commission and its agents, with proper identification, to enter upon privately owned land for the purpose of performing their duties under this Bylaw. The Commission may make or cause to be made such examinations, surveys or sampling as the Commission deems reasonable and necessary, subject to the laws of the United States and the Commonwealth.

The Commission shall have the authority to enforce this Bylaw and Permits issued there under by violation notices, non-criminal citations under M.G.L. Chapter 40, Section 21D,

administrative orders, 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/or take other action deemed reasonable and necessary to remedy such violations, or may be fined, or both.

Upon request of the Commission, the Select Board may direct the Town Counsel to 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.

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

Any person who violates any provision of this Bylaw, Permits or Enforcement Orders issued there under, shall be served with a Notice of Violation enumerating the alleged violations. If after ten (10) business days the Commission has not received what it deems to be either (a) sufficient evidence demonstrating that no violations have occurred, or (b) a filing that will remove the violations along with evidence that sufficient progress is being made to correct the violation, then the violator shall be punished by a fine per offense (see Southampton Conservation Commission Fee Schedule for fine amount). Beginning ten business days after the date of the Notice of Violation each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the Bylaw, Permits, or Enforcement Orders violated shall constitute a separate offense.

In addition to any fine, the Town shall be entitled to reimbursement for all expenses, including legal fees, incurred in prosecuting said violation, either civilly or criminally.

13. Security

The intent of this section is to secure against the potential of significant environmental damage. As part of a Permit issued under this Bylaw, in addition to any security required by any other town or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed hereunder (including conditions requiring mitigation work) be secured wholly or in part by one or more of the methods described below:

1. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the Permit.
2. By 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 of Southampton and members of the public, 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. The bond or covenant shall, in the case of the bond, be given to the Town, and in the case of a covenant, be recorded in the Registry of Deeds or the Land Court at least 10 business days before the start of any work under the permit.

14. Burden of Proof

The applicant for a Permit shall have the burden of proving, by a preponderance of 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 Bylaw. 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.

15. Waivers

Strict compliance with the Bylaw may be waived when, in the judgment of the Commission, such action is in the public interest and is consistent with the intent and purpose of the Bylaw. Any request for a Waiver must be submitted to the Commission in writing and presented at the time of filing along with a written justification stating why a Waiver is desired or needed, is in the public benefit, and is consistent with the intent and purpose of the Bylaw. The Waiver is intended to be employed only in rare and unusual cases.

16. Appeals

A decision of the Conservation Commission under this bylaw shall be reviewable in Superior Court in accordance with M.G.L. Chapter 249, Section 4.

17. Severability

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision or phrase thereof, nor shall it invalidate any Permit, which previously has been issued.

18. Relation to the Wetlands Protection Act

This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and the Regulations, 310 CMR 10.00, there under.

19. Effective Date

The Effective Date of this Bylaw is the date after the Bylaw has been approved by the Attorney General and published by the Town Clerk as set forth in M.G.L. Chapter 40 Section 32. The Bylaw shall not, however, apply to:

1. Any structure or activity lawfully in existence or lawfully begun prior to the Effective Date.
2. Any structure or activity which is the subject of a pending Notice of Intent, or Request for Determination of Applicability filed under the Massachusetts Wetlands Protection Act (M.G.L. Chapter 131, Section 40) prior to the Effective Date.
3. Any structure or activity which has an Orders of Conditions, Order of Resource Area Delineation, or Determination of Applicability or other Commission decision filed under the Massachusetts Wetlands Protection Act (M.G.L. Chapter 131, Section 40) and that is still in effect prior to the Effective Date. These Orders or Determinations shall expire at the end of their legally regulated term, which is usually three years from date of issuance, after which any new work will be subject to the provisions of this Bylaw.
4. Any structure or activity for which any extensions of or modifications or amendments to a current Orders of Conditions or Notice of Intent were approved prior to the Effective Date. These extensions, modifications and amendments shall remain in effect until the end of their legally regulated term, which is usually three years from date of issuance, after which any new work will be subject to the provisions of this Bylaw.

20. Associate Members of the Commission

The Chairman, with the approval of a majority of the Commission, may appoint individuals for the purpose of assisting the Commission. Such individuals shall be referred to as Associate Members,

shall be non-voting members, and shall serve for a term of one year and may be reappointed as deemed appropriate by a majority of the Commission.

Or take any other action relative thereto.

(Speaker: Conservation Commission)

SUMMARY: *The purpose of this By-Law is to authorize prior review and control of activities deemed by the Conservation Commission to have significant or cumulative detrimental effect upon 1) The public water supply; 2) Groundwater; 3) Flood control; 4) Erosion and sedimentation control; 5) Storm damage prevention; 6) Prevention of water pollution; 7) Protection of fisheries and wildlife habitat, and rare species habitat including rare plant species; and 8) Recreation, agriculture and aquaculture.*

MOTION: Move that the Town amend Article XXIX of the Town By-Laws by adding Section 6, The Wetlands Protection By-Law, as set forth in Article 8 of the Warrant for the October 17, 2020 Special Town Meeting.

Simple Majority

Finance Committee: No Recommendation, Not in their purview