



Town of Wareham, Massachusetts

2004 Special Town Meeting Warrant APRIL 26, 20

WARRANT

TOWN OF WAREHAM

SPECIAL TOWN MEETING

APRIL 26, 2004

WAREHAM HIGH SCHOOL AUDITORIUM
VIKING DRIVE
WAREHAM, MA 02571 7:30 P.M.

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, §

TO EITHER OF THE CONSTABLES OF THE TOWN OF WAREHAM

GREETINGS:

In the name of the Commonwealth of Massachusetts, you are hereby directed to notify and warn the legal voters of the Town qualified to vote in Town affairs to meet in the Wareham High School Auditorium, 7 Viking Drive, Wareham, MA on Monday, April 26 at 7:30 p.m. to act on the following articles:

ARTICLE 1

To see if the Town will vote to appropriate and transfer from available funds a sum of money to supplement the Fiscal 2004 operating budget, or to do or act in any manner relative thereto.

Inserted by the Board of Selectmen

ARTICLE 2

To see if the Town will vote to raise and appropriate or transfer from available funds or by any combination of the foregoing, a sum of money to pay unpaid bill of prior fiscal years, or to do or act in any manner relative thereto.

W.B. Mason Company, Inc. \$397.60

Inserted by the Board of Selectmen

ARTICLE 3

To see if the Town will authorize the Board of Selectmen to acquire by gift, purchase, eminent domain or otherwise, for the

purpose of historical and archeological preservation, the fee interest in a certain parcel of land located off Minot Avenue, containing 1.4 acres, more or less, being Lot 1076 on Assessors Sheet 43, being the land described in the deed from the Town to Joseph Peter Petruszewicz, recorded with the Plymouth County Registry of Deeds in Book 5779, Page [013], together with and subject to such rights, restrictions and easements of record as do not interfere with the purpose for which the land is to be acquired, and on such other terms and conditions as the Selectmen shall determine, said land following acquisition to be held in the care, custody, management and control of the Wareham Historical Commission under M.G.L.c.40 §8D for historical and archeological site preservation purposes, and, to the extent that any federal, state or other grants or gifts are or become available for the purposes outlined in this Article, to authorize the Board of Selectmen and/or said Historical Commission to apply for and accept such grants and gifts; and further provided that the Board of Selectmen and/or said Historical Commission be authorized to enter into all agreements and execute any and all instruments as may be necessary on behalf of the Town of Wareham to effect said acquisition, grants or gifts; and further, to authorize the Board of Selectmen and/or said Historical Commission to convey to a federal or state agency or charitable corporation or trust whose purposes include preservation of sites of historic or historical significance, for such consideration as the Selectmen or Commissioners determine, which may be nominal consideration, a perpetual preservation restriction on said land as authorized by M.G.L. c. 184 § 31-33, or to do or act in any manner relative thereto.

Inserted by the Board of Selectmen at the request of the Town Administrator

ARTICLE 4

To see if the Town will vote to transfer to the Board of Selectmen, to be held for the purpose of conveyance, a portion of Town-owned land identified as Lot 1006F, as shown on Preliminary Plan of Thatcher Lane Extension (Wareham Industrial Park, Phase One) drawn by Braman and Handy Engineering, Inc., dated October 24, 2002, last revised February 21, 2003, a copy of the plan is on file in the Office of the Town Clerk, and to authorize the Board of Selectmen to convey an easement for roadway purposes, as shown on said plan; said easement being necessary to complete the construction of Thatcher Lane Extension; or to take any other action relative thereto.

Inserted by the Board of Selectmen at the request of the Town Administrator

ARTICLE 5

To see if the Town will vote to amend the Zoning By-laws as follows:

1. Delete the existing Zoning By-laws except for the subsection and Zoning Map entitled "Business Development Overlay District";
2. Adopt a new document entitled "Town of Wareham – Proposed Zoning By-law—April 2004," on file in the office of the Town Clerk.
3. Replace the existing Zoning Maps with the following three (3) new maps, on file in the office of the Town Clerk:
 -Zoning District map, dated April 26, 2004
 -Groundwater Protection Overlay District, dated April 26, 2004
 -Buttermilk Bay Overlay District, dated April 26, 2004 (per action of April 23, 1991 Town Meeting)
4. This By-law will go into effect on November 1, 2004;

or do or take any other action relative thereto.

Inserted by the Board of Selectmen at the request of the Zoning By-law Rewrite Committee

ARTICLE 6

To see if the Town will vote pursuant to the authority granted under General Home Rule Powers expressed in M.G.L. c. 40, §21, to amend the Wetlands By-law by substituting a new non-zoning Wetlands Protective By-law, in its entirety, for the existing non-zoning Wetlands Protective By-law designated as Division VI of the By-laws of the Town of Wareham.

Wareham Wetlands Protection By-law

I. Purpose

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

II. Jurisdiction

Except as permitted by the Conservation Commission or as provided in this By-law, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; intermittent streams; creeks; beaches; dunes; estuaries; the ocean; lands under water bodies; lands containing shellfish; lands within one-hundred feet of any of the aforementioned resource areas (buffer zone resource area), rivers and riverfront areas, lands subject to flooding or inundation by groundwater or surface water; lands subject to tidal action, coastal storm flowage, or flooding; (collectively the “resource areas protected by this By-law”). Said resource areas shall be protected whether or not they border surface waters.

III. Conditional Exceptions

1. The application and permit required by this By-law 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, gas, water, sewer, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
2. The application and permit required by this By-law shall not be required for normal road maintenance activities, i.e.; cleaning catch basins, road repair, street sweeping, etc., performed by the Wareham Municipal Maintenance Dept., or its agents.
3. The application and permit required by this By-law shall not be required for work performed for normal maintenance or improvement of land which is in agricultural use.
4. The application and permit required by this By-law shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that:
 - A. 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;
 - B. advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement;
 - C. the Commission or its agent certifies the work as an emergency project;
 - D. the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and
 - E. within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this By-law.

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.

5. Other than stated in this section, the exceptions provided in the Wetlands Protection Act (M.G.L. c. 131, §40) and Regulations (310 CMR 10.00) shall not apply under this By-law.

IV. Applications for Permits (Notices of Intent) and Requests for Determination

1. The Commission may accept as the permit application and plans under this By-law the Notice of Intent and plans filed under the Wetlands Protection Act (M.G.L. c. 131, §40) and Regulations (310 CMR 10.00).
2. Written application shall be filed with the Commission to perform activities affecting resource areas protected by this By-law. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this By-law. No activities shall commence without

receiving and complying with a permit issued pursuant to this By-law.

3. Any person desiring to know whether or not a proposed activity or an area is subject to this By-law may in writing request a determination from the Commission. Such a Request for Determination (RFD) shall include information and plans, as deemed necessary by the Commission.

4. At the time of the permit application or RFD, or application for Certificate of Compliance, the applicant shall pay a filing fee specified in the regulations of the Commission. The fee is in addition to that required by the Wetland Protection Act (M.G.L. c. 131, §40) and the Regulations promulgated thereunder at 310 CMR 10.00, et seq. The fee shall be deposited into a dedicated account, for use only for wetlands protection activities, from which the Commission may withdraw funds without further appropriation.

A. Upon receipt of a permit application or RFD, or at any point during the hearing process, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee is called the "consultant fee." The specific consultant services may include, but are not limited to, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydro geologic and drainage analysis; and researching environmental or land use law.

B. The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision.

C. Where specific conditions, arising from the land or the nature of the proposal, necessitates the assistance of outside consultants, the Conservation Commission may engage such consultant services to assist the Commission in analyzing the project to ensure compliance with the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40), this by-law, their respective regulations, good design principals, and best available practices. In these instances the Commission will require the applicant to pay a review fee consisting of the reasonable costs to be incurred by the Commission for these services (The provisions for this language, M.G.L. c. 44, §. 53G, were adopted at the October 21, 2002 Town Meeting). The project shall not be segmented to avoid being subject to the consultant fee.

D. Funds received by the Commission pursuant to this section shall be deposited with the Town Treasurer who shall establish a special individual account for this purpose. Expenditures from this special account may be made at the direction of the Commission. Expenditures from this account shall be made only in connection with the review of a specific project or projects for which a review fee has been, or will be collected from the applicant. Failure of an applicant to pay all review fees shall be grounds for denial of the application or permit.

E. Review fees may only be spent for services rendered in connection with the specific project for which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Commission's review of a project, any excess amount of funds in the account, including any interest, attributable to a specific project, shall be repaid to the applicant or the applicant's successor in interest. The applicant must submit a written request for these funds. Upon request, a final report for said account shall be made available to the applicant, or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Commission with the documentation establishing such succession in interest.

F. Any applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen, providing that such appeal is taken within 14 days of notification of the Commission's appointment of the consultant. The grounds for such an appeal shall be limited to the claims that the selected consultant has a conflict of interest or does not possess the minimum required qualifications as may be set by the Commission. Minimum qualifications may be changed at the Commission's discretion depending upon the complexity and/or importance of the proposed project. 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 the Board of Selectmen makes no decision within one month following the filing of the appeal, the selection made by the Commission shall stand.

G. The Commission may waive the filing fee, consultant fee, and costs and expenses for a permit application or RFD filed by a government agency.

V. Notice and Hearings

1. Any person filing a permit application with the Commission at the same time shall give written notice thereof, by certified

mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, within 100 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice to abutters shall have enclosed a copy of the permit application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission.

2. Any person filing a Request for Determination of Applicability with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all direct abutters at their mailing addresses shown on the most recent applicable tax list of the assessors. The notice to abutters shall have enclosed a copy of the permit application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission.

A. When a person requesting a determination is other than the owner, the request shall be sent by the person requesting the determination to the owner.

B. When a person requesting a determination is other than the owner, the notice of the hearing, and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

3. The Commission shall conduct a public hearing on any permit application or RFD, with written notice given at the expense of the applicant, five business days prior to the hearing, in a newspaper of general circulation in the municipality.

4. The Commission shall commence the public hearing within 21 days from receipt of a completed permit application or RFD unless the applicant authorizes an extension in writing.

5. The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon unless the applicant authorizes an extension in writing.

6. The Commission in an appropriate case may combine its hearing under this By-law with the hearing conducted under the Wetlands Protection Act (M.G.L. c.131, §40) and Regulations (310 CMR 10.00).

7. The Commission shall have authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant, or others, deemed necessary by the Commission, in its discretion, to come to a final decision on an application.

VI. Permits and Conditions (Orders of Conditions)

1. If the Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which will result there from are likely to have a significant individual or cumulative effect upon the resource area values protected by this By-law, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions, which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. The Commission may take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

2. The Commission is empowered to deny a permit for failure to meet the requirements of this By-law; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards; for failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this By-law; and where no conditions are adequate to protect those values.

2. Lands within 200 feet of rivers, and lands within 100 feet of other resource areas, except the buffer zone resource area, lands subject to flooding or inundation by groundwater or surface water and lands subject to tidal action, coastal storm flowage or flooding, are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resource, 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 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 [or 100 foot] area, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the By-law.

A. In the review of areas within 200 feet of rivers and streams, no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this By-law, has proved by a preponderance of the evidence that (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 adverse impact on the areas or values protected by this By-law.

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 purpose), logistics, existing technology, costs of the alternatives, and overall project costs.

2. To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

2. No person shall install a newly constructed septic system within one hundred fifty feet of any wetland as defined in M.G.L. c. 131 § 40. A variance to this setback may be granted based upon findings of the Wareham Board of Health determining that such a variance is appropriate, but said variance shall not allow the system to be within 100 feet of any wetland, as defined by M.G.L. c. 131, §40, to be in accordance with previous Town meeting vote (Article 76 of April 25, 1988 Annual Town Meeting; Approved by the Attorney General July 28, 1988). Any existing system, which is replaced, must be located in conformity with this section except where lot size would not allow sufficient distance from such a setback, or where other setback requirements could not be met. In such exceptions, the repaired system would have to be placed as far from said wetlands as would be reasonably possible under then regulations.

2. A permit shall expire three years from the date of issuance. Notwithstanding the above the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one-year period, provided that the Commission prior to expiration receives a request for a renewal in writing. 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 owners of the land.

2. For good cause the Commission may revoke or modify a permit or determination issued under this By-law after notice to the holder of the permit or determination, notice to the public, abutters, and a public hearing.

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

2. No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the Plymouth County Registry of Deeds or, if the land affected is registered land, in the registry section of the Plymouth County Land Court, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded.

VII. Definitions

1. The following definitions shall apply in the interpretation and implementation of this By-law.

The term “aesthetics” shall include, without limitation, the relevant qualities to be protected under the By-law, which are due to those natural and natively scenic impressions of our shores, ponds, lakes, streams, rivers, and the lands bordering them.

The term “alter” shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this By-law:

noval, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
hanging of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;

- C. Drainage, or other disturbance of water or water table;
- D. Dumping, discharging, or filling with any material, which may degrade water quality;
- E. Placing of fill, or removal of material, which would alter elevation;
- F. Driving of piles, erection, or repair of buildings, or structures of any kind;

G. Placing of obstructions or objects in water;
H. Destruction of plant life including cutting of trees;
aging temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
ny activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater; or
ncremental activities, which have, or may have, a cumulative adverse impact on the resource areas protected by this By-law.

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

The term “erosion and sedimentation control” shall include both the ability of the Wetland Resource Area to perform these functions and the responsibility of the project applicant to propose a design that incorporates these controls into the plan to prevent damage to the resource area, buffer zone or abutting properties from erosion/sedimentation and water displacement caused by the project. Furthermore, each proposed project must be designed to prevent damage to the resource area due to scouring, propeller wash/shear, re-suspension of sediments and from increased wave energy. Projects shall be designed to cause no adverse effect on significant shellfish habitat and/or eelgrass beds.

The term “freshwater wetlands” shall include, without limitation, those areas within which saturated or inundated conditions exist other than salt marshes.

The term “Order of Conditions” means the permit to fill, dredge, remove or alter an area subject to protection under the Massachusetts Wetlands Protection Act. The Commission in an appropriate case may issue as the permit under this By-law the Order of Conditions issued under the Wetlands Protection Act (M.G.L. c. 131 §40) and Regulations (310 CMR 10.00).

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

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

The term “recreation” shall include, without limitation, the purposes for which the resource areas are used by the public such as navigation, fishing, hunting, shellfishing, swimming, water skiing, diving, walking, etc. A project must be designed so as to not impair the ability of the resource area to provide for these and other normal and customary public recreation uses.

The term “significant shellfish habitat” shall include those areas of Lands Containing Shellfish designated and mapped as significant shellfish habitat for commercial or recreational use by the Massachusetts Division of Marine Fisheries.

The term “vernal pool” shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations regardless of whether the Site has been certified by the Massachusetts Division of Fisheries and Wildlife.

2. Except as otherwise provided in this By-law or in regulations of the Commission, the definitions of terms in this By-law shall be as set forth in the Wetlands Protection Act (M.G.L. c. 131, §40) and Regulations (310 CMR 10.00).

VIII. Security

As part of a permit issued under this By-law, 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:

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

recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

IX. Enforcement

1. No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this By-law, or cause, suffer or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this By-law.
2. The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this By-law and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.
3. The Commission shall have authority to enforce this By-law, its regulations and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions. Any person who violates provisions of this By-law may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.
4. Upon request of the Commission, the select board and the town counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law.
5. Municipal boards and officers, including any police officer or other office having police powers, shall have authority to assist the Commission in enforcement.
6. Any person who violates any provision of this By-law, regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than \$300. 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 By-law, regulations, permits, or administrative orders violated shall constitute a separate offense.
7. As an alternative to criminal prosecution in a specific case, the Conservation Administrator and any Town of Wareham Police Officer may issue citations under the non-criminal disposition procedure set forth in M.G.L. c. 40, §21D, which has been adopted by the Town in Division VIII of the general By-laws by Article 6 of the October 19, 1987, Town Meeting and approved by the Attorney General on December 28, 1987.

The fines for violation of the provisions of this By-law, permits, or administrative orders issued thereunder, pursuant to M.G.L. c. 40, §21D shall be up to \$300.00 per offense.

X. Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative effect upon the resource area values protected by this By-law. 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.

XI. Appeals

A decision of the Commission shall be reviewable in the Superior Court in accordance with M.G.L. c. 249, §4.

XII. Relation to the Wetlands Protection Act

This By-law 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. c. 131, §40) and Regulations (310 CMR 10.00) thereunder.

XIII. Severability

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

XIV. Regulations

After public notice and hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this By-law effective when voted and filed with the town clerk. Failure by the Commission to promulgate such rules and regulations or a legal

declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this By-law.

At a minimum, these regulations shall define key terms in this By-law not inconsistent with the By-law and procedures governing the amount and filing of fees, and the submittal requirements for applications.

Given under our hands this 30th day of March in the year 2004

WAREHAM BOARD OF SELECTMEN

Cynthia K. Chamberlain

Cynthia K. Chamberlain, Chairman

Patrick G. Tropeano

Patrick G. Tropeano, Clerk

R. Renee Fernandes-Abbott

R. Renée Fernandes-Abbott

Mary Jane Pillsbury

Mary Jane Pillsbury

Bruce D. Sauvageau

Bruce D. Sauvageau

A True Copy

ATTEST:

Robert E. Short

Robert E. Short
Constable of Wareham