

**LINCOLN WETLANDS PROTECTION BYLAW Version dated 03-14-07**

**Article XVIII – revisions proposed for March 24, 2007 Town Meeting**

**Section 1. Purpose**

The purpose of this bylaw is to maintain the quality of surface water, the quality and level of the ground water table and water recharge areas for existing or potential water supplies, to protect the public health and safety, to protect the community against the costs that may be incurred when development occurs in or adjacent to wetland resource areas; 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 Lincoln.

Accordingly, this bylaw protects the wetlands, related water resources, the adjoining land areas, and important wildlife habitat areas in the Town of Lincoln by controlling activities deemed by the Conservation Commission (the "Commission") likely to have a significant effect, immediate or cumulative, 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, water quality, prevention, avoidance and control of water pollution, fisheries, wildlife habitat and habitat for rare species including rare plant and animal species, agriculture, aquaculture, and recreation values deemed important to the community (collectively, the "resource area values protected by this bylaw").

This bylaw utilizes the Home Rule authority of the Town of Lincoln to protect the resource areas subject to regulation under the Wetlands Protection Act (*M.G.L. c.131, §40*) (the "Act") to a greater degree; to protect additional resource areas recognized by the Town as significant, beyond those subject to regulation under the Act; to protect all resource areas for their additional values beyond those recognized under the Act, and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and its implementing regulations (310 CMR 10.00) (the "Regulations"), subject, however, to the rights and benefits accorded to agricultural uses and agricultural structures of all kinds pursuant to the laws of the Commonwealth.

**Section 2. Jurisdiction; Presumption**

Except as permitted by the Commission pursuant to this bylaw, or as otherwise allowed in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following wetland resource areas: any freshwater wetland; marsh; wet meadow; bog; swamp; vernal pool; bank; reservoir; lake, pond of any size; river, stream, brook or creek, whether perennial or intermittent; lands under any water body; land subject to flooding or inundation by groundwater or surface water; or the following upland buffer zone resource areas: lands within 200 feet of any river or any perennial stream, brook or creek (the "Riverfront Area"); and lands within 100 feet of any freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, bank, reservoir, lake, pond, intermittent stream, brook or creek, lands under any water body, and land subject to flooding or inundation by groundwater or surface water. Collectively, all such wetland resource areas and upland resource areas

shall be deemed to be “resource areas protected by this bylaw” whether or not they border surface waters.

It shall be presumed that significant adverse effects on the values of a resource area protected by this bylaw will result from any filling, dredging, building upon or other alteration within a wetland resource area or within 50 feet of the edge of any freshwater wetland, marsh, wet meadow, bog, or swamp within 50 feet of the top of the bank of any lake, reservoir, pond or intermittent stream, brook or creek or within 100 feet of any vernal pool or the top of the bank of any river or any perennial stream, brook or creek unless the applicant demonstrates by clear and convincing evidence that such significant adverse effect will not occur.

Lands within 200 feet of rivers or perennial streams, brooks and creeks and lands within 100 feet of other wetland resource areas protected by this bylaw are presumed to be important to the protection of these resource areas because activities undertaken in these upland buffer zone resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction or clearing, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction, clearing and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, excess nitrogen and phosphorus loading, and loss of wildlife habitat. The Commission may therefore, by regulation, establish design specifications, performance standards setbacks, no-disturb areas, no-build areas, other work limits and other measures and safeguards for the protection of such upland buffer zone resource areas including, without limitation, strips of continuous, undisturbed vegetation or other form of work limit or setback to buildings, roads, landscaping and other features.

### **Section 3. Exemptions and Exceptions**

No application or permit shall be required by this bylaw for the commencement of an emergency projects necessary for the protection of the health or safety of the public, if such project is to be undertaken by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof provided, however, that (a) advance notice, oral or written, has been given to the Commission either prior to commencement of such project or within 24 hours after commencement (b) the Commission or its agent certifies the work as an emergency project: (c) the project is undertaken only for the time and place certified by the Commission and for the limited purposes necessary to abate the emergency and (d) within 21 days of the commencement of an emergency project an application shall be filed with the Commission for review as provided by this bylaw. Upon failure to meet these or other requirements of the Commission, the Commission may, after notice and a public hearing, order the modification or cessation of an emergency project or the implementation of restoration or mitigation measures.

No application or permit shall be required by this bylaw for work performed for normal maintenance or improvement of land in agricultural use as defined by the Regulations.

No application or permit shall be required by this bylaw for filling, dredging, building upon or other alteration of a resource area undertaken by the Town of Lincoln Water Board, acting within its lawful authority and in compliance with applicable State and Federal laws and regulations.

Mosquito control work that is exempted from regulation under the is subject to this bylaw; provided, however, that all such mosquito control work proposed throughout the Town in any year may be presented in a single application to the Commission, that no filing fee for such application shall be charged, that no notice to abutters shall be required for such application, and that all such work may be allowed by a single annual permit.

Other than as stated in this section, all work that is exempted from regulation under the Act or the Regulations is subject to this bylaw. An application and a permit may be required by this bylaw whether or not an Order of Conditions is also required under the Act.

#### **Section 4. Applications and Fees**

Any person who proposes to perform activities affecting resource areas protected by this bylaw shall file a written Notice of Intent with the Commission that shall include such information and plans as are deemed necessary by the Commission to describe (a) the proposed activities: (b) their effects on the resource areas protected by this bylaw: and (c) where appropriate, any practicable alternatives to such activities. No such activities shall commence without receiving and complying with an Order of Conditions issued pursuant to this bylaw.

Any person desiring to know whether or not a proposed activity or any area is subject to this bylaw may file a written Request for Determination of Applicability from the Commission. Such Request for Determination of Applicability shall contain data and plans sufficient to enable the Commission to identify and understand the proposed activity and its location or the location of the area to which the request relates. A negative Determination of Applicability shall authorize the work described in the Request to proceed subject to certain conditions that the Commission may impose. A positive Determination of Applicability will require the filing of a Notice of Intent.

Any person may file an Abbreviated Notice of Resource Area Delineation to determine the boundaries of resource areas protected by this bylaw on a specific site. The Commission will issue an Order of Resource Area Delineation either confirming or modifying the boundaries delineated in the filing.

The Commission, in an appropriate case, may accept an application and associated filed pursuant to the Act and Regulations as the application and associated plans filed pursuant to this bylaw.

At the time of an application the applicant shall pay a filing fee specified by regulation of the Commission. This fee shall be in addition to that required pursuant to the Act and Regulations. This fee shall not be refundable.

At any point prior to or during any hearing on an application filed pursuant to this bylaw, the Commission may require the applicant to pay a consultant fee for the reasonable costs and expenses borne by the Commission for the services of specific expert consultants, including engineers, wetlands scientists, wildlife biologists or others deemed necessary by the Commission to aid in the review of proposed projects including, but not limited to, performing or verifying the accuracy of any resource area survey or delineation; analyzing resource area functions and values, including wildlife habitat evaluations pursuant to Section 7; hydrogeologic and drainage analysis; and researching and interpretation of applicable law.

Pursuant to Massachusetts General Law, Chapter 44, Section 53G and regulations promulgated by the Commission, any such consultant fees shall be deposited with the Town Treasurer, who shall create a special account specifically for this purpose, separate and apart from other monies held by the Town. Funds in such special account (including accrued interest, if any) may be expended at the direction of the Commission without further appropriation; provided, however, that such funds may be expended only in connection with the project for which the consultant fee has been collected. Upon the completion of the consultant's services pursuant to this section and the payment of all fees incurred in connection therewith, any excess funds remaining in the special account that are attributable to the project, including any accrued interest, shall be repaid to the applicant or to the applicant's successor in interest and a final report of said account shall be made available to the applicant or to the applicant's successor in interest. The Commission may waive the filing fee or consultant fee of an application filed by a government agency.

Failure by the applicant to pay the requested consultant fee within ten (10) business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and to deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and DEP of such a decision in writing.

Within ten (10) business days of the date that a request for consultant fees is made by the Commission or an applicant is informed of the Commission's selection of an expert consultant pursuant to this section, whichever is later, the applicant may appeal such selection in writing to the Board of Selectmen, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The filing of an appeal pursuant to this paragraph shall extend the applicable time limits for action upon the application by the amount of time during which such appeal is pending before the Board of Selectmen.

## **Section 5. Notice and Hearings**

Any person filing an application with the Commission, shall, within seven (7) days after such person is informed of the date and time of the public hearing thereon, give written notice thereof, by certified mail (return receipt requested) or hand delivery, to the owner of the land to be affected by the proposed work, if different from the applicant; to all owners according to the most recent records of the assessors, of land abutting the affected land, including owners of land located across a traveled way or body of water therefrom; and to abutters to such

abutters whose property is located within 300 feet of the affected land, including any property located in another municipality or across a body of water therefrom. Such notice shall state the time and place of the hearing, shall identify the applicant, the property affected and the work proposed, and shall either (a) enclose a copy of the application or request, with plans, or (b) state where copies may be examined and duplicated. The applicant shall submit to the Commission, at or before the public hearing, receipts for such notices or other satisfactory evidence that such notices have been given. Failure to provide such evidence shall be grounds for rescheduling the hearing or, if intentional or repeated, denial of the requested permit.

The Commission shall conduct a public hearing on any application, with notice given at the expense of the applicant at least five business days prior to the hearing, in a newspaper of general circulation in the Town of Lincoln.

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

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

The Commission may, whenever appropriate, combine its hearing pursuant to this bylaw with any hearing conducted pursuant to the Act and Regulations.

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 receipt of new information offered by the applicant or others, or the need for additional information or plans from the applicant or comments and recommendations from boards and officials referenced in Section 6 of this bylaw.

## **Section 6. Coordination With Other Boards**

Any person filing an application with the Commission, or any amendment thereto, shall provide a copy thereof, together with any accompanying plans, within seven (7) days after filing with the Commission, by certified mail (return receipt requested) or hand delivery, to the Planning Board, Board of Health, Building Inspector, and such other Town boards and officials as the Commission or its Administrator may request. A copy shall be provided in the same manner to the Conservation Commission of any adjoining municipality, if the application pertains to property within 300 feet of that municipality. The applicant shall submit, at or before the public hearing, receipts for such copies or other satisfactory evidence that such copies have been provided in accordance with this section.

Town boards and officials shall be entitled to file written comments and recommendations with the Commission at or before any public hearing. The Commission shall take such comments and recommendations into account during its deliberations but shall not be bound by them. The applicant shall have the right to receive copies of any such comments and recommendations at or before the public hearing.

## **Section 7. Permits, Determinations, Conditions and Appeals**

If the Commission, after a public hearing determines that the activities that are the subject of an application, or the land or water uses that will result therefrom, are likely to have an effect, immediate or cumulative, upon the resource area values of the resource areas protected by this bylaw, the Commission shall, within 21 days of the close of the hearing, issue or deny a permit for the activities requested. When making its decision the Commission shall 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; the proposed activities and foreseeable future activities. If the Commission issues a permit it may impose conditions that it deems necessary or desirable to protect resource area values. All activities authorized by a permit issued pursuant to this section shall be conducted in accordance with the conditions of such permit..

Where the Commission determines that a proposed activity would have an adverse effect on the values of resource areas protected by this bylaw the Commission shall not permit such activity unless the applicant demonstrates by a preponderance of the credible evidence that there is no practicable alternative to the proposed activity that would have materially less adverse effect on the values of all resource areas protected by this bylaw. The Commission shall regard as practicable an alternative that is reasonably available and feasible considering 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.

The Commission shall require applicants to avoid all wetland resource area alterations wherever feasible. Where alteration is unavoidable the Commission shall require such alteration to be minimized, and shall require full mitigation of the adverse effects of such alteration. The Commission may authorize or require replication of wetland resource areas as a form of such mitigation, but only with adequate security, professional design, and monitoring to assure the success of such replication activities.

The Commission may require any applicant to obtain and to submit a wildlife habitat study of the project area, regardless of the type of resource area or the amount or type of alteration proposed. Such a requirement shall be based upon the Commission's estimate of the importance of the habitat area considering the project area's proximity to other areas suitable for wildlife, the importance of wildlife corridors in the area, the actual or possible presence of rare plant or animal species in the area or other relevant factors. The study shall be performed by an individual who at least meets the applicable qualifications set forth in the Regulations.

The Commission shall presume that all vernal pools, including their adjacent upland buffer zone resource areas, perform essential wildlife habitat functions. This presumption may be overcome only by the presentation of clear and convincing evidence that the vernal pool does not provide essential habitat functions. Any formal vernal pool evaluation submitted to the Commission by an applicant shall be performed by an individual who at least meets the applicable qualifications set forth in the Regulations.

The Commission is empowered to deny or revoke a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; if the project as proposed might cause significant adverse effects, immediate or cumulative, upon the values of any resource area protected by this bylaw; or where no conditions are adequate to protect those values.

A permit issued pursuant to this bylaw shall expire three years from the date of its issuance provided, however, that the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, subject to the condition that annual notification of the time and location of work is given to the Commission. Permits issued pursuant to this bylaw may be extended for one or more periods of up to three years each, if such an extension is requested in writing at least thirty days before the applicable expiration date and the Commission finds that (a) good cause has been shown for such extension: and (b) such extension will not have significant adverse effects, immediate or cumulative, upon any of the values of resource areas protected by this bylaw. The Commission may grant such an extension at any public meeting but if it determines that the public interest so requires the Commission may defer action on a request for an extension until after notice is given and a public hearing is conducted, in accordance with the requirements applicable to the original application. If a permit expires before all activities authorized by such permit have been completed, then all such activities shall cease until a new permit has been issued pursuant to the procedures set forth in this bylaw.

Notwithstanding the time limits established in this Section, a permit may be made subject to conditions or requirements that shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and that apply to all present and future owners of the land.

For good cause the Commission may revoke or modify a permit issued pursuant to this bylaw after notice and a public hearing provided in the same manner as required by this bylaw for an original permit.

In an appropriate case the commission may combine any action on an application filed pursuant to this bylaw with an Order of Conditions, Order of Resource Area Delineation, Determination of Applicability or Certificate of Compliance issued pursuant to the Act and Regulations. In the event that conditions are imposed pursuant to this bylaw that are not also imposed pursuant to the Act, such conditions shall be imposed by a separate written permit.

No activity subject to any Order of Conditions issued pursuant to this bylaw shall commence until such permit has been recorded with the appropriate Registry of Deeds and the holder thereof provides satisfactory evidence of such recording to the Commission. If the applicant fails to perform, the Commission may record the documents itself at the applicant's expense.

Upon receiving a written request for a Certificate of Compliance, the Commission shall inspect the area where any activity governed by an Order of Conditions issued pursuant to this bylaw was undertaken and, if such activity has been completed in accordance with said permit, the Commission shall, within twenty-one (21) days after such request, issue a Certificate of Compliance evidencing such determination, which may in an appropriate case be combined with a Certificate of Compliance issued pursuant to the Act. A Certificate of Compliance may specify conditions in the permit that will continue to apply after its issuance.

**Section 8. Regulations**

After public notice and public hearing, the Commission may issue rules and regulations to effectuate the purposes of this bylaw, effective when voted and filed with the Town Clerk. Failure by the Commission to issue 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 bylaw. At a minimum these regulations may define key terms contained in this bylaw, as well as additional terms not inconsistent with this bylaw, establish the amount of filing and consultant fees and procedures governing the filing of applications.

**Section 9. Definitions**

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

The term “alter” shall include, without limitation, the following activities when undertaken to, upon, within or actually affecting any resource area protected by this bylaw:

- A. Removal, excavation, or dredging of soil, sand, gravel, organic matter or aggregate materials of any kind;
- B. Changing of preexisting drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- C. Drainage, or other disturbance of water level or water table;
- D. Dumping, discharging, or filling with any material that may degrade water quality;
- E. Placing of fill, or removal of material, which would alter elevation;
- F. Driving of piles, erection, expansion or repair of buildings, or structures of any kind, except (a) work wholly inside a building and (b) exterior repair of existing buildings or structures if such repair presents no risk of alteration of land, waters or vegetation;
- G. Placing of obstructions or objects in water;
- H. Destruction of plant life including cutting or trimming of trees and shrubs;
- I. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of water;

J. Any activities, changes, or work that 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;

K. Incremental activities that have, or may have, a cumulative adverse impact on the values of a resource areas protected by this bylaw.

The term “application” shall mean a wetlands filing to the Commission and includes the following: Notice of Intent, Abbreviated Notice of Resource Area Delineation and Request for Determination of Applicability.

The term “bank” shall include the 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 “Commission” shall mean the Conservation Commission of the Town of Lincoln.

The term “permit” shall include the following decisions of the Commission: Order of Conditions, Order of Resource Area Delineation and Determination of Applicability.

The term “person” shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust or estate, any regional, county or municipal governmental body, administrative agency or public or quasi-public corporation or body, including the Town of Lincoln, and any other legal entity, its legal representatives, agents, or assigns.

The term “pond” shall include any body of water satisfying the definition of “pond” in the Regulations, without regard to the size threshold of 10,000 square feet.

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

The term “vernal pool” shall include, in addition to scientific definitions found in the Regulations, any confined basin or depression not occurring in existing lawns or driveways that, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife, and regardless of whether the site is contained within another resource area. The adjacent upland buffer zone resource area for vernal pools shall

extend 100 feet outward from the mean annual high-water line defining the depression.

The term “wildlife corridor” shall include any land, the topography, soil structure, plant community composition and structure, proximity to water bodies and waterways, and hydrologic regime of which provides food, shelter, migratory, breeding or overwintering areas for birds, mammals, reptiles or amphibians.

Except as otherwise provided in this bylaw or in regulations of the Commission, terms and procedures used in this bylaw shall have the same definitions as set forth in the Act and Regulations.

The Commission shall have copies of the Act and Regulations available for inspection and, at the expense of the person requesting a copy, duplication.

### **Section 10. Security**

As part of any permit issued pursuant to 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 hereunder be secured wholly or in part by one or more of the methods described below:

A. 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.

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, 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 11. Enforcement**

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter any 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 Commission, its agents, officers, and employees shall have authority to enter upon public or private land for the purpose of performing their duties pursuant to this bylaw and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary, subject to the limitations imposed by applicable Federal or State law.

The Commission and the Board of Selectmen shall have authority to enforce this bylaw, its regulations, and permits issued hereunder by letters, phone calls, electronic communication and other informal methods, violation notices,

administrative orders, non-criminal citations pursuant to *M.G.L. c.40, §21D*, and civil and criminal court actions.

Upon request of the Commission, the Board of Selectmen and the Town Counsel may take appropriate legal action for civil enforcement of this bylaw pursuant to applicable law. Upon request of the Commission, the Chief of Police may initiate criminal proceedings charging violation of this bylaw.

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

Any person who violates provisions of this bylaw, or regulations, permits, or administrative orders issued hereunder, shall be served with a Notice of Violation and 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.

Violations shall be punishable by an amount up to or equal to the maximum fine allowed under §21D as allowed by *Article XVI* of Lincoln's General Bylaws. 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 violation of each provision of this bylaw or of regulations, permits or administrative orders issued hereunder 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. c.40, §21D*, which has been adopted by the Town in *Article XVI* of the general bylaws.

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation 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 any such person who at the time such property was acquired, had no actual or constructive knowledge of such violation unless such action is commenced within three years following the date of acquisition of the real estate by such person.

**Section 12. Burden of Proof**

Except where a higher burden of proof is specified in this bylaw or regulations, 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 adverse effects, immediate or cumulative, upon the resource area values protected by this bylaw. Failure to provide adequate credible evidence to the Commission satisfying this burden shall be sufficient cause for the Commission to deny an application or to impose conditions sufficient to prevent any adverse effects on the values of any resource area protected by this bylaw.

**Section 13. Appeals**

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

**Section 14. Severability**

If any provision of this bylaw shall be found invalid for any reason, such invalidity shall be construed as narrowly as possible and the balance of the bylaw shall be deemed to be amended to the minimum extent necessary to provide to the Town substantially the benefits set forth in this bylaw. No judicial determination of invalidity of any section or provision or phrase of this bylaw shall be construed to invalidate any permit, Determination, Order or other decision issued prior to such determination to which such determination does not specifically apply.