WARRANT FOR SPECIAL TOWN MEETING

Middleborough, Massachusetts

To Bruce D. Gates, Police Chief or any of the
Police Officers of the Town of Middleborough

Greetings:

In the name of the Commonwealth of Massachusetts you are hereby required to notify and warn all the inhabitants of said Town, qualified to vote in Town affairs, to meet in the **Auditorium of the Middleborough High School**, on **Monday, October 7, 2013 at 7:00 P.M.**, to act on the following articles:

ARTICLE 1. To see if the Town will vote to raise and appropriate and/or transfer a sum of money from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account, or other available source to supplement and/or adjust departmental budgets for Fiscal Year 2014, or act anything thereon.

ARTICLE 2. To see if the Town will vote to raise and appropriate and/or transfer a sum of money from taxation, free cash, another specific available fund, an existing appropriation or account, or other available source for unpaid bills from prior years, or act anything thereon.

ARTICLE 3. To see if the Town will vote to raise and appropriate and/or transfer a sum of money of money from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account, or other available source to fund sick leave buy-backs, or act anything thereon.

ARTICLE 4. To see if the Town will vote to raise and appropriate and/or transfer a sum of money from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, to be placed into the Stabilization Fund, or act anything thereon.

ARTICLE 5. To see if the Town will vote to raise and appropriate and/or transfer a sum of money from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, to be placed into the Other Post-Employment Benefits Liability Trust Fund, or act anything thereon.

ARTICLE 6. To see if the Town will vote to raise and appropriate and/or transfer a sum of money from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source to fund one or more collective bargaining agreements, or act anything thereon.

ARTICLE 7. To see if the Town will vote to raise and appropriate and /or transfer a sum of money from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source for the purpose of reimbursing retired Town employees and other persons enrolled in the Town's Medicare health insurance plans for some of the health insurance premiums and co-payments paid by said retirees and other persons after Fiscal Year 2012, and to pay any related costs, or act anything thereon.

ARTICLE 8. To see if the Town will vote to raise and appropriate and/or transfer a sum of money from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, or by borrowing to purchase new firearms for the Police Department, or act anything thereon.

ARTICLE 9. To see if the Town will vote to raise and appropriate and/or transfer a sum of money from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation of account or other available source or by borrowing to purchase a 20/30 passenger special needs school bus with a wheelchair lift and a new maintenance vehicle for the School Department, or act anything thereon.

ARTICLE 10. To see if the Town will vote to raise and appropriate and/or transfer a sum of money from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, or by borrowing to shore up the bridge structure at Middleborough High School, or act anything thereon.

ARTICLE 11. To see if the Town will vote to raise and appropriate and/or transfer a sum of money from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source or by borrowing to purchase computers, servers, monitors, printers, and related hardware and software for various Town departments, or act anything thereon.

ARTICLE 12. To see if the Town will vote to rescind various debt authorization(s) voted at previous town meeting(s) for capital projects and raise and appropriate and/or transfer a sum of money from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source to fund capital projects voted at previous town meetings(s), or act anything thereon.

ARTICLE 13. To see if the Town will vote to raise and appropriate and/or transfer a sum of money from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, or by borrowing for

the Department of Public Works for all relevant and necessary expenses associated with new stormwater activities required by the EPA/DEP, or act anything thereon.

ARTICLE 14. To see if the Town will vote to transfer $14,787 from the receipts reserved for the Water Pollution Abatement Trust Loan Repayment Account in order to meet the Town's obligation for payment of the Water Pollution Trust Loan, or act anything thereon.

ARTICLE 15. To see if the Town will include water main replacements on Mitchell, Sachem, Park, Sprout, and Vine Streets to the water system improvements project voted under Article 12 of the warrant for the September 23, 2002 Special Town meeting, or act anything thereon.

ARTICLE 16. To see if the Town will vote to appropriate $91,050 from the Historic Resources Reserve of the Community Preservation Fund to fund climate control measures at the Middleborough Historical Museum for preservation of two museum buildings, historic town records and artifacts contained in the two buildings; said funds to be expended under the direction of the Community Preservation Committee; or act anything thereon.

Sponsored by the Community Preservation Committee

ARTICLE 17. To see if the Town will vote to appropriate $68,509 from the Historic Resources Reserve of the Community Preservation Fund to begin Phase 2 of the Town's Historic & Vital Records Preservation which will include establishing a computerized retrieval system; said funds to be expended under the direction of the Community Preservation Committee; or act anything thereon.

Sponsored by the Community Preservation Committee

ARTICLE 18. To see if the Town will vote to appropriate $15,000 from the Historic Resources Reserve of the Community Preservation Fund to fund a study by the Historical Commission to determine the overall condition of the estate and the value of a conservation restriction and a historic preservation restriction on the Oliver Homestead located on Plymouth Street on the Nemasket River; said funds to be expended under the direction of the Community Preservation Committee; or act anything thereon.

Sponsored by the Community Preservation Committee

ARTICLE 19. To see if the Town will vote to appropriate $156,600 from the Open Space Reserve of the Community Preservation Fund for the Conservation Commission's proposal to acquire and preserve the Lion's Head Property which consists of 103 acres on the Nemasket River; said appropriation is contingent upon Wild Lands Trusts and Land Grant funding; said funds to be expended under the direction of the Community Preservation Committee; or act anything thereon.

Sponsored by the Community Preservation Committee

ARTICLE 20. To see if the Town of Middleborough will vote to appropriate, and authorize the Treasurer with the approval of the Selectmen to allow funding from the Community Preservation Act Fund to borrow the sum of ($435,000.00) according to M.G.L. Chapter 44, Section 8C, for the purpose of purchasing for conservation and passive recreation purposes, by gift, negotiated purchase or eminent domain of a parcel of land of approximately 103.09 +/- acres together with buildings thereon, known as "Lion's Head", owned by Sarah Jigerjian and Mary Jigerjian as described on Assessors Map 21 Parcels 1141 & 4652 and Map 12, Parcel 4585said appropriation is contingent upon Wildland's Trust and Land Grant funding; that said land be conveyed to said Town of Middleborough under the provisions of Massachusetts General Laws, Chapter 40, Section 8C, and as it may hereafter be amended and other Massachusetts statutes relating to Conservation, to be managed and controlled by the Conservation Commission of Middleborough, and the Conservation Commission be authorized to file on behalf of Middleborough any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts deemed necessary under Chapter 132A, Section 11 and /or any others in any way connected with the scope of this Article, and the Town of Middleborough and the Conservation Commission be authorized to enter into all agreements and execute any and all instruments as may be necessary on behalf of Middleborough to affect said purchase; or act anything thereon.

ARTICLE 21. To see if the Town of Middleborough will vote to raise, borrow and/or appropriate $156,600.00 for the acquisition by gift, negotiated purchase or eminent domain of a parcel of land of approximately 103.09 +/- acres together with buildings thereon, known as "Lion's Head", owned by Sarah Jigerjian and Mary Jigerjian as described on Assessors Map 21 Parcels 1141 & 4652 and Map 12, Parcel 4585, said appropriation is contingent upon Wildland's Trust and Land Grant funding, to be managed and controlled by the Conservation Commission of the Town of Middleborough in accordance with Chapter 40, Section 8C for conservation and passive recreation purposes, and to meet said appropriate with funds transferred and/or borrowed in accordance with M.G.L. Chapter 293, the Community Preservation Act and to authorize the Treasurer, with the approval of the Board of Selectmen, to issue any bonds or notes that may be necessary for that purpose, as authorized by M.G.L. Chapter 44, or any other enabling authority, and that the Town Manager or Board of Selectmen be authorized to file on behalf of the Town of Middleborough any and all applications deemed necessary under the Self-Help Act (M.G.L. Chapter 132A, Section 11) or any other applications for funds in any way connected with the scope of this acquisition, and the Town manager and the Board of Selectmen and the Conservation Commission be authorized, as they deem appropriate, to enter into all agreements and execute any and all instruments including the conveyance of a perpetual conservation restriction in accordance with M.G.L. Chapter 184 as required by Section 12(a) of Chapter 44B or Chapter 293 Section 10 of the Acts of 1998 as amended, as may be necessary on behalf of the Town of Middleborough to affect said purchase. Said conservation restriction may be granted to the Wildland's Trust or any other organization qualified and willing to hold such a restriction; or act anything thereon.

ARTICLE 22. To see if the Town will vote to amend its Zoning By-laws for the purpose of regulating the locations of registered marijuana dispensaries by adding a new use to the TABLE OF USES in Section 3.1, Subsection D – COMMERCIAL USES so that the new use is permitted in the General Use (GU) District by special permit from the Board of Appeals but not otherwise and that the by-laws read as follows:

TABLE OF USES									
PRINCIPAL USE	**RA**	**RB**	**RR**	**B**	**I**	**GU**	**GUX**	**GUA**	**CD**
D. COMMERICIAL USES									
34. Registered Marijuana Dispensary	N	N	N	N	N	ZBA	N	N	N

, or act anything thereon.

ARTICLE 23. To see if the Town will vote to accept M.G.L. Chapter 59, Section 5L. Upon acceptance of this section by a municipality and notwithstanding any other provision of this chapter to the contrary, any taxes due under this chapter by a member or a dependent of a member of the Massachusetts National Guard or a reservist shall be deferred while that member is on active service outside the commonwealth for the next 180 days after that service. No interest or penalties shall be assessed for any period before the expiration of those 180 days, or act anything thereon.

ARTICLE 24. To see if the Town will vote to amend the existing Town by-law Regulation of Sewer Use to comply with changes mandated by the United States Environmental Protection Agency, as noted in the letter dated June 17, 2013. The Regulation/Sewer Use by-law being on file with the Town Clerk, or act anything thereon.

ARTICLE 25. To see if the Town will vote to adopt the following by-law:

Discharges to the Municipal Storm Drainage System

Section 1. Purpose

Increased and contaminated stormwater runoff is a major cause of: impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding.

Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of the Town of Middleborough's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment.

The objectives of this By-Law are:

1. to prevent Pollutants, as defined herein, from entering the Town of Middleborough's municipal separate storm sewer system (hereinafter, the "MS4");
2. to prohibit illicit connections and unauthorized discharges to the MS4 to the maximum extent practicable;
3. to require the removal of all such illicit connections;
4. to comply with state and federal statutes and regulations relating to stormwater discharges;
5. to establish the legal authority to ensure compliance with the provisions of this By-Law through inspection, monitoring, and enforcement.

Section 2. Definitions

For the purposes of this By-Law, the following shall mean:

AUTHORIZED ENFORCEMENT AGENCY: The Town of Middleborough Board of Selectmen [the Board]), its employees or agents designated to enforce this By-Law.

BEST MANAGEMENT PRACTICE ("BMP"): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

CLEAN WATER ACT: The Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) as hereafter amended.

DISCHARGE OF POLLUTANTS: The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

GROUNDWATER: Water beneath the surface of the ground.

ILLICIT CONNECTION: A surface or subsurface drain or conveyance, which allows an unauthorized discharge of pollutants into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water; and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this By-Law.

ILLICIT DISCHARGE: Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section 7. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or a Surface Water Discharge Permit, or resulting from firefighting activities exempted pursuant to Section 7, of this By-Law.

IMPERVIOUS SURFACE: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes, without limitation, roads, paved parking lots, sidewalks, tennis/sports courts and rooftops.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Middleborough.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT: A permit issued by United States Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to waters of the United States.

NON-STORMWATER DISCHARGE: Discharge to the municipal storm drain system not composed entirely of stormwater.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, unincorporated entity, business enterprise, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

POLLUTANT: Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth. Pollutants shall include without limitation:

(1) paints, varnishes, and solvents;

(2) oil and other automotive fluids;

(3) yard wastes;

(4) refuse, rubbish, garbage, litter, or other discarded or abandoned objects;

(5) pesticides, herbicides, and fertilizers, unless applied in accordance with manufacturer's instructions;

(6) hazardous materials and wastes; sewage, fecal coliform and pathogens;

(7) dissolved and particulate metals above EPA's ambient water quality criteria;

(8) animal wastes;

(9) rock, sand, salt, soils unless applied for the purpose of public safety;

PROCESS WASTEWATER: Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

RECHARGE: The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

STORMWATER: Storm water runoff, snow melt runoff, and surface water runoff and drainage.

SURFACE WATER DISCHARGE PERMIT. A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.

TOXIC OR HAZARDOUS MATERIAL or WASTE: Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under M.G.L. Ch.21C and Ch.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

WATERCOURSE: A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

WATERS OF THE COMMONWEALTH: All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

WASTEWATER: Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

Section 3. Applicability

This By-Law shall apply to flows entering the municipally owned storm drainage system.

Section 4. Authority

This By-Law is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34.

Section 5. Responsibility for Administration

The Board shall administer, implement and enforce this By-Law. Any powers granted to or duties imposed upon the Board may be delegated in writing by the Board to agents of the Board.

Section 6. Prohibited Activities

Illicit Discharges. No person shall dump, discharge, cause or allow to be discharged any Pollutant or non-stormwater discharge into the municipal separate storm sewer system (MS4), into a watercourse, or into the waters of the Commonwealth.

Obstruction of Municipal Storm Drain System. No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written approval from the Board.

Section 7. Exemptions

The following activities shall be exempt from the prohibitions under Section 6:

Discharge or flow resulting from firefighting activities.

Discharge or flow resulting from DPW ice and snow control operations

The following non-stormwater discharges or flows are exempt from the prohibition of non-stormwaters provided that the source is not a significant contributor of a pollutant to the municipal storm drain system:

(1) Waterline flushing;

(2) Flow from potable water sources;

(3) Springs;

(4) Natural flow from riparian habitats and wetlands;

(5) Diverted stream flow;

(6) Rising groundwater;

(7) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;

(8) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;

(9) Discharge from landscape irrigation or lawn watering;

(10) Water from individual residential car washing and temporary fundraising car wash events;

(11) Discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;

(12) Discharge from street sweeping;

(13) Dye testing, provided verbal notification is given to the Board or its duly authorized agent prior to the time of the test;

(14) Non-stormwater discharge permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Massachusetts Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations;

(15) Discharge for which advanced written approval is received from the Board or its agent as necessary to protect public health, safety, welfare or the environment; and

(16) Discharge allowed under a Planning Board-issued special permit/subdivision approval or under a Conservation Commission-issued Order of Conditions

Section 8. Sump Pumps

All sump pumps tied into the MS4 shall be registered with the Authorized Enforcement Agency. If, for reasons of protecting public health or the environment, the Authorized Enforcement Agency deems it necessary, disconnection of sump pump(s) or pretreatment of discharge may be required.

Section 9. Emergency Suspension of Storm Drainage Access

The Board may suspend MS4 access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the Board may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

Section 10. Notification of Spills

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in, or which may result in, discharge of pollutants to the MS4 or waters of the Commonwealth, the person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the Middleborough Fire and Police Departments. In the event of a release of non-hazardous material, the person shall notify the Authorized Enforcement Agency no later than the next business day. The person shall provide to the Authorized Enforcement Agency written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

Section 11. Enforcement

The Board or an authorized agent of the Board shall enforce this By-Law, regulations, orders, violation notices, and enforcement orders, and may pursue all criminal remedies for such violations.

Orders. The Board or an authorized agent of the Board may issue a written order to enforce the provisions of this By-Law or the regulations thereunder, which may include: (a) elimination of illicit connections or discharges to the MS4; (b) performance of monitoring, analyses, and reporting; (c) that unlawful discharges, practices, or operations shall cease and desist; and (d) remediation of contamination in connection therewith.

If the enforcing person determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed.

Remedies Not Exclusive. The remedies listed in these regulations are not exclusive of any other remedies available under any applicable federal, state or local law.

If the property owner violates more than one provision of this By-Law, each provision so violated shall constitute a separate offense.

Entry to Perform Duties Under this By-Law. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Board, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this By-Law and regulations and may make or cause to be made such examinations, surveys or sampling as the Board deems reasonably necessary.

Section 12. Severability

Any person that violates any provision of these regulations may be punished by fines of not more than $300. Each day or portion thereof during which a violation continues shall constitute a separate offense. The Board or its duly authorized agent is an authorized officer to impose such fines.

The provisions of this By-Law are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this By-Law or the application thereof to any person, establishment, or circumstances shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions or application of this By-Law.

Section 13. Transitional Provisions

Property owners shall have 30 days from the effective date of the By-Law to comply with its provisions provided good cause is shown for the failure to comply with the By-Law during that period, or act anything thereon.

ARTICLE 26. To see if the Town will adopt the following non-zoning wetlands bylaw:

WETLANDS PROTECTION BYLAW

Section I. Purpose
The purpose of this bylaw is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Middleborough by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect on resource area values, including but not limited to the following: public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention including coastal storm flowage, water quality, prevention and control of pollution, fisheries, shellfisheries, wildlife habitat, rare species habitat 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 is intended to utilize the Home Rule authority of this municipality so as to protect the resource areas under the Wetlands Protection Act (G.L Ch.131 §40; the Act) to a greater degree, to protect additional resource areas beyond the Act recognized by the Town as significant, to protect all resource areas for their additional values beyond those recognized in the Act, and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and regulations thereunder (310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth and other relevant bylaws of the Town of Middleborough.

Section II. Jurisdiction
Except as permitted by the Conservation Commission 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, springs, banks, reservoirs, lakes, ponds of any size, beaches, dunes, estuaries, the ocean, and lands under water bodies; intermittent streams, brooks and creeks; lands adjoining these resource areas out to a distance of 100 feet, known as the buffer zone; perennial rivers, streams, brooks and creeks; lands adjoining these resource areas out to a distance of 200 feet, known as the riverfront area; lands subject to flooding or inundation by groundwater or surface water; and lands subject to tidal action, coastal storm flowage, or flooding (collectively the "resource areas

protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters.

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

Section III. Exemptions and Exceptions

The applications and permits required by this bylaw shall not be required for work performed for normal maintenance or improvement of land in agricultural and aqua cultural use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04.

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

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

Other than stated in this bylaw, the exceptions provided in the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) shall not apply under this bylaw.

Section IV. Applications and Fees

Written application shall be filed with the Conservation Commission to perform activities affecting resource areas protected by this bylaw. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

The Commission in an appropriate case may accept as the application and plans under this bylaw any application and plans filed under the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00), but the Commission is not obliged to do so.

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

At the time of an application, the applicant shall pay a filing fee specified in regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act and regulations. Pursuant to G.L. Ch. 44 §53G and regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects. Such funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected shall be paid from this account, and expenditures may be made at the sole discretion of the Commission. Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission. The Commission shall provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or delivered. The applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.

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

The applicant may appeal the selection of an outside consultant to the select board, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue, or a related field. The applicant shall make such an appeal in writing, and must be received within ten (10) business days of the date that request for consultant fees was made by the Commission. Such appeal shall extend the applicable time limits for action upon the application.

Section V. Notice and Hearings

Any person filing a permit or other application or RDA or ANRAD or other request with the Conservation Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date if known. The notice to abutters also shall include a copy of the application, 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. When a person requesting a determination is other than the owner, the application, 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.

The Commission shall conduct a public hearing on any permit application, RDA, or ANRAD with written notice given at the expense of the applicant, at least not less than five business days prior to the hearing, in a newspaper of general circulation in the

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

The Commission shall issue its permit, other order or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act (G.L. Ch.131 §40) and regulations (310 CMR 10.00).

Section VI. Coordination with Other Boards

Any person filing a permit application, RDA, or ANRAD with the Conservation Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested) or hand delivery, to the select board, planning board, board of appeals, board of health, agricultural commission, town engineer, and building inspector. A copy shall be provided in the same manner to the Commission of the adjoining municipality, if the application or RDA pertains to property within 300 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the above boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

Section VII. Permits and Conditions

If the Conservation 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 therefrom, are likely to have a significant individual or cumulative effect on the resource area values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect. The Commission may also consider any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities.

If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect said resource area values, and all activities shall be conducted in accordance with those conditions. Where no conditions are adequate to protect said resource area values, the Commission is empowered to deny a permit for failure to meet the requirements of this bylaw. It may also deny a permit: for failure to submit necessary information and plans requested by the Commission; for failure to comply with the procedures, design specifications, performance standards, and other requirements in regulations of the Commission; or for failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values protected by this bylaw. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have

been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

In reviewing activities within the buffer zone, the Commission shall presume the buffer zone is important to the protection of other resource areas because activities undertaken in close proximity have a high likelihood of adverse impact, 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 may establish, in its regulations, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of such lands, including without limitation strips of continuous, undisturbed vegetative cover, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw.

In reviewing activities within the riverfront area, the Commission shall presume the riverfront area is important to all the resource area values unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this bylaw, 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 bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.

To prevent resource area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication.

The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless the type of resource area or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60).

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

A permit, Determination of Applicability (DOA), or Order of Resource Area Delineation (ORAD) 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 a request for a renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all present and future owners of the land.

For good cause the Commission may revoke any permit, DOA, or ORAD or any other order, determination or other decision issued under this bylaw after notice to the holder, the public, abutters, and town boards, pursuant to §V and §VI, and after a public hearing.

Amendments to permits, DOAs, or ORADs shall be handled in the manner set out in the Wetlands Protection Act regulations and policies thereunder.

The Commission in an appropriate case may combine the decision issued under this bylaw with the permit, DOA, ORAD, or Certificate of Compliance (COC) issued under the Wetlands Protection Act and regulations.

No work proposed in any application shall be undertaken until the permit, or ORAD issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the document has been recorded. If the applicant fails to perform such recording, the Commission may record the documents itself and require the Applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a Coe.

VIII. Regulations

After public notice and public hearing, the Conservation Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw, 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 bylaw. At a minimum these regulations shall reiterate the terms defined in this bylaw, define additional terms not inconsistent with the bylaw, and impose filing and consultant fees.

IX. Definitions

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

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

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

A. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind
B. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics
C. Drainage, or other disturbance of water level or water table
D. Dumping, discharging, or filling with any material which may degrade water quality
E. Placing of fill, or removal of material, which would alter elevation
F. Driving of piles, erection, expansion or repair of buildings, or structures of any kind
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 any waters
J. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater
K. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

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 "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 bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

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

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

The term "vernal pool" shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be the mean annual high-water line defining the depression.
Except as otherwise provided in this bylaw or in associated regulations of the Conservation Commission, the definitions of terms and the procedures in this bylaw shall be as set forth in the Wetlands Protection Act (GL. Ch. 131 §40) and regulations (310 CMR 1000).

Section X. Security
As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Conservation 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 both of the methods described below:

A. By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a COC for work performed pursuant to the permit.

B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, 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 XI. Enforcement

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

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

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

Upon request of the Commission, the select board and 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.

Municipal 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, or 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 bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

Section XII. Burden of Proof

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

Section XIII.Appeals

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

Section XIV.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 (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) thereunder. It is the intention of this bylaw that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Wetlands Protection Act and regulations.

Section XV. Severability
The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, approval or determination which previously has been issued, or act anything thereon.

ARTICLE 27. To see if the Town will vote to accept Veronica Lane as a Town way as laid out by the Board of Selectmen and to authorize the Selectmen to acquire by eminent domain or by gift the fee in the way as shown on the road layout plan, on file with the Town Clerk entitled "As-Built-Street Acceptance Plan – Veronica Lane – Acorn Ridge Subdivision, Middleborough, Mass" dated February 2, 1993, revised August 28, 2013, prepared by Michael J. Koska & Associates, Inc., and any related easements, to authorize the Board to complete construction of the way and related easements, to raise and appropriate a sum of money by borrowing for the cost of construction, and to meet this appropriation to authorize the Treasurer, with the approval of the Board of Selectmen, to borrow a sum of money under General Laws, Chapter 44 and to authorize the Board of Selectmen to assess betterments for the cost of construction under General Laws, Chapter 80, or act anything thereon.

ARTICLE 28. To see if the Town will vote to accept Tall Oak Drive as a Town way as laid out by the Board of Selectmen and to authorize the Selectmen to acquire by eminent domain, or by gift, the fee in the way and related easements as shown on the road layout plan, on file with the Town Clerk entitled "As-Built Acceptance Plan, Tall Oak Drive" dated October 21, 1994 and revised on September 8, 1995, By James E. Miller P.E., and any related easements, or act anything thereon.

ARTICLE 29. To see if the Town will vote to accept Dona Drive as a Town way as laid out by the Board of Selectmen and to authorize the Selectmen to acquire by eminent domain, or by gift, the fee in the way and related easements as shown on the road layout plan, on file with the Town Clerk entitled "Roadway As-Built in Middleborough, MA, Dona Estates Subdivision, Dona Drive" dated 7/24/2013, prepared by AZOR Land Sciences, Inc., and any related easements, or act anything thereon.

ARTICLE 30. To see if the Town will vote to transfer the care, custody, management and control of certain real estate on the northerly side of Wareham Street and being part of Lot 872 on Assessors Map 58D and being sometimes known as Thomas Memorial Park from the Municipal Light Board (Gas & Electric Commission) to the Board of Selectmen, Park Commission or other Town Board for the same purpose as the real estate is currently used for, such real estate consisting of 2.69 acres of land more or less and being bounded southerly by Wareham Street, westerly by a chain link fence located easterly of the main building at the Wareham Street Electric Station, northerly by Lot 828 on Assessors Map 58D and easterly in part by the Nemasket River and in part by land shown as Lot 1638 on Assessors Map 58D, or act anything thereon.

ARTICLE 31. To see if the Town will vote to authorize the Municipal Light Board (Gas & Electric Commission) to acquire by gift on behalf of the Town easements for the transmission of gas and electric services in private ways off North Street known as Peirce Lane and Weston Avenue, or act anything thereon.

ARTICLE 32. To see if the Town will vote to authorize the Board of Selectmen to accept conveyance for the Town from the Plymouth County Commissioners of a portion of the Taunton Avenue County highway layout which is to be discontinued and which contains a cross located in an island part of the layout and to accept conveyance for the Town from the Commonwealth of Massachusetts of a portion of the State highway layout for Route 28 (West Grove Street) which is to be discontinued, such portion being located adjacent to the aforesaid portion of the County highway layout, to discontinue as a Town way the said portion of the State highway layout to be effective when the Commonwealth discontinues that portion as a State highway, to transfer the care, custody, management and control of said portions of the County and State highway layouts to the Board of Selectmen for the purpose of sale, and to authorize the Board of Selectmen to sell and convey the said portions of the County and State highway layouts on such terms and conditions determined by the Board, or act anything thereon.

ARTICLE 33. To see if the Town will vote to appropriate the sum of $210,000 from the proceeds of surety pursuant to the Subdivision Control Law, MGL Chapter 41 Section 81U, from the subdivision known as Fernway Estates which is in default of completion, to be made available to the Planning Board for expenditure to meet the cost and expenses for completing the work as specified in the approved subdivision plan, or act anything thereon.

ARTICLE 34. To see if the Town will vote to authorize the Board of Selectmen to amend the Intermunicipal Agreement with the Town of Lakeville, which permits Middleborough to provide water services to existing Lakeville customers, by adding a new residential customer located at 37 Bridge Street, or act anything thereon

Given, under our hands at Middleborough, this 16th day of September, 2013.

STEPHEN J. MCKINNON

ALLIN FRAWLEY

BEN QUELLE

LEILANI DALPE

JOHN M. KNOWLTON

BOARD OF SELECTMEN

Pursuant to the instructions contained in the above warrant, I have notified and warned all Inhabitants of said Town of Middleborough, qualified to vote as expressed in said Warrant, to meet at the time and place for the purpose specified by causing an attested Copy of the same to be published in the Middleboro Gazette on the **19th day of September, 2013**, that date being more than fourteen days before the time specified for said meeting.

BRUCE D. GATES, Police Chief