

TOWN OF NEEDHAM

WETLANDS PROTECTION REGULATIONS

PROMULGATED UNDER NEEDHAM

GENERAL BYLAWS ARTICLE 6

March 13, 2025

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PART I. GENERAL PROVISIONS

1.01 INTRODUCTION AND PURPOSE

(1) Introduction

These regulations are promulgated by the Town of Needham Conservation Commission pursuant to the authority granted to it under Article 6 of the Town of Needham General Bylaws (hereinafter referred to as the “**Bylaw**”). These regulations shall complement the Bylaw and shall have the force of law upon their effective date.

The intent of the Wetlands Protection Bylaw and these regulations is to supplement the state review under MGL c. 131 s. 40 (The Wetlands Protection Act) and its regulations (310 CMR 10.00), and to provide additional protections for resource areas within the Town of Needham. These regulations also extend such protections to resource areas not covered under the state Wetlands Protection Act, including Vegetated Wetlands and the Buffer Zone.

(2) Purpose

The Bylaw sets forth a public review and decision-making process by which activities having an impact or effect upon Resource Areas are to be regulated in order to ensure the protection of the following interests:

- ☐ Public water supply
- ☐ Private water supply
- ☐ Groundwater and groundwater quality
- ☐ Water quality in the numerous ponds of the Town
- ☐ Flood Control
- ☐ Erosion and sedimentation control
- ☐ Stormwater management (infiltration and runoff control) and storm damage prevention
- ☐ Water pollution
- ☐ Wildlife and wildlife habitat
- ☐ Fisheries
- ☐ Carbon Sequestration
- ☐ Protection of trees and maintenance of the tree canopy

The purpose of these regulations is to define and classify that process by establishing standard definitions and uniform procedures by which the Commission may carry out its responsibilities under the Bylaw.

1.02 STATEMENT OF JURISDICTION

(1) Exceptions

The following activities are exempt from filing for a Permit. However, a notification letter must be submitted to the Commission at least 14 days prior to the start of work.

- (a) Maintaining or repairing, but not changing or enlarging, an existing and lawfully

located structure or facility used in the service of the public to provide electric, gas, water, sewer, telephone, telegraph, or other telecommunications services, provided that written notice has been given to the Commission at least 14 days prior to commencement of work, and provided that the work conforms to the performance standards and design specifications of these regulations.

- (b) Work performed for normal maintenance or improvement of land in agricultural use or for Aquaculture, provided that written notice has been given to the Commission at least 14 days prior to the commencement of work.
 - (c) Subject to the requirements of Section 1.06, Emergency Projects necessary for the protection of the health or safety of the public, as determined by the Commission, after advance written notice has been received by the Commission prior to commencement of any work. An exception to the requirement for advance notice will be made for an emergency response conducted by public officials in order to safeguard life, health, and property damage, provided that notice shall be provided to the Commission as soon as is practicable.
- (2) Resource Areas Subject to Protection Under the Bylaw. The following resource areas are subject to protection under the Bylaw (collectively, the “**Resource Areas**”; and individually, a “**Resource Area**”):
- (a) Any Freshwater Wetland;
 - (b) Any Bank;
 - (c) Any Water Body;
 - (d) Any land within the Buffer Zone; and
 - (e) Any Land Subject to Flooding.
- (3) Activities Subject to Regulation Under the Bylaw.

The following activities are subject to regulation under the Bylaw and these regulations:

- (a) Any activity proposed or undertaken that will constitute removing, filling, dredging, building upon or altering, any Resource Area is subject to regulation under the Bylaw and requires a Permit, unless the Commission issues a Negative Determination of Applicability; and
- (b) Any activity proposed or undertaken outside a Resource Area shall not be subject to regulation under the Bylaw and shall not require a Permit unless, in the judgment of the Commission, said activity will result or has resulted in the removing, filling, dredging, building upon, or altering a Resource Area.

Any person who wishes to know whether or not a proposed activity or an area is subject to the Bylaw and requires a Permit may in writing request a determination from the

Commission. Such a Request for Determination of Applicability shall be submitted pursuant to Section 1.05(3) of these regulations.

(4) Minor Activities Exempt from Regulation Under the Bylaw.

Certain minor activities occurring exclusively within the Buffer Zone that are not likely to alter an adjacent Resource Area are exempt from the requirement to obtain a Negative Determination of Applicability or a Permit. However, except for the work described in Section 1.02(4)(a) and Section 1.02(4)(e) below, written notification must be submitted to the Commission at least 21 calendar days before work can be started (a “**Notice of Exempt Activity**”). If the Commission determines at a public meeting that the work proposed in a Notice of Exempt Activity requires formal review pursuant to a Notice of Intent or Request for Determination of Applicability, or if the need for formal review cannot be assessed based upon the information provided, the Commission shall notify the Applicant in writing within 5 business days following the public meeting. These exempt minor activities include, but are not limited to:

- (a) Mowing and maintenance of lawfully existing lawns and gardens, provided that no fertilizers, herbicides, or pesticides are used. However, lawn clippings, leaves, brush, and other landscape debris may not be deposited in a Resource Area, including, without limitation, the Buffer Zone.
- (b) Unpaved pedestrian walkways less than 30 inches wide for private use and less than 36 inches wide for public access on conservation property.
- (c) Installing fencing and/or stone walls or placement of stacks of cordwood within the Buffer Zone, provided they will not constitute a barrier to wildlife movement.
- (d) Vista pruning, provided the activity is located more than 75 feet from the limits of any Bank or boundary of any Vegetated Wetlands.
- (e) Planting native, non-cultivar species of trees, shrubs, or herbaceous species within the Buffer Zone, provided that existing vegetation (except lawn, ornamental gardens and invasive species) is not removed or otherwise disturbed. Planting a lawn is **NOT** exempted from the requirement to obtain a Negative Determination of Applicability or a Permit.
- (f) Individual tree removals when evidence is provided by a Certified Arborist showing that the tree is in poor health and/or poses an imminent danger to persons or property.
- (g) Treatment and/or removal of invasive plant species in accordance with current methods approved by the Commission, except for the removal of any Norway Maple (*acer platanoides*) with a DBH greater than 6 inches.
- (h) The conversion of lawn located outside of the Riverfront Area to uses accessory to residential structures such as decks, sheds, patios, replacement of a basement bulkhead and the installation of a ramp for compliance with accessibility requirements, but not including additions, or the conversion of such uses accessory to an existing single-family house to lawn, provided, in each case:

- a. the activity, including material staging and stockpiling is located more than 75 feet from the upper boundary of any Bank or from the boundary of any Vegetated Wetlands;
 - b. new impervious surface is less than or equal to 500 square feet in floor area; and
 - c. erosion and sedimentation controls are implemented during construction.
- (i) The conversion of impervious to vegetated surfaces, provided erosion and sedimentation controls are implemented during construction and no invasive plant species are planted in any vegetated surface.
- (j) Exploratory borings, test wells, and soil tests if conducted within the Buffer Zone using a hand or motorized drill. However, test pits excavated using a backhoe or similar equipment are not exempted from the requirement to obtain a Negative Determination of Applicability or a Permit.
- (k) Installation of direct embedded utility poles and associated anchors, push braces or grounding mats/rods along existing paved or unpaved roadways and private roadways/driveways, and their existing maintained shoulders, or within existing railroad rights-of-way, provided that all work is conducted within ten feet of the road or driveway shoulder and is a minimum of ten feet from the edge of any Bank or the boundary of any Vegetated Wetland and as far away from Resource Areas as practicable, with no additional tree clearing or substantial grading within the Buffer Zone, and provided that all vehicles and machinery are located within the roadway surface during work.
- (l) Installation of underground utilities (e.g., electric, gas, water) within existing paved or unpaved roadways and private roadways/driveways, provided that all work is conducted within the roadway or driveway and that all trenches are closed at the completion of each workday.
- (m) Installation and repair of underground sewer lines within existing paved or unpaved roadways and private roadways/driveways, provided that all work is conducted within the roadway or driveway and that all trenches are closed at completion of each workday.
- (n) Installation of new equipment within existing or approved electric or gas facilities when such equipment is contained entirely within the developed/disturbed existing fenced yard.
- (o) Installation of access road gates at public or private road entrances to existing utility right-of-way access roads, provided that all vehicles and machinery are located within the roadway surface during work.
- (p) Removal of existing utility equipment (poles, anchors, lines) along existing or approved roadways or within existing or approved electric, water or gas facilities, provided that all vehicles and machinery are located within the roadway surface during work.
- (q) Vegetation cutting for road safety maintenance, limited to the following:

- a. Removal of diseased or damaged trees or branches that pose an immediate and substantial threat to driver safety from falling into the roadway;
 - b. Removal of shrubbery or branches to maintain clear guardrails; such removal shall extend no further than six feet from the rear of the guardrail;
 - c. Removal of shrubbery or branches to maintain sight distances at existing intersections; such removal shall be no farther than five feet beyond the "sight triangles" established according to practices set forth in American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets, 2011, 6th edition, and such removal is a minimum of ten feet from a Resource Area, other than a Bank; and
 - d. Removal of shrubbery, branches, or other vegetation required to maintain the visibility of road signs and signals. Cuttings of shrubs and branches from mature trees will be performed with suitable horticultural equipment and methods that do not further damage the trees. To prevent the possible export of invasive plants, cut vegetation shall be chipped and evenly spread on site, provided the chips are spread outside the Buffer Zone, and raked to a depth not to exceed three inches, clear of all drainage ways. Alternatively, all cuttings and slash shall be removed from the site and properly disposed in accordance with current methods approved by the Commission.
- (r) Installation, repair, replacement or removal of signs, signals, sign and signal posts and associated supports, braces, anchors, and foundations along existing paved roadways and their shoulders, provided that work is conducted as far from Resource Areas as practicable, and is located a minimum of ten feet from a Resource Area. Any excess soil must be removed from the project location, and any disturbed soils must be stabilized, as appropriate.
- (s) Pavement repair, resurfacing, and reclamation of existing roadways within the right-of-way configuration provided that the roadway and shoulders are not widened, no staging or stockpiling of materials, all disturbed road shoulders are stabilized within 72 hours of completion of the resurfacing or reclamation, and no work on the drainage system is performed, other than adjustments and/or repairs to respective structures within the roadway.
- (t) The repair or replacement of an existing and lawfully located driveway servicing not more than two dwelling units provided that all work remains within the existing limits of the driveway and all surfaces are permanently stabilized within 14 days of final grade.
- (u) Installing a shed, less than or equal to 100 square feet in floor area, on blocks or piles, on an existing lawn located outside of any Riverfront Area and the 25-Foot No-Disturb Zone or, if applicable, the 50-Foot No-Disturb Zone.
- (5) Notwithstanding the provisions of Section 1.02(2), the construction, operation, and/or maintenance of a stormwater management system designed, constructed, and installed in accordance with the Stormwater Management Standards of the Massachusetts Wetlands

Protection Act regulations (310 CMR 10.05(6)(k) through (q)) does not by itself create additional Resource Area provided that:

- the system was designed, constructed, and installed on or after January 2, 2008; and
- if the system was constructed in a Resource Area the system was designed, constructed, and installed in accordance with all applicable provisions of these regulations.

1.03 GENERAL PROVISIONS CONCERNING BURDEN OF GOING FORWARD AND BURDEN OF PROOF

- (1) The Applicant shall have the burden of going forward by providing credible evidence from a competent source in support of all matters asserted by the Applicant, in accordance with his or her burden of proof pursuant to Section 1.03(2) below.
- (2) The Applicant shall have the burden of proving by a preponderance of credible evidence that the activities proposed in the Application will not harm the interests protected by the Bylaw and these regulations. Failure to meet the burden of proof shall be cause for the Commission to deny an Application along with any work or activity proposed therein.

1.04 DEFINITIONS

Note: some of the following terms may not be capitalized; and any terms not defined herein shall have the meaning given in the Wetlands Protection Act or 310 CMR 10.00, as amended.

25-Foot No-Disturb Zone means any land within 25 feet of any Freshwater Wetland, Water Body or Land Subject to Flooding.

50-Foot No-Disturb Zone means any land within 50 feet of any Freshwater Wetland, Water Body or Land Subject to Flooding if (a) such Freshwater Wetland, Water Body or Land Subject to Flooding provides wildlife habitat or (b) such land within 50 feet of any Freshwater Wetland, Water Body or Land Subject to Flooding is forested, meadowland, or otherwise undeveloped except for lawful existing lawn and ornamental or vegetable gardens. Unless the Commission makes a finding to the contrary, a Freshwater Wetland, Water Body or Land Subject to Flooding shall be presumed to provide wildlife habitat.

Abutters means owners of land directly adjacent to, or 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.

Activity means any form of draining, dumping, dredging, damming, discharging, excavating, filling or grading; the demolition, erection, reconstruction, teardown, or expansion of any buildings, structures or other improvements; the driving of pilings; the construction or improvement of roads and other ways; the changing of runoff characteristics; the intercepting or diverting of ground or surface water; the installation of drainage, sewage, and water systems; the discharging of pollutants; the destruction

of plant life; and any other changing of the physical characteristics of land, or of the physical, biological, or chemical characteristics of water.

Alter means to change the conditions of any Resource Area. The term “alter” shall include, without limitation, the following activities when undertaken to, upon, within, or affecting any Resource Area:

- (a) Removal, excavation, or dredging of any soil, sand, gravel, sediment, or aggregate materials of any kind;
- (b) Changing pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- (c) Draining or other disturbance of water level or water table;
- (d) Dumping, discharging or filling with any material;
- (e) Placing fill, or removing material;
- (f) Driving piles, erecting buildings or structures of any kind;
- (g) Placing obstructions or objects in water;
- (h) Destroying plant life, including cutting living or dead trees (except as allowed pursuant to Section 1.02(4)(e)), landscaping, or replacing existing plant life with lawns;
- (i) Changing water temperature, biochemical oxygen demand, or other physical 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.

Other construction activities that may result in soil or root compaction or adversely affect trees or other plant life, such as the movement of construction equipment, soil stockpiles or laydown areas.

The terms “**altered**”, “**alteration**” or words of similar import shall have the meaning correlative to the foregoing.

Application means a Notice of Intent, Request for Determination of Applicability, Notice of Exempt Activity, a request for an Extension Permit or a request for an amendment to an Order of Conditions.

Applicant means the individual filing an Application or on whose behalf an Application is filed before the Commission.

Aquaculture means the growing of aquatic organisms under controlled conditions, including but not limited to finfish, shellfish, amphibians, reptiles and seaweeds.

Bank means that portion of the land surface that normally abuts and confines a Water Body. A

Bank may be partially or totally vegetated, or it may be comprised of exposed soil, gravel, stone, or sand. The upper boundary of a Bank is the first observable break in slope or the mean annual high water level, whichever is lower. The lower boundary of a Bank is the mean annual low water level.

Best Available Measures means the most up-to-date technology or the best designs, measures, or engineering practices that have been developed and that are commercially available.

Best Practical Measures means technologies, designs, measures, or engineering measures or engineering practices that are in general use to protect like or similar interests.

Bog means any area where standing or slowly running water is near or at the surface during a normal growing season, and where the vegetation community has a significant portion of the water or surface covered with sphagnum moss, and where the vegetation community is made up of a significant portion of one or more of, but not limited to nor necessarily all of, the following plants or groups of plants: azaleas (*Rhododendron canadense* and *R. viscosum*), black spruce (*Picea mariana*), bog cotton (*Eriophorum*), cranberry (*Vaccinium macrocarpon*), highbush blueberry (*Vaccinium corymbosum*), larch (*Larix laricina*), laurel (*Kalmia polifolia* or *K. angustifolia*), leatherleaf (*Chamaedaphne calyculata*), orchids (*Pogonia*, *Calopogon*), pitcher plant (*Sarracenia purpurea*), sundews (*Drosera*), bog aster (*Aster nemoralis*), sweet gale (*Myrica gale*), white cedar (*Chamaecyparis thyoides*), sedges (*Dulichium arundinaceum*, *Carex canescens*, *Rhynchospora*, *Cladium mariscoides*).

Bordering Land Subject to Flooding means an area with low flat topography adjacent to and inundated by flood waters rising from any Water Body; where a Vegetated Wetland occurs, the Bordering Land Subject to Flooding extends from the upper boundary of said Vegetated Wetland. The boundary of Bordering Land Subject to Flooding is the estimated maximum lateral extent of flood water that will theoretically result from the statistical 100-year frequency storm. Said boundary shall be that determined by reference to the most recently available flood profile data prepared under the National Flood Insurance Program (NFIP) currently administered by the Federal Emergency Management Agency (FEMA). Said boundary, so determined, shall be presumed accurate. This presumption may be overcome only by credible evidence from a registered professional engineer or other professional competent in such matters. Where NFIP profile data are unavailable, the boundary of Bordering Land Subject to Flooding shall be the maximum lateral extent of flood water that has been observed or recorded. In the absence of such observations or records, the estimated maximum lateral flood water that will theoretically result from the statistical 100-year frequency storm shall be determined by a registered professional engineer.

Buffer Zone means any land within 100 feet of any Freshwater Wetland, Bank, Water Body or Land Subject to Flooding.

Carbon Sequestration means the removal and long-term storage of carbon from the atmosphere in carbon sinks (such as oceans, forests or soils) through physical or biological processes, such as photosynthesis.

Certificate of Compliance means a written determination by the Commission that a proposed activity approved by the Commission has been completed in accordance with the Conditions set

forth in the applicable Permit.

Certified Arborist means an arborist certified by the International Society of Arboriculture (ISA) or the Massachusetts Arborist Association (MAA).

Commission means the Town of Needham Conservation Commission, a body comprised of members lawfully appointed by the Select Board of the Town of Needham pursuant to MGL c. 40 s. 8C.

Conditions mean those requirements set forth in a written Permit issued by the Commission for the purposes of permitting, regulating, or prohibiting any activity that removes, fills, dredges, builds upon, or alters a Resource Area.

Date of Issuance means the date a Permit, Determination of Applicability, or Certificate of Compliance is mailed, as evidenced by a postmark or the date it is hand delivered.

Date of Receipt means the date of delivery to an office, home, or usual place of business by mail or hand delivery.

Department means Massachusetts Department of Environmental Protection (DEP).

Determination or Determination of Applicability means a Positive Determination of Applicability or a Negative Determination of Applicability, as the case may be.

Dredge means to deepen, widen, or excavate a vegetated wetland or Water Body, whether temporarily or permanently.

Emergency Project means an action necessary to eliminate an imminent threat to human life, health, or property; to restore property that has been damaged due to a storm or other sudden unforeseen event, where such restoration must be undertaken immediately to protect human life or further property damage; and an Immediate Response Action receiving oral approval from the Bureau of Waste Site Cleanup of the Massachusetts Department of Environmental Protection pursuant to 310 CMR 40.0420.

Erosion Control means the prevention or reduction of the detachment or movement of soil or rock fragments by water, wind, ice, and/or gravity.

Extension Permit means a written extension of time within which an activity previously approved by the Commission shall be completed.

Fill means to deposit any material so as to raise an elevation, either temporarily or permanently.

Flood Control means the prevention or reduction of flooding and flood damage.

Freshwater Wetlands means any area where the topography is low and flat, where soils are annually saturated (as demonstrated by the presence of hydric soils), and where the vegetation community is composed of species adapted to or characteristic of saturated soil conditions, including Vegetated Wetland and Vernal Pools.

Groundwater Supply means water below the earth's surface in the zone of saturation.

Hydric Soil means any soil that displays characteristics normally associated with annual saturation or inundation, as defined in the current version of "Field Indicators of Hydric Soils in New England", including:

- (a) the presence of a dark organic layer at least 6 inches thick;
- (b) the layer under the A horizon has a chroma less than or equal to 2; and/or
- (c) the layer under the A horizon contains prominent high-chroma mottles.

Interests mean the wetland values (collectively, the "interests protected by the Bylaw") specified in Section 6.1 of the Bylaw and/or Section 1.01(2) of these regulations.

Invasive Plant Species means an alien (non-native) plant species whose introduction does or is likely to cause economic or environmental harm, harm to native animal or plant communities, or to ecological processes which these species depend, including, but not limited to, Norway maple (*Acer platanoides*), garlic mustard (*Alliaria petiolata*), Japanese barberry (*Berberis thunbergii*), oriental bittersweet (*Celastrus orbicularis*), burning bush (*Euonymus alatus*), shrub honeysuckles (*Lonicera morrowii*, *L. tartarica*, *L. zylostereum*, *L. x bella*), purple loosestrife (*Lythrum salicaria*), parrotfeather (*Myriophyllum aquaticum*), eurasian milfoil (*Myriophyllum spicatum*), reed canary grass (*Phalaris arundinacea*), common reed (*Phragmites australis*), Japanese knotweed (*Polygonum cuspidatum*), kudzu (*Pueraria lobata*), glossy buckthorn (*Frangula alnus*), water chestnut (*Trapa natans*), and any other species identified by the Massachusetts Executive Office of Energy and Environmental Affairs as invasive plant species.

Isolated Land Subject to Flooding means an isolated depression or closed basin without an inlet or outlet. It is an area that at least once a year confines standing water to an average depth of not less than six (6) inches and an average surface area of not less than 2,000 square feet. An Isolated Land Subject to Flooding may be underlain by pervious material, which in turn may be covered by a mat of organic peat and muck. The boundary of an Isolated Land Subject to Flooding is the perimeter of the largest observed or recorded volume of water confined in said area. In the absence of such observations, the boundary shall be established as the maximum lateral extent of water retained during the statistical 100-year frequency storm.

Jurisdiction of the Bylaw means, with respect to any proposed work or activity, such work or activity is described in Section 1.02(3) and is not subject to any exception or exemption under Section 1.02(1), Section 1.02(4) or Section 1.02(5).

Lake means any open body of fresh water with a surface area of 10 acres or more.

Land Subject to Flooding means any Bordering Land Subject to Flooding or any Isolated Land Subject to Flooding, as the case may be.

Lawfully Existing means a condition existing prior to the effective date of the Needham General Wetlands Protection By-Law (May 23, 1988) or permitted by the Commission subsequent to that date through issuance of a Negative Determination of Applicability or a Permit.

Lawn means a cultivated area of land covered with grass that is regularly maintained and kept

short. Lawns are often found in residential yards, parks, and public spaces and are primarily for aesthetic, recreational, or landscaping purposes. They typically require regular care, such as watering, mowing, and fertilization, to stay healthy and visually appealing.

Mailed means sent via the U.S. Postal Service, a private service such as FedEx or UPS, or via electronic mail.

Majority means more than half of the members of the Commission then in office.

Marsh means any area where standing or slowly running water is near or at the surface during a normal growing season, and where a significant part of the vegetation community is composed of, but not limited to nor necessarily all of, the following plants or groups of plants: bladderworts (*Utricularia*), bur-reed (*Sparganium*), button bush (*Cephalanthus occidentalis*), cattails (*Typha*), duck weeds (*Lemna*), hydrophilic grasses (*Calamagrostis Canadensis*, *Phalaris arundinacea*, *Phragmites australis*, *Glyceria*), pickerel weed (*Pontederia*), pipewort (*Eriocaulon*), rushes (*Juncus*), hydrophilic sedges (*Scirpus cyperinus*, *Carex stricta*, *Carex lacustris*, *Carex crinita*, *Carex lurida*, *Eleocharis*, *Rhynchospora*), hydrophilic smartweeds (*Polygonum*), water willow (*Decodon*), arrowhead (*Sagittaria*), or sweet flag (*Acorus*).

Negative Determination of Applicability means a finding by the Commission that a proposed activity set forth in a Request for Determination of Applicability is not subject to the jurisdiction of the Bylaw.

Notice of Exempt Activity has the meaning set forth in Section 1.02(4).

New Construction means the construction or replacement of a structure, house or building which requires a Building Permit or construction/reconstruction of a parking lot, or construction of a subdivision roadway requiring Planning Board or Board of Appeals approval.

Notice of Intent means the written notice filed by any Applicant intending to perform any work or activity that is subject to regulation under the Bylaw.

Obstructions or Objects in water means but is not limited to dams, weirs, sluiceways, docks, bulkheads, pilings, slips, floats or cofferdams.

Open Meeting Law means MGL c. 39, s. 23A, s. 23B, and s. 23C, as from time to time amended, or any successor statute thereto.

Order means an Order of Conditions, Superseding Order or Final Order (as such terms are defined in 310 CMR 10.00, as amended), whichever is applicable, issued pursuant to MGL c. 131 s. 40.

Permit means the document issued by the Commission approving any activity proposed by an Applicant pursuant to a Notice of Intent and containing conditions that regulate or prohibit such proposed activity. The Commission in an appropriate case may combine the Permit or other action on an Application with an Order of Conditions.

Person Aggrieved means any person who, because of an act or failure to act by the Commission,

may suffer an injury in fact which is different either in kind or in magnitude from that suffered by the general public and which is within the scope of the interests identified in the Bylaw. Such persons must specify in writing sufficient facts to allow the Commission to determine whether or not the person is in fact aggrieved.

Plans mean such data, maps, engineering drawings, calculations, specifications, schedules, and other materials, if any, deemed necessary by the Commission to describe the project site and the activity set forth in an Application, to determine the applicability of the Bylaw to any proposed activity set forth in an Application, or to determine the impact of the any proposed activity set forth in an Application upon the interests identified in the Bylaw.

Point-Source Discharge means a pipe or other similar conveyance, from which treated or untreated stormwater or non-stormwater flows are discharged.

Pond means any open body of fresh water, either naturally occurring or man-made by impoundment or excavation, which is not without water due to natural causes for more than six months of the year, except during periods of extended drought. For purposes of this definition, extended drought shall mean any period of four or more months during which the average rainfall for each month is 50 percent or less of the ten-year average for the same month. Basins or lagoons that are part of waste water treatment plants shall not be considered ponds, nor shall swimming pools or other impervious man-made ponds or retention basins.

Positive Determination of Applicability means a finding by the Commission that a proposed activity set forth in a Request for Determination of Applicability is subject to the jurisdiction of the Bylaw.

Prevention of Pollution means the prevention or reduction of contamination of surface or groundwater.

Private Water Supply means any source or volume of surface or groundwater demonstrated to be in any private use, or demonstrated to have a potential for private use.

Project Site means the limits of work proposed by an Applicant in an Application, typically identified by a limit of work line or limit of erosion control barrier on a plan submitted to the Commission.

Protection of Fisheries means protection of the capacity of aa Resource Area to prevent or reduce contamination or damage to fish, and to serve as the habitat and nutrient source for fish.

Public Comment Policy means Attachment E to these regulations, as it may be amended, modified or supplemented by the Commission from time to time.

Public Water Supply means any source or volume of surface or groundwater demonstrated to be in public use or approved for water supply pursuant to MGL c. 111, s, 160 by the Division of Water Supply of the DEP, or shown to have a potential for public use.

Quorum means the majority of the duly appointed members of the Commission that when duly assembled is legally empowered to transact business.

Remove means to take away any type of material either temporarily or permanently.

Request for Determination of Applicability means a written request made by an Applicant for a Determination of Applicability.

Resource Area has the meaning set forth in Section 1.02(2) of these regulations.

River means a naturally flowing body of water that empties to any ocean, lake, pond, or other river, and that flows throughout the year.

Riverfront Area has the meaning set forth in 310 CMR 10.58(2).

Sedimentation Control means the prevention or reduction of the collection or concentration of sand, soil or rock fragments by the action of water, wind, ice, or gravity.

Significant means plays a role. A Resource Area is significant to an interest identified in the Bylaw when it plays a role in the provision or protection, as appropriate, of that interest.

Storm Damage Prevention means the prevention of damage caused by water from storms, including but not limited to: erosion and sedimentation, damage to vegetation, property or buildings, or damage caused by flooding, waterborne debris, or waterborne ice.

Stormwater Management Policy means Attachment C to these regulations, as it may be amended, modified or supplemented by the Commission from time to time.

Stream means a body of running water, including brooks, creeks, and other watercourses, that moves in a defined channel in the ground due to a hydraulic gradient. A portion of a stream may flow through a culvert or beneath a bridge. A stream may be intermittent (i.e., does not flow throughout the year).

Swamp means any area where standing or slowly running water is near or at the surface during a normal growing season, and where the vegetation community is made up of a significant portion of one or more of, but not limited to nor necessarily all of, the following plants or groups of plants: alders (*Alnus*), ashes (*Fraxinus pensylvanica*), azalea (*Rhododendron canadense* or *R. viscosum*), winterberry (*Ilex verticillata*), highbush blueberry (*Vaccinium corymbosum*), red maple (*Acer rubrum*), poison sumac (*Toxicodendron vernix*), spicebush (*Lindera benzoin*), sweet pepperbush (*Clethra alnifolia*), black gum (*Nyssa sylvatica*), swamp white oak (*Quercus bicolor*), willow (*Salix*), skunk cabbage (*Symplocarpus foetidus*), cinnamon fern (*Osmunda cinnamomea*), or royal fern (*O. regalis*).

Tree Removal and Protection Policy means Attachment B to these regulations, as it may be amended, modified or supplemented by the Commission from time to time.

Vegetated Wetland means any area where the soils are annually saturated (hydric) and where at least 50 percent of the plant community consists of wetland plant species. Vegetated Wetlands include bogs, marshes, wet meadows, and swamps. The boundary of Vegetated Wetlands shall be defined using the same criteria for the boundary of bordering vegetated wetlands in the Massachusetts Wetlands Protection Regulations, 310 CMR 10.55(2)(c).

Vernal Pool means any vegetated wetland or area subject to flooding that provides breeding habitat for obligate vernal pool species such as wood frogs (*Rana sylvatica*), spotted salamanders (*Ambystoma maculata*), blue-spotted salamanders (*A. laterale*), or fairy shrimp, and that may be without standing water during late summer.

Waiver means the waiver by the Commission of strict compliance with these regulations pursuant to Section 1.11.

Water Body means any water body or waterway, including any lake, river, pond, stream, or watercourse, whether natural or man-made, including the land beneath any stream, river, pond, lake or ditch in addition to the Water Body itself. Said land may be composed of organic muck or peat, fine sediments, gravel, or rock. The boundary of a Water Body is the mean annual low water level.

Wet Meadow means any area where standing or slowly running water is near or at the surface during a normal growing season, and where the vegetation community is made up of a significant portion of one or more of, but not limited to nor necessarily all of, the following plants or groups of plants: marsh fern (*Thelypteris palustris*), sensitive fern (*Onoclea sensibilis*), sedges (*Scirpus cyperinus*, *Carex stricta*, *C. stipata*, *Eleocharis*), hydrophilic grasses (*Calamagrostis Canadensis*, *Glyceria*), rushes (*Juncus*), blue flag (*Iris versicolor*), vervain (*Verbena hastata*), joe-pye-weed (*Eupatorium maculatum*, *E. dubium*), boneset (*Eupatorium perfoliatum*), and meadowsweet (*Spiraea latifolia*, *S. tomentosa*).

Wetland Plant Species means those species listed as occurring in bogs, marshes, swamps, or wet meadows, as well as any other plant species known to occur primarily in wetlands, and including all species classified as Obligate, Facultative-Wetland, or Facultative according to the most recent edition of the National List of Wetland Indicators published by the United States Fish and Wildlife Service.

Wildlife means any non-domesticated native mammal, bird, reptile, amphibian, fish, mollusk, arthropod, or other invertebrate other than a species of the class Insecta that has been determined by the Commission to constitute a pest whose protection under the Bylaw would be a risk to humans.

Wildlife Habitat means areas having a plant community composition and structure, hydrologic regime, or other characteristics sufficient to provide shelter, nutrients, growing conditions, nesting or breeding sites conducive to the propagation and preservation of wildlife.

Wildlife Habitat Assessment Policy means Attachment D to these regulations, as it may be amended, modified or supplemented by the Commission from time to time.

Work means the same as Activity.

1.05 PROCEDURES

(1) Time Periods

All time periods of ten days or less specified in the Bylaw and these regulations shall be

computed using business days only. Such period shall commence on the first day after the date of filing of an Application or issuance of a Permit or a Determination, as applicable, and shall end at the close of business on the last business day of such period. All other time periods specified in the Bylaw and these regulations shall be computed on the basis of calendar days, unless the last day falls on a Saturday, Sunday or legal holiday, in which case the last day shall be the next business day following.

(2) Actions by Commission

Where the Bylaw states that a particular action (except receipt of an Application or the issuance of a Permit or notification) is to be taken by the Commission, that action is to be taken by more than half the members present at a meeting of at least a quorum. Where the Bylaw states that any Permit or notification shall be issued by the Commission, that action is to be taken by a majority of the members then in office, who need not convene as a body in order to sign said Permit or notification, provided that they met pursuant to the Open Meeting Law, when voting on the matter.

Where the Bylaw states that the Commission is to receive an Application, a member of the Commission or an individual designated by the Commission may receive such Application.

(3) Requests for Determinations of Applicability

- (a) Any person who desires a determination as to whether a proposed activity is subject to jurisdiction of the Bylaw may submit to the Commission by certified mail, certificate of mailing, or hand delivery three (3) paper copies and one (1) electronic (PDF) copy of a Request for Determination of Applicability.

The Request for Determination of Applicability form shall be the same as that required by MGL c. 131 s. 40 and 310 CMR 10.00, as amended, so that no separate submission is necessary to comply with the Bylaw. The Request for Determination of Applicability shall include:

- ☐ A statement as to the reason(s) that the proposed activity is not subject to jurisdiction of the Bylaw, with specific reference to the applicable provisions of the Bylaw and these regulations.
- ☐ An 8 ½ x 11 inch locus map sufficient to show the location of the Project Site, including streets and abutters.
- ☐ A drawing showing boundaries of all Resource Areas within, adjacent or near the Project Site. The Commission strongly encourages and may require that such drawings be prepared by a registered professional engineer, land surveyor, or wetland professional. A plot plan, as required in an application for a Building Permit, may be submitted to meet this requirement.
- ☐ When the Request for Determination of Applicability proposes any work under the jurisdiction of the Bylaw, the drawing shall show the exact location of that work, including the minimum distance of Resource Areas from the limit of proposed work.

- ❑ A written description of the work proposed, including a description of any excavation, proposed structures, stormwater management and erosion and sedimentation controls.
 - ❑ Additional information as may be required by the Commission in accordance with published policies or guidelines.
 - ❑ The appropriate filing fee as defined in Section 1.12 of these regulations.
- (b) Any person filing a Request for Determination of Applicability with the Commission at the same time shall give written notice thereof in accordance with Section 6.5 of the Bylaw to all Abutters according to the most recent records of the Assessors, including those across a traveled way, and to all other persons as the Commission shall in writing require. An applicant who proposes work solely within Water Bodies, or solely within a single lot with an area greater than 50 acres, is required to provide notification only to Abutters whose lot is within one hundred feet from the Project Site. An applicant proposing a linear-shaped Project greater than 1,000 feet in length is required to provide notification only to Abutters whose lot is within 1,000 feet from the Project Site. The notice shall enclose a copy of the request with plans, or shall state where such copies may be examined. The notice shall also provide the time and place of the public hearing at which the Determination of Applicability shall be made. Written notice shall be provided to all Abutters not less than five (5) business days prior to such hearing.
- (c) When an Applicant requesting a Determination of Applicability is other than the owner of the Project Site, the request, the notice of the hearing, and the determination itself shall be sent by the Applicant to the owner, and the Applicant shall supply the Commission with the name and current address of the owner.
- (d) Within 21 days after receipt of a Request for Determination of Applicability, the Commission shall hold a public hearing on the Request for Determination of Applicability. Notice of the time and place of the public hearing at which the Determination of Applicability will be made shall be given by the Commission, at the expense of the Applicant, not less than five (5) days prior to such hearing, by publication in a newspaper of general circulation in the Town, and by mailing a notice to the Applicant and, if different, to the owner of the Project Site. Notice shall also be given in accordance with the Open Meeting Law.

At the Public Hearing on a Request for a Determination of Applicability, the Commission will either make a:

1. Positive Determination of Applicability, in which case the proposed work requires a Permit pursuant to Section 1.05(4); or
2. Negative Determination of Applicability, in which case the proposed work does not require a Permit pursuant to Section 1.05(4).

The Determination of Applicability shall be signed by a majority of the Commission and shall be sent by the Commission to the Applicant and, if different, the owner of the

Project Site, within 21 days of the close of the public hearing or any continuance thereof. A Determination shall be valid for three years from the Date of Issuance. In the event of a Positive Determination of Applicability, the Applicant shall not perform the proposed work unless a Notice of Intent has been filed and the Commission has issued a Permit approving the proposed work, all in accordance with Section 1.05(4).

(4) Application for Permit (Notice of Intent)

- (a) Any person who proposes to do work that is subject to the jurisdiction of the Bylaw shall submit three (3) paper copies and one (1) electronic copy (PDF) of an Application for Permit and other application materials in accordance with the submittal requirements set forth below. This submittal shall be made by hand, certified mail, or certificate of mailing. Electronic copies may be submitted by email to the Conservation Department.

The Application for Permit form shall be the same as that required by MGL c. 131 s. 40 and 310 CMR 10.00, as amended, so that no separate submission form is necessary to comply with the Bylaw. The Application for Permit shall include:

- ☐ A Notice of Intent Form
- ☐ A written report/narrative of the work proposed, including the information described below.
- ☐ Completed Checklist (See Attachment A)
- ☐ A locus map, based on the appropriate USGS quad sheet
- ☐ A Stormwater Management Report in accordance with Attachment C: Stormwater Management Policy.
- ☐ The appropriate filing fees, based on the calculation sheet required by the Massachusetts Department of Environmental Protection and the Needham Bylaw (Section 1.12 of these regulations), must be submitted with an explanation of how the fee was calculated.
- ☐ Plans of the Project Site showing existing and proposed conditions, including any proposed plantings.
- ☐ A wildlife habitat assessment (if applicable) in accordance with the Wildlife Habitat Assessment Policy (Attachment D).
- ☐ Documentation to support the delineation of all applicable Resource Areas. For documentation of a Vegetated Wetland, such documentation must be quantitative, and must demonstrate that the contribution of wetland vegetation to the area above (upgradient) of the boundary of the Vegetated Wetland is less than 50 percent and that there is no evidence (hydric soils or other documentation) of a wetland hydrology upgradient of the delineated boundary.

- ❑ An analysis of the proposed work's compliance with the performance standards set forth in Part II of these regulations, including, without limitation the performance standards applicable to work within the Buffer Zone, and any applicable performance standards required under any other law or regulation, including, without limitation, the Wetlands Protection Act or 310 CMR 10.00.
- ❑ A Statement that any required special permit, variance or board of health permit has been obtained, or if such special permit, variance or board of health permit has not been obtained, a statement as to the reason that the Application is being submitted prior to the receipt of such special permit, variance or board of health permit.
- ❑ Tree Removal narrative or report (if applicable) in accordance with the Tree Removal and Protection Policy. Additional information as may be required by the Commission in accordance with published policies or guidelines. If a Waiver is requested, the Applicant is required to provide documentation to demonstrate that the proposed project meets the criteria set forth in Section 1.11 below.
- ❑ Required Project Plans All plans submitted to the Commission must be stamped and signed by a Professional Engineer or Registered Land Surveyor, and must conform with the following guidelines:
 - All plans shall be at the scale of 1"=40" or 1"=20". Paper copies shall be printed on ANSI D size paper (22" x 34").
 - The boundaries of all Resource Areas shall be clearly shown, including the boundary of the Buffer Zone.
 - The 25-Foot No-Disturb Zone and, if applicable, the 50-Foot No-Disturb Zone shall also be clearly shown. The following colors shall be used to show boundaries:
 - Red: 25-Foot No-Disturb Zone
 - Yellow: 50-Foot No-Disturb Zone
 - Green: Buffer Zone outside the 25-Foot No-Disturb Zone or, if applicable, the 50-Foot No-Disturb Zone
 - Blue: Riverfront Area
 - Locations and numbers of all wetland flags must be clearly shown.
 - Certification from the wetlands biologist responsible for the wetland delineation must be provided, stating the basis for the wetland delineation; the date on which the delineation was performed; and stating that the flagging as indicated on the plans appears to be correct.
 - All existing and proposed grades must be shown, based on two -foot contours. Plans must also show all roads, paths, stone walls, and structures present on the

site.

- The limit of work or clearing must be shown, together with the minimum distance to any Resource Area.
 - All proposed soil stockpile and material laydown areas must be shown. All erosion control measures must be shown, and must be sufficient to prevent any silt or sediment from entering the Resource Areas. Plans must indicate the type of erosion measures to be used, details showing the installation of such measures, and the locations of any areas to be revegetated following construction.
- (b) Dimensions of existing and proposed structures and impervious surfaces, that support calculations must be shown on the plans. The Commission will not scale any drawings. The Commission in an appropriate case may accept as the Application and plans under the Bylaw the Notice of Intent and plans filed under the Wetlands Protection Act, MGL c. 131 s. 40. An Applicant who proposes work solely within Water Bodies, or solely within a single lot with an area greater than 50 acres, is required to provide notification only to Abutters whose lot is within one hundred feet from the Project Site. An Applicant proposing a linear- shaped Project greater than 1,000 feet in length is required to provide notification only to Abutters whose lot is within 1,000 feet from the Project Site. The notice shall enclose a copy of the Application with plans, or shall state where such copies may be examined, and shall provide the time and place of the public hearing. Written notice shall be provided to all Abutters not less than five (5) business days prior to the hearing.
- (c) When the Applicant is not the owner of the Project Site, the Application and notice of the hearing shall be sent by the Applicant to the owner. The Applicant shall supply the Commission with the name, current address and telephone number of the owner. In the event that the Applicant is not the owner, the owner must co-sign the Application or provide the Commission with written evidence that the owner is aware of the Application and consents to the proposed work.
- (d) Within fourteen (14) days of receipt of an Application for a Permit, the Commission shall assign a file number and schedule a hearing, or notify the Applicant by mail, to the address provided in the application, if the Application is not complete. In the event that notice is given to the Applicant or the Applicant's representative that the Application is not complete, the 21-day period described in section 1.05(5) shall not commence until the Application is deemed complete by the Commission. The designation of a file number shall not imply that the plans and supporting documents have been judged adequate for the issuance of a Permit but only that copies of the minimum submittal requirements have been filed. In an appropriate case, the Commission may use the same file number issued by DEP.
- (e) If only a portion of the proposed work or activity lies within a Resource Area, all aspects of the work must be described in the detail called for in Section 1.05(4)(a). In such circumstances, the Application for Permit shall also contain descriptions and calculation of peak flow and estimated water quality characteristics of discharge from a point source

(both closed and open channel) when the point of discharge falls within aa Resource Area.

- (f) Notwithstanding the foregoing, when the Commission has determined that an activity outside the Resource Areas has in fact altered aa Resource Area, it may require such plans, supporting calculations, and other documentation as are necessary to describe the entire activity.
- (g) An Application for Permit may be rejected by the Commission if:
 - 1. The filing is deemed incomplete;
 - 2. A Special Permit or Variance from the Zoning Board of Appeals is required and has not been applied for or obtained; or
 - 3. A Board of Health Permit is required and has not been applied for or obtained.

If any such Special Permit, Variance or Board of Health Permit has not been obtained, then the Commission shall reject the Application unless the Commission determines that it is in the public interest for the Application to be accepted or the rejection of the Application would result in severe economic hardship for the Applicant.

(5) Public Hearing on Applications for Permit

- (a) A public hearing on an Application for Permit shall be held by the Commission within 21 days of receipt of the minimum submittal requirements set forth in Section 1.05(4)(a) and shall be advertised by the Commission, at the expense of the Applicant, no less than five (5) business days prior to the hearing in a newspaper of general circulation in the Town and in accordance with the requirements of the Open Meeting Law. Notice of the hearing shall be provided in writing by the Commission to the Applicant and to the owner if other than the Applicant.
- (b) The Commission in an appropriate case may combine its hearing under the Bylaw with the hearing conducted under the Wetlands Protection Act, MGL c. 141 s. 40.
- (c) Public Hearings may be continued as follows:
 - 1. Without the consent of the Applicant to a date certain, for reasons stated at the hearing, which may include receipt of additional information offered by the Applicant or others, information and plans required of the Applicant, additional information deemed necessary by the Commission in its discretion, or comments and recommendations of other local or state boards and officials;
 - 2. With the consent of the Applicant, to an agreed-upon date, which shall be announced at the hearing; or
 - 3. With the consent of the Applicant for a period not to exceed 21 days after the

submission of a specified piece of information or the occurrence of a specific action. The date, time and place of said continued hearing shall be publicized in accordance with the Bylaw, and notice shall be sent to all abutters according to the most recent records of the assessors, including those across a traveled way, and to all other persons as the Commission shall in writing require.

(d) Public Hearing Procedures

Public hearings shall be open to the public. An applicant may appear on his or her own behalf or may be represented by an agent or attorney-in-fact. If the applicant or representative is not present without due cause, the Commission, in its discretion, may act based on the information before it, may continue the hearing, or may declare the petition incomplete or withdrawn without prejudice.

The primary purpose and intent of a Conservation Commission public hearing is to gather information that will be used to make a decision on the matter before Commissioners. The hearing is a fact-finding exercise; it is not a discussion between the applicant and Commissioners. The Board shall allow a limited time for each public hearing. Applicants should be prepared, be brief, and be non-repetitive.

The Chair, Vice Chair, or Acting Chair presiding over each hearing shall determine the order of the proceedings, but hearings will generally follow this format:

1. The Chair opens the hearing
2. Presentation by the applicant or applicant's representative
3. Statement by the Commission's agent
4. Questions from Conservation Commissioners
5. Public comments. (See Attachment E – Public Comment Policy)
6. Applicant's response; and
7. Deliberations by the Commission.

All parties to the hearing may address the Commission only when recognized by the Chair. Once the Commission begins its deliberation, it is inappropriate for any other party to participate in the hearing unless specifically asked to do so by the Chair.

(6) Permits Regulating the Work

- (a) Within 21 days of the close of the public hearing, the Commission shall issue or deny the Permit.
- (b) If the Permit is issued, it shall impose such conditions as deemed necessary by the Commission for the protection of one or more of the interests identified in the Bylaw and/or in these regulations. The Permit shall impose conditions on the work or portion

thereof that will, in the judgment of the Commission, result in removing, dredging, filling, building upon, or altering a Resource Area. The Permit shall impose conditions setting limits on the quantity and quality of discharge from a point source (both closed and open channel) when said limits are necessary to protect the interests identified in the Bylaw.

- (c) The Permit shall prohibit any work, or portions thereof, that cannot be conditioned to protect said interests.
- (d) If the Permit is denied, it shall be for one or more of the following reasons:
 - 1. For failure to meet the requirements of the Bylaw or these regulations;
 - 2. For failure to submit necessary information or plans requested by the Commission;
 - 3. For failure to meet design specifications, performance standards, or other requirements of these regulations;
 - 4. For failure to avoid or prevent unacceptable or cumulative effects upon the wetland values protected by the Bylaw;
 - 5. Where the Commission determines that no conditions are adequate to safeguard the wetland values protected by the Bylaw.
- (e) A Permit shall be valid for three (3) years from the Date of Issuance. The Commission may issue a permit expiring five (5) 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.
- (f) The Permit shall be signed by a majority of the Commission and shall be mailed or hand delivered to the Applicant or the Applicant's agent, and to the owner of record.
- (g) A copy of the plans describing the work and the Permit shall be kept on file by the Commission and shall be available to the public at reasonable hours.
- (h) Prior to the commencement of any work permitted or required by the Permit, the Permit shall be recorded in the Registry of Deeds or filed with the Land Court for the district in which the land is located within the chain of title of the affected property, as the case may be. In the case of recorded land, the permit shall also be noted in the Registry of Deed's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the Permit shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. Certification of the recording or filing, as applicable, shall be sent to the Commission. If work is undertaken without the Applicant first recording or filing the Permit, as applicable, the Commission may issue an Enforcement Order (as defined in 310 CMR 10.00, as amended) or may itself record the Permit and seek reimbursement of any recording fees from the Applicant.

- (i) For good cause the Commission may revoke or modify a Permit issued under the Bylaw and these regulations after public notice and public hearing, and notice to the holder of the Permit.
- (j) The Commission in an appropriate case may combine the Permit or other action on an application issued under the Bylaw with the Order of Conditions issued under the Wetlands Protection Act, MGL c. 131 s. 40

(7) Extensions of Permits

- (a) The Commission may in its sole discretion extend a Permit once for an additional period of up to three years except as described in (b) below. Requests for extensions must be made to the Commission in writing at least thirty days prior to the expiration of the Permit.
- (b) The Commission may deny a request for an extension and require the filing of a new Application for Permit for the work or any remaining work, as the case may be.
- (c) In order to be valid, the Extension Permit must be signed by a majority of the Commission.
- (d) The Extension Permit shall be filed in the Land Court or recorded the Registry of Deeds, whichever is appropriate. Certification of filing or recording shall be sent to the Commission. If work is undertaken without the Applicant so filing or recording an Extension Permit, the Commission may issue an Enforcement Order or may itself file or record the Extension Permit and seek reimbursement for any recording fees from the Applicant.

(8) Certificates of Compliance

- (a) All requests for Certificates of Compliance shall be accompanied by a written statement by a registered professional engineer, architect, landscape architect, land surveyor or other signatory approved by the Commission, certifying that there has been full compliance with the terms of the Permit and with the plans submitted with the Application. If the work is not fully in compliance with the Plans and Permit, the request for a Certificate of Compliance must fully describe in detail all work not completed in accordance with the Plans and Permit.
- (b) Prior to the issuance of a Certificate of Compliance, a site inspection may be required by the Commission.
- (c) Upon written request by the Applicant, including all information required in (d) below and any other requirements as may be set forth in the Permit, review of a Certificate of Compliance shall be completed by the Commission within 21 days of receipt thereof.
- (d) If the Commission determines that a Certificate of Compliance is warranted, it shall certify that the activity or portions thereof described in the Application for Permit and the plans approved by the Commission has been completed in compliance with the Permit. In order to be valid, the Certificate of Compliance must be signed by a majority of the

Commission.

- (e) If the Commission determines, after review and inspection, that the work has not been done in compliance with the Permit, it may refuse to issue a Certificate of Compliance. Such refusal shall be issued within 21 days of receipt of a Request for a Certificate of Compliance, shall be in writing, and shall specify the reasons for denial.
- (f) If the Permit contains conditions that continue past the completion of the work, such as maintenance or monitoring, the Certificate of Compliance shall specify which, if any, of such conditions shall continue. The Certificate of Compliance shall also specify to what portions of the work or portions of a property it applies, if it does not apply to all the work or areas regulated by the Permit.
- (g) In the event that the Permit allows replication, replacement, or restoration of any Resource Area, conditions pertaining to same shall continue for at least two growing seasons after planting has been completed. No Certificate of Compliance shall be issued until such replication, replacement or restoration has been completed in accordance with the conditions of the Permit. At its discretion, the Commission may issue a Partial Certificate of Compliance if all other requirements of the Permit have been fully complied with prior to the full establishment of the replication or restoration area.
- (h) The Certificate of Compliance shall be filed in the Land Court or recorded in the Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the Commission.

1.06 EMERGENCIES

- (1) Any person requesting permission to do an Emergency Project shall specify why the project is necessary for the protection of the health or safety of the public and what agency of the Commonwealth or subdivision thereof is to perform the project or order it to be performed.
- (2) The request may be written or oral, but if oral must be confirmed by written notice within 24 hours of work commencement.
- (3) The request must be made prior to commencement of any work, except in the case of an emergency response conducted by public officials in order to safeguard life, health, and property damage.
- (4) A majority of the Commission must certify the work as an Emergency Project.
- (5) Within 21 days of commencement of an Emergency Project, an Application for Permit shall be filed with the Commission for review as provided in the Bylaw and in this regulation.
- (6) An emergency certification shall be issued only for the protection of public health or safety or the protection of a Resource Area.
- (7) The work must be performed exclusively during the time and place certified by the Commission for the limited purpose of abating the emergency. The time limit for performance of emergency work shall not exceed 30 days from day of certification by the

Commission.

1.07 SEVERABILITY

The invalidity of any section of these regulations shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination that previously has been issued.

If a court having jurisdiction shall invalidate any provision of the Bylaw or of these regulations, the Commission shall promulgate additional regulations, or present to the next Town Meeting after such invalidation, amendments to the Bylaw which are designed to comply with any Court decision invalidating such provision or regulation, as the case may be.

1.08 EFFECTIVE DATE

The effective date of these regulations shall be March 13, 2025 and the provisions of these regulations shall apply to all work performed after that date.

1.09 ENFORCEMENT

Any person who violates any provision of the Bylaw, these regulations, or any conditions of a valid Permit shall be punished by a fine of not more than \$300 per day for each offense. Each day or portion thereof of continuing violation shall constitute a separate offense. The Bylaw, these regulations, and all Permits may be enforced (in accordance with the Bylaw) by any Town Police Officer or any other officer having police powers. In the case of any unauthorized work, the offence shall be deemed to continue each day until the area is restored to the condition that existed prior to the commencement of unauthorized work.

The members and agents of the Commission may enter upon privately owned land for the purposes of performing their duties under the Bylaw and these regulations.

When the Commission determines that an activity is in violation of the Bylaw, these regulations, or a Permit, the Commission may issue an Enforcement Order.

Violations include, but are not limited to:

- (a) Failure to comply with a Permit, such as failure to observe a particular condition or time period specified in the Permit.
- (b) Failure to complete work described in a Permit, when such failure causes damage to the interests identified in the Bylaw.
- (c) Failure to obtain a valid Permit or Extension Permit prior to conducting an activity subject to the jurisdiction of the Bylaw.
- (d) Conducting work that causes harm to a Resource Area, except as provided under a valid Permit. An Enforcement Order issued by the Commission shall be signed by a majority of the Commission. In a situation requiring immediate action, an Enforcement Order may be signed by a single member or agent of the Commission (with the consent of at least one

member of the Commission), provided said Enforcement Order is ratified by a majority of the members at the next scheduled meeting of the Commission.

1.10 SECURITY

The Commission may require, as a Permit condition, that the performance and observance of the Permit be secured by one or both of the following methods:

- (a) By a bond or deposit of money or negotiable securities in an amount and form determined by the Commission to be sufficient to secure the completion of all conservation measures specified in their Permit and the Commission may require that the Applicant specify the time within which such construction shall be completed.

The penal sum of any such bond shall bear a direct and reasonable relationship to the expected costs, including the effects of inflation, necessary to complete the sub-work. Such amount or amounts shall be from time to time reduced as is, in the determination of the Commission, necessary to reflect the actual expected costs of the work remaining to be completed.

- (b) By a covenant, executed and duly recorded by the owner of record, running with the land, whereby such conservation measures as are stated in the Permit be provided before any lot may be built upon or conveyed.
- (c) The bond or covenant shall, in the case of the bond, be given to the Town and, in the case of a covenant, be recorded in the Registry of Deeds or filed with the Land Court, as applicable, within 14 days of the granting of a Permit.

1.11 WAIVER OF REGULATIONS

Strict compliance with these regulations may be waived when, in the judgment of the Commission:

- (a) such action would serve a substantial public interest,
- (b) such action is required for compliance with the Massachusetts Contingency Plan (MCP),
- (c) strict compliance would result in severe economic hardship greater in magnitude than the public interest to be served, or
- (d) a credible expert has demonstrated that the Resource Area does not protect the public interests or serve the interests identified in the Bylaw or these regulations.

No waiver shall be granted unless the Commission determines that:

- (a) there are no practicable alternatives to the proposed action;
- (b) alteration of the Resource Area has been minimized to the greatest extent practicable; and

- (c) compensatory or mitigating measures are taken, even at an off-site location, to protect the public interest in the protected Resource Area to be removed, filled, dredged, built upon, or altered. Removal of existing lawn and restoration of the 25-Foot No-Disturb Zone and, if applicable, the 50-Foot No-Disturb Zone to natural vegetative conditions is strongly encouraged.

The burden of proof shall be on the Applicant to demonstrate that the proposed project meets the standards defined in this Section.

1.12 FILING FEES

In addition to the fees charged under MGL c. 131 s. 40, these regulations establish the fees listed below. The fees, which apply to all non-municipal projects, are deposited in the General Fund. Costs associated with the publication of legal notices are not included in the schedule of filing fees and shall be paid by the Applicant directly to the newspaper publisher. No public hearing shall be opened, and no action taken on any matter before the Commission, until the appropriate filing fee has been received by the Commission.

Any fee listed in parts (A) through (G) below will be **doubled** for any Application filed after any work within the jurisdiction of the Bylaw has been started or completed. This does not preclude the Commission from initiating enforcement actions as outlined in Section 1.09 of these regulations.

- (A) **Request for Determination of Applicability** \$100.00
- (B) **Resource Area Delineation**
 - i. Single-family residential lot \$100.00
 - ii. Other projects \$1 per LF linear foot (\$1,000 maximum)

(C) **Application for Permit (Notice of Intent)**

The total Bylaw filing fee for a Notice of Intent that involves more than one activity is determined by adding the fees for each proposed activity. An activity is a distinct component of the project that is not reliant on other activities to be undertaken (at the discretion of Conservation Department staff).

- i. Minor Activities (accessory use to single-family dwellings) \$50.00
**Includes additions, driveways, swimming pools, tennis courts, etc.*
- ii. New Residential Construction and Associated Site Work \$500.00
**Includes demolition and new construction.*
- iii. Multiple Dwelling Structures (three or more units) \$750.00
- iv. Subdivisions (roads and utilities only) \$750.00
- v. Commercial, Institutional or Industrial development \$1000.00
- vi. New Parking Lot \$750.00
- vii. Any other activity (not described in i through vi above) \$250.00

(D) Amendment to an Order of Conditions	\$150.00
(E) Request to Extend an Order of Conditions	\$100.00
(F) Request for Certificate of Compliance for an Expired Order of Conditions	\$150.00
<i>* there is no fee associated with a Request for Certificate of Compliance for a valid Order of Conditions.</i>	
(G) Work Requiring a Waiver under Section 1.11 of these Regulations	\$1,000.00

1.13 WAIVER OR REDUCTION OF FILING FEES

The regulations at Section 1.12 (G) impose a \$1,000.00 filing fee for any project requesting a Waiver pursuant to Section 1.11 of these regulations. Waiver requests typically require the investment of a significantly higher level of Commission resources and scrutiny than projects that comply with the regulations. For example, more time must be spent by the Commission and its agent reviewing documents submitted by the Applicant as well as other available sources, and in evaluating whether the Application fully meets the more stringent requirements defined in these regulations. In some cases, the Commission must also hire an outside consultant to review materials submitted by the Applicant and provide an expert opinion on the application.

Some types of projects that cannot meet the performance standards set forth in the regulations may not require a substantially higher level of scrutiny or staff review, and may not require the services of an outside consultant. Other projects that fall in this category may require a higher level of scrutiny than a project that complies with the Bylaw regulatory performance standards, but at an intermediate level. Activities defined as Minor Activities under Section 1.05(3) are exempt from the requirement of the \$1,000 Waiver Filing Fee. Projects that may qualify for a reduction in the fee include:

- Work where the land within 25 feet of a Bank or Vegetated Wetland is lawn, already lawfully paved, or already occupied by a structure and no impervious surfaces are proposed to be constructed closer to the Resource Area boundary.
- Work within 25 feet of a Bank where the Bank is a man-made wall and the 25-foot Buffer Zone does not provide significant wildlife habitat.
- Work within 100 feet of a Vernal Pool, where the proposed work area is already lawfully paved or occupied by a structure and no expansion of impervious surfaces is proposed.
- Installing or upgrading stormwater management and treatment structures in paved areas or areas that are currently lawn, where no alternative location exists.
- Work that is necessary for public safety.
- Work where the only activity within a restricted area involves installing erosion controls, undertaking mitigation/restoration planting, or removal of invasive plant species. Minor construction (an addition, deck, or landscaping) on a single-family lot created prior to December of 2005 where that lot is 20,000 square feet in size or less.
- Work that consists of the restoration of previously-altered Buffer Zone, Vegetated Wetland,

Bank or Land Subject to Flooding to a natural condition.

For these activities, the Commission will consider requests to waive or reduce the \$1,000.00 filing fee. In order for the Commission to consider waiving or reducing the filing fee, the Applicant must submit a written request for a fee waiver or reduction that states how the proposed project meets one or more of the above criteria. A written request for a fee waiver will be deemed to also be a request for a fee reduction if the Commission determines that some fee less than the full fee amount is warranted. When evaluating requests to waive or reduce the bylaw filing fee, the Commission will consider whether the \$1,000.00 waiver fee itself would constitute a significant economic hardship (e.g., would be 10% or more of the cost of the project).

PART II REGULATIONS FOR INLAND WETLANDS

2.01 INLAND BANKS

(1) Preamble

Banks are likely to be significant to wildlife, public or private water supply, to groundwater supply, to flood control, to storm damage prevention, to the prevention of pollution, and to the protection of fisheries. Where Banks are composed of concrete, asphalt, or other artificial impervious material, said Banks are likely to be significant to flood control and storm damage prevention.

Banks are areas where groundwater discharges to the surface and where, under some circumstances, surface water recharges to the groundwater. Where Banks are partially or totally vegetated, the vegetation serves to maintain the Bank's stability, which in turn protects water quality by reducing erosion and siltation. The vegetation present on a Bank serves to retain and take up contaminants, protecting water quality. Banks act to confine floodwaters during most storms, preventing the spread of water to adjacent land. Banks provide shade that moderates water temperatures, as well as providing breeding habitat, escape cover, and feeding habitat, all of which are significant to the protection of fisheries. The topography, plant community composition and structure, and soil structure of Banks may provide important food, shelter, migratory and overwintering areas, and breeding areas for wildlife, where the Bank contains natural vegetation.

Land within 100 feet of a Bank is likely to be significant to the protection and maintenance of the Bank, and therefore to the protection of the interests which these Resource Areas serve to protect.

(2) Critical Characteristics

The physical characteristics of a Bank, as well as its location, are critical to the protection of the interests specified in Section 2.01(1).

(3) Performance Standards Applicable to Work on a Bank.

The performance standards listed below are critical to the protection of the Interests of the Bylaw. These include short- and long-term protection of the wildlife habitat capacity and water

quality within the Bank and adjacent Water Body, as well as the wildlife habitat present within the Water Body.

- (a) Any proposed work permitted by the Commission on a Bank shall not impair the physical stability of the Bank, the water-carrying capacity of the existing channel within the Bank, the capacity of the bank to protect groundwater and surface water quality, the capacity, of the Bank to provide breeding habitat, escape cover, and food for fisheries, and the capacity of the Bank to provide wildlife habitat.
- (b) Where a Bank is significant to wildlife habitat, any alteration of the Bank or the vegetation within 25 feet of that Bank is deemed to alter the capacity of the Bank to provide wildlife habitat.
- (c) Where a Bank is significant to the protection of fisheries, any alteration of the Bank or the vegetation on that Bank is deemed to alter the capacity of the Bank to protect fisheries.
- (d) Any proposed work, permitted by the Commission, shall meet the performance standards specified in Section 2.06(3).

2.02 FRESHWATER WETLANDS

(1) Preamble

Freshwater Wetlands are likely to be significant to wildlife, public or private water supply, to groundwater supply, to flood control, to storm damage prevention, to the prevention of pollution, and to the protection of fisheries.

The plant communities, soils and associated low, flat topography of Freshwater Wetlands remove or detain sediments, nutrients (such as nitrogen or phosphorus), and toxic substances (such as heavy metal compounds) that occur in run-off and flood waters.

Some nutrients and toxic substances are detained for years in plant root systems or in the soils. Others are held by plants during the growing season and released as the plants decay in the fall and winter. This latter phenomenon delays the impacts of nutrients and toxins until the cold weather period, when such impacts are less likely to reduce water quality.

Freshwater Wetlands are areas where groundwater discharges to the surface and where, under some circumstances, surface water discharges to the groundwater.

The profusion of vegetation and low, flat topography of Freshwater Wetlands slow down and reduce the passage of flood water during periods of peak flows by providing temporary flood water storage, and by facilitating water removal through evaporation and transpiration. This reduces downstream flood crests and resulting damage to private and public property. During dry periods the water retained in Freshwater Wetlands is essential to the maintenance of base flow levels in rivers and streams, which in turn is important to the protection of water quality and water supplies.

Wetland vegetation provides shade that moderates water temperatures important to fish

life. Wetlands flooded by adjacent water bodies and waterways provide food, breeding habitat, and cover for fish. Fish populations in the larval stage are particularly dependent upon food provided by overbank flooding which occurs during peak flow periods (extreme storms), because most river and stream channels do not provide quantities of the microscopic plant and animal life required. Wetland vegetation supports a wide variety of insects, reptiles, amphibians, mammals and birds, which are a source of food for important game fish.

The hydrologic regime, plant community composition and structure, soil composition and structure, topography, and water chemistry of Freshwater Wetlands and their adjacent uplands provide important food, shelter, migratory and overwintering areas, and breeding areas for many birds, mammals, amphibians, reptiles, and invertebrates.

Freshwater Wetlands, together with land within 100 feet of a Freshwater Wetland, serve to moderate and alleviate thermal shock and pollution resulting from runoff from impervious surfaces, which may be detrimental to wildlife, fisheries, and shellfish within and downstream of the Freshwater Wetlands.

Land within 100 feet of a Freshwater Wetland is likely to be significant to the protection and maintenance of Freshwater Wetlands, and therefore to the protection of the interests which these Resource Areas serve to protect.

(2) Critical Characteristics

The physical characteristics of Freshwater Wetlands are critical to the protection of the interests specified in Section 2.02(1) above.

(3) Performance Standards for Work in a Wetland

The performance standards listed below are critical to the protection of the Interests of the Bylaw. These include short- and long-term protection of the wildlife habitat capacity and water quality within the Freshwater Wetland, as well as the wildlife habitat present within the Freshwater Wetland.

- (a) No work shall be permitted in a Freshwater Wetland that would destroy or alter any portions of said Freshwater Wetland, or impair in any way the Freshwater Wetland's ability to perform any of the functions in Section 2.02(1).
- (b) No stormwater runoff may be allowed to discharge to a Vernal Pool. Any work permitted by the Commission within 100 feet of a Vernal Pool shall not result in changes to the hydrology of the Resource Area.
- (c) Any proposed work, permitted by the Commission, shall meet the performance standards specified in Section 2.06(3).
- (d) Any work permitted by the Commission in a Freshwater Wetland (such as removal of invasive plant species) shall improve the ability of the Freshwater Wetland to protect the Interests of the Bylaw.

2.03 WATER BODIES AND WATERWAYS

(1) Preamble

Water Bodies are likely to be significant to wildlife, public or private water supply, to groundwater supply, to flood control, to storm damage prevention, to the prevention of pollution, and to the protection of fisheries. Where the land under Water Bodies is composed of pervious material, such land represents a point of exchange between surface and groundwater.

The physical nature of land under Water Bodies is highly variable, ranging from deep organic and fine sedimentary deposits to rocks and bedrock. The organic soils and sediments play an important role in the process of detaining and removing dissolved and particulate nutrients (such as nitrogen and phosphorus) from the surface water above. They also serve as traps for toxic substances such as heavy metal compounds.

Land under Water Bodies, in conjunction with Banks, serves to confine floodwater within a defined channel during the most frequent storms. Filling within this channel blocks flow which in turn causes backwater and overbank flooding during such storms. An alteration of land under Water bodies and Waterways that causes water to frequently spread out over a larger area at a lower depth increases the amount of property that is routinely flooded. Additionally, it results in an elevation of water temperature and a decrease in habitat within the main channel, both of which are detrimental to fisheries, particularly during periods of warm weather and low flows.

Land within 100 feet of any Water Body is likely to be significant to the protection and maintenance of the Water Body and therefore to the protection of the interests which these Water Bodies serve to protect.

The plant community composition and structure, hydrologic regime, topography, soil composition, and water quality of water bodies and waterways provide important food, shelter, migratory and overwintering areas, and breeding areas for wildlife and fish.

(2) Critical Characteristics

The physical characteristics and location of Water Bodies and land under Water Bodies are critical to the protection of the interests specified in Section 2.03(1) above.

(3) Performance Standards

The performance standards listed below are critical to the protection of the Interests of the Bylaw. These include short- and long-term protection of the wildlife habitat capacity and water quality within the Water Body, as well as the wildlife habitat present within the Water Body.

- (a) Any proposed work permitted by the Commission within a Water Body, or on land under a Water Body, shall not impair the water- carrying capacity of the defined channel, which is provided by said land in conjunction with the banks,, groundwater and surface water quality; the capacity of the Water Body to provide breeding habitat, escape cover, and food for fisheries,, and the capacity of the Water Body to provide wildlife habitat.

- (b) The following activities are deemed likely to adversely affect the capacity of the Water Body to provide the functions listed above: placing fill so as to alter the composition or topography of the land within the Water Body; destroying natural vegetation; discharging any new stormwater runoff to the Water Body, with the exception of that which has been treated, prior to discharge, according to the current Best Available Measures; using pesticides or herbicides within the Water Body; and dredging so as to alter the depth, vegetation, or substrate composition of the Water Body.

2.04 BORDERING LAND SUBJECT TO FLOODING

(1) Preamble

A Bordering Land Subject to Flooding is an area that floods from a rise in a bordering waterway or Water Body. Such areas are likely to be significant to flood control and storm damage prevention, and to wildlife habitat.

Bordering Land Subject to Flooding provides a temporary storage area for flood water that has overtopped the Bank of a Water Body. During periods of peak runoff, flood waters are retained (i.e. slowly released through surface discharge) by Bordering Land Subject to Flooding. Over time, incremental filling of these areas causes increases in the extent and level of flooding by eliminating flood storage volume or by restricting flows, thereby causing increases in damage to public or private properties. Where Bordering Land Subject to Flooding is composed of mineral soils, it provides an important site for groundwater recharge.

Bordering Land Subject to Flooding is likely to provide important wildlife habitat, with the exceptions of those portions which have been so extensively altered by human activity that their important wildlife habitat functions have been effectively eliminated (such as paved and graveled areas, and roadways). The hydrologic regime, plant community composition and structure, topography, soil composition and structure, proximity to Water Bodies, and to Freshwater Wetlands, enable Bordering Lands Subject to Flooding to provide important food, shelter, migratory and overwintering areas, and breeding areas for wildlife.

(2) Definitions, Critical Characteristics, and Boundaries

The topography, vegetation and location of Bordering Land Subject to Flooding specified in the foregoing subsection 2.04(1) are critical to the protection of the interests specified in this Section 2.04.

(3) Performance Standards

Any proposed work, permitted by the Commission, on Bordering Land Subject to Flooding shall not result in the following:

- (a) Flood damage due to filling which causes lateral displacement of water that would otherwise be confined within said area; or
- (b) Any impairment of the capacity of said area to provide important wildlife habitat functions.

2.05 ISOLATED LAND SUBJECT TO FLOODING

(1) Preamble

An Isolated Land Subject to Flooding is an isolated depression or closed basin that serves as a ponding area for runoff or high groundwater which has risen above the ground surface. Such areas are likely to be locally significant to flood control and storm damage prevention, and to wildlife habitat. In addition, where such areas are underlain by pervious materials they are likely to be significant to public or private water supply and to groundwater supply. Finally, where such areas are underlain by pervious material covered by a mat of organic peat and muck, they are also likely to be significant to the prevention of pollution.

Isolated Land Subject to Flooding provides a temporary storage area where runoff and high groundwater pond and slowly evaporate or percolate into the substrate. Filling causes lateral displacement of the ponded water onto contiguous properties, which may in turn result in damage to said properties.

Isolated Land Subject to Flooding, where it is underlain by pervious material, provides a point of exchange between ground and surface waters. Contaminants introduced into said area, such as septic system discharges and road salts, find easy access into the groundwater and neighboring wells. Where these conditions occur and a mat of organic peat or muck covers the substrate of the area, said mat serves to detain and remove contaminants which might otherwise enter the groundwater and neighboring wells.

Isolated Land Subject to Flooding that meets the definition of vernal pool provides essential breeding sites for amphibians and invertebrates.

(2) Critical Characteristics

The characteristics of Isolated Land Subject to Flooding are critical to the protection of the interests specified in this Section 2.05.

(3) Performance Standards

Any proposed work permitted by the Commission on Isolated Land Subject to Flooding shall not result in the following:

- (a) Flood damage due to filling which causes lateral displacement of water that would otherwise be confined within said area;
- (b) An adverse effect on public or private water supply or groundwater supply, where said area is underlain by pervious material;
- (c) An adverse effect on the capacity of said area to prevent pollution of the groundwater, where the area is underlain by pervious material that in turn is covered by a mat of organic peat and muck; or
- (d) Any impairment of the capacity of said area to provide important wildlife habitat functions.

2.06 THE BUFFER ZONE

(1) Preamble

The Buffer Zone is likely to be significant to wildlife, public and private water supply, and to the prevention of pollution.

The plant communities and soils of these areas, where these are composed of natural vegetation and indigenous soils, provide important shelter, nesting, feeding, and migratory areas for wildlife associated with the adjacent wetlands. Many wildlife species that feed or breed in Freshwater Wetlands require adjacent undisturbed upland areas for critical portions of their life cycles. Other wildlife, which perform key ecological roles in Freshwater Wetlands or Water Bodies, may nest or perch in areas immediately adjacent to Freshwater Wetlands or Water Bodies. Forested upland vegetation, where this occurs directly adjacent to Freshwater Wetlands or Water Bodies, provides an important buffer that maintains air temperatures, light regimes, and habitat quality within the Freshwater Wetland or Water Body.

The natural vegetation found in upland areas adjacent to Freshwater Wetlands and Water Bodies provides key functions in the attenuation and uptake of pollutants that would otherwise be discharged to Freshwater Wetlands and Water Bodies. These areas act as filters that may prevent erosion and decrease the non-point source loading of contaminants that may alter the water quality of Freshwater Wetlands and Water Bodies and other surface waters.

The natural vegetation found in areas adjacent to Freshwater Wetlands and Water Bodies provides shade and cover that moderates temperatures and is important to the protection of fisheries.

Trees not only absorb water but also release it through evapotranspiration, which can amount to up to 100 gallons per day for larger trees. This process helps reduce soil moisture, allowing more capacity for absorption during subsequent rain events, which is crucial in preventing surface runoff and localized flooding. In flood-prone areas, these properties make trees an essential component of natural flood management strategies. Their root systems also help stabilize the soil and prevent erosion, which further supports flood control efforts.

Areas of natural, undisturbed upland soils adjacent to Freshwater Wetlands and Water Bodies have been shown to provide key areas for seasonal groundwater recharge that protects public and private groundwater supplies or that maintains base flow and water quality in streams during low flow periods.

Construction that occurs within 100 feet of water bodies, waterways, banks, or Freshwater Wetlands is likely to result in the alteration of the Resource Area through siltation, overgrading, or deposition of construction debris. Following construction, activities within this area frequently result in impacts to Freshwater Wetlands and Water Bodies from the deposition of lawn debris, increased runoff, siltation, and increased temperature or nutrient loading. These subsequent, unregulated alterations are common in areas where development occurs in close proximity to Water Bodies, Banks, or Freshwater Wetlands.

(2) Critical Characteristics

The physical characteristics of the Buffer Zone, including topography, soils and vegetation, of this area are critical to the protection of the interests as specified in Section 2.06(1).

(3) Performance Standards

The performance standards listed below are critical to the protection of the Interests of the Bylaw. These include short- and long-term protection of the wildlife habitat capacity and water quality within the adjacent Water Body, Bank, or Freshwater Wetland, as well as the wildlife habitat present within the Buffer Zone and adjacent Resource Areas.

- (a) No activity subject to the jurisdiction of the Bylaw is permitted within the 25-Foot No-Disturb Zone or, if applicable, the 50-Foot No-Disturb Zone.
- (b) No work within the Buffer Zone shall impair the water quality, water temperature, or wildlife habitat of the adjacent Water Body, Bank, or Vegetated Wetland.
- (c) Where new point-source discharges are proposed within the Buffer Zone, a comprehensive stormwater management system shall be designed that will not degrade the values or functions of the receiving or downstream Water Bodies or Vegetated Wetlands, surface water, or groundwater. Such stormwater management systems shall employ Best Practical Measures. Any point-source discharge must be designed to discharge water at non-erosive velocities equal to 2 fps (feet per second) or less.
- (d) Where stormwater management systems, including but not limited to detention basins, swales, ditches, infiltration or recharge structures are proposed within the Buffer Zone, these shall be designed to be maintenance-free, self-cleaning, and to deter acts of vandalism. The inlet and outlet shall be designed to avoid scour and erosion of the basin bottom and discharge channel. The basin must be designed to avoid or minimize direct flows between the inlet and outlet, and to maximize the stormwater residence times.
- (e) Where proposed work within the Buffer Zone will increase impervious surfaces and reduce groundwater recharge, infiltration measures must be designed to maintain said groundwater recharge.
- (f) Erosion and sedimentation controls must be utilized for any construction within the Buffer Zone that will result in exposed soils. An erosion and sedimentation control plan must be prepared which provides specifications for temporary and permanent soil stabilization, using Best Practical Measures. No silt or sediment may be permitted to enter wetland Resource Areas during or subsequent to construction.
- (g) The removal or trimming of trees within the Buffer Zone shall comply with the Tree Removal and Protection Policy.

Attachment A
Needham Wetlands Regulations
Notice of Intent Application Checklist

This checklist must be completed, signed and submitted with any Notice of Intent permit application. All required information and notifications must be included for the application to be considered complete. Also see the Needham Wetlands Protection Bylaw (Article 6 of the General Bylaws), Section 1.05(4) and the Needham Wetlands Regulations for a complete list of the regulatory requirements for an application.

Three (3) paper copies and one (1) electronic copy of all materials must be submitted, and check(s) made out to Town of Needham for application fee (see fee schedule)

ABUTTER NOTIFICATION (by certified mail, return receipt or hand delivery)

- ☐ List certified by the Assessor's Office of all abutters within 300 feet of the property line.
- ☐ Copy of the Assessor's Map or Subdivision Plan showing abutting and adjacent lots within 300 feet of the parcel on which work is proposed.
- ☐ Copy of draft notification made to abutters including date and specific time of public hearing. (See Sample online)
- ☐ Proof of notification to abutters and Select Board, Planning Board, Board of Health, and Building Inspector (SUBMIT AT OR PRIOR TO HEARING).

PLANS (shall include the following)

- ☐ An 8.5" x 11" section of the U.S. Geologic Survey quadrangle or other map of the area.
- ☐ TITLE block clearly stating the name of the project.
- ☐ Street address, map and parcel numbers.
- ☐ Date of plan (and most recent revision).
- ☐ Scale (1"=20' or 1"=40' or metric equivalent).
- ☐ Stamped and signed by a Professional Engineer or Registered Land Surveyor.
- ☐ Show existing conditions (grades, structures, roads, treelines, and limits of existing lawn).
- ☐ Clearly show the boundaries, in the required colors, of all regulated resource areas (Vegetated Wetland, Bank, BLSF, ILSF, Riverfront Area, Vernal Pools), including the 100-foot and 50- or 25-foot Buffer Zone limits as defined under the Wetlands Protection Act and the Needham General Wetlands By-Law and Regulations.
- ☐ Clearly show the location and numbers of all wetland flags and method of survey.
- ☐ Show proposed limit of work, including but not limited to proposed grades, locations of all structures, roads, paths, utilities, drainage structures, trees to be removed, changes in lawn edges, plantings (including replacement trees), and proposed tree line.
- ☐ Show the minimum distance between the limit of proposed work (erosion controls) and the edge of wetland
- ☐ Details of any stormwater management or subsurface drainage structures.
- ☐ Detail of any erosion and sedimentation control measures.
- ☐ Location of all soil stockpile and laydown areas
- ☐ Dimensions of existing and proposed structures and impervious surfaces, that support calculations.

POLICIES (as applicable)

- ☐ **Tree Removal and Protection-** Applicant has read the Tree Removal and Protection Policy (Attachment B to the Needham Wetlands Regulation) and is has complied with the requirements therein.

- ☐ **Stormwater Management** - Applicant has read the Stormwater Management Policy (Attachment C to the Needham Wetlands Regulation) and is has complied with the requirements therein.
- ☐ **Wildlife Habitat Assessment** - Applicant has read the Wildlife Habitat Assessment Policy (Attachment D to the Needham Wetlands Regulation) and is has complied with the requirements therein.

DOCUMENTS

- ☐ WPA Form 3 – Notice of Intent.
- ☐ Application for a Permit (Needham General Wetlands Protection Bylaw Article 6).
- ☐ Written Description (narrative) of the work proposed, including a description of any excavation, proposed structures, and erosion and sedimentation controls.
- ☐ Stormwater Management Report (see Attachment C- Stormwater Management Policy).
- ☐ Quantitative documentation to support the delineation of the vegetated wetland, with certification from the wetland scientist responsible for the delineation, stating the basis for the delineation and the date on which the delineation was performed. DEP Bordering Vegetated Wetland (310 CMR 10.55) Delineation Field Data Forms must document both upland and wetland plots.
- ☐ Wildlife Habitat Assessment (See Attachment D - Wildlife Habitat Assessment Policy), where alterations to a wetland resource area or naturally-vegetated buffer zone are proposed.
- ☐ Request for a waiver from compliance with the regulation (including proposed basis for request) if regulatory performance standards cannot be met.

☐ **Signature:** _____ **Date:** _____

Attachment B
Needham Wetlands Regulations
Tree Removal and Protection Policy

The Needham Conservation Commission is frequently asked to allow the removal of trees which are dead or damaged/diseased and pose a threat to private or public property (hazard trees), or which are within the footprint of proposed construction. The Commission primarily reviews such requests under the Wetlands Protection Act and Needham Wetlands Protection Bylaw and Wetlands Protection Regulations in the context of Requests for Determination of Applicability (RFD) and Notices of Intent (NOI). An exception to this is Regulations Section 1.02(4)(f) which states that “individual tree removals when evidence is provided by a Certified Arborist showing that the tree is in poor health and/or poses an imminent danger to persons or property” is a minor activity, that can be approved administratively, when the tree is within a Buffer Zone. This Policy has been developed to provide a consistent approach to tree removal and protection that protects the wetland functions and values provided by trees within wetlands, floodplains, Buffer Zones, or Riverfront Area.

Needham is designated a “Tree City USA” by the Arbor Day Foundation, a designation that shows that the community cares about its environment and the quality of life. Trees are an important part of Needham’s visual landscape, as well as providing cleaner air, shadier streets, and habitat for birds and other wildlife. The shade produced by trees in summer reduces temperatures and can reduce energy usage and air conditioning costs, important factors to a Green Community. Trees help slow climate change by removing carbon dioxide from the air, storing carbon in the trees and soil, and releasing oxygen into the atmosphere. With respect to wetland functions and values, trees provide shade that maintains a favorable microclimate for wetland plants, reptiles and amphibians, and insects. Trees provide wildlife habitat features which include food, shelter, nesting habitat, migratory habitat, and perching habitat (for predatory and insect-eating birds). Dead limbs and hollow trunks provide cavities which may be used by small mammals and birds for nests, dens, or shelter. The leaves shed by deciduous trees in the fall provide a valuable source of nutrients and organic matter that supports the texture and fertility of wetland soils.

Tree Removal Policy

It is the Needham Conservation Commission’s Policy that no trees may be removed in jurisdictional areas or their Buffer Zones unless permission has been granted by the Commission and/or its Agent. This Policy applies to all areas jurisdictional to the Commission, whether natural or landscaped. Natural areas are those areas comprised predominantly of naturally occurring vegetation. Landscaped areas are those areas comprised predominantly of lawn or landscaping shrubs.

Trees subject to this policy are those at least 6 inches in diameter, measured 4.5 feet off the ground (DBH).

Note: This policy is intended to cover the removal of trees only. Other requests for removal of vegetation within the Commission’s jurisdiction such as removing trees less than 6” in diameter, removal of shrubs,

native groundcover and native vegetation must be reviewed and approved by the Commission and/or Agent Tree Removal Request, Review and Approval Process.

Tree removal requests may be granted conditional on the replacement of one or more trees. (See replacement standards below). The Commission may also require further review through the filing of a RFD or NOI permit.

Requests should be made in writing to the Conservation Department at 500 Dedham Avenue Needham, MA 02492 or via email at conservation@needhamma.gov. If the homeowner contends that the tree is dead or diseased and therefore compromised, a letter from a Certified Arborist, retained by the Applicant, attesting to this may be required prior to approval.

A duly authorized member of the Commission and/or its Agent may conduct a site visit. In some cases, requests can be administratively approved at that time with submittal of required documentation. (For example, if a tree shows obvious signs of disease and decay or is dead). Otherwise, requests are reviewed at the Commission's regularly scheduled public hearings. Once the review is complete, a letter or email of approval or denial will be issued to the homeowner. The Commission may also require further review through the filing of a RFD or NOI permit.

If the Commission requires filing of an RFD or NOI, identification of the species and size of trees to be removed should be shown on the existing conditions plot plan. Also, a description, photos and condition assessment of trees proposed to be removed, along with the reason for the tree removal request (e.g., poses a safety threat or interferes substantially with the landowner's use of property) should be provided. Any tree determined to be a Hazard Tree should be so certified by a Massachusetts Certified Arborist.

Tree Removal Policy

General – The Commission requires that all tree removal equipment remain on landscaped or paved areas and outside natural areas. Also, to minimize disturbance, the only stumps that may be ground below the surface are those in landscaped areas or outside the 25-Foot No-Disturb Zone.

Snags – A “snag” is a dead tree left upright to decompose naturally and provide valuable wildlife habitat. The Commission requires that wherever feasible, a snag at least 6 feet high be retained when a diseased, dead, or hazardous tree, 6-inches or greater DBH is removed.

Replacement Ratio – The Commission requires that all trees, that have a 6-inch DBH or greater, removed within its jurisdictional areas or their Buffer Zones, be replaced within the Buffer Zone and/or 200-foot Riverfront Area, at a minimum 2:1 ratio (two new trees for each tree removed), with native tree species (see attached Replacement Tree List). The replacement trees must be a minimum of 2 1/2-inch caliper or for evergreen trees, at least 8 feet in height. When more than 4 replacement trees are proposed, they shall

be of diverse species appropriate to the site. Although replacement trees are preferred, in certain circumstances, such as when space is limited, an Applicant may propose habitat replacement with high wildlife value native shrub species in addition to trees. Shrubs shall be proposed at no less than a 4:1 ratio (four shrubs for each tree removed). Shrubs shall be at least 36 inches in height. The proposed shrub ratio shall not exceed 50% of the required tree replacement. (For example, if 3 trees are removed, 6 trees or a combination of 4 trees and 4 shrubs could be proposed as mitigation). The attached list provides guidance on what tree and shrub species are acceptable. Other native plants may be proposed beyond those listed in this document. Final approval is subject to review by the Conservation Commission or their designee.

Significant Trees – A “significant tree” is one which has a DBH of 32-inches (thirty-two inches) or more, or one that is considered by the Commission to of unique and intrinsic value to the wetlands because of its size, age, or ecological value. The Commission requires replacement of a “significant tree” to be at a 3:1 ratio (three new trees for each significant tree removed).

Planting Requirements, Schedule, and Follow-up

Replacement trees should be planted in season preferably in the early spring before bud break or in early to mid-November after leaf drop if not designated a fall dig hazard. Trees are to be planted at least as close to the resource area as the cut tree as feasible. A proposed planting plan and plant list shall be submitted to the Commission and/or its Agent for approval prior to purchase and installation. If the appropriate replacement ratio cannot be achieved on site, then the scope of the project should be scaled back, and trees retained.

Trees and shrubs shall not be planted within 6 feet of a structure, whether for tree replacement or Riverfront or other mitigation.

Staff do not conduct site visits to check on the health of replacement trees. The applicant must hire a professional to conduct site visits and submit a monitoring report, including photographs, after 6 months, 1 year and 2 years post-planting. Replacement plantings that do not survive for at least two growing seasons must be replaced.

Tree Protection Policy

Even though trees may not be removed during a proposed project they can be damaged during construction if proper precautions are procedures are not followed. This may result in a hazardous or dead tree. Accordingly, the Commission requires that adequate protection be provided for all trees potentially impacted by proposed construction in its jurisdictional areas. Protective measures should follow Best Practical Measures and include protection of critical root zones, bark, and changes in grade. Detailed information of tree protection can be found at:

<https://www.mass.gov/doc/protecting-our-community-trees-fact-sheet/download>

<https://www.mass.gov/doc/protecting-our-community-trees-fact-sheet/download>

and

<https://www.arboday.org/programs/graphics/conservation-trees/save-trees-during-construction.pdf>

Permit Application Requirements

Applications requesting the removal of 2 or more trees shall include the following:

- Show the location of the trees to be removed, each with a unique ID on a Plot Plan
- Provide a table listing the species, size (DBH) , condition and reason for removal for each tree identified to be removed
- Show the location of the required replacement trees on a Plot Plan
- Provide a table listing the species, size (caliper of height), for each replacement tree or shrub.

Applications where one or more trees may be impacted by construction activities shall include the following:

- Show the location of the potentially impacted tree(s) on a Plot Plan
- Provide a narrative describing the protective measures to be taken.

Replacement Trees – Native to New England

Wetter Areas	Drier Areas
<i>Acer rubrum</i> (red maple)	<i>Acer saccharum</i> (sugar maple)
<i>Acer saccharinum</i> (silver maple)	<i>Betula papyrifera</i> (paper birch)
<i>Betula lenta</i> (sweet/black birch)	<i>Fagus grandifolia</i> (American beech)
<i>Betula nigra</i> (river birch)	<i>Fraxinus pennsylvanica</i> (green ash)
<i>Betula populifolia</i> (gray birch)	<i>Juniperus virginiana</i> (eastern red cedar)
<i>Chamaecyparis thyoides</i> (Atlantic white cedar)	<i>Liriodendron tulipifera</i> (tulip tree)
<i>Nyssa sylvatica</i> (tupelo, black gum)	<i>Pinus strobus</i> (white pine)
<i>Quercus bicolor</i> (swamp white oak)	<i>Platanus occidentalis</i> (sycamore)
<i>Tsuga canadensis</i> (Canada hemlock)*	<i>Prunus serotina</i> (black cherry)
	<i>Quercus alba</i> (white oak)
	<i>Quercus coccinea</i> (scarlet oak)
	<i>Quercus palustris</i> (pin oak)
	<i>Quercus rubra</i> (red oak)
* <i>Tsuga canadensis</i> should only be planted if a long-term monitoring plan (approved by the Conservation Commission) is in place to control woolly adelgid.	<i>Quercus velutina</i> (black oak)
	<i>Tilia americana</i> (basswood)

High Wildlife Value Shrubs – Native to New England

Wetter Areas	Drier Areas
<i>Alnus incana</i> (<i>rugosa</i>) (Speckled Alder)	<i>Amelanchier</i> spp. (serviceberry)
<i>Clethra alnifolia</i> (Sweet Pepperbush)	<i>Cornus alternifolia</i> (alternate-leaved dogwood)
<i>Cornus amomum</i> (Silky Dogwood)	<i>Cornus racemosa</i> (gray dogwood)
<i>Ilex verticillata</i> (Winterberry Holly)	<i>Corylus americana</i> (American hazelnut)
<i>Salix discolor</i> (Pussy Willow)	<i>Hamamelis virginiana</i> (witch hazel)
<i>Vaccinium corymbosum</i> (Highbush Blueberry)	<i>Photinia melanocarpa</i> (black chokeberry)
<i>Viburnum dentatum</i> (Northern Arrowwood)	<i>Viburnum trilobum</i> (American cranberrybush)

Also see: <https://ag.umass.edu/landscape/fact-sheets/north-american-plants-for-new-england-gardens>

Attachment C
Needham Wetlands Regulations
Stormwater Management Policy

Improperly managed stormwater runoff can have a negative impact on wetlands and other resource areas through erosion, pollutant and sediment contamination and limitation of groundwater recharge. Accordingly, it is the policy of the Needham Wetlands Commission that all New Construction comply with the Needham Stormwater Bylaw (Article 7 of the General Bylaws including any regulations promulgated thereto, as amended), and with the latest edition of the Massachusetts Stormwater Standards (including the Massachusetts Stormwater Handbook), as applicable. In addition, the Commission requires that any new impervious areas, such as patios, decks, porches, driveways, etc. constructed within a buffer zone or Riverfront area be designed to prevent pollutant and sediment contamination and to maintain the lost infiltration.

The following summarizes requirements for **single family home** projects, the most common application to the Commission. Refer to the Needham Stormwater Bylaw and Regulations and the Massachusetts Stormwater Standards for all other projects, such as multi-housing or redevelopment projects.

Note: The Needham Stormwater Bylaw is currently under review. It is anticipated that the Bylaw will be updated, and stand-alone regulations will be issued in the future. This Stormwater Management Policy will be updated at that time.

Notice of Intent Application

Applicants are required to provide a Stormwater Management and Erosion Control Plan or a Stormwater Management and Erosion Control section of the project narrative with the following information:

1. Construction period measures to prevent the discharge of silt, sediment and runoff to the resource areas or abutting properties. The location of silt fences, silt socks, wattles, berms, etc. should be shown on the plot plan. Wattles should be a minimum of 12 inches in diameter.
2. Calculations showing the pre- and post-construction impervious areas. Impervious areas should be shown and dimensioned on the plot plans.
3. Where subsurface infiltration systems are proposed, provide test pit data and a soils evaluation completed by a competent soils evaluator. This evaluation should indicate the estimated seasonal high groundwater elevation and the estimated infiltration rate. Test pit location should be shown on the plot plan. The Commission prefers that the soils evaluation be conducted prior to issuance of an Order of Conditions but may waive this requirement if the applicant can show why that is not practical. In any case this a soils evaluation must be provided prior to installation of the infiltration system.
4. Where subsurface infiltration systems are proposed, provide appropriate sizing calculations and show the location, cross section and overflow of the infiltration systems on a

dimensioned plan.

5. An Operations and Maintenance Plan, signed by the property owner, providing, at a minimum annual inspections and removal of sediment, debris and leaves, as needed. If the project involves the continued use of an existing onsite stormwater system, the applicant should provide evidence that they are operating and maintaining the systems, such as the previous year annual inspection reports.

Design Requirements

1. General - Infiltration and other stormwater management systems should be designed in accordance with the Needham Stormwater Bylaw and Regulations, as amended and using Best Management Practices as included in the Massachusetts Stormwater Handbook. For Subsurface Infiltration Chambers, the most used system for single family house projects in Needham, typical BMPs include:
 - a. Sizing and installation must conform to specific manufacturer requirements.
 - b. Infiltration systems, including open storage systems must exfiltrate in a maximum of 72 hours.
 - c. Infiltration chambers must be located at minimum of 2 feet above the seasonal high groundwater elevation.
 - d. Infiltration chambers are required to include observation and cleanout ports.
2. Infiltration systems for projects with a total of 4,000 square feet or less of impervious surfaces are required to be sized to collect a minimum of 1 inch of rainfall over the appropriate roof area (see Stormwater Bylaw and Regulations for requirements for house additions). Rainfall falling on other impervious areas, including driveways, decks and patios, can either be collected in the same infiltration system or managed in another manner such as rain gardens, drainage trenches or swales, detention basin or other BMP.
3. Infiltration systems for projects with a total greater than 4,000 square feet of impervious area are required to be sized to collect a minimum of 1 inch of rainfall over the total impervious area (roof, driveways, patios, decks, etc.). In addition, the Applicant must demonstrate compliance with the Massachusetts Storm Water Standards, in particular Standard 2 – Peak Rate Attenuation and Standard 3 – Recharge. Calculations and design for systems with greater than 4,000 square feet must be stamped by a Massachusetts registered professional engineer.

Attachment D
Needham Wetlands Regulations
Wildlife Habitat Assessment Policy

The Town of Needham Wetlands Protection Regulations (pursuant to the authority of the Needham Wetlands Protection Bylaw, Needham General Bylaw, Section 6) protect vegetated wetlands and buffer zones for, in part, their ability to provide wildlife habitat. The Regulations presume that these resource areas, as well as Bordering Land Subject to Flooding and Bank, protect wildlife habitat except in certain unusual circumstances. The Regulations, at 1.05(4)(a), require submittal of a wildlife habitat assessment where work is proposed within a resource area (including the Buffer Zone). This Policy is intended to establish standards for such habitat assessments.

REGULATORY FRAMEWORK

The regulations for the Vegetated Wetlands, Section 2.02(1), state that “the hydrologic regime, plant community composition and structure, soil composition and structure, topography, and water chemistry of Freshwater Wetlands and their adjacent uplands provide important food, shelter, migratory and overwintering areas, and breeding areas for many birds, mammals, amphibians, reptiles, and invertebrates.”

The regulations for Bordering Land Subject to Flooding, Section 2.04(1), state that “Bordering Land Subject to Flooding is likely to provide important wildlife habitat, with the exceptions of those portions which have been so extensively altered by human activity that their important wildlife habitat functions have been effectively eliminated (such as paved and graveled areas, and roadways). The hydrologic regime, plant community composition and structure, topography, soil composition and structure, proximity to Water Bodies, and to Freshwater Wetlands, enable Bordering Lands Subject to Flooding to provide important food, shelter, migratory and overwintering areas, and breeding areas for wildlife.”

The regulations for Buffer Zone, Section 2.06(1), state that the “plant communities and soils of these areas, where these are composed of natural vegetation and indigenous soils, provide important shelter, nesting, feeding, and migratory areas for wildlife associated with the adjacent wetlands. Many wildlife species that feed or breed in Freshwater Wetlands require adjacent undisturbed upland areas for critical portions of their life cycles. Other wildlife, which perform key ecological roles in Freshwater Wetlands or Water Bodies, may nest or perch in areas immediately adjacent to Freshwater Wetlands or Water Bodies. Forested upland vegetation, where this occurs directly adjacent to Freshwater Wetlands or Water Bodies, provides an important buffer that maintains air temperatures, light regimes, and habitat quality within the Freshwater Wetland or Water Body.”

PRESUMPTIONS

The Regulations establish the presumption that wetland resource areas, including the Buffer Zone, are significant to the protection of wildlife habitat unless they are so substantially altered that wildlife habitat has been eliminated. Areas that are presumed to **not** be significant to the protection of wildlife habitat include:

- a) mowed lawns

- b) parking lots and other paved areas
- c) roads and railroads
- d) cemeteries
- e) areas with a gravel surface, lacking natural vegetation

The regulations presume that the alteration of any resource area (including the Buffer Zone) will adversely affect the ability of the resource to protect wildlife habitat, including the ability of the resource to provide shelter, nesting habitat, migratory habitat, feeding habitat, or other habitat functions, for birds, mammals, amphibians, or reptiles. The regulations presume that alteration of the Buffer Zone is likely to have an adverse effect on the ability of the adjacent Vegetated Wetland or Bank to provide wildlife habitat. The performance standards for each of the resource areas require that any proposed work, permitted by the Commission, shall not result in “any impairment of the capacity of said area to provide important wildlife habitat functions.”

The Massachusetts Wetlands Protection Regulations (310 CMR 10.00 et seq) provide clear performance standard thresholds for work that is presumed to not impair the capacity of an area to provide important wildlife habitat functions:

- a) for Vegetated Wetland, alteration of less than 5,000 with equal replacement
- b) for Bordering Land Subject to Flooding, alteration of the lesser of 5,000 square feet or 10 percent of the land within the resource area
- c) for Bank, alteration of the lesser of 50 linear feet or, 10 percent of the total length of Bank
- d) for Riverfront Area, alteration of the greater of 5,000 square feet or 10 percent of the land within the resource area.

The Needham Conservation Commission incorporates these performance standards and the procedures for determination of Important Wildlife Habitat as established in DEP Wetland Program Policy 88-2. However, the state regulations do not address Buffer Zone, which is a resource area only under the Needham Wetlands Protection Bylaw.

WILDLIFE HABITAT PERFORMANCE STANDARDS – BUFFER ZONE

Work within the Buffer Zone of a Vegetated Wetland, Bank, or land under a Water Body is presumed to not impair the capacity of the Buffer Zone to provide important wildlife habitat functions when the work will:

1. alter the lesser of (a) up to 5,000 square feet or (b) 10 percent of the land within the resource area, and
2. maintain undisturbed natural vegetation a minimum of 50 feet in width adjacent to the Vegetated Wetland, Bank or land under a Water Body.

Applicants seeking to alter land within the Buffer Zone in excess of these thresholds must provide a wildlife habitat analysis to the Commission that includes the information listed in the next section of this Policy.

WILDLIFE HABITAT ANALYSIS

Wildlife Habitat Analyses **must include the information listed below**. Habitat analyses that generate a numerical value rating for wildlife habitat do not provide this information and will not be accepted by the Needham Conservation Commission.

1. Description of Adjacent Wetland Resource Area (Bank, land under a Water Body, or Vegetated Wetland)

- a) Size or length within the subject property
- b) Total size or length
- c) Type of hydrology (seasonal maximum depth and extent of water)
- d) Presence of open water (size, location, type of water body)
- e) Dominant Vegetation
 - a. Canopy: list species, percent cover
 - b. Shrub layer: list species, percent cover
 - c. Herbaceous layer: list species, percent cover
- f) Other vegetation cover types
- g) Wildlife habitat features (tree cavities, fallen logs, dead perch trees)
- h) Direct observations of wildlife usage
- i) List of wildlife species that are capable of using the resource area for nesting, breeding, overwintering, or for migratory or feeding habitat.

2. Description of Buffer Zone

- a) Size within the subject property
- b) Dominant vegetation
 - a. Canopy: list species, percent cover
 - b. Shrub layer: list species, percent cover
 - c. Herbaceous layer: list species, percent cover
- c) Other vegetation cover types
- d) Wildlife habitat features (tree cavities, fallen logs, dead perch trees)
- e) Direct observation of wildlife usage
- f) Location of Buffer Zone with respect to potential wildlife corridors to other Wetlands
- g) List of wildlife species that are capable of using the resource area for nesting, breeding, overwintering, or for migratory or feeding habitat.

3. Description of Impact

- a) Amount of Buffer Zone to be altered
- b) Percent of total Buffer Zone on the property
- c) Distance from edge of Vegetated Wetland or Bank
- d) Configuration of impacted area (outer edge of Buffer Zone vs. creation of gap in canopy extending to wetland edge)

4. Description of measures to mitigate for impacts to wildlife habitat within the Buffer Zone

For example, minimizing the use of leaf blowers and outdoor lighting.

Attachment E
Needham Wetlands Regulations
Public Comment Policy

The Commission welcomes the opportunity to hear from members of the Public. To ensure the ability of the Commission to discuss its business and hold its meetings in an orderly manner, while also providing the opportunity for public input on the business before it, the Commission has adopted the following rules and procedures:

Written Statements

If any person interested in a hearing is unable to attend, written statements regarding an application may be submitted to the Commission at least two (2) business days prior to the public hearing. Such statements will be provided to all Commissioners and incorporated into the public record of the hearing. They will not necessarily be “read into the record” during the hearing. Once a hearing is closed, no further comments will be entered into the public record.

Public Hearings

1. For each scheduled hearing on the agenda, the Chair will introduce the applicant and/or their consultant and invite them to begin their presentation. After conclusion of the presentation, the Chair will call on the Commission staff and members for their questions or comments. After questions and comments from the staff and members, the Chair may solicit public comment for that agenda item.
2. Public speakers will begin their remarks by stating their first and last name, and town of residency for the record. All remarks will be addressed through the Chair.
3. Public speakers must only address topics within the scope of jurisdiction of the Commission and shall be out of order if they address other issues.
4. Individual speakers are limited to speak for a total of three (3) minutes per person. Groups addressing the same topic are encouraged to consolidate their remarks and/ or select a spokesperson to speak.
5. Public comment is not a discussion, debate, or dialogue between individuals and the Commission. It is an individual's opportunity to express an opinion on topics within the jurisdiction of the Commission. Comments made during Public Comment do not reflect the views or opinions of the Commission.
6. The Chair will not interrupt speakers who have been recognized to speak; however, comments will be curtailed by the Chair once they exceed the time limits outlined in paragraph 4 of this policy or to the extent, they address topics outside the jurisdiction of the Commission as required under paragraph 3.

