

# **FOXBOROUGH WETLANDS PROTECTION REGULATIONS**

## **SECTIONS**

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## **SECTION 1. PURPOSE**

The purpose of Chapter 267, the Town of Foxborough Wetlands Protection Bylaw (*formerly Article IX*), is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Foxborough by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect on resource area values, including but not limited to the following: *public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention, water quality, prevention and control of pollution, fisheries, wildlife habitat, rare species habitat including rare plant and animal species, and preservation of open space, deemed important to the community* (collectively, the “resource area values protected by the Bylaw”).

These rules and regulations are promulgated to define key terms and additional terms to implement the provisions of the Town of Foxborough Wetlands Protection Bylaw. They are intended to minimize delay in the permitting process by providing applicants and their consultants with rules and regulations to comply with the Bylaw. The Bylaw sets forth a public review and decision making process to protect wetlands and adjoining land areas by controlling activities deemed likely to have significant or cumulative impact on wetland values of the Bylaw which shall include, but are not limited to, the following:

1. Protection of public and private water supplies and quality for the health of the inhabitants of the Town of Foxborough;
2. Protection of ground water supply and quality;
3. Flood control;
4. Storm damage prevention;
5. Erosion and sedimentation control;
6. Prevention of water and soil pollution;
7. Protection of fisheries;
8. Protection and preservation of wildlife habitat and rare species habitat including rare plants; and
9. Preservation of open space and recreation values.

## **SECTION 2. STATEMENT OF JURISDICTION**

Except as provided by these rules and regulations no person shall remove, fill, dredge, alter or build upon or within any resource areas or buffer zones.

### **A. Areas Subject to Protection**

The rules and regulations provide a framework for the protection of the following resource areas in addition to the areas protected by the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, §40):

1. Bank, freshwater wetland, creek, river, stream, pond or lake.
2. Land under any of the water bodies and waterways listed above.
3. Any bog, swamp, marsh or wet meadow, not otherwise included in #1 above.
4. Land subject to flooding (by surface water, groundwater or storm water flow).
5. Isolated wetland as defined in Section 3.
6. Vernal pools as defined in Section 3.
7. Riverfront area as defined in 310 CMR 10.58.

## **B. Activities Subject to Regulation**

Any of the following activities are subject to the jurisdiction of this Regulation:

1. Activities proposed or undertaken within a resource area identified in Section 2.A which will remove, fill, dredge or alter that area.
2. Activities proposed or undertaken within one hundred (100) feet horizontally outward from the boundary of any resource area identified in Section 2.A.1, 2, 3 and 6 and within two hundred (200) feet horizontally outward from a river which, in the judgment of the Conservation Commission, will alter a resource area.

## **C. No Activity Zones**

For the purposes of these Regulations, no activity, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering land, shall be permitted by the Commission in these areas (see Section 3 Definitions, No Activity Zones).

## **SECTION 3. DEFINITIONS**

The following definitions shall apply in the interpretation and implementation of the Bylaw and these Regulations. Both the Massachusetts Wetland Protection Act (*the Act*) and the Foxborough Wetlands Protection Bylaw (*the Bylaw*) definitions should be reviewed together, but *where these definitions expand upon the Act's definitions, these definitions shall control.*

**Agent** shall include any consultant/expert appointed or assigned by the Conservation Commission (*Commission*) to serve as its representative.

**Alter** (may also be referred to as "*construction*," defined below) shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by the Bylaw:

1. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
2. Changing of preexisting drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
3. Drainage or other disturbance of water level or water table;
4. Dumping, discharging, or filling with any material which may degrade water quality;
5. Placing of fill, or removal of material, which would alter elevation;
6. Driving of piles, erection, expansion or the repair of buildings (which will result in removing, filling, or altering land), or structures of any kind;
7. Permanent placement of obstructions or objects in water;
8. Destruction of plant life including cutting or trimming of trees and shrubs; cutting of single trees may be allowed, if the Commission determines that said tree would pose a risk to public safety;
9. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
10. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or ground water including, without limitation, any activity that may cause surface water runoff contaminated with sediments, chemicals, or animal wastes;
11. Application of pesticides or herbicides;
12. Test pits in previously undisturbed areas, for the purpose of preparing an application to the Commission;
13. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas or values protected by the Bylaw;
14. Storage of flood waters (other than naturally occurring) and stormwater runoff waters in wetlands; and
15. Temporary or permanent change in the use of land which may result in potential or actual adverse effect on the purposes and values of the Bylaw, including but not limited to any temporary or

permanent change in use of land preserved pursuant to Article 97 of the Massachusetts Constitution.

**Areas of Critical Environmental Concern** are critical ecological areas and resources designated by the Commonwealth of Massachusetts Secretary of the Executive Office of Environmental Affairs for the purpose of long-term preservation, management and use or stewardship under authority granted by M.G.L. Ch. 21A §2(7) and §40(e) and the regulations promulgated thereunder (301 CMR 12.00).

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

**Bordering Lands.** Also referred to as “*bordering lands subject to flooding*,” bordering lands include the area inundated when a statistical one hundred (100) year frequency storm causes a creek, river, stream, pond or lake to rise from their normal courses. For the boundary of bordering lands, see Section 8.J.

**Buffer Zone** shall include any land within one hundred (100) feet horizontally outward from the edge of any “*resource area*” as defined in Section 2.A.1, 2, 3 and 6. Buffer zones and resource areas are regulated in order to ensure that no harm is done to wetland values.

**Certified Vernal Pool,** as used in the Bylaw and Regulations, shall mean any vernal pool that has been documented as conforming to the Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program Certification Criteria by the Commission prior to the close of a hearing.

**Construction** shall include any or all of the definitions for the term “*alter*,” as defined in this section.

**Creek** is synonymous with “*perennial stream*.”

**Distances** noted in the Bylaw (excluding depth), such as buffer zone distances, are planar distances measured along a single elevation. Consequently, on steeply sloped topography, the measured over-ground distance may not accurately reflect the distances specified in the permits and conditions specified by the Bylaw or these Regulations. In particular, the one hundred (100) foot buffer zone on steeply sloped land will measure considerably more than one hundred (100) feet when measured over-ground on site.

**Exception.** When an action is in the public interest, consistent with the intent of the Bylaw and has met the requirements of Section 10 of these Regulations, the Commission may waive strict compliance requirements with applicable portions of the Bylaw and Regulations.

**Existing** shall mean existing in full on or after the effective date of these Regulations, unless specified otherwise in the Bylaw.

**Floodplain and Land Subject to Flooding** shall include isolated wetlands, isolated land subject to flooding, isolated wetlands, bordering lands subject to flooding, Federal Emergency Management Agency (FEMA) floodplain and the land surrounding vernal pools.

**Freshwater Wetland.** The term “*freshwater wetland*” shall include all wetlands, whether or not they border on a water body. For the purposes of these Regulations, all bordering vegetated wetlands, as well as all isolated wetlands encompassing at least five hundred (500) square feet in area, shall be protected.

**Intermittent Stream.** See “*stream*,” defined below.

**Isolated Wetland.** The term “*isolated wetland*” shall include an area, depression or basin encompassing at least five hundred (500) square feet in area, with standing water for at least two (2) consecutive weeks during most years. **Not included** are swimming pools, artificially lined ponds or pools, detention basins, or constructed wastewater lagoons.

**Land Subject to Flooding.** See “*floodplain*,” defined above.

**Mean Annual High Water Line/Bankfull Discharge.** The active work of a stream (erosion, sediment transport, and deposition) primarily takes place at bankfull discharge. Flat depositional feature immediately adjacent to a river’s channel and sandy deposits on the top of point bars shall be used to determine “*mean annual high water line*.”

**No Activity Zones.** For the purposes of these Regulations, no activity, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering land, shall be permitted by the Commission in these areas.

- **25-Foot No Activity Zone.** Means that part of an upland area that extends twenty-five (25) feet horizontally outward from a bordering vegetated wetland or inland bank.
- **Vernal Pool No Activity Zone.** The area within one hundred (100) feet (adjacent upland resource area) of the mean annual boundaries or highest observed flood level, whichever is higher, of a vernal pool shall be referred to as “*Vernal Pool No Activity Zone.*”
- **State Listed Species No Activity Zone.** The “*State Listed Species No Activity Zone*” shall be one hundred (100) feet from any isolated wetland which is identified or recognized by the Commonwealth of Massachusetts as the habitat of a state listed species.

**Perennial Stream.** See “*river,*” defined in Section 3.

**Pollution** shall include any substances in water, soil, or air that degrade the natural quality of the environment, offend the senses of sight, taste, or smell, or cause a health hazard. The usefulness of the natural resource is usually impaired by the presence of pollutants and contaminants.

**Pond.** The term “*pond*” shall follow the definition of 310 CMR 10.04.

**Rare Species** shall include, without limitation, all vertebrate and invertebrate animals and all plant species currently listed as *Endangered, Threatened, or Species of Special Concern* by the Massachusetts Division of Fisheries and Wildlife.

**Recreation** shall include any leisure activity or sport taking place in, on, or within one hundred (100) feet of a resource area, including but not limited to noncommercial fishing, hunting, boating, canoeing, swimming, walking, painting, photography, bird watching, aesthetic enjoyment or any leisure activity which is dependent on the resource area and its values, directly or indirectly, for its conduct and enjoyment.

**Renovation** shall include any or all of the definitions for the term “*alter,*” as defined in this section.

**Resource Area** shall include areas defined in Section 2.A.

**River** shall refer to perennial streams. A “*perennial stream*” or “*perennial river*” is defined in 310 CMR 10.58(2)(a)(1) as one that flows throughout the year, except in periods of extended drought. For the purposes of the Bylaw, rivers may also be regarded as perennial even if they dry up due to diversion of water, well draw-down, or if flow is restricted by control structures.

A river shall be presumed to be perennial if the following criteria apply:

1. It has a watershed of one-half (1/2) square mile or greater;
2. It has upstream tributaries, making the stream second order or greater; or
3. Groundwater elevation is at or near the surface.

**Setbacks.** These include varying distance requirements for proposed treatment systems as required by Chapter 267-6 and Chapter 267-8 of the Bylaw. The setback for vegetated wetlands and inland banks is synonymous with the “*25-Foot No Activity Zone*” in Section 3 (see “*No Activity Zones*”).

**Sole Source Aquifer** means the principal drinking water source for an area, and which, if contaminated, would create a significant hazard to public health. The Canoe River Aquifer is designated by the U.S. Environmental Protection Agency as a sole source aquifer.

**State Listed Species** shall include, without limitation, all vertebrate and invertebrate animals and plant species currently listed as *Endangered, Threatened, or of Special Concern* by the Massachusetts Division of Fisheries and Wildlife.

**Storm Damage Prevention** shall refer to the ability of wetland soils, vegetation and physiography to prevent damage from storms, including, but not limited to:

1. Erosion and sedimentation;
2. Damage to vegetation, property or structures; and/or
3. Damage caused by flooding, waterborne debris or waterborne ice.

**Stream** shall refer to intermittent streams. An “*intermittent stream*” is a naturally occurring channel with a hydraulic gradient through which water flows during part of the year and which either flows out of, into, or within a wetland resource under the Bylaw. A portion may flow through a culvert or under a bridge.

**Subject Lands** shall include all “*resource areas*” defined in Section 2.A, and the “*No Activity Zones*” defined in Section 3.

**Super Majority Vote.** The term “*super majority vote*” shall refer to:

1. Five (5) of seven (7) members voting in favor;
2. Five (5) of six (6) members voting in favor; or
3. Four (4) of five (5) members voting in favor.

If only four (4) or less members are present, a super majority vote shall not apply. An abstention shall not be considered a vote.

**Treatment Systems** shall include on-site subsurface sewage disposal systems as defined in 310 CMR 15.000 (Title 5) of the Massachusetts Environmental Code, or more stringent local requirements.

**Vernal Pool.** The term “*vernal pool*” shall include any confined basin or depression *not occurring in existing* lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two (2) continuous months during the spring and/or summer, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species.

**Vernal Pool No Activity Zone.** The “*Vernal Pool No Activity Zone*” shall extend one hundred (100) feet outward from the mean annual high-water line defining the depression, or the highest observed flood level of such pool, whichever is higher; or one-half (1/2) the distance between the vernal pool and any existing house foundation, whichever is smaller. In either case, the Vernal Pool No Activity Zone *shall not extend over* existing lawns, gardens, landscaped or developed areas. This exclusion pertains only to the area that is developed; undeveloped land beyond these features remains an adjacent upland resource area. Such an area provides extremely important habitat functions including food, shelter, migration, estivation and hibernation habitat during the non-breeding season for a variety of amphibian, reptile or other vernal pool community species, as well as other wildlife.

**Waiver.** When an action is in the public interest, consistent with the intent of the Bylaw and has met the requirements of Section 10 of these Regulations, the Commission may waive strict compliance requirements with applicable portions of the Bylaw and/or Regulations.

**Wetland Protection Act.** Chapter 131, Section 40, of the Massachusetts General Laws and regulations thereunder (310 CMR 10.00 *et seq.*).

**Wetland Values,** as defined in the “*Purpose*” section of the Bylaw, shall include but are not limited to the following:

1. Protection of public and private water supplies and quality for the health of the inhabitants of the Town of Foxborough;
2. Protection of ground water supply and quality;
3. Flood control;
4. Storm damage prevention;
5. Erosion and sedimentation control;
6. Prevention of water and soil pollution;
7. Protection of fisheries;
8. Protection and preservation of wildlife habitat and rare species habitat including rare plants; and
9. Preservation of open space and recreation values.

**Wildlife Habitat** shall include those areas subject to the jurisdiction of the Bylaw which, due to their plant community composition, soils, hydrologic characteristics, geomorphology, proximity to resource areas and/or other characteristics, provide food, shelter, migratory or over wintering areas, breeding and/or rearing areas for wildlife. Vernal pools are a special and important type of wildlife habitat.

## **SECTION 4. REVISIONS AND EFFECTIVE DATE OF REGULATIONS**

### **A. Promulgation**

As stated in the Bylaw: “After public notice and public hearing the Conservation Commission shall promulgate rules and regulations to effectuate the purposes of this Bylaw.” Regulations shall be promulgated by a majority of a quorum of the Commission, provided that one advertised public hearing has been held (previous to or at the time of the vote) for discussion of the proposed Regulations.

### **B. Incorporation**

All of the definitions, resource area descriptions, procedures and requirements set forth in the Wetland Protection Act’s regulations at 310 CMR 10.00 *et seq.* are hereby incorporated and made a part of these Regulations, except where they differ from or depart from these Regulations. Where these Regulations differ from the State regulations, these Regulations shall be applied in addition to the State regulations.

### **C. Effective Date**

The effective date of these Regulations is **October 7, 2013. *These Regulations shall apply to all business of the Commission conducted after this date.*** The effective date of *subsequent revisions* will be the date on which the revisions are approved by vote of the Commission, and filed with the Town Clerk.

### **D. Revisions**

These Regulations may be revised from time to time by a majority of a quorum of the Commission, provided that one advertised public hearing has been held (previous to or at the time of the vote) for discussion of the proposed revisions. Said hearing shall be advertised at least forty-eight (48) hours before the hearing on the Commission’s website and on the Town Clerk’s bulletin board.

### **E. Policies and/or Procedures**

Commission policies and/or procedures may be created and/or revised from time to time at a public hearing, after being advertised at least forty eight (48) hours before the hearing.

## **SECTION 5. PROCEDURES**

A wetland application form is required whenever a project or activity is proposed within one hundred (100) feet of a potential wetland or vernal pool, or within two hundred (200) feet of a river. A wetland application form is also required for the placement of a septic system within one hundred fifty (150) feet of a wetland or within two hundred fifty (250) feet of an existing or proposed system which discharges foreign material into soil over an aquifer or within two hundred (200) feet of an existing system which discharges foreign material into soil within a recharge area.

The wetland application forms include the following:

- A Request for Determination of Applicability (*RFD*) should be filed for simple projects.
- A Notice of Intent (*NOI*) is used for more complicated projects.
- An Abbreviated Notice of Resource Area Delineation (*ANRAD*) should be filed before any large project, so that the site’s wetland boundary lines can be reviewed and approved before any major project planning begins.

Most of the Commission’s application forms are State forms that have been modified to reference the Bylaw. Only one application form is required to be submitted to comply with both the Act and Bylaw. Paper versions of the wetland application forms can be obtained at the Conservation Office, located in the Town Hall. The Commission only accepts completed versions of their wetland application forms.

### **A. Timeframes for Submission of Documentation**

All documentation (including, plans, maps, tables, charts, reports, etc.) to be considered as part of a permit filing by the applicant must be submitted to the Commission no later than two weeks (2) prior to the next scheduled Commission meeting date. The Commission meeting dates and application deadlines are posted on the Commission’s website and in Town Hall.

All documentation to be considered during a continued hearing must be submitted to the Commission no later than four (4) business days prior to the scheduled public hearing’s continuation date. Documentation submitted with fewer than the minimum four (4) business days for review may be excluded from consideration at the scheduled hearing and held for discussion at a subsequently scheduled meeting.

**B. Resource Area Designations on Plans**

All plans submitted to the Commission must show all resource areas on the property and within one hundred (100) feet of the property lines (150 feet for septic system placement) or two hundred (200) feet in the case of perennial streams, regardless of whether or not the proposed work is expected to occur within the jurisdictional areas associated with the resource.

In those instances where the project is part of a subdivision, a plan must be submitted to the Commission showing all resource areas located within the subdivision boundaries and within one hundred (100) feet of those boundaries (150 feet for septic system placement) or two hundred (200) feet in the case of perennial streams.

Failure to provide this information, or providing erroneous or false information, shall be grounds for denying, suspending, or revoking the applicant's request.

**C. Request for Determination of Applicability (RFD)**

Any person desiring to know whether or not a proposed activity or area is subject to the Bylaw may request a determination in writing from the Commission. The Commission shall accept the RFD filed pursuant to the Act, as an application under the Bylaw, and may require additional information to be answered as an addendum to the RFD. The submittal of the RFD shall be accompanied by a fee pursuant to the filing fee schedule provided in Appendix A – Chapter 267 Filing Fee Schedule.

**D. Notice of Intent (NOI)**

Any person desiring to perform any activity subject to the Commission's jurisdiction of this regulation shall file a NOI with the Commission. The Commission shall accept the NOI filed pursuant to the Act as an application under these Regulations, and may require additional information to be answered as an addendum to the NOI.

The application shall include such information and plans as the Commission determines necessary to describe the proposed activity, its impact on the environment, and its effect on the values protected by the Bylaw. When the Commission or its agent determines that an activity proposed in an application represents only a portion of a project, it may require information describing the entire project and its potential impact. A NOI under these Regulations shall be delivered by hand or sent by certified mail, receipt acknowledged to the Commission, and shall be accompanied by a fee pursuant to Appendix A – Chapter 267 Filing Fee Schedule.

**E. Abbreviated Notice of Resource Area Delineation (ANRAD)**

Any person desiring to certify, for purposes of the Bylaw, the limits of resource areas on a site may file a request for wetland delineation approval. The ANRAD shall include such information and plans that are deemed necessary by the Commission to describe and define the resource areas. The Commission shall accept an ANRAD form under the Act as the filing form required to comply with the Bylaw.

**F. Request for Certification Compliance**

This request is for certification that the work performed under a permit has been completed to the satisfaction of the Commission.

**SECTION 6. PERMITS, DETERMINATIONS AND CONDITIONS**

**A. Public Hearings; Public Meetings**

A public hearing (or public meeting) will be scheduled for a project for which a NOI (or RFD) application has been submitted to the Commission. After a public hearing or public meeting, if the Commission determines that the activities which are the subject of the application are likely to have a significant or cumulative effect upon the wetland values protected by the Bylaw, the Commission shall issue an Order of Conditions or Determination ("*permit*") or deny a permit within twenty-one (21) days after closing the public hearing for the activities requested.

**B. Insufficient information, False Information, and the Timing of Evidence**

The Commission may deny a permit if the information presented to it is determined to be false, deficient, or insufficient (or if the applicant refuses to provide relevant information) to properly assess the likely impact of the proposed project to the interests and values protected by the Bylaw.

In some instances the timing of evidence collection is fundamental to proper analysis. Accordingly, in such instances the Commission may require that the hearing be postponed until evidence can be properly collected during the appropriate time period. The Commission may also require its own

properly timed site visits as necessary to confirm the evidence. Evidence gathered at inappropriate times shall be considered faulty and invalid and may be grounds for a denial based on insufficient evidence.

### **C. Orders of Conditions**

When the Commission issues a permit, the Commission shall impose conditions which are deemed necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

The Commission is empowered to deny an Order of Conditions for:

1. Failure to meet the requirements of the Bylaw;
2. Failure to submit necessary information and plans requested by the Commission;
3. Failure to meet the performance standards and other requirements in the Bylaw and the Regulations issued hereunder;
4. Failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by the Bylaw; and
5. Where no conditions are adequate to protect those values.

A permit shall expire three (3) years from the date of issuance. The Commission may extend a permit for one (1) or more periods of up to three (3) years each, upon written request made at least thirty (30) days prior to the expiration of the permit. If a permit has expired, a new NOI shall be required. For good cause the Commission may revoke or modify a permit issued under the Bylaw and Regulations. The Commission, in an appropriate case, may combine the permit or other action on an application issued under this Bylaw with the Order of Conditions issued under the Act.

No work proposed in any application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the Norfolk Registry of Deeds or, if the land affected thereby be registered land, in the registry section of the land court for the Norfolk District, and until the holder of the permit certifies in writing to the Commission that the permit has been so recorded.

### **D. Amended Orders of Conditions**

The Commission recognizes that modifications may be needed and sets forth the following procedures for assessing them. With any proposed modification, the applicant will first contact the Commission and explain the modification. The Commission has the authority to determine the appropriate category for the modification (per DWW Policy 85-4, revised March 1, 1995).

The Commission shall consider the following criteria in making this determination:

- Extent of modification;
- Proximity to resource area; and
- Type of equipment required for construction

1. Minor Changes. Modifications that the Commission determines have either (a) no likelihood of an impact, or (b) the likelihood of minimal impact on any resource areas, need only the formal approval/vote of the Commission during a regularly scheduled meeting. The Commission will record the minutes of their determination in the project file.
2. Moderate Changes (*Amended Orders of Conditions*). Modifications that the Commission determines have some likelihood of an impact on a resource area shall be considered "*Moderate Changes*." These changes require an Amended Order of Conditions, and require the applicant or their agent to:
  - a. Submit a written request for a public hearing, with a separate filing fee, to the Commission;
  - b. Mail abutter notifications; and
  - c. Pay for the posting of a legal notice in a local newspaper (posted by the conservation office)

The following may require an Amended Order of Conditions:

- a. Decrease in the limit of work's distance from resource area;
- b. Increase in potential for erosion;
- c. Decrease in the size of the no activity zone;
- d. Alteration of land form;
- e. Change in size and location of structure or appurtenances;
- f. Increase in amount of vegetation removed; or
- g. Activity beyond the permitted limit of work.

An Amended Order of Conditions must be filed at the Norfolk Registry of Deeds with a reference to the original Order of Conditions.

3. **Significant Changes** (*requires filing of new NOI*). Modifications that are not related to the originally permitted activity may require a new NOI rather than an Amended Order of Conditions. Any modification that will change or increase the impact of the project on any resource area, as determined by the Commission, is considered a “*Significant Change*.” In the case of two (2) or more abutting subdivisions or projects becoming owned by the same person or entity (after the issuance of an Order of Conditions), the submission of a new NOI shall be required for the increased size of the contiguous subdivision(s) or project(s). To avoid segmentation, these projects shall require the filing and review as one (larger) project or subdivision under a single NOI.

## **SECTION 7. ENFORCEMENT**

### **A. Purpose and Guidelines**

The ultimate goal of enforcement is prompt and continued compliance; the intent of this section is to establish as much uniformity as possible, consistent with effective and appropriate enforcement actions. This section follows the recommendation of the DEP’s “*Wetlands Enforcement Manual*” dated November 2004. For details, the Manual should be consulted.

### **B. Administrative Procedure**

The following guidelines outline the response that the Commission and/or its manager will take to violations or apparent violations of the Act or the Bylaw:

Step 1: Review Commission Records and available resources/tools, including aerial photos.

Step 2: Respond Swiftly and Consistently to any violations, or apparent violations, that occur.

Step 3 and Continuing: Gather Evidence, keeping in mind that the Commission bears the burden of proof in an enforcement case to prove each element of a violation (see *Step 7*, below).

Step 4: Informal Contact. Contact the violator or property owner to arrange a meeting (on site, in office, or at a Commission meeting) or visit the property to speak informally with the violator or property owner. Discuss with the contact the site activity, the legal requirements, and possible remedial action. If full cooperation and agreement is achieved, Commission may issue a Restoration Enforcement Order (see below). If cooperation is not achieved, then the Commission will proceed to the next steps.

Step 5: Document Site Access, including a written notation to the file that identifies who visited the site and when, and who authorized access. If consent has not been obtained, it is very important to document attempts to gain access and the landowner’s response.

Step 6: Violation Letter. If informal contact cannot be made, send a violation (form) letter, informing violator and/or property owner of the wetlands protection laws and the apparent violation. Include a cease and desist request, a requirement to prevent further damage, and a request for the owner to attend the Commission’s next meeting. A violation letter, issued under the Act, and/or under the Bylaw, will constitute a warning that a public hearing will be held.

Step 7: Administrative Hearing. When the Commission determines that an activity could be in violation of the Bylaw or Act, the Commission shall hold a public hearing to give the property owner, or owner’s representative, an opportunity to respond to the evidence and circumstances. The Commission will then consider whether a violation actually occurred and, if so, whether the landowner will be issued an Enforcement Order or Restoration Enforcement Order for the violation.

During public hearings, site observations should be reduced to a memorandum and documents should be entered into the record in such a manner that the applicant and other participants are aware of their contents and have an opportunity to respond to them. It should be noted that since Commissioners frequently have specialized knowledge of the site of the violation or the area from site visits, previous proceedings, other documentary materials, or merely general experience, they can rely on those sources of knowledge to some extent.<sup>1</sup>

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<sup>1</sup> At least one court has noted that the Commission is not required either to ignore history or its own expertise in determining the likely impact of actions plaintiffs take.

Step 8: Enforcement Order. Failing an adequate response to *Step 6: Violation Letter*, or for serious violations, the Commission may issue an Enforcement Order under the Act in lieu of or in addition to an Enforcement Order under the Bylaw. If only one document is issued pursuant to both the Act and the Bylaw, each law should be cited on the document's face.

All Enforcement Orders and letters should be directed toward restoration rather than toward the filing of plans or a NOI. If further enforcement action is required, it should be because of failure to restore illegally altered land to its original condition rather than for the responsible party's failure to submit plans or a NOI.

In a situation requiring immediate action, an Enforcement Order may be signed and issued by a single member or agent of the Commission, as long as said Order is ratified by a majority of the Commission at their next scheduled meeting. The Enforcement Order should be sent by certified mail, return receipt requested, or by hand delivery to each of the named parties. If it is hand delivered, the individual who delivered the document should sign the Order and either obtain a receipt or draft an affidavit documenting service for the files. Any time an Enforcement Order is amended, the Amended Order should also be properly served on the violator.

Step 9: Restoration Order. If full cooperation and agreement is achieved, the Commission may issue a Restoration Order, setting forth specific requirements for the restoration of the site to its original condition within a specified time period. This Order would require a detailed Restoration Plan, including specific dates for submissions, construction, and compliance milestones. If the compliance milestones are not met, then a formal Enforcement Order may be issued, per *Step 8*, above.

## **SECTION 8. WETLAND VALUES AND PERFORMANCE STANDARDS**

### **A. Preamble**

Lands within two hundred (200) feet of rivers and lands within one hundred (100) feet of "*resource areas*" identified in Section 2.A.1, 2, 3 and 6 are presumed important to the protection of wetlands and adjoining land areas because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetlands or other resources subject to the jurisdiction of the Commission. Adverse impacts can occur either immediately, as a consequence of construction, or over time, as a consequence of construction, daily operation or existence of the activities. An example of these adverse impacts from construction and use can include, without limitation, *erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat.*

### **B. General**

Applicants proposing alteration of any area subject to the jurisdiction of the Bylaw may be required to replace not only the function of the area to be disturbed, but also its physical properties, characteristics, and vegetative cover. Inability to do so may be cause for denial. Areas subject to jurisdiction of the Bylaw are presumed to be significant to the values protected by the Bylaw until it is demonstrated otherwise by a preponderance of credible evidence to the contrary.

The Commission has the discretionary authority to require enhanced performance standards and/or mitigation, and to permit with conditions or deny a permit as needed to ensure that the values of the Bylaw are protected.

The introduction, purpose and performance standards stated in the M.G.L. 310 CMR 10.51 through 10.60 shall apply except as stated below.

### **C. Alterative Analysis**

The Commission shall require the applicant to provide an analysis of alternatives to projects and associated disturbances proposed within any resource area protected under the Bylaw. The project shall be located outside the resource area unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the Bylaw.

The Commission shall not consider as practical alternatives options that were available to the applicant but appear to be precluded due to self-imposed hardships and constraints (e.g., lot, roadway, and/or drainage layouts engineered without prior regard to impact on Bylaw resources).

It shall be the responsibility of the applicant to provide the Commission with any information that the Commission may request to enable the Commission to ascertain such adverse effects. The failure of the applicant to furnish any information that has been so requested may result in the denial of a request for a waiver or exception.

#### **D. No Net Loss Policy**

As expressed in the Bylaw, the Commission seeks to establish measures to protect the Town's wetlands and ensure that their values, as listed in the Bylaw, are maintained. The following measures are required to prevent a net loss of wetlands and their values.

1. Rationale for No Net Loss Policy. Natural wetlands perform many functions and it is not possible to replicate all of them. Furthermore, it is difficult even to determine which functions are most probably or exclusively being performed in a given wetland area. Therefore, destruction or alteration of wetlands should only be undertaken most cautiously and only as a last resort. Applicants are advised that the Commission will require wetland replication based on the latest available scientific information and practices and will require replication on at least a two to one (2:1) basis.
2. Sequence to Prevent Wetland Loss. The applicant shall submit an analysis of alternatives, with the following "sequencing" approach used to evaluate any proposed wetland loss:

- a. Avoidance. A permit will be issued only for the least environmentally damaging practicable alternative. It is the obligation of the proponent to present this alternative for any non-water dependent activity. Compensatory mitigation or wetland replication will not qualify as avoidance.
- b. Minimization. Once the test of avoidance has been met, a proposal should minimize its adverse impacts through project modifications. It is the burden of the applicant to take all appropriate and practicable steps to minimize the impacts.

(1) Minimize Pre-Project to Post-Project Changes in Site Hydrology - Pre-project and post-project hydrology should remain fundamentally the same as it pertains to protecting wetlands functions and values. Some minor degree of change in hydrology within reasonable limits may be permitted by the Commission when, in its judgment, such changes will not produce a significant impact of wetlands functions and values. Erosion control may require limiting stormwater discharge volumes and velocities. Therefore the Commission may require the construction of such stormwater control structures, and specify particular engineering and design details, as it deems necessary to protect wetland resources, values, and functions.

Failure to contain sediments and control erosion will result in a Cease and Desist Order. All work on site will be stopped until erosion control barriers are corrected and sediments removed from resource areas, restricted buffer areas or impacted off-site areas.

(2) Minimizing Change in Runoff Water Quality - The physical, chemical, and biological qualities of stormwater runoff are altered by encounters with impervious surfaces, especially roadways and related structures. Increases in water temperature, reduction in pH, chemical and nutrient contamination, and transport of silt are just a few of the degrading shifts that may occur. Where such stormwater runoff is likely to contact wetland resources or buffer zones, the Commission shall impose conditions that, in its judgment, reduce undesirable water quality changes to levels that will not harm wetland functions or values, immediately or cumulatively. The Commission may require the construction of specific structures to improve stormwater runoff quality, such as wet detention basins for pollutant removal and broad riprap swales for aeration.

- c. Mitigation. After the avoidance and minimization tests have been met, all lost wetlands and resource areas shall be restored or replicated to previous natural vegetated conditions or better on at least a two to one (2:1) basis, with the focus being on replacement or restoration of function and acreage. All mitigation shall be performed in Foxborough.

#### **E. Limited Projects**

The Commission, at its sole and reasonable discretion, may issue a permit for the Limited Projects identified in the 310 CMR 10.53(3), with the same or additional performance standards, such as limits on road width, location or number of driveway crossings. The Commission has the discretion authority to permit, with conditions as needed, to ensure that the values of the Bylaw are protected.

## **F. Performance Standards for All Resource Areas**

1. **Presumption of Significance, General.** Where a proposed activity involves the removing, filling, dredging, or altering of a resource area, the Commission shall presume that such an area is significant to the values described in the Bylaw and Regulations. This presumption may be overcome upon a showing of clear and convincing evidence demonstrating that the resource area does not play a role in the protection of said values. In the event that the Commission determines that the presumption has been overcome, it shall make a written determination to that effect, setting forth its grounds. This determination may be overcome at a later date by a change in the site and reconsideration of its functions.
2. **Presumption of Significance for Wildlife Habitat.** Wildlife habitat serves a variety of functions in support of wildlife. Food, water, breeding space, shelter, security, movement and migration space, territory, and connections to other habitat areas are all equally important. All of these wildlife habitat functions are presumed to exist in all resource areas and therefore all resource areas are presumed significant for wildlife habitat interests and values.
3. **Performance Standards.** No project may have a significant adverse project/site-specific impact or an adverse cumulative impact on wildlife habitat for more than two (2) growing seasons.

For wildlife habitat purposes a “*significant cumulative adverse impact*” occurs when work or other activities in a resource area would under reasonable assumptions (a) result in a measurable decrease in the collective capacity of the site, the neighborhood, the Town, or the watershed (collectively known as the “*vicinity*”) to provide wildlife habitat functions such as (but not limited to) food, shelter, breeding space, or inter-habitat/intra-habitat movement, or (b) impair, damage, destroy, or reduce in value for wildlife purposes certain specific habitat features.

Examples of habitat features that shall be protected include (but are not limited to):

- Large cavity trees
- Turtle nesting areas
- Existing nest trees for birds that reuse nests (e.g., great blue herons, osprey)
- Beaver dams, dens, and lodges
- Mink or otter dens
- Vernal pools
- Vertical sandy banks
- Movement corridors that provide connectivity between wildlife habitats
- Sphagnum hummocks and pools suitable to serve as nesting habitat for four-toed salamanders

The relative abundance of these features off the project site is irrelevant to the determination of site-specific impact.

Wildlife studies have shown that *direct impacts* from work (filling, grading, vegetation removal, construction of barriers to movement, etc.) in resource areas can severely harm wildlife populations. Accordingly, the Commission shall prohibit the placement of fences or other barriers to wildlife movement within and between resource areas and the destruction of specific habitat features.

*Indirect impacts* (the effects of human activities near wildlife habitat) can have equally harmful effects. For example, floodlights continuously illuminating feeding, nesting and movement areas can effectively deny those areas to wildlife. Therefore the Commission shall take into account indirect effects on a project by project basis. (For a more comprehensive list of features and activities see Appendix A of the DEP’s “*Massachusetts Wildlife Habitat Protection Guidance for Inland Wetlands*,” dated March 2006.)

The Commission at its discretion may require, as part of the permitting process, the applicant to have the plan approved by the Massachusetts Division of Fisheries and Wildlife if it appears that the work may have a significant adverse impact on wildlife habitat.

## **G. Banks (Freshwater Wetland, Creek, River, Stream, Pond or Lake)**

Banks are areas where ground water discharges to the surface and where, under some circumstances, surface water recharges the ground water.

1. **Presumption of Significance.** Where a proposed activity involves the filling, dredging, or altering of a bank, the Commission shall presume that protection of the bank as a resource area is significant

to the following wetland values: *public or private water supply, to ground water supply, to flood control, to storm damage prevention, to the prevention of pollution, to the protection of fisheries and wildlife habitat, and to water quality.*

Bank vegetation serves to maintain stability, which in turn protects water quality by reducing erosion and siltation. Banks may provide shade that moderates water temperatures, as well as providing breeding habitat, escape cover and food, all of which are significant to the protection of fisheries. Bank undercuts can provide hiding spots for important game species. Banks act to confine flood waters during the most frequent storms, preventing the spread of water to adjacent land which maintains the water temperatures and depths necessary for the protection of fisheries. An alteration of a bank that permits water to frequently and consistently spread over a larger area increases the amount of property which is routinely flooded, as well as elevating water temperature and reducing fisheries habitat within the main channel, particularly during warm weather.

2. Performance Standards. Proposed activities that may alter a bank shall not adversely affect the following:
  - a. The stability of the bank;
  - b. The capacity of the channel to convey water;
  - c. Ground water and surface water quality;
  - d. The capacity of the bank to provide important fisheries, wildlife habitat, food, shelter, migratory, breeding, and overwintering areas; and
  - e. The function of the bank to recharge or discharge ground water.

#### H. **Freshwater Wetlands (Any Bog, Swamp, Marsh or Wet Meadow)**

Freshwater wetlands are areas where the soils are saturated and/or inundated such that they support a predominance of wetland indicator plants. Freshwater wetlands include all wetlands, whether or not they border on a water body.

1. Boundary. The boundary of freshwater wetlands is the line within which fifty percent (50%) or more of the vegetational community consists of wetland indicator plants and hydrology indicators such as, but not limited to saturated or inundated conditions (under normal rainfall conditions) or plants exhibiting physiological or morphological adaptations to life in saturated or inundated conditions. Wetland indicator plants are those classified with an indicator category of Facultative, Facultative+, Facultative-, or Obligate in the *2012 National Wetland Plant List*<sup>2</sup> or more current list.

Areas containing a predominance of wetland indicator plants are presumed to indicate the presence of saturated or inundated conditions. Therefore, the boundary as determined by fifty percent (50%) or more wetland indicator plants shall be presumed accurate when:

- a. All dominant species have an indicator status of obligate, facultative+, facultative, or facultative- and the slope is distinct or abrupt between the upland plant community and the wetland plant community; and
- b. The issuing authority determines that sole reliance on wetland indicator plants will yield an accurate delineation.

When the boundary is not presumed accurate by the Commission, or to overcome the presumption, credible evidence shall be submitted by a competent source (a registered, certified wetland scientist). The Commission will evaluate vegetation and indicators of saturated or inundated conditions if submitted by a credible source, or may require credible evidence of saturated or inundated conditions when determining the boundary.

Indicators of saturated or inundated conditions sufficient to support wetland indicator plants shall include one or more of the following:

- a. Groundwater, including the capillary fringe, within a major portion of the root zone;
- b. Presence of indicators of hydrology such as, but not limited to: *site inundation or saturation, water marks, drift lines, sediment deposits, oxidized rhizospheres, water-stained leaves,*

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<sup>2</sup> Lichvar, R.W. 2012. The National Wetland Plant List. ERDC/CRREL TR-12-11. Hanover, NH: U.S. Army Corps of Engineers, Cold Regions Research and Engineering Laboratory.

*shallow root systems, buttressed tree trunks, or recorded hydrogeologic data (stream gauge, aerial photo, or other);*

- c. Observation of prolonged or frequent flowing or standing surface water; or
- d. Characteristics of hydric soils.

Where an area has been disturbed, the boundary is the line within which there are indicators of saturated or inundated conditions sufficient to support a predominance of wetland indicator plants or credible evidence from a competent source that the area supported (prior to the disturbance), or would support under undisturbed conditions, a predominance of wetland indicator plants.

Supporting biological data for freshwater wetlands delineations shall be considered valid for a period of three (3) years from the date of the issuance of an Order of Resource Area Delineation or Order of Conditions.

- 2. Timing. The delineation of freshwater wetlands should be avoided if possible when deep snow cover or deep freeze conditions exist. The applicant and Commission should agree upon a reasonable time period for continuing the wetland delineation process in order to conduct or review the boundary delineation during more favorable conditions.
- 3. Presumption of Significance. Where a proposed activity involves the filling, dredging, or altering of a freshwater wetland, the Commission shall presume that protection of the freshwater wetland as a resource area is significant to the following wetland values: *protection of public or private water supply, protection of groundwater, flood control, erosion and sedimentation control, storm damage prevention, prevention of water pollution, protection of fisheries and wildlife habitat, protection of rare species habitat and recreation values.*

The plants and soils of freshwater wetlands remove or detain sediments, nutrients (such as nitrogen and phosphorous) and toxic substances (such as heavy metal compounds) that occur in stormwater runoff and flood waters.

The hydrologic regime, plant community composition and structure, soil composition and structure, topography and water chemistry of freshwater wetlands provide important food, shelter, migratory and overwintering areas, and breeding areas for many birds, mammals, amphibians, and reptiles. A wide variety of vegetative wetland plants, the nature of which are determined in large part by the depth and duration of water, as well as soil and water composition, are utilized by varied species as important areas for mating, nesting, brood rearing, shelter, and (directly and indirectly) food. The diversity and interspersed nature of the vegetative structure is also important in determining its nature and use for wildlife habitat.

- 4. Performance Standards. Any proposed work in a freshwater wetland shall not destroy or otherwise impair any portion of said wetland. The cutting of vegetation within a freshwater wetland in order to maintain a specific successional stage, such as a wet meadow, or for removal of invasive plants, may be permitted at the Commission's sole discretion, through the filing of a NOI and subsequent Order of Conditions, as part of a management plan approved by the Commission. In addition, and at its sole discretion, the Commission may issue an Order of Conditions allowing work that results in the loss of freshwater wetlands when said area is replaced in accordance with the following conditions and any additional, specific conditions the Commission deems necessary to ensure that the replacement area will function in a manner similar to the area that will be lost.

In situations where wetlands loss is unavoidable, a compensatory wetland area shall be provided that is at least twice the size of the lost area; is at or below the same elevation; has the same hydrology and surface water elevation; has the same hydrologic connection to a water body; and is vegetated within two (2) growing seasons with a plant community of at least seventy-five percent (75%) cover consisting of the same native plant community type and similar species composition to the lost area; and demonstrates a hydrologic regime similar to the lost area within two (2) growing seasons. The Commission may require detailed plans, professional oversight of construction, monitoring for two (2) years, completion of the replication before the project begins, and other conditions as needed to maximize the chance of a successful replication.

Isolated Wetlands that qualify as vernal pools shall follow the setback distances described in Section 8.K.5.

## **I. Land Under Water Bodies and Waterways (Under any Creek, River, Stream, Pond or Lake)**

1. **Boundary.** The boundary of Land Under Water Bodies and Waterways (LUWBW) is the mean annual high water level as defined in Section 3, Definitions, of these Regulations.
2. **Presumption of Significance.** Where a proposed activity involves the filling, dredging, or altering of a LUWBW, the Commission shall presume that protection of the LUWBW as a resource area is significant to the following wetland values: *public and private water supply, ground water supply, flood control, storm damage prevention, water quality protection, water pollution control, prevention of pollution, protection of fisheries, wildlife habitat protection, rare species habitat protection and erosion and sedimentation control.* LUWBW also represents a point of exchange between surface and ground water.

LUWBW plays an important role in the process of detaining and removing dissolved and particulate nutrients (such as nitrogen and phosphorous) from the surface water above. They also serve as traps for toxic substances (such as heavy metal compounds). LUWBW, in conjunction with banks, serves to confine floodwater within a definite channel during the most frequent storms. Land under rivers, streams and creeks are important to the survival of warm and cold water fisheries. River, stream and creek bottoms with a diverse structure provide feeding, spawning, escape cover and resting areas for fisheries.

The plant community composition and structure, hydrologic regime, topography, soil composition and water quality of land under water bodies and waterways provide important food, shelter, migratory and overwintering areas, and breeding areas for wildlife. Certain submerged, rooted vegetation is eaten by water fowl and some mammals. Some amphibians (as well as some invertebrate species eaten by vertebrate wildlife) attach their eggs to such vegetation. Some aquatic vegetation protruding out of the water is also used for nesting, and many species use dead vegetation resting on land under water but protruding above the surface for feeding and basking. Soil composition is also important for hibernation and for animals which begin to burrow their tunnels under water. Hydrologic regime, topography, and water quality not only affect vegetation, but also determine which species feed in an area.

3. **Performance Standards.** Any proposed work within LUWBW shall not impair the following:
  - a. The water carrying capacity within the defined channel, which is provided by said land in conjunction with the banks;
  - b. Ground and surface water quality;
  - c. The capacity of said land to provide breeding habitat, escape cover and food for fisheries; and
  - d. The capacity of said land to provide important wildlife habitat functions.

## **J. Land Subject to Flooding (Bordering and Isolated Areas)**

### **1. Bordering Land Subject to Flooding (BLSF)**

A BLSF is an area which floods from a rise in a bordering waterway or waterbody. BLSF provides a temporary storage area for flood water which has overtopped the bank of the main channel of a creek, river or stream or the basin of a pond or lake. 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 and private properties.

Vernal pool habitat is often found at various locations throughout the one hundred (100) year floodplain. The pool itself generally formed by meander scars, or sloughs left after the main water channel has changed course. For Performance Standards, see Section 8.K.5, vernal pools.

- a. **Boundary of BLSF.** The boundary of BLSF is defined in one of three ways:
  - (1) The boundary or high water mark of the one hundred (100) year floodplain as shown on the FEMA flood study map where that boundary is based on flood profile data.
  - (2) For areas bordering other resource areas, where the boundaries of the one hundred (100) year floodplain are not based on FEMA flood profile data, historic observations of high water flood levels shall be used. Evidence includes high water marks, flood damage to structures or trees, flood debris deposition elevations, written depth measurements, photos, and other flood documentation.

- (3) For areas bordering other resource areas where the boundaries of the one hundred (100) year floodplain are not based on FEMA flood profile data, and where documented historic observations are not available, the floodplain boundaries may be based on hydrologic calculations using the new *Atlas of Precipitation Extremes for the Northeastern United States and Southeastern Canada*<sup>3</sup> (updates TP-40).
- b. Presumption of Significance. Where a proposed activity involves the filling, dredging, or altering of BLSF, the Commission shall presume that protection of the BLSF as a resource area is significant to the protection of *wildlife habitat*.
  - c. Performance Standards
    - (1) Compensatory storage shall be provided for all flood storage volume that will be lost as the result of a proposed project within BLSF, when in the judgment of the Commission said loss will cause an increase or will contribute incrementally to an increase in the horizontal extent and level of flood waters during peak flows.

Compensatory storage shall mean a volume not previously used for flood storage and shall be incrementally equal to the theoretical volume of flood water at each elevation, up to and including the one hundred (100) year flood elevation, which would be displaced by the proposed project. Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or water body. Further, with respect to waterways, such compensatory volume shall be provided within the same reach of the river, stream or creek.
    - (2) Work within BLSF, including that work required to provide the above-specified compensatory storage, shall not restrict flows so as to cause an increase in flood stage or velocity.
    - (3) Work in those portions of BLSF found to be significant to the protection of wildlife habitat shall not impair its capacity to provide important wildlife habitat functions.

## **2. Isolated Land Subject to Flooding (ILSF)**

Isolated Land Subject to Flooding is an isolated depression or a closed basin which serves as a ponding area for run-off or high ground water which has risen above the ground surface.

- a. Boundary of ILSF. ILSF is an isolated depression or closed basin without a permanent inlet or outlet. It is an area which at least once a year confines standing water. The boundary of ILSF is the perimeter of the largest observed or recorded volume of water confined in said area.

In the event of conflict of opinion regarding the extent of water confined in an ILSF, the Commission will allow an applicant to submit documentation that the extent of the ILSF is based upon a total run-off from a statistical 2.6 inch rainfall in twenty-four (24) hours, including ground-water inputs to the basin at the beginning of the spring season (see *DEP DWW Policy 85-2*).

- b. Presumption of Significance. Where a proposed activity involves the filling, dredging, or altering of an ILSF, the Commission shall presume that protection of the ILSF as a resource area is significant to the following wetland values: *flood control, storm damage prevention, public and private water supply, groundwater supply, water quality protection, water pollution control, prevention of pollution, wildlife habitat, and erosion and sedimentation control*.

Where such areas are vernal pools, they are significant to the protection of *wildlife habitat*. For Performance Standards, see Section 8.K.5, Vernal Pools.

- c. Performance Standards. A proposed project in ILSF shall not result in the following:
  - (1) Flood damage due to filling which causes lateral displacement of water that would otherwise be confined within said area;
  - (2) An adverse effect on public and private water supply or ground water supply; or
  - (3) An impairment of its capacity to provide wildlife habitat where said area is a vernal pool.

<sup>3</sup> *Atlas of Precipitation Extremes for the Northeastern United States and Southeastern Canada*, published by Cornell University. Copies may be obtained from the Northeast Regional Climate Center, Cornell University (607) 255-1751 (publication RR 93-5)

## K. Vernal Pools and Vernal Pool No Activity Zone

Vernal pools constitute a unique and increasingly vulnerable type of wetland.<sup>4</sup> They are inhabited by many species of wildlife, some of which are totally dependent on vernal pools and the surrounding upland area for their survival. Vernal pools do not support fish because they dry out annually or at least periodically. Some may contain water year round, but are free of fish as a result of significant drawdowns that result in extremely low dissolved oxygen levels. Vernal pools are an important habitat resource for many birds, mammals, reptiles and amphibians, including many species listed under the Massachusetts Endangered Species Act (M.G.L Ch.131A).

The Vernal Pool No Activity Zone is the upland area within one hundred (100) feet of a vernal pool. This area provides obligate vernal pool species with important non-breeding habitat functions, such as migratory pathways, feeding, shelter, and over-wintering areas. Many other species utilize vernal pools and Vernal Pool No Activity Zones for breeding and non-breeding functions as well. The protection of vernal pools and Vernal Pool No Activity Zones are essential for the survival of wildlife species that depend on these unique and threatened resource areas.

1. Vernal Pool Protection. Vernal pools, as used in the Bylaw and Regulations, shall mean any vernal pool that has been documented by the Commission prior to the close of a hearing as conforming to the Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program's (NHESP) Certification Criteria.

The "NHESP Guidelines for the Certification of Vernal Pool Habitat" (NHESP Guidelines), Vernal Pool Fact Sheet, March 2009, page I.1 states:

*"Vernal pools that are not certified may also be protected by local conservation commissions or the DEP if credible scientific evidence is presented prior to the end of the appeals period for a Superseding Order of Conditions (OOC) issued by the DEP. A conservation commission, or the DEP on appeal, can incorporate protective conditions into an OOC that would prevent the impairment of the wildlife habitat value of the pool and its 100 foot 'Vernal Pool Habitat' if the pool is not certified."*

A vernal pool is protected under the Bylaw if it meets at least one (1) of the following criteria:

- a. The vernal pool has been certified by the NHESP.
  - b. The vernal pool contains breeding evidence of any one (1) or more of the following "obligate" indicator species: mole salamanders (*Ambystoma spp.*) including spotted salamander, blue-spotted salamander, Jefferson salamander or marbled salamander; wood frog (*Lithobates sylvaticus*); or the presence of fairy shrimp (*Eubranchipus spp.*), and evidence that the pool meets the physical criteria described in the NHESP Guidelines.
  - c. In the absence of obligate indicator species, the vernal pool contains evidence of breeding by at least two (2) of the following "facultative" indicator species: American toad (*Anaxyrus americanus*), spring peeper (*Pseudacris crucifer*), gray tree frog (*Hyla versicolor*), or Fowler's toad (*Anaxyrus fowleri*), and meets the physical criteria described in the NHESP Guidelines.
2. Description/Boundary.<sup>5</sup> Vernal pools exhibit great variation in physical, geographic, hydrologic and vegetative conditions. In general, a vernal pool is a temporary body of freshwater which, in most years, holds water for a minimum of two (2) continuous months and is free of established, reproducing fish populations.

The shallow edges of vernal pool habitat represent one of the most ecologically valuable portions of these habitats. These areas are generally the first to thaw in the spring and provide access to the pool for the earliest breeding species. These shallow water zones also tend to be significantly warmer than the deeper portions of a vernal pool throughout the spring. Egg masses of early breeding amphibians benefit from the warmer water temperatures at the pool edges that promote rapid egg development.

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<sup>4</sup> Division of Fisheries & Wildlife, Natural Heritage & Endangered Species Program's Guidelines for the Certification of Vernal Pool Habitat, March 2009

<sup>5</sup> Division of Fisheries & Wildlife, Natural Heritage & Endangered Species Program's Guidelines for the Certification of Vernal Pool Habitat, March 2009

The boundary of Vernal Pool No Activity Zone must incorporate these shallowest reaches of the pool. When there is no distinct and clear topographic break at the edge of a pool, the maximum observed or recorded extent of flooding represents the ecological boundary of the vernal pool. This boundary is evident and should be delineated by leaf staining and other indicators of hydrology outside of the mean annual high water period (March through early April in most cases).

In the event of conflict of opinion regarding the extent of water confined in the vernal pool basin, the Act allows an applicant to submit an opinion as to the extent of a certified vernal pool that is based upon a total run-off from a statistical 2.6 inch rainfall in twenty-four (24) hours, including groundwater inputs to the basin at the beginning of the spring amphibian breeding season (see *DEP DWW Policy 85-2*).

3. Timing of Evidence Collection and Type of Evidence. Many of the indicators of vernal pools are seasonal. For example, most salamander egg masses are only found between March and May, except marbled salamanders, which breed in the fall. Wood frog chorusing usually occurs between late March and late May, and often only at night. Not all animals breed every year, depending on site and seasonal conditions, so evidence may be sparse or lacking in some years. Consequently, failure to find evidence of breeding must be tied explicitly to those periods during which the evidence is most likely to be available.

Accordingly, in the case of challenges to the presumption of a vernal pool designation, the Commission may require that the determination be postponed until the appropriate time period, consistent with the evidence being presented.

The Commission may require its own site visits or those of a professional as necessary to confirm the evidence or lack thereof. The type of evidence accepted to verify an area as a vernal pool will be the same as described by the NHESP's certification criteria. In addition, the Commission may accept as evidence a statement from a competent source, signed under penalties of perjury, attesting to the presence of vernal pool obligate indicator species in a vernal pool.

4. Presumption of Significance. Where a proposed activity involves the removing, filling, dredging, or altering of a vernal pool or Vernal Pool No Activity Zone, the Commission shall presume that protection of the vernal pool and Vernal Pool No Activity Zone as resource areas is significant to the protection of the following wetland values: *wildlife habitat and rare species habitat*.

This presumption is rebuttable by a showing of clear and convincing evidence that the vernal pool or its No Activity Zone does not play a role in the protection of said values. When such evidence is based upon the absence of any obligate or facultative indicator species, the Commission may require evidence gathered from the spring time of two (2) different years as documentation of such absence (see #3, Timing of Evidence Collection and Type of Evidence, above).

In the event that the presumption is deemed by the Commission to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds. The determination that the basin is not a vernal pool is not permanent, and may be overcome at a later date by this Section's previously listed criteria.

5. Performance Standards. When the presumption set forth in Section 8.K.4 is not overcome, the following standards shall apply to vernal pools and Vernal Pool No Activity Zones:

- a. No Alteration of Vernal Pools will be permitted that will have an adverse effect upon wildlife habitat. Adverse effect means the alteration of any habitat characteristic listed below, insofar as such alteration will, following two (2) growing seasons of project completion and thereafter substantially reduce its capacity to provide the important wildlife habitat functions, as listed at 310 CMR 10.60(2). These characteristics include the topography, soil structure, plant community composition and structure, and hydrologic regime.

Procedures contained in 310 CMR 10.60 will be used to evaluate whether a proposed project will have no adverse effects on wildlife habitat. If the Commission approves the restoration and replication of altered Vernal Pool No Activity Zone, it shall be performed as described in the 310 CMR 10.60(3), except that the Commission requires two to one (2:1) or greater replication and may require other additional conditions as deemed necessary to guarantee success of replication and mitigation for the alteration.

- b. No Activity Zone. The Vernal Pool No Activity Zone is a no-disturbance zone. No activity shall be permitted within one hundred (100) feet of the edge of the vernal pool. Prohibited activities include, but are not limited to, grading, filling, vegetation control, excavation, roadway, driveway or building construction. For areas within the Vernal Pool No Activity Zone that are already lawn, gardens, landscaped areas, driveways, or buildings, no new or expansion of clearing, cutting, grading, impervious surface or building construction will be permitted.
- c. Migratory Pathways of Vernal Pool Breeders. Work shall not be allowed that obstructs the migratory pathways of vernal pool breeding species.

#### L. Intermittent Streams

1. Definition, Critical Characteristics. For the purpose of these Regulations, an intermittent stream is that segment of a flowing watercourse that experiences naturally occurring sporadic flow interruptions such that it does not have a continuous sheet of surface water for four (4) or more consecutive days in any consecutive twelve (12) month period during non-drought conditions in areas not significantly impacted by beaver or other impoundments.

Under these Regulations all flowing watercourses shall be considered perennial streams if they are shown as perennial streams on the most current USGS topographic map, qualify under the DEP perennial stream criteria in the 310 CMR 10:58(2), or are shown as a perennial stream on any two (2) or more government-issued maps or plans, such as Natural Resource Conservation Service soil surveys, U.S. Fish & Wildlife Service National Wetlands Inventory maps, or older USGS topo-graphic maps.

This presumption may be overturned by a preponderance of evidence presented to and deemed acceptable by the Commission. Information necessary to overcome this presumption includes, but is not limited to, direct observation and documentation of:

- a. The absence of a continuous sheet of surface water throughout the watercourse, or relevant segment, for a minimum of four (4) consecutive days in any consecutive twelve (12) month period (excluding periods when local drought or other conditions abnormally lowering the water table are known to exist, or due to water withdrawals) as witnessed by a member of the Commission or its staff at least one of those days, and by submittal of documentation following procedures described in the 310 CMR 10:58(2)d, which shall be considered definitive evidence in overcoming the presumption of perennial status.
- b. Other information that may be relevant to overcoming the presumption of perennial stream status for a watercourse or a segment of that watercourse includes, but is not limited to, direct observation and documentation of:
  - (1) Absence of a clearly defined flow channel;
  - (2) Absence of bank undercutting;
  - (3) Presence of established non-aquatic plants in the flow path (i.e. plants that are unable to grow in continuously submerged conditions);
  - (4) Absence of continuous sheet water in the stream channel or relevant segment at a time when Commission designated perennial streams of comparable characteristics are flowing, as witnessed by a member of the Commission or its staff or documented according to the methods in the Act's regulations 310 CMR 10:58(2)d.
- c. The Commission will also consider estimates from modeling studies of surface water and ground water hydrology in the relevant watershed. However, such information will only be considered as evidence in conjunction with the observable indicators noted above.

Observational evidence shall, in all instances, take precedence over estimates, calculations, and other inferential evidence.

The Commission shall consider all of the evidence available together, judging the validity and reliability of the information, and base its determination on the preponderance of acceptable evidence. The determination of intermittent status of a designated stream shall be only for that segment or portion for which there is documentation. The Commission shall determine whether the distances between documented sites are too far apart to consider it a continuous section of stream, and how far from the documented site the determination shall apply.

2. Presumption of Significance. Where a proposed activity involves the filling, dredging, or altering of an Intermittent Stream, the Commission shall presume that protection of the Intermittent Stream as a resource area is significant to the following wetland values: *protection of groundwater, flood control, storm damage prevention, and protection of wildlife habitat*.

This presumption may be overcome upon a showing of clear and convincing evidence demonstrating that the Intermittent Stream does not play a role in the protection of said values. In the event that the Commission determines that the presumption has been overcome, it shall make a written determination to that effect, setting forth its grounds. This determination may be overcome at a later date by a change in the site and reconsideration of its functions.

3. Performance Standards for Intermittent Streams. No project shall impair the water quality or water carrying capacity of any stream channel or the capacity of the stream to provide important wildlife habitat functions, protection of groundwater, flood control, and storm damage prevention.

## **M. Riverfront Areas**

### **1. Definition, Critical Characteristics**

- a. River shall refer to perennial streams. A *perennial stream* or *perennial river* is defined in 310 CMR 10.58(2)(a)(1) as one that flows throughout the year, except in periods of extended drought. For the purposes of the Bylaw, rivers may also be regarded as perennial even if they dry up due to diversion of water, well draw-down, or if flow is restricted by control structures. A river shall be presumed to be perennial if the following criteria apply:

- (1) It has a watershed of one-half (1/2) square mile or greater;
- (2) It has upstream tributaries, making the stream second order or greater; or
- (3) Groundwater elevation is at or near the surface.

Proposed work in riverfront areas, including work within two hundred (200) feet of any perennial stream, river, or creek shall conform to the performance standards of 310 CMR 10.58, as amended.

- b. Boundary: Mean Annual High Water Line/Bankfull Discharge. The active work of a stream (erosion, sediment transport, and deposition) primarily takes place at bankfull discharge. Flat depositional feature immediately adjacent to a river's channel and sandy deposits on the top of point bars shall be used to determine mean annual high water line. Depositional features are the most reliable indicator of the bankfull condition.

Bankfull stage represents the break between channel processes and floodplain processes. On a national average, bankfull discharge occurs every one and one-half (1.5) years, reached or exceeded two (2) times in three years. The extent of imperviousness in a watershed will affect bankfull recurrence interval.

## **N. Buffer Zones**

Buffer zones perform vital functions in protecting the wetland values listed in the Bylaw.

1. Boundary. The buffer zone is the land extending one hundred (100) feet horizontally from the delineated edge of the following resource areas:
  - a. Freshwater wetlands;
  - b. Vernal pools;
  - c. Banks; and
  - d. The water column in, and land under any creek, river, stream, brook, pond or lake.

Note that Riverfront, Bordering Land Subject to Flooding and Isolated Land Subject to Flooding (when not a vernal pool) do not have buffer zones.

2. Presumption of Significance. Where a proposed activity involves the removing, filling, dredging, or altering of the buffer zone, the Commission shall presume that protection of the buffer zone is significant to the following wetland values: *protection of public or private water supply, protection of groundwater, flood control, erosion and sedimentation control, storm damage prevention, prevention of water pollution, protection of fisheries and wildlife habitat, and rare species habitat and recreation*.

This presumption may be overcome upon a showing of clear and convincing evidence demonstrating that the buffer zone does not play a role in the protection of said wetland values. In the event that the Commission determines that the presumption has been overcome, it shall make a written determination to that effect, setting forth its grounds. This determination may be overcome at a later date by a change in the site and reconsideration of its functions.

3. Performance Standards. The Commission will carefully examine any proposals for work in the buffer zone to determine potential impact on the resource areas and, the values of the Bylaw, and how the applicant has designed the project to avoid adverse impacts. Work permitted in the buffer zone shall be in accordance with the following standards:
  - a. No activity is permitted within twenty-five (25) feet of the edge of any bordering vegetated wetland or bank of any creek, river, stream, brook, pond or lake (*25-Foot No Activity Zone*).
  - b. No activity within one hundred (100) feet of a vernal pool or isolated wetland that is listed as habitat for a state listed species (*Vernal Pool No Activity Zone and State Listed Species No Activity Zone*).
  - c. To ensure that there will be no encroachments into the buffer zones by the applicant or future owners of the property, the Commission may require the boundary of the buffer zones to be marked on the ground with permanent markers at the applicant's expense. Markers may be stone or concrete bounds, metal pipes or rods, trees, shrubs or other structures, the material, size and location of which shall be approved by the Commission.

Proposed activities in the buffer zone shall maintain an adequate cover of vegetation that will:

- a. Reduce water pollution by providing a natural filter to adsorb nutrients and chemicals contained in road runoff, fertilizers, pesticides and other contaminants;
- b. Slow surface water runoff to reduce soil erosion and siltation of surface waters and to prevent storm damage;
- c. Maintain ambient shade conditions to preserve natural water temperature regimes, to protect aquatic amphibians, fish and reptilian life;
- d. Provide wildlife habitat and corridors for wildlife movement;
- e. Act as a filter zone to protect water supplies and prevent pollution; and
- f. Protect aesthetic and scenic values.

The Commission may allow water dependent structures (such as docks and piers), improvements for recreational purposes (such as trails and signs) and other minimally invasive improvements (such as wellheads) when the Commission determines these activities are consistent with the purpose and intent of the Bylaw. Stormwater management structures may be allowed within this area only when an alternative analysis, performed by the applicant, clearly demonstrates that there is no practicable alternative, as determined by the Commission, and when the applicant has demonstrated that there will be no significant adverse impact to resource areas.

Additional width to the 25-Foot No Activity Zone may be required to protect the integrity of the area of natural vegetation, including the associated root system and canopy of adjacent trees. For example, new foundations, including footings, frost walls or other in-ground structures may need further off-set to protect natural features. The Commission may also grant an exception which allows a reduced setback distance from the 25-Foot No Activity Zone when the applicant meets the standards set forth in Section 10.

#### **M. Sole Source Aquifer**

1. Definition, Critical Characteristics. A sole source aquifer means the principal drinking water source for an area, and which, if contaminated, would create a significant hazard to public health. The Canoe River Aquifer, portions of which are located in Foxborough, was designated a sole source aquifer by the U.S. Environmental Protection Agency. In addition, due to the highly significant environmental resources and high-yield aquifers found in the area, the Massachusetts Secretary of Environmental Affairs designated the Canoe River Aquifer, Snake River, Watson Pond and Lake Sabbatia Area of Critical Environmental Concern (in a similar location to the Canoe River Aquifer) as an Area of Critical Environmental Concern (*ACEC*).

2. Presumption of Significance. Where a proposed activity involves the removing, filling, dredging, or altering of a freshwater wetland or buffer zone located in a sole source aquifer, the Commission shall presume that protection of the sole source aquifer is significant to the following values: *public or private water supply*.
3. Performance Standards. The Commission, at its sole and reasonable discretion, may conduct a more stringent project review for projects where a proposed activity involves the removing, filling, dredging, or altering of a freshwater wetland that is also located in a sole source aquifer area.

## **SECTION 9. CONSULTANT REVIEW AND FEES**

### **A. Applicability**

The Commission, at its sole discretion, may determine that a proposed project's size, scale, complexity, potential impact or use of the land warrants the use of outside consultants (such as engineers, wetland scientists, lawyers, hydro geologists, or others). Such consultants shall be selected and retained by the Commission and shall assist the Commission, with analysis, comments, and recommendations prior to action by the Commission in plan review, impact analysis, inspection or other technical or legal assistance necessary to ensure compliance with all relevant laws and regulations. Such assistance may include, but shall not be limited to, analyzing an application, resource area delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law, providing legal counsel for decisions, and monitoring or inspecting a project or site during construction or post-construction for compliance with the Commission's decisions or Regulations

- B. Most wetland applications for large projects** require review by outside consultants. After receipt of a complete application package, a copy of the submitted materials will be transmitted to the Commission's consultant for review. In some circumstances, more than one consultant will be utilized. The applicant is responsible for the total cost of review by all consultants selected by the Commission.

### **C. Submittal**

Consultant review fees shall be submitted upon receipt of estimated consultant review cost for deposit in an account established pursuant to M.G.L. Ch. 44, §53G. Any application filed without this fee shall be deemed incomplete and no review work shall commence until the fee has been paid in full.

### **D. Monitoring and Inspection Phase**

As a condition of approval of a NOI, the Commission may require additional consultant review fees to inspect, monitor, and oversee the implementation of the approved project.

### **E. Handling of Consultant Review Fees**

The consultant review fee is to be deposited into a special escrow account as set forth in M.G.L. Ch. 44, §53G. Excess consultant review fees, including any accumulated interest, shall be returned to the applicant, or the applicant's documented successor in interest, at the conclusion of the review process as determined by the Commission.

### **F. Selection and Appeal**

The Commission shall competitively select consultants for a period not to exceed three (3) years. As provided in M.G.L. Ch. 44, §53G, an applicant may administratively appeal the selection of the consultant to the Board of Selectmen, on grounds that the proposed consultant selected has a conflict of interest or that the proposed consultant does not possess the minimum required qualifications of an educational degree or three (3) or more years of practice in, or closely related to, the field at issue. Such an appeal may be initiated by the applicant filing notice with the Town Clerk within seven (7) calendar days of notice of the selection. The consultant selection made by the Commission shall stand if one (1) month passes without decision by the Board of Selectmen on said appeal. The required time limits for action upon an application by the Commission shall be extended by duration of the administrative appeal. This appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this section.

### **G. Remedy**

Review fees associated with the review of a submission shall be paid prior to the close of the public hearing. Failure of an applicant to pay the consultant review fee determined by the Commission may be grounds for disapproval.

## **SECTION 10. WAIVERS AND EXCEPTIONS**

### **A. Waiver and Exception Provisions**

The performance standards for wetland resource areas have been created to ensure that the interests and values of the Act and Bylaw are protected adequately. The Commission recognizes that, in certain situations, a waiver or exception of a specific wetland resource area performance standard may be appropriate for a particular project when the waiver or exception is consistent with the intent and purpose of the Bylaw and these Regulations.

### **B. Alternatives Analysis**

The Commission shall require the applicant to provide an analysis of alternatives to projects and associated disturbances proposed within any resource area protected under the Bylaw. The project shall be located outside the resource area unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the Bylaw.

The Commission shall not consider as practical alternatives options that were available to the applicant but appear to be precluded due to self-imposed hardships and constraints (e.g., lot, roadway, and/or drainage layouts engineered without prior regard to impact on Bylaw resources).

It shall be the responsibility of the applicant to provide the Commission with any information that the Commission may request to enable the Commission to ascertain such adverse effects. The failure of the applicant to furnish any information that has been so requested may result in the denial of a request for a waiver or exception.

A request for a waiver or exception must demonstrate by clear and convincing evidence the following information:

1. There are no practicable conditions or alternatives that would allow the project to proceed in compliance with these Regulations; and
2. The project, or its natural and consequential effects, will not have any adverse effects upon any of the values protected by the Bylaw; and
3. The project will improve the natural capacity of a resource area to protect the values identified in the Bylaw, provided any adverse effects on any such values are minimized by carefully considered conditions.

However, no project may be permitted which would have an adverse impact on rare wildlife species.

**APPENDIX A – CHAPTER 267 FILING FEE SCHEDULE** (Adopted 2/14/11, rev. 6/29/15)

**Category 1 (Fee for each activity is \$250)\***

- a. Work on single family house (SFH) lot (addition, pool, deck, garage or other accessory activity)
- b. Site preparation work (single lot without a house), including excavation and grading, etc.
- c. Construction, repair, replacement or upgrade of a subsurface septic system, separate from house
- d. Construction of each bridge
- e. Monitoring well activities, not including access roadway
- f. Assessment or remediation of a contaminated site
- g. Impervious recreational facility including but not limited to tennis courts, basketball courts, etc.

**Category 2 (Fee for each activity is \$500)\***

- a. Construction of single family house (SFH), including site work and septic system
- b. Construction of each resource area crossing for driveway to SFH, including culvert
- c. Construction of each crossing culvert
- d. Construction of each detention basin
- e. Each direct discharge to resource area
- f. Parking lot (10 parking spaces or less) **plus \$50** for each parking space located within the buffer zone
- g. Beach nourishment (placement of sand)
- h. Construction of underground or overhead public utilities
- i. Water level variation/dewatering
- j. Dam, sluiceway work
- k. Water supply development
- l. Any other activity not included in Category 1, 3, 5, 6, 7 or 8

**Category 3 (Fee for each activity is \$1,500, any part of which is in a buffer zone or resource area)\***

- a. Site preparation for any development other than SFH, including removal of vegetation, grading, etc.
- b. Construction of each building for any commercial, industrial, or multi-unit development
- c. Road construction, not including crossing or SFH driveway

**Category 4 (Fee for each activity is \$2,000)\***

- a. Each crossing for development or commercial road, unless a bridge is proposed
- b. Electric generating facility activities
- c. Sand and gravel operation
- d. Railroad line construction
- e. Dredging
- f. Package treatment plant and discharge
- g. Tree clearing for aircraft

**Category 5 (Fee is \$5 per linear foot total fee not less than \$100 or more than \$2,000)**

Work on docks, piers, dikes or other engineering structures, including placement of rip rap or other material on resource areas

**Category 6 (Fee is \$2 per linear foot for each resource area)**

For each resource area delineation, the fee shall not exceed

**\$200** for activities associated with a SFH or

**\$2,000** for all other activities

**Category 7 (Fee is \$200 per Unit, in addition to Category 3, above)**

Per unit fee, all or part of which lies within a buffer zone or resource area, for a multiple dwelling structure

**Category 8 (Fee for each activity)**

- |  |                |                          |
|--|----------------|--------------------------|
| a. Resource Restoration or Enhancement:        |                | \$ 25                    |
| b. Request for Determination of Applicability: | \$ 75 for SFH; | \$200 for other projects |
| c. Amendment to Orders of Conditions:          | \$100 for SFH; | \$200 for other projects |
| d. Order of Conditions Extension:              | \$ 75 for SFH; | \$200 for other projects |
| e. Certificate of Compliance:                  | \$100 for SFH; | \$200 for other projects |
| f. Partial Certificate of Compliance:          | \$100 for SFH; | \$200 for other projects |
| g. Issuance of bank closing letter:            |                | \$100                    |
| h. Reissuance of lost permits:                 |                | \$100                    |
| i. Work Requiring a Waiver under Section 10:   |                | \$1,000                  |

**\* Add 50% if in Riverfront Area, in addition to another resource area.**

Application fee checks should be made payable to "Town of Foxborough."

Applicant shall be responsible for the cost of advertising legal notice in the Foxboro Reporter.