



# **TOWN OF PLYMPTON, MA**

## **WETLANDS BYLAW REGULATIONS**

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# **ARTICLE I**

## **GENERAL PROVISIONS AND PROCEDURES**

### **§1 AUTHORITY, PURPOSE, EFFECTIVE DATE.**

- A. Authority. The Town of Plympton Conservation Commission promulgates these regulations pursuant to the authority granted to it by the Town of Plympton Wetlands Protection Bylaw, Chapter 290 (previously Article XXVIII) of the Town of Plympton General Bylaws (hereinafter the "Bylaw"). These regulations complement the Bylaw and shall have the force of law upon their effective date, as such may be amended from time to time.
- B. Purpose. The Bylaw sets forth a public review and decision-making process by which activities affecting resource areas subject to protection under the Bylaw are to be regulated to ensure the protection of wetland values, including but not limited to those wetland values enumerated in Section 290-1 of the Bylaw. The protected Bylaw wetland values are: public water supply; 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 and rare plant and animal species; agriculture and aquaculture values that are important to the community. The purpose of these regulations is to define and clarify the review process set forth under the Bylaw by establishing definitions, uniform procedures, and performance standards by which the Plympton Conservation Commission shall carry out its responsibilities under the Bylaw.
- C. Effective date.
  - (1) These regulations, as such may be amended from time to time, take effect when voted by the Plympton Conservation Commission and filed with the Town Clerk as provided in Section VII of the Bylaw.
  - (2) The effective date of these regulations shall be July 18, 2019, and the provisions of these regulations shall apply to all applications for determinations and permits for work filed after that date. The effective dates of substantive amendments made after July 18, 2019 are noted and those added or changed provisions shall apply to requests for determinations and applications for permits for work filed after the applicable amendment date.

### **§2 JURISDICTION AND EXEMPTION FROM REGULATION.**

- A. Jurisdiction.
  - (1) Resource areas subject to protection under the Bylaw. The Bylaw protects all areas defined in the Massachusetts Wetlands Protection Act, which incorporates the Rivers Protection Act, MGL c. 131, §40, and protects additional areas, which are collectively known as the "resource areas subject to protection under the Bylaw" or "Bylaw resource areas." The resource areas subject to protection under the Bylaw are:
    - (a) Any vegetated wetlands (freshwater wetlands, including a wet meadow, marsh, bog, or swamp);
    - (b) Any vernal pool;
    - (c) Any bank or beach;

- (d) Any lake, or pond of any size;
  - (f) Any land under water bodies and waterways;
  - (e) Any river, stream, brook or creek, whether perennial or intermittent;
  - (g) Any land subject to flooding or inundation by groundwater or surface water; and
  - (h) Lands within 100 feet of any of the areas subject to protection under the Bylaws set forth in the aforesaid Subsection A(1)(a) through (g), also known as the "Bylaw one-hundred-foot buffer zone" or "buffer zone"; and, further
  - (i) Lands within 200 feet of any perennial river, stream, brook or creek, also known as the "Bylaw riverfront area" or "riverfront area."
- (2) Activities subject to regulation under the Bylaw. The Conservation Commission shall regulate the following activities or work within the Town of Plympton. Nothing herein shall preclude the Conservation Commission from taking appropriate enforcement action against activities occurring outside the Town of Plympton but which alter a resource area within Plympton subject to protection under the Bylaw.
- (a) Any activity proposed or undertaken that constitutes removing, filling, dredging, building upon, degrading, discharging into or otherwise altering any resource area subject to protection under the Bylaw, as specified in the aforesaid Subsection A(1), is subject to regulation under the Bylaw and requires the filing of an application for a permit with the Conservation Commission.
  - (b) Any activity connected with the construction or maintenance of a subsurface sewage disposal system, where any component thereof is within any resource area subject to protection under the Bylaw, as specified in the aforesaid Subsection A(1), because of the demonstrated potential for contamination of ground and surface waters from the effluent of these systems.
  - (c) Any activity proposed or undertaken outside a resource area subject to protection under the Bylaw, as specified in the aforesaid Subsection A(1), shall not be subject to regulation under the Bylaw unless, in the judgment of the Conservation Commission, said activity may result or has resulted in the removing, filling, altering, dredging, or building upon a resource area subject to protection under the Bylaw. If a person wishes to have the Conservation Commission determine whether an activity may be subject to regulation under the Bylaw, that person shall submit a Request for Determination of Applicability pursuant to §§7, 24, and 25 of these Wetlands Protection Regulations.
- B. Exemptions. As provided in the Bylaw, only the following activities and work are exempted from regulation under the Bylaw, and the exemptions provided in the Wetlands Protection Act, MGL c. 131, §40, shall not apply.
- (1) Normal maintenance or improvement of land in agricultural use. The application and permit for work required by the Bylaw shall not be required for work performed for normal maintenance or improvement of land in agricultural use as defined by 310 CMR 10.04.
    - (a) Agriculture is one of the Bylaw wetland values. Accordingly, work consisting of normal maintenance or improvement of land in agricultural use does not require a permit for work if the work meets approved performance standards under the Bylaw.
    - (b) Expansion of agricultural activities onto lands not previously in agricultural use and within the jurisdiction of the Conservation Commission requires a permit for work.
    - (c) Provided, however, nothing contained within the aforesaid Subsections B(1) and (1)(a) shall prohibit the Conservation Commission from exercising its full enforcement powers under the Bylaw and the Wetlands Protection Act, MGL c. 131, §40, should the Commission determine the activity is not normal maintenance or improvement of land in agricultural use.
  - (2) Public utilities. The application and permit for work required by the Bylaw shall not be

required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric service; gas service; water service; and telephone, telegraph or other telecommunication services, provided that:

- (a) the structure or facility is not substantially changed or enlarged,
- (b) written notice is given to the Conservation Commission before the commencement of work, and
- (c) the work conforms to the performance standards and design specifications in these regulations.

### **§3 BURDEN OF PROOF AND BURDEN OF GOING FORWARD.**

#### **A. Burden of proof.**

- (1) Permit for work. The Applicant shall have the burden of proving by a preponderance of the credible evidence that any proposed work and its natural and consequential cumulative impacts and effects shall have no adverse effect upon any of the Bylaw wetland values and, further, shall contribute to the protection of the Bylaw wetland values by complying with the general performance standards established for each Bylaw resource area. Failure to meet the burden of proof shall be cause for the Conservation Commission to deny the application for a permit for work along with any work or activity proposed therein.
- (2) Determinations of applicability. The Applicant shall have the burden of proving by a preponderance of the credible evidence that the Conservation Commission does not have jurisdiction over the proposed activity (work) in a request for a Determination of Applicability.
- (3) Determination of significance (nonsignificance). The Applicant requesting a determination of significance shall have the burden of demonstrating by clear and convincing evidence that the Bylaw resource area is not significant to (that it does not play a role in) the protection of one or more Bylaw wetland values.
- (4) Determination of Resource Area Delineation. The Applicant shall have the burden of proving by a preponderance of the credible evidence that the boundaries of the resource areas subject to protection under the Bylaw (Bylaw resource areas) are accurate in a request for Determination of Resource Delineation.
- (5) Waiver. The Commission may waive a performance standard set forth in these regulations and more particularly at **§21**. The person requesting a waiver of a performance standard shall have the burden of demonstrating by clear and convincing evidence that:
  - (a) there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations;
  - (b) avoidance, minimization, and mitigation have been employed to the maximum extent feasible and the proposed work, including all mitigation measures, and the natural and consequential cumulative effects of the work, will have no significant adverse effects upon any of the Bylaw wetland values as set forth in these regulations; and
  - (c) the project provides benefits in the public interest as defined by **§4B** and
  - (d) the project is otherwise in compliance with these regulations including all the provisions of **§21**.
- (6) Waiver for Rare Species Habitat. Notwithstanding Subsection 3(5) above, where the project limit of work is within or abuts an estimated rare species habitat as designated on the most current map prepared by the Massachusetts Natural Heritage & Endangered Species Program (NHESP) or Core Habitat or Critical Natural Landscape as designated in BioMap, the Commission shall be diligent in its review of the proposed activity. The Commission may

consider waiving a performance standard when the proposed activity is within or abutting rare species habitat only when the following conditions are met in addition to the requirements in **Subsection 3A(4)** and **§22**. The Applicant for a waiver of a performance standard shall have the burden of demonstrating by clear and convincing evidence that: the MA Natural Heritage and Endangered Species Program (NHESP) has been consulted, and has issued a formal determination, prior to filing a request with the Commission; and

- (a) the project has been designed in accordance with any formal determination of the NHESP to address the standards in the MA Endangered Species Act and its implementing regulations at 321 CMR 10.00; and
- (b) at least 14 days prior to the public hearing, the Applicant must provide to the Commission the NHESP determination and accompanying comments. The Commission cannot close the hearing until the NHESP has been consulted and has submitted written comments

B. Burden of going forward. The project proponent shall have the burden of going forward with credible evidence from a competent source in support of all matters asserted pursuant to Subsection A.

#### **§4 DEFINITIONS.**

- A. Application of definitions in Wetlands Protection Act, MGL c. 131, §40. Except as otherwise provided in the Bylaw and in Subsection **B** below, the definitions of terms in the Bylaw and the regulations shall be as set forth in the Wetlands Protection Act, MGL c. 131, §40, and 310 CMR 10.00 et. seq.
- B. Definitions. As used in these regulations, the following terms shall be defined as follows:

##### **ABUTTER (OWNER OF LAND ABUTTING THE ACTIVITY)**

An owner of land in any direction sharing a common boundary with the site of the proposed activity (work), even where that boundary is located at a point within the site; in a street, way, intersection of roadways; or in a river, stream, reservoir, lake, pond, and within 200 feet of the property line of the land where the activity is proposed.

##### **ACT**

The Massachusetts Wetlands Protection Act (incorporating The Rivers Protection Act, 1996 Mass. Acts c. 258), MGL c. 131, §40.

##### **ACTIVITY**

Any form of draining, dumping, dredging, damming, discharging into, excavating, filling, or grading; the erection, reconstruction, or expansion of any buildings or structures; the driving of pilings; the construction or improvement of roads and other ways; the changing of hydrology runoff characteristics; the intercepting or diverging of ground or surface water; the installation of any component of drainage, sewage, and water systems; the discharging of pollutants; the destruction of plant life; the cutting of trees; and any other changing of the physical characteristics of land, or the physical or chemical characteristics of water. (See also the definition of "work.")

##### **ADJOINING LAND AREAS**

As used in the Bylaw, the one-hundred-foot buffer zone and the two-hundred-foot riverfront area as those Bylaw resource areas are further defined in §§19 and 20, respectively, of these regulations.

##### **AGRICULTURE and AGRICULTURE VALUES**

A Bylaw wetland value enumerated in Bylaw, which term, including "normal maintenance or improvement of land in agricultural use," as further defined in 310 CMR 10.04.

**ALTER**

To change the condition of any resource area subject to protection under the Bylaw. As defined in the Bylaw the term "alter" shall include, without limitation, the following activities when undertaken to, upon, within, or affecting a resource area protected under 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, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics.
- (3) Drainage or other disturbances 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, or erection or repair of buildings, or structures of any kind.
- (7) Placing of obstructions or objects in water.
- (8) Destruction of plant life, including cutting or trimming of trees and shrubs.
- (9) Changing temperature, biochemical oxygen demand, or other physical, biochemical, or chemical characteristics of any water.
- (10) Any activities, changes, or work which may cause or tend to contribute to the pollution of any body of water or groundwater.
- (11) Application of pesticides or herbicides, provided such application is not in accordance with a Vegetation Management Plan approved by the Department of Food and Agriculture in accordance with its regulations promulgated in Mass. Regs. Code tit. 333, c. 11.00, under the Massachusetts Pesticide Control Act, MGL c. 132B.

**APPLICANT**

Any person who files an application for a permit for work or request for a determination of applicability, determination of resource area delineation, or determination of significance or on whose behalf such an application or request is filed.

**AQUACULTURE**

A Bylaw wetland value enumerated in Bylaw, which term, including "normal maintenance or improvement of land in aquacultural use," as further defined in 310 CMR 10.04.

**AREA SUBJECT TO PROTECTION UNDER THE ACT**

Any area specified in the Wetlands Protection Act, MGL c. 141, §40, and regulations promulgated under the Act's authority in 310 CMR 10.02(1).

**BANK**

A Bylaw resource area, as defined in the Bylaw and in these regulations at §16.

**BEACH**

A naturally occurring beach means an unvegetated bank as defined in these regulations at §15.

**BOG**

A type of vegetated wetlands, a resource area subject to protection under the Bylaw, defined in the Wetlands Protection Act, MGL c. 131, §40, sixth paragraph, and listed in the Act as a type of "freshwater wetlands" in the eighth paragraph. Vegetated wetlands are noted as "freshwater wetlands" under the Bylaw.

**BORDERING**

Touching in some manner, at any point or along any length of a property boundary, and including any portion of a resource area subject to protection under the Bylaw that may be touching upon any resource area subject to protection under the Bylaw or upon other land area or waterbody, notwithstanding such land area or waterbody is not a Bylaw resource area.

## **BOUNDARY**

The boundary of a Bylaw resource area (resource area subject to protection under the Bylaw). A description of the boundary of each Bylaw resource area is found in the applicable section of Article II of these regulations.

## **BUFFER ZONE**

A Bylaw resource area (resource area subject to protection under the Bylaw) that is the area of land extending 100 feet horizontally outward from the boundary of the following Bylaw resource areas (resource areas subject to protection under the Bylaw): vernal pools; reservoirs, lakes, and ponds; vegetated wetlands; lands under water bodies; and lands subject to flooding. The buffer zone is further defined in §19.

## **BYLAW**

The Plympton Wetlands Protection Bylaw, published at Chapter 290 (previously Article XXVIII) of the Town of Plympton General Bylaws.

## **BYLAW RESOURCE AREA**

Any of the areas specified in the Bylaw. The term is used synonymously with "resource area subject to protection under the Bylaw," each of which is enumerated in Section II of the Bylaw.

## **BYLAW WETLAND VALUE**

Those values specified in Section 290-1 of the Bylaw ("resource area values protected by this bylaw") and as further listed in §1B of these regulations for which the work regulated under the Bylaw and these regulations seek to protect.

## **CERTIFICATE OF COMPLIANCE**

A written determination by the Conservation Commission that work or a portion thereof was completed in accordance with the Bylaw permit for work.

## **CLEAR AND CONVINCING EVIDENCE STANDARD OF PROOF**

The person having the burden of proof must present full, clear, and decisive proof that is free from doubt or uncertainty. This standard of proof is applicable to overcoming the presumption that a confined basin and adjoining uplands is a vernal pool, to overcoming the presumption that a Bylaw resource area is significant to the protection of the Bylaw wetland values, and to requests for a waiver from one or more performance standards as further provided in Section 3 of these regulations.

## **CONDITIONS**

Those requirements set forth in a written Bylaw permit for work issued by the Conservation Commission for the purpose of permitting, regulating, or prohibiting any activity that removes, fills, dredges, or alters a Bylaw resource area (resource area subject to protection under the Bylaw).

## **CONSERVATION COMMISSION or COMMISSION**

The Plympton Conservation Commission, the members of which comprise a department or body of the Town of Plympton, lawfully appointed by the Board of Selectmen as authorized by MGL c. 40, §8C.

## **CREEK**

The same as "stream" as that term is defined below and in §14.

## **CUMULATIVE EFFECTS UPON WETLAND VALUES**

The impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. "Effects" include (a) direct effects, which have been caused in the past and are caused by the action and occur at the same time and place; and (b) indirect effects, which are caused by the action and are later in time or farther removed in distance,



but are still reasonably foreseeable. Indirect effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate and related effects on air and water and other natural systems, including ecosystems.

#### **CUMULATIVE IMPACTS**

See definition for "CUMULATIVE EFFECTS UPON WETLAND VALUES"

#### **DATE OF ISSUANCE**

The date a Bylaw permit for work, any determination, certificate of compliance, or any enforcement notice is mailed, as evidenced by a postmark, or the date it is hand-delivered, as evidenced by a signed or initialed notation to that effect.

#### **DATE OF RECEIPT**

The date of delivery to an office, home, or usual place of business by mail or the date of hand delivery to a person, office, home, or usual place of *business*. *In the case of an application for a permit for work*, an application is not deemed submitted if it does not comply with the requirements as outlined in §§25 and 27. Upon determination by the Conservation Commission or its agent that the application is complete and in compliance with the requirements of these regulations, the Commission or its agent shall consider the application received.

#### **DETERMINATIONS OF APPLICABILITY**

- (1) **DETERMINATION OF APPLICABILITY** A written finding by the Conservation Commission as to whether a site or the work proposed thereon is subject to the jurisdiction of the Bylaw.
- (2) **DETERMINATION OF BYLAW WETLAND RESOURCE AREA BOUNDARIES** A written finding by the Commission, after a public hearing, as to the identity and boundary of a resource area subject to protection under the Bylaw (Bylaw resource area) and further defined in §§13 through 20. The identity and boundary of the Bylaw Resource area(s) confirmed in said determination will be limited to those shown on the Plan of Record or as otherwise cited in the written finding of the Commission.
- (3) **DETERMINATION OF SIGNIFICANCE** A written finding by the Conservation Commission, after a public hearing, that the area on which the proposed work is to be done, or which the proposed work will alter, is significant or not significant to any of the wetland values identified in the Bylaw or in Section 1B above. ("Bylaw wetland values").

#### **EROSION AND SEDIMENTATION CONTROL**

A Bylaw wetland value enumerated in the Bylaw, which means the prevention or reduction of the detachment or movement of soil or rock fragments by water, wind, ice, and/or gravity.

#### **EXISTING**

Work or activity begun or completed before the date of the request for a determination or application for a permit for work or the condition of the property before any activity or work on the site or property.

#### **EXTENSION BYLAW PERMIT FOR WORK**

A written extension of time by a majority vote of the Conservation Commission at a public hearing within which the authorized work under a Bylaw permit for work shall be completed. The Commission shall record such extension on the appropriate form, as provided in §8.

#### **FEE SCHEDULE**

See §23 for the applicable filing fee and permissible consultant fees.

#### **FILL**

To deposit any material so as to raise an elevation of the land or water, either temporarily or permanently.

**FISHERIES**

All species of fresh and saltwater fin fish and shellfish, including the nutrient sources and the habitat in which they live all or part of their life cycle. "Fisheries" and "shellfish" are wetland values enumerated in Chapter 290-1 (previously Article XXVIII-I) of the Plympton Municipal Bylaw.

**FLOOD CONTROL**

The prevention or reduction of flooding and flood damage. Flood control is a Bylaw wetland value enumerated in the Bylaw.

**FRESHWATER WETLANDS**

See definition of "vegetated wetlands."

**GROUNDWATER**

The water below the earth's surface in the zone of saturation. The protection of the quality and quantity of groundwater is a Bylaw wetland value enumerated in the Bylaw.

**IMPERVIOUS**

Resistant to penetration by water or plant roots.

**ISSUING AUTHORITY**

The Conservation Commission of the Town of Plympton.

**LAKE**

Any open body of fresh water with a surface area of 10 acres or more.

**LAND SUBJECT TO FLOODING**

A Bylaw resource area (resource area subject to protection under the Bylaw), which is defined in §18.

**LAND UNDER WATER BODIES AND WATERWAYS**

The bottom of or land under the surface of a river, stream, reservoir, lake, or pond. Land under water bodies is a Bylaw resource area (resource area subject to protection under the Bylaw), which is further defined in §17.

**MAJORITY**

More than half of the members of the Conservation Commission then in office.

**MARSH**

A type of vegetated wetlands, a resource area subject to protection under the Bylaw and defined in the Wetlands Protection Act, MGL c. 131, §40, eleventh paragraph, and listed in the Act as a type of "freshwater wetlands" in the eighth paragraph; vegetated wetlands are noted as "freshwater wetlands" under the Bylaw.

**MASSACHUSETTS ENVIRONMENTAL POLICY ACT ("MEPA")**

MGL c. 30, §§62 through 62H, and the regulations promulgated pursuant thereto, published in 301 CMR 11.00 et. seq.

**MASSACHUSETTS STORMWATER HANDBOOK**

Handbook published by Massachusetts Department of Environmental Protection.

**MEAN ANNUAL FLOOD LEVEL**

The average highest instantaneous peak discharge of the water year. The mean annual flood level sets the upper boundary of a bank, as that is more fully explained in §15.

**MEAN ANNUAL HIGH-WATER LINE**

As defined in 310 CMR 10.58(2), the mean annual high-water line is the line that is apparent from visible markings or changes in the character of soils or vegetation due to the prolonged presence of water and that distinguishes between predominantly aquatic and predominantly terrestrial land.

Field indicators of bank full conditions shall be used to determine the mean annual high-water line. Bank full field indicators include, but are not limited to: changes in slope, changes in vegetation, stain lines, changes in bank materials, bank undercuts, or documented observed annual flooding.

- (1) In most rivers, the first observable break in slope is coincident with bank full conditions and the mean annual high-water line. In some river reaches, the mean annual high-water line is represented by bank full field indicators that occur above the first observable break in slope or, if no observable break in slope exists, by other bank full field indicators. These river reaches are characterized by at least two of the following features: low gradient, meanders, oxbows, histosols, a low-flow channel, or poorly defined or nonexistent banks.
- (2) The mean annual high-water line sets the boundary of a vernal pool and the inner boundary of the riverfront area.

#### **MEAN ANNUAL LOW-WATER LEVEL**

The average lowest instantaneous water discharge of the water year. The mean annual low-water level sets the lower boundary of a bank and the boundary of land under water bodies and waterways.

#### **NOTICE OF INTENT**

The written application filed by any person proposing to perform work in resource areas subject to protection under the Bylaw as set forth in Sections 1 and 2 of these regulations.

#### **NO ALTERATION ZONE**

Twenty-five to fifty (25-50) feet from any wetland resource area subject to protection under the Bylaw.

#### **NO TOUCH ZONE**

Twenty-five (25) feet from any wetland resource area subject to protection under the Bylaw.

#### **ORDER OF CONDITIONS**

The decision issued by the Conservation Commission containing conditions that regulate or prohibit an activity subject to regulation as set forth in Section 2 of these regulations and under the Bylaw.

#### **PARTY TO ANY PROCEEDING**

The applicant; the Conservation Commission; and may include the landowner, any abutter, any person aggrieved, any 10 residents of the Town where the land is located, and any 10 persons pursuant to Massachusetts Administrative Procedures Act, MGL c. 30A, §10A.

#### **PERMIT FOR WORK**

The document issued by the Conservation Commission containing conditions that regulate or prohibit an activity (work) under the Bylaw, also defined as an Order of Conditions.

#### **PERSON**

As defined in the Bylaw, any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town bylaws, administrative agency, public or quasi-public corporation or body, the Town of Plympton, and any other legal entity and the respective legal representatives, agents, or assigns of each person or entity listed above.

#### **PERSON AGGRIEVED**

Any person who, because of an act or failure to act by the Conservation Commission, may suffer an injury in fact that is different either in kind or magnitude from that suffered by the general public and which injury is within the scope of the Bylaw wetland values. Such person must specify, in writing before the close of the public hearing, sufficient facts to allow the Conservation Commission to determine whether the person meets the criteria of being "aggrieved."

#### **PLANS or PLAN OF RECORD**

Such data, maps, engineering drawings, calculations, specifications, schedules, and other like

information and materials deemed necessary by the Conservation Commission to describe the site and work to enable the Commission to determine the applicability of the Bylaw and these regulations and the Act or to determine the impact of the proposed work upon the Bylaw wetland values and the interests identified in the Act. (See §24B for a listing of the minimum information required by the Commission.) The term "plan of record" shall mean the final plan reviewed by the Conservation Commission, including any revisions, that is referenced in the permit for work, determination, or order of conditions.

#### **POLLUTION**

Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any material that, because of its quantity, concentration, or other characteristics, does or may result in an adverse impact to human, plant, or animal life or property or may unreasonably interfere with the comfortable enjoyment of life or property. (See also "water pollution," defined below.)

#### **POND**

As stated in the Bylaw, the definition of a pond, a Bylaw resource area, shall follow the definition of "pond" as appearing in 310 CMR 10.04, except that the size threshold of 5,000 square feet shall apply. The Bylaw resource area of "pond" is defined in §13 below.

#### **PREPONDERANCE OF THE CREDIBLE EVIDENCE STANDARD OF PROOF**

The person having the burden of proof must show that it is more likely than not that the facts as asserted by that person are true.

#### **PREVENTION OF WATER POLLUTION**

The prevention or reduction of the contamination of surface or groundwater. "Water pollution" is further defined below. The prevention of water pollution is a Bylaw wetland value.

#### **PRIVATE WATER SUPPLY**

Any source or volume of surface or groundwater demonstrated to be in any private use or shown to have potential for private use. The protection of private water supply is a Bylaw wetland value.

#### **PROTECTION OF FISHERIES**

Protection of the capacity of an area subject to protection under the Bylaw to prevent or reduce contamination or damage to fish and to serve as their habitat and nutrient source. Fisheries is a Bylaw wetland value.

#### **PROTECTION OF WILDLIFE**

The protection of any plant or animal species listed as endangered, threatened, or of special concern or placed on the Watch List by the Massachusetts Natural Heritage Program; listed as federally endangered or federally threatened by the U.S. Fish and Wildlife Service; deemed locally threatened, in writing, by the Conservation Commission; and, further, means protection of the ability of any Bylaw resource area to provide food, breeding habitat, or escape cover; and species falling within the definition of "wildlife" set forth below. Wildlife is a Bylaw wetland value.

#### **PUBLIC INTEREST**

Something of benefit to the health, welfare, or safety of the Plympton community at large as opposed to one individual, special interest group, organization, or other entity.

#### **PUBLIC WATER SUPPLY**

Any source or volume of surface or groundwater demonstrated to be in public use or approved for a public water supply pursuant to MGL c. I II, §160, by the Division of Water Supply of the Department of Environmental Protection or shown to have a potential for public use. Public Water Supply is a Bylaw wetland value.

#### **RARE SPECIES**

As defined in the Bylaw, rare species include, without limitation, all vertebrate and invertebrate

animal and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

#### **REMOVE**

To take away any type of material, thereby changing an elevation, either temporarily or permanently.

#### **RESERVOIR**

A Bylaw resource area (resource area subject to protection under the Bylaw), which is defined in §13.

#### **RESOURCE AREA SUBJECT TO PROTECTION UNDER THE BYLAW**

Any area specified in the Bylaw and in Section 2A of these regulations. the wetland regulations at §2A. This term is used synonymously with "Bylaw resource area," and each Bylaw resource area is defined in its respective section of these regulations.

#### **RIVER**

A Bylaw resource area (resource area subject to protection under the Bylaw), which is defined in §14. A river is the same as a perennial stream.

#### **RIVERFRONT AREA**

A Bylaw resource area (resource area subject to protection under the Bylaw), which is defined in §20.

#### **SEDIMENT**

Transported and deposited particles derived from rocks, soil, or biological material. Sediment is also the layer of soil, sand, and minerals at the bottom of surface waters, such as rivers, streams, lakes, and ponds.

#### **SHELLFISH**

A Bylaw wetland value enumerated in Chapter 290-1 (previously Article XXVIII-I) of the Plympton Municipal Bylaw, which is defined in 310 CMR 10.34(2).

#### **SIGNIFICANT**

A Bylaw resource area is significant to a Bylaw wetland value when it "plays a role" in the provision or protection of that value.

#### **SOLE SOURCE AQUIFER**

An area designated under Section 1424(e) of the Federal Safe Drinking Water Act of 1974, 42 USC §300f et seq. The Plymouth-Carver Aquifer is a nationally designated sole source aquifer in Region I of the Environmental Protection Agency (EPA) as published on August 7, 1990, in the Federal Register.

#### **STORM DAMAGE PREVENTION**

The prevention of damage caused by water from storms, including but not limited to: erosion and sedimentation; damage to vegetation, property, or buildings; or damage caused by flooding, waterborne debris, or waterborne ice. Storm damage prevention is a Bylaw wetland value.

#### **STORMWATER BEST MANAGEMENT PRACTICES**

- (1) A structural or nonstructural technique for managing stormwater to prevent or reduce non-point source pollutants from entering surface waters or ground waters. A structural stormwater best management practice (BMP) includes a basin, discharge outlet, swale, rain garden, filter, or other stormwater treatment practice or measure either alone or in combination including without limitation any overflow pipe, conduit, weir control structure that:
  - (a) is not naturally occurring;
  - (b) is not designed as a wetland replication area; and

- (c) has been designed, constructed, and installed for the purpose of conveying, collecting, storing, discharging, recharging or treating stormwater.
- (2) Nonstructural stormwater best management practices include source control and pollution prevention measures.

### **STORMWATER MANAGEMENT**

a system for conveying, collecting, storing, discharging, recharging, or treating stormwater on-site including: stormwater best management practices (BMPs) and any pipes and outlets intended to transport and discharge stormwater to the groundwater, surface water, or a municipal separate storm sewer system.

### **STREAM**

A body of running water, including those called "brooks" and "creeks," that moves in a definite channel in the ground due to hydraulic gradient. A portion of a stream may flow through a culvert or beneath a bridge. A stream is a resource area subject to protection under the Bylaw.

### **STREAM ORDER**

The measure of the relative size of a stream or river. The smallest tributaries are called "first-order" streams, while the largest river in the world, the Amazon, is a twelfth-order waterway. When two first-order streams come together, the streams form a second-order stream; when two second-order streams come together, the streams form a third-order stream; and so on. However, if a first-order stream joins a second-order stream, the streams remain a second-order stream. It is not until one stream combines with another stream of the same order that the resulting stream increases by an order of magnitude.

### **SWAMP**

A type of vegetated wetlands, a resource area subject to protection under the Bylaw, defined in the Wetlands Protection Act, MGL c. 131, §40, ninth paragraph, and listed in the Act as a type of "freshwater wetlands" in the eighth paragraph. Vegetated wetlands are noted as "freshwater wetlands" under the Bylaw.

### **VEGETATED WETLANDS**

The same as "freshwater wetlands," a Bylaw resource area (resource area subject to protection under the Bylaw), which is defined in §16 of the Plympton Municipal Bylaw.

### **VERNAL POOL**

A Bylaw resource area which is defined in the Bylaw and further in §12 of the Plympton Municipal Bylaw.

### **VERNAL POOL SPECIES**

Animals that depend upon the vernal pool and the upland adjacent to the vernal pool for life, including but not limited to wood frogs (*Rana sylvatica*), green frogs (*Rana clamitans*), mole salamanders (*Ambystoma*, spp.), four-toed salamanders (*Hemidactylium scutatum*), Fowler's toads (*Bufo* [*Anaxyrus*] *fowleri*), American toads (*Bufo americanus*), spring peepers (*Hyla crucifer*), and gray treefrogs (*Hyla versicolor*).

### **WATER POLLUTION**

Industrial and institutional waste and other harmful or objectionable material in sufficient quantities to result in a measurable degradation of the water quality.

### **WATER QUALITY IN PONDS, LAKES, RESERVOIRS**

A Bylaw wetland value enumerated in §1B, which means maintaining pollution-free water in Plympton's bodies of water.

### **WET MEADOW**

A type of vegetated wetlands, a resource area subject to protection under the Bylaw, and defined in

the Wetlands Protection Act, MGL c. 131, §40, tenth paragraph, and listed in the Act as a type of "freshwater wetlands" in the eighth paragraph. Vegetated wetlands are noted as "freshwater wetlands" under the Bylaw.

#### **WETLAND VALUE**

See definition of "Bylaw wetland value" above.

#### **WETLANDS PROTECTION ACT**

The same as "Act" as that is defined above.

#### **WILDLIFE**

Any non-domesticated mammal, bird, reptile, amphibian, fish, mollusk, arthropod, or other invertebrate, other than a species of the Class Insecta (Phylum Arthropoda, Subphylum Tracheata) that has been determined by the Commonwealth of Massachusetts or any agency thereof to be a pest the protection of which under the provisions of the Bylaw would be a risk to man. Wildlife is a Bylaw wetland value listed in §1 as authorized by the Bylaw.

#### **WILDLIFE HABITAT**

A Bylaw wetland value that is defined in the Wetlands Protection Act, MGL c. 131, §40, nineteenth paragraph, as areas "which, due to their plant community composition and structure, hydrologic regime or other characteristics, provide important food, shelter, migratory or overwintering areas, or breeding areas for wildlife."

#### **WORK**

The same as "activity" as that term is defined above.

### **§5 COMPUTATION OF TIME PERIODS.**

All time periods of 10 days or less as specified in the Bylaw and these regulations shall be computed using business days only. Where the time is 10 days or less, such period shall commence on the first day after the date of the event, such as the issuance of a document, and shall end at the close of business on the 10th business day thereafter. All other time periods specified in the Bylaw and these regulations shall be computed on the basis of calendar days with the period commencing on the first day after the date of the event but shall end at the close of business on the last calendar day, unless the last day falls on a Saturday, Sunday, or legal holiday, in which case the last day shall be the next business day following.

### **§6 ACTIONS BY CONSERVATION COMMISSION.**

- A. Generally, by majority of quorum at public meeting. Where the Bylaw states that the Conservation Commission is to take a particular action (except receipt of a request for a determination or an application for a permit for work), that action is to be taken by more than half the members present at a meeting of at least a quorum. A quorum is defined as a majority of the members then in office.
- B. Execution and issuance of determination, permit, notifications. Where the Bylaw states that a determination, permit for work, or notification shall be issued by the Conservation Commission, that action is to be taken by a majority of the members then in office, who need not convene as a body in order to sign said determination, permit for work, or notification, provided they met pursuant to the Open Meeting Law, MGL c. 39, §§23A through 23C, when voting on the matter.
- C. Receipt of request, application, or information. Where the Bylaw states that the Conservation Commission is to receive a request, application, notice, or information, "Conservation

Commission" means a member of the Conservation Commission or an individual designated by the Commission to receive such request, application, notice, or information.

## **§7 DETERMINATIONS OF APPLICABILITY, RESOURCE DELINEATION, AND SIGNIFICANCE.**

- A. Requests for determination of applicability, determination of Bylaw resource delineation, and determination of significance (nonsignificance).
  - (1) Request submittal information. Any person who desires a determination as to (a) whether the Bylaw applies to land, or to work that may affect a resource area subject to protection under the Bylaw, (b) confirmation of Bylaw resource area delineation; or (c) determination of significance of a Bylaw resource area to protect any Bylaw wetland values may submit to the Conservation Commission, by certified mail, certificate of mailing, or hand delivery, a request for a determination on the appropriate Commission's form and other application materials in accordance with the submittal requirements set forth in the filing guidelines for request for determinations of applicability, Bylaw resource areas delineation, or Bylaw resource area significance as provided in §25.
  - (2) Information where landowner not making request for determination. If the person making any request for a determination is not the owner of the land that is subject to such request, the request shall include a certification that the owner of the land and others that may have a property interest in the area subject to the request have been notified that a determination is being requested under the Bylaw.
- B. Commission action on requests for determinations of applicability (applicability, Bylaw resource delineation, and significance).
  - (1) Scheduling public hearing and publication of notice.
    - (a) Within 21 days after the date of receipt of a request for a determination, the Conservation Commission shall hold a public hearing. The Conservation Commission considers the determination received when the proper fee and all filing requirements, as outlined in §§23, 24, and 25, are submitted.
    - (b) Notice of the time and place of the public hearing shall be given by the Conservation Commission, at the expense of the person making the request, not less than five business days prior to such hearing, by publishing a notice, in accordance with the requirements of the Open Meeting Law, MGL c. 39, §23B, in a newspaper of general circulation in Plympton and by mailing or hand-delivering a notice to the person making the request, the landowner, the Board of Health, the Planning Board, the Zoning Board of Appeals, the Board of Selectmen, and Building Inspector.
    - (c) The person making the request shall also give notice to abutters in accordance with the Bylaw, Section 290-5, Notice and hearings, Subsection A.
  - (2) Continuing public hearing. The Commission, at its sole discretion, may continue any public hearing in accordance with the Open Meeting Law, MGL c. 39, §23B, on any request for a determination; provided, however, that the person requesting such determination may require the Commission to close the hearing.
  - (3) Decision of Commission after close of public hearing.
    - (a) Determination of applicability.
      - [1] The Conservation Commission shall find that the Bylaw applies to the land, or a portion thereof, if it is a resource area subject to protection under the Bylaw as listed in §2A. The Commission shall find that the Bylaw applies to the work or the portion



thereof if it is an activity subject to the regulations under the Bylaw as defined in §2B and such work will alter a Bylaw resource area.

[2] Said determination shall be valid for a period of three years.

[3] Where the Conservation Commission finds that the Bylaw applies (positive determination), an application for a permit for work shall be filed and all of the procedures set forth in §§8, 26, and 27 shall apply before any work may commence on the site.

- (b) Determination of Bylaw resource delineation - The Commission shall confirm the boundaries of the resource areas subject to protection under the Bylaw, as those boundaries may have been adjusted by the Commission based on direct observations and other information submitted during the public hearing process. The identity and boundary of the Bylaw Resource area(s) confirmed by this determination are limited to those shown on the Plan of Record or otherwise cited in the written finding of the Commission. Said boundary delineations shall be valid for a period of three years, unless new information, not available to the Commission during the hearing process, establishes that the boundaries are in error. Said new information shall include but not be limited to false or erroneous information presented by the person requesting such delineation.
- (c) Determination of significance (non-significance). The Conservation Commission shall make a determination that the area on which the work is proposed to be done, or which the proposed work will remove, fill, dredge, or alter, is either significant or not significant to any Bylaw wetland value, and shall so notify the applicant on the appropriate Commission's form.

## **§8 BYLAW PERMIT FOR WORK; EXTENSION; CERTIFICATE OF COMPLIANCE.**

### **A. Application for Bylaw permit for work.**

#### **(1) Application submittal information.**

- (a) Any person who proposes to do work that will remove, fill, dredge, build on, or alter any resource area subject to protection under the Bylaw shall submit an application for permit on the appropriate Commission's form and other application materials in accordance with the submittal requirements set forth in the general instructions for completing applications for a Permit for Work provided in §§24 and 26. The Conservation Commission also requires the submission of the proper filing fee as provided in §23.
- (b) If only a portion of a proposed project or activity lies within a resource area subject to protection under the Bylaw and the remainder of the project or activity lies outside those Bylaw resource areas, all aspects of the project must be described in the detail as required by §§24 and 26, and any other of the general instructions provided on the appropriate Commission's forms; provided, also, that in such circumstances the application for a permit for work shall also contain a description and calculation of peak flow and estimated water quality characteristics of discharge from a point source (both closed and open channel) when the point of discharge falls within a resource area subject to protection under the Bylaw.

- (2) Issuance of Bylaw file number. Upon receipt of the application materials referred to in Subsection A above, the Conservation Commission shall issue a file number. The designation of file number shall not imply that the plans and supporting documents have been judged adequate for the issuance of a permit for work but only that copies of the minimum submittal requirements have been filed.

B. Public hearing.

- (1) Scheduling. A public hearing shall be held by the Conservation Commission within 21 days of receipt of the minimum submittal requirements as referenced above at §8A(1) . The public hearing shall be advertised in accordance with the Bylaw and the requirements of the Open Meeting Law, MGL c. 39, §23B.
- (2) Continued hearing.
  - (a) The Conservation Commission may continue a public hearing as follows:
    - [1] Without the consent of the applicant to a certain date announced at the hearing either for receipt of additional information offered by the applicant or others or for information required of the applicant deemed necessary by the Conservation Commission as its discretion; or
    - [2] With the consent of the applicant, to an agreed upon date, which shall be announced at the hearing; or
    - [3] With the consent of the applicant for a period not to exceed 21 days after the submission of specified information or the occurrence of a specified action.
  - (b) The date, time, and place of said continued hearing shall be publicized in accordance with the Bylaw Section 290-5, and written notice shall be sent to any person at the hearing who so requests such notice.

C. Decision of Commission after close of public hearing.

- (1) Time of decision. Within 21 days of the close of the public hearing, or any extension thereof, the Conservation Commission shall vote at a public meeting to either issue the permit for work or deny the application and, within the aforesaid 21 days, the Commission shall issue either a permit for work or a denial of permit of work, unless otherwise granted an enlargement of time by the applicant for the issuance.
- (2) Decision to approve work. Within 21 days of the close of the public hearing or any continuance thereof, the Conservation Commission may vote to approve the proposed work and issue a permit for work. In making such a decision, the Conservation Commission shall either:
  - (a) Make a determination that the resource area subject to protection under the Bylaw on which the work is proposed to be done or which the proposed work will remove, fill, dredge, or alter is not significant to any of the Bylaw wetland values and shall so notify the applicant on the appropriate Commission's form titled "Notification of Non-Significance," and allow the work to go forward as proposed; or
  - (b) Make a determination that the resource area subject to protection under the Bylaw on which the work is proposed to be done or which the proposed work will remove, fill, dredge, or alter is significant to one or more of the Bylaw wetland values and shall issue a Bylaw permit for work. The Commission shall condition said proposed work to protect the applicable Bylaw wetland values and shall issue the permit for work. In this permit for work, the Conservation Commission shall, at a minimum:
    - [1] Impose such conditions as are necessary for the protection of the Bylaw resource areas found to be significant to one or more of the Bylaw wetland values; and
    - [2] Prohibit any work or any portion thereof that cannot be conditioned to meet the standard of protection of the Bylaw wetland values; and
    - [3] Impose conditions upon the work or the portion thereof that will in the judgment of the Conservation Commission result in any alteration of a resource area subject to protection under the Bylaw; and

[4] Impose conditions setting limits of the quantity and quality of discharge from point sources (both open and closed channel) as necessary to protect the Bylaw wetland values.

- (c) Decision to deny the work. The Conservation Commission may issue a decision denying the proposed work where the Commission finds that the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the Bylaw wetland values. The denied work decision shall specify the information that is lacking and why it is necessary. The Commission cannot condition the proposed work to protect the Bylaw wetland values.

D. Issuance of permit for work, recording at Registry of Deeds.

- (1) Issuance of permit for work or denial of permit for work.
  - (a) The permit for work shall be valid for three years from the date of its issuance.
  - (b) The permit for work or denial of permit for work shall be signed by a majority of the members of the Conservation Commission and shall be mailed by certified mail or hand-delivered to the applicant and his/her agent, representative, or attorney, as designated.
  - (c) A copy of the plans describing the work and a copy of the permit for work or denial of permit for work shall be kept on file by the Conservation Commission and shall be available to the public at reasonable times during the normal business hours of the Conservation Commission.
- (2) Recording of permit for work. Prior to the commencement of any work permitted or required by the permit for work, the permit shall be recorded in the Plymouth County Registry of Deeds or the Land Court. Certification of recording shall be sent to the Conservation Commission on the detachable sheet at the end of permit for work. If work is undertaken without the applicant first recording the permit for work, the Conservation Commission may issue an enforcement order or may itself record the permit at the expense of the landowner/applicant.
  - (a) In the case of recorded land, the permit for work shall also be noted in the Registry's Grantor Index under the name of the owner of land upon which the proposed work is to be done.
  - (b) In the case of registered land, the permit for work shall also be noted on the Land Court certificate of title of the owner of the land upon which the proposed work is to be done.

E. Extension of permit for work.

- (1) The Conservation Commission may extend a permit for work for up to three years. The request for an extension shall be made to the Conservation Commission at least 30. As such there really would be no advantage to the applicant to the additional 60 days for extending a local permit before the expiration of the permit. As provided in the Bylaw, where the activity permitted by the permit for work cannot commence because of an appeal of the order of conditions or an order by the Superior Court enjoining activity in an appeal of a permit for work, that period while the appeal(s) is pending shall not be counted toward any initial or extension period and the Conservation Commission shall issue an appropriate extension permit for work to that effect.
- (2) The Conservation Commission may deny the request for an extension and require the filing of a new application for a permit for the remaining work in the following circumstances:
  - (a) Where no work has begun on the proposed project, except where such failure is due to an unavoidable delay, such as an appeal of the order of conditions issued by the

- Conservation Commission under the Wetlands Protection Act and in the obtaining of other necessary permits; or
- (b) Where new information, not available at the time the Conservation Commission issued the permit for work, has become available and indicates that the permit for work is not adequate to protect the Bylaw wetland values; or
  - (c) Where incomplete work is causing damage to the Bylaw wetland values; or
  - (d) Where work has been done in violation of the permit for work.
- (3) If issued by the Conservation Commission, the extension permit for work shall be signed by a majority of the members of the Conservation Commission.
  - (4) The extension permit for work shall be recorded in the Land Court or the Registry of Deeds, whichever is appropriate. The certificate of recording shall be sent to the Conservation Commission on the detachable sheet at the end of the extension permit for work. If work is undertaken without the applicant so recording the extension permit for work, the Conservation Commission may issue an enforcement order or may itself record the extension permit for work at the expense of the landowner/applicant.
- F. Certificate of Compliance. Upon written request by the applicant or the then-current landowner, the Conservation Commission shall issue or deny a certificate of compliance within 21 days of receipt thereof.
- (1) Request for certificate of compliance. The applicant or current landowner shall request in writing that the Conservation Commission issue a certificate of compliance.
    - (a) The person making the request shall certify that the work or portions thereof described in the application for the permit for work was completed in compliance with the permit. This certification shall be on the applicable Commission's form.
    - (b) If a project has been completed in accordance with plans stamped by a registered professional engineer or a land surveyor, a written statement by such a professional person certifying substantial compliance with the plans and setting forth what deviation, if any, exists from the plans approved in the permit shall accompany the request for a certificate of compliance.
  - (2) Site inspection. Before the Conservation Commission may issue a certificate of compliance, the Commission or its agent(s) shall inspect the site. Said site inspection shall be made in the presence of the landowner or the landowner's agent whenever possible.
  - (3) Decision of Commission.
    - (a) Denial of certificate of compliance. If the Conservation Commission determines, after review and inspection of the site, that the work has not been done in compliance with the permit for work, it shall refuse to issue a certificate of compliance. The Commission shall issue such refusal within the time limitation as stated in the aforesaid Subsection F (21 days from receipt of the request) and such refusal shall be in writing and shall specify the reasons for denial.
    - (b) Issuance of certificate of compliance. If the Conservation Commission determines, after review and inspection of the site, that the work has been done in compliance with the permit for work, as certified by the person requesting the certificate of compliance and, where appropriate, a professional engineer or surveyor as stated above, it shall issue a certificate of compliance.
      - [1] If the permit for work contains conditions that continue past the completion of the work, such as maintenance or monitoring, the certificate of compliance shall specify which, if any, of such conditions shall continue.
      - [2] The certificate shall also specify to what portion of the work it applies, if it does not apply to all the work regulated by the permit for work such certificate shall be clearly titled a "Partial Certificate of Compliance."

- G. Recording. The certificate of compliance shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the Conservation Commission in accordance with the detachable certification at the end of the certificate of compliance. Upon failure of the applicant to so record, the Conservation Commission may do so at the expense of the landowner/applicant.

## **§9 EXCEPTIONS TO APPLICATION FOR PERMIT FOR WORK.**

- A. Emergency project of commonwealth or subdivision thereof. The Conservation Commission may approve work by the Commonwealth or political subdivision thereof in emergency situations, as described below, without the need to obtain a permit for work before the work takes place.
- (1) Request. Any person requesting permission to do an emergency project shall specify why the project is necessary for the protection of the health or safety of the citizens of the Commonwealth and what agency of the Commonwealth or subdivision thereof is to perform the project or has ordered the project to be performed.
  - (2) Commission review of request. The Conservation Commission or its agent shall inspect the site prior to certification.
  - (3) Commission decision.
    - (a) The agent, a member, or employee of the Commission may grant certification of emergency work; provided that the Commission shall ratify such decision at its next regularly scheduled meeting.
    - (b) The Conservation Commission shall issue an emergency certification only for the protection of public health or safety or for the protection of any interest specified in the Bylaw.
    - (c) The certification shall include a description of the work which is to be allowed and shall not include work beyond that necessary to abate the emergency.
    - (d) The time limitation for performance of emergency work shall not exceed 21 days.

## **§10 ENFORCEMENT.**

- A. Recording notices of violation and enforcement orders. The Conservation Commission shall record a notice of violation or an enforcement order, issued under the Bylaw Section 290-10, with the appropriate Registry of Deeds when (1) the Commission has information that the property in violation of the Bylaw may change ownership; (2) when the owner of the property in violation or other responsible party has failed to respond to the notice of violation or enforcement order after 10 business days of receipt thereof; or (3) when the owner of the property in violation has failed to file a corrective Notice of Intent or Application for a Permit for Work, as applicable, within 30 days of receipt of the notice of violation or enforcement order.
- B. Any person who violates any provision of the Bylaw or these regulations, or permits or administrative orders issued thereunder, shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues, or unauthorized fill remains in place, shall constitute a separate offense, and each provision of the Bylaw, regulations, permit, or order violated shall constitute a separate offense.

- C. Penalty abatement. The Conservation Commission may abate a fine imposed under the Bylaw Section 290-10 when complete restoration and substantial mitigation is provided as approved by the Commission as part of a permit for work. However, the Commission shall not waive or reduce the appropriate filing fee, as provided in §23.

## **§11 SEVERABILITY; COMPLIANCE WITH COURT DECISIONS.**

- A. Severability. The invalidity of any section or provision of the Bylaw or of these regulations shall not invalidate any other section or provisions thereof, nor shall it invalidate any determination or permit for work that the Conservation Commission previously issued.
- B. Compliance with Court decisions. If any Court of the Commonwealth shall invalidate any provisions of the Bylaw or of these regulations, the Conservation Commission shall promulgate additional regulations or present to the next Town Meeting after such invalidation, amendments to the Bylaw that are designed to comply with any Court decision invalidating such provisions of the Bylaw or regulations, as the case may be.

## ARTICLE II

### REGULATION OF RESOURCE AREAS SUBJECT TO PROTECTION UNDER THE BYLAW (BYLAW RESOURCE AREAS)

#### §12 VERNAL POOLS.

##### A. Definition, critical characteristics, boundary, presumption of existence.

- (1) Definition, critical characteristics. A vernal pool is any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways that holds water for a minimum of two continuous months during the spring and/or summer; contains at least 200 cubic feet of water; is free of adult predatory fish populations; and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for a Vernal Pool shall be 100 feet outward from the mean annual high-water line defining the depression, but shall not include a lawn, garden, landscaped area, or developed area in existence at the time of the effective date of this provision in this chapter.
- (2) Presumption confined basin and adjacent land is a vernal pool. Section 290-6 of the Bylaw presumes that a vernal pool habitat exists if an area's physical characteristics conform with those basins, depressions, or ponding areas as defined in Section 290-8 of the Bylaw and above in subsection A(1).
  - (a) The presumption of the existence of a vernal pool, where there is a closed basin or depression meeting the definition contained in the aforesaid Subsections A(1) and A(2), may be overcome with the presentation of clear and convincing evidence to the Conservation Commission that, in the judgment of the Commission, demonstrates the basin, depression, or ponding area does not provide and cannot provide vernal pool wildlife habitat functions.
  - (b) For the purposes of overcoming the presumption of vernal pool habitat, the Commission shall consider:
    - [1] Evidence that the basin, depression, or ponding area does not hold water for at least two continuous months in three out of five consecutive years and where any of the five consecutive years has not been a year for which an "Advisory" or more severe drought level has been determined for the area by the Massachusetts Drought Management Task Force,
    - [2] Evidence that vernal pool species do not breed or have not bred in the basin, depression, or ponding area.
    - [3] Evidence that the basin, depression, or ponding area could not be a viable breeding site for vernal pool species because of incompatible physical, chemical, biological, or other persistent conditions at the site in most years, that is three out of five consecutive years. Such evidence may include, without limitation, several months of pH and dissolved oxygen measurements yielding values incompatible with amphibian or reptile breeding.
  - (c) Failure to find evidence of breeding must be tied explicitly to those periods during which the evidence is most likely to be available. Accordingly, the Conservation Commission shall require that the evidence be collected only at the appropriate time. The Commission may require site visits as necessary to confirm the evidence presented.

B. Presumption of significance; findings.

- (1) The Conservation Commission shall presume that protection of a vernal pool is significant to the Bylaw wetland values specified in §1B. This presumption of significance may be rebutted upon a showing by clear and convincing evidence that the vernal pool does not play a role in the protection of the Bylaw wetland values.
  - (a) Where the Conservation Commission determines that the presumption of significance of the vernal pool to one or more, but not all, Bylaw wetland values has been overcome, the Commission shall make a written determination to this effect, setting forth its grounds as part of its findings in the permit for work or denial of the permit for work.
  - (b) Where the Conservation Commission determines that the presumption of significance of the vernal pool to all Bylaw wetland values has been overcome, the Commission shall find that the confined basin, depression, or ponding area and the adjacent one-hundred-foot land is not a vernal pool, as provided in the aforesaid Subsection A(2).
- (2) A vernal pool is highly likely to be significant to wildlife, to wildlife habitat, to groundwater supply, and to flood control.
- (3) Land within 100 feet of a vernal pool (the 100 feet horizontally outward from the boundary of the vernal pool) is likely to be significant to the protection and maintenance of the vernal pool and, therefore, to the protection of the Bylaw wetland values that this chapter resource area serves to protect. Said one-hundred-foot buffer zone is regulated under §19, which states that the Commission shall not allow alteration in the entire one-hundred-foot buffer zone of a vernal pool unless the Commission grants a waiver to this performance standard of no alteration as further provided in §19C(4).

C. Performance standards.

- (1) Point-source stormwater discharges to Vernal Pools and their one-hundred-foot buffer zones may not be allowed.
- (2) Notwithstanding §12C(1), no activity or work that will result in altering the vernal pool or land within the one-hundred-foot buffer zone of any vernal pool, whether or not such lands are within or abut an estimated (rare species) habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage & Endangered Species Program, or Core Habitat or Critical Natural Landscape as designated on BioMap, or Core Habitat or Critical Natural Landscape as designated on BioMap, shall be permitted by the Conservation Commission. The Commission may grant a waiver of this performance standard as provided in §21.

## **§13 RESERVOIRS, LAKES, PONDS.**

A. Definition, critical characteristics, boundary.

- (1) Reservoir: a naturally occurring lake or pond or other basin where water is collected and stored for future use.
- (2) Lake: A Lake means any open body of freshwater with a surface area of 10 acres or more. Any pond over 10 acres is usually called a "lake" but the term is synonymous with a pond.
- (3) Pond: A pond is any open body of fresh water, either naturally occurring or manmade by impoundment, excavation, or otherwise, which is never without standing water due to natural causes, except in periods of extended drought. For purposes of this definition, "extended drought" shall mean those periods, in specifically identified geographic locations, determined to be at the "Advisory" or more severe drought level by the Massachusetts Drought



Management Task Force, as established by the Executive Office of Environmental Affairs and the Massachusetts Emergency Management Agency in 2001, in accordance with the Massachusetts Drought Management Plan. Notwithstanding the above, the following man-made bodies of open water shall not be considered ponds:

- (a) basins or lagoons that are part of wastewater treatment plants,
  - (b) swimming pools or other impervious man-made retention basins;
  - (c) man-made fish ponds; and
  - (d) individual gravel pits or quarries excavated from upland areas unless inactive for five or more consecutive years.
- B. Presumption of significance, findings. The Conservation Commission shall presume that protection of the resource areas protected under the Bylaw, a reservoir, lake, and pond, are significant to the Bylaw wetland values specified in §1B.
- C. Performance standards.
- (1) The Commission shall apply the performance standards of bank and land under water bodies and waterways in assessing a proposed project that would alter a reservoir, lake, or pond.
  - (2) A reservoir, lake, and pond each have a one-hundred-foot buffer zone and may have a two-hundred-foot riverfront area under the Bylaw and these areas are classified as resource areas subject to protection under the Bylaw. Consequently, the Conservation Commission shall apply the performance standards of the riverfront area in assessing a proposed project that would alter a reservoir, lake, or pond.
  - (3) Except as authorized by the Commission, no activity subject to regulation under the Bylaw or these regulations shall be permitted within a twenty-five foot (25') "no touch zone" between any reservoir, lake, or pond and any proposed site disturbance. Nothing herein shall preclude the maintenance of an existing structure located within the "no touch zone." The Commission may allow activities upon an express determination that the applicant has made a clear and convincing showing that the proposed work in the "no touch zone" will not adversely affect the ability of the reservoir, lake, or pond to function to protect the wetland values.
  - (4) No alterations under the Bylaw or these regulations shall be permitted within the twenty-five to fifty foot (25'-50') "no alteration zone" between any reservoir, lake, or pond and any proposed site disturbance. The Commission may allow activities upon an express determination that the applicant has made a clear and convincing showing that the proposed work in the "no alteration zone" will not adversely affect the ability of the reservoir, lake, or pond to function to protect the wetland values. Where it has been determined by the Commission that alteration of a resource area is unavoidable, the Commission shall require full mitigation by the applicant.

## **§14 RIVERS, STREAMS (CREEKS).**

### **A. Definition, critical characteristics, boundary.**

#### **(1) River (perennial stream).**

- (a) A river (perennial stream) is any natural or man-made flowing body of water that empties to any ocean, lake, pond, wetland, or other perennial stream and which flows throughout the year. A river is a perennial stream. A river or perennial stream is characterized by horizontal

zonation, as opposed to the vertical stratification typically associated with lakes, ponds, and embayments.

- [1] A river or stream shown as perennial on the current United States Geological Survey (USGS) is perennial.
  - [2] A river or stream shown as intermittent or not shown on the current USGS map that has a watershed size greater than or equal to one square mile is perennial.
  - [3] A stream shown as intermittent or not shown on the current USGS map or more recent map provided by the Department that has a watershed size of less than one square mile is perennial if the stream has a watershed size of at least 0.50 square mile and has a predicted flow rate greater than or equal to 0.01 cubic feet per second at the 99% flow duration using the USGS Stream Stats method.
  - [4] When the USGS StreamStats method cannot be used because the stream does not have a mapped and digitized centerline and the stream has a watershed size of at least 0.50 square mile, and the surficial geology of the contributing drainage area to the stream at the project site contains 75% or more stratified drift, the issuing authority shall find such streams to be perennial. Stratified drift shall mean sand and gravel deposits that have been layered and sorted by glacial meltwater streams. Areal percentages of stratified drift may be determined using USGS surficial geologic maps, USGS Hydrologic Atlases, Massachusetts Geographical Information System (MassGIS) surficial geology data layer, or other published or electronic surficial geological information from a credible source.
  - [5] Rivers include perennial streams that cease to flow during periods of extended drought. Periods of extended drought shall be those periods, in those specifically identified geographic locations, determined to be at the "Advisory" or more severe drought level by the Massachusetts Drought Management Task Force, as established by the Executive Office of Environmental Affairs and the Massachusetts Emergency Management Agency in 2001, in accordance with the Massachusetts Drought Management Plan (MDMP). Rivers and streams that are perennial under natural conditions but are significantly affected by drawdown from withdrawals of water supply wells, direct withdrawals, impoundments, or other manmade flow reductions or diversions shall be considered perennial.
- (b) Where a river (perennial stream) flows through a culvert of any length it does not lose its classification as a river.
- (2) Stream (creek, intermittent stream).
- (a) An intermittent stream is that segment of a flowing watercourse, natural or manmade, that regularly experiences naturally occurring sporadic flow interruptions such that it does not have a continuous sheet of surface water for five consecutive days or more annually. Where there is a question as to whether a stream is intermittent or perennial, the Commission shall find any stream is intermittent based upon a documented field observation that the stream is not flowing. A documented field observation shall be made by a competent source and shall be based upon an observation made at least once per day, over four days in any consecutive twelve-month period, during a non-drought period on a stream not significantly affected by drawdown from withdrawals of water supply wells, direct withdrawals, impoundments, or other man-made flow reductions or diversions. Field observations shall be documented by field notes and by dated photographs or video. All field observations shall be submitted to the Conservation Commission with a statement signed under the penalties of perjury attesting to the authenticity and veracity of the field notes, photographs, or video and other credible evidence. Department staff, conservation commissioners, and conservation commission staff are competent sources; issuing authorities may consider evidence from other sources that are determined to be competent.

- (b) Intermittent streams exhibit a longitudinal gradient of hydrology, from:
    - [1] ephemeral channels that flow only in response to storms, through
    - [2] intermittent sections that flow seasonally until the groundwater table falls below the channel and are dry the rest of the year, and
    - [3] interstitial reaches that flow seasonally and retain pools connected by subsurface flow during the summer, to
    - [4] the perennial stream.
  - (c) The Conservation Commission recognizes four types of intermittent streams:
    - [1] Type I: a stream segment that originates at the headstream and is sometimes associated with forested seeps and small wetlands and includes headwater (first-through third-order) streams, which trap flood waters, remove pollution, are important both for aquatic biodiversity and for ecological function of lower stream reaches.
    - [2] Type II: a stream segment that does not originate at the headstream in which continuous standing water disappears for at least five but not more than 30 consecutive days annually.
    - [3] Type III: a stream segment that does not originate at the headstream in which continuous standing water disappears for more than 30 consecutive days annually.
    - [4] Type IV: a stream segment, without regard to duration of continuous standing water, that connects two culvert pipes or otherwise functions as a man-made drainage channel within an already developed area.
- B. Presumption of significance, findings. The Conservation Commission shall presume that protection of a river and a stream is significant to the Bylaw wetland values specified in §1B.
- (1) River (perennial stream).
    - (a) A river (perennial stream) serves as public and private water supplies. In addition, a river is important for storm damage prevention, flood control, groundwater protection, wildlife habitat, and recreation values.
    - (b) The surface water interaction with groundwater significantly influences the ecosystem of a river. The dynamic relationship between surface and groundwater within the "hyporheic zone" sustains communities of aquatic organisms which regulate the flux of nutrients, biomass, and the productivity of organisms including fish within the stream itself. The hyporheic zone extends to greater distances horizontally from the channel in large, higher-order streams with alluvial floodplains, but the interaction within this zone is important in smaller streams as well.
  - (2) Intermittent stream (creek).
    - (a) Intermittent streams are important for storm damage prevention, flood control, groundwater protection, wildlife habitat, and recreation values. During spring, summer, and fall these streams disperse snow melt and storm runoff across the landscape thereby preventing dangerous volumes and flows from spilling over roadways and property. This board dispersal also allows for larger volumes of water to infiltrate into the ground, recharging groundwater supplies.
    - (b) Intermittent streams are an essential source of food and water for wildlife, and are often the only source of water in higher-elevation areas. The moist soils that border intermittent streams are significantly richer in herbs and flowering/fruited plants, the base trophic level

- of food, than surrounding upland areas.
- (c) During all seasons, but especially in winter and spring, intermittent streams act as essential corridors for animal movement when food is scarce. Some animals, such as pickerel frogs and eastern spotted newts, rely heavily on intermittent streams for movement.
  - (d) For the above reasons the upland areas surrounding intermittent streams are heavily utilized by wildlife for living space, breeding, feeding, migrating, dispersal, and security.

*C. Performance standards.*

- (1) The Commission shall apply the performance standards of bank and land under water bodies and waterways in assessing a proposed project that would alter either a perennial or intermittent stream.
- (2) A river (perennial stream) has a two-hundred-foot riverfront area under the Bylaw and this area is classified as a resource area subject to protection under the Bylaw. Consequently, the Conservation Commission shall apply the performance standards of the riverfront area in assessing a proposed project that would alter a river (perennial stream).
- (3) An intermittent stream has a one-hundred-foot buffer area under the Bylaw. Consequently, the Conservation Commission shall apply the performance standards for a Buffer Zone to an intermittent stream in assessing a proposed project that would alter a stream.

**§15 INLAND BANKS (BEACHES).**

*A. Definition, critical characteristics, boundary.*

- (1) A bank is the portion of the land surface which normally abuts and confines a water body. A bank occurs between a water body and a vegetated bordering wetland and adjacent floodplain, or, in the absence of these, it occurs between a water body and upland.
- (2) A bank may be partially or totally vegetated or it may be composed of exposed soil, gravel, or stone. Where the bank is flat and not vegetated or only partially vegetated, it is a "beach."
- (3) The upper boundary of a bank is the first observable break in the slope of the mean annual flood level or the mean annual flood level, whichever is higher. The lower boundary of a bank is the mean annual low flow level.

*B. Presumption of significance; findings.*

- (1) The Conservation Commission shall presume that protection of a bank is significant to the Bylaw wetland values specified in §1B .
- (2) A bank is likely to be significant to wildlife, wildlife habitat, public or private water supply, to groundwater supply, to flood control, to storm damage prevention, to the prevention of pollution, and to the protection of fisheries. Where a bank is composed of concrete, asphalt, or other artificial impervious material, said bank is likely to be significant to flood control and storm damage prevention.
- (3) A bank is an area where groundwater discharges to the surface and where, under some circumstances, surface water recharges the groundwater.
- (4) Where a bank is partially or totally vegetated, the vegetation serves to maintain the stability of the bank, which in turn protects water quality by reducing erosion and siltation.
- (5) A bank may also provide shade that moderates water temperatures, as well as providing breeding habitat and escape cover and food, all of which are significant to the protection of fisheries. A bank that drops off quickly or overhangs the water's edge often contains numerous undercuts that are favorite hiding spots for important game species.

- (6) A bank acts to confine floodwater during the most frequent storms, preventing the spread of water to adjacent land. Because a bank confines water during such storms to an established channel it maintains water temperatures and depths necessary for the protection of fisheries. The maintenance of cool water temperatures during warm weather is critical to the survival of many species. An alteration of a bank that permits water to frequently and consistently spread over a larger and shallower area increases the amount of property that is routinely flooded, as well as elevating water temperatures and reducing fish habitat within the main channel, particularly during warm weather.

C. Performance standards.

- (1) No activity or work, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of a bank, whether or not such lands are within or abut an estimated (rare species) habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage & Endangered Species Program, or Core Habitat or Critical Natural Landscape as designated on BioMap, or Core Habitat or Critical Natural Landscape as designated on BioMap, shall be allowed by the Commission. The Commission may grant a waiver of this performance standard as provided in §21.
- (2) Any activity which is allowed by the Commission on a bank through a waiver of the performance standard shall not impair the following:
  - (a) The physical stability of the bank;
  - (b) The water carrying capacity of the existing channel within the bank;
  - (c) Groundwater and surface water quality;
  - (d) The capacity of the bank to provide breeding habitat, escape cover, and food for fisheries.
- (3) Except as authorized by the Commission, no activity subject to regulation under the Bylaw or these regulations shall be permitted within a twenty-five foot (25') "no touch zone" between the inland bank and any proposed site disturbance. Nothing herein shall preclude the maintenance of an existing structure located within the "no touch zone."

The Commission may allow activities upon an express determination that the applicant has made a clear and convincing showing that the proposed work in the "no touch zone" will not adversely affect the ability of the inland bank to function to protect the wetland values.

- (4) No alterations under the Bylaw or these regulations shall be permitted within the twenty-five to fifty foot (25'-50') "no alteration zone" between any inland bank and any proposed site disturbance. The Commission may allow activities upon an express determination that the applicant has made a clear and convincing showing that the proposed work in the "no alteration zone" will not adversely affect the ability of the inland bank to function to protect the wetland values. Where it has been determined by the Commission that alteration of a resource area is unavoidable, the Commission shall require full mitigation by the applicant.

## **§16 VEGETATED WETLANDS (WET MEADOWS, MARSHES, SWAMPS, BOGS).**

A. Definition, critical characteristics, boundary.

- (1) Vegetated wetlands ("freshwater wetlands" as provided in the Bylaw are areas where the topography is low and flat and where the soils are annually saturated. Vegetated wetlands may be bordering on surface water bodies or other Bylaw resource areas or they may be isolated.

Vegetated wetlands may be of any size.

- (2) The types of vegetated wetlands include but are not limited to wet meadows, marshes, swamps, and bogs. The ground and surface water regime and the vegetative community that occur in wet meadows, marshes, swamps, and bogs are specified in the Wetlands Protection Act, MGL c. 131, §40, sixth paragraph (bogs), ninth paragraph (swamps), tenth paragraph (wet meadows), eleventh paragraph (marshes).
- (3) Vegetated Wetlands also include areas where groundwater, flowing or standing surface water, or ice provides a significant part of the supporting substrate for a plant community for at least five months of the year, such as a seep, and areas of emergent and submerged plant communities in inland waters.
- (4) The boundaries of a vegetated wetland are the line within which 50% or more of the vegetative community consists of wetland species identified in the Wetlands Protection Act as referenced in the aforesaid Subsection A(2). Alternatively, if the vegetative community has been disturbed, then the boundaries may be determined in accordance with the standards of Subsection A(5) below.
- (5) The boundary of a vegetated wetland that has been disturbed (e.g., by cutting, filling, or cultivation), the boundary is the line within which there are indicators of saturated or inundated conditions sufficient to support a predominance of wetland indicator plants, a predominance of wetland indicator plants, or credible evidence from a competent source that the area supported or would support under undisturbed conditions a predominance of wetland indicator plants before the disturbance.

**B. Presumption of significance; findings.**

- (1) The physical characteristics of vegetated wetlands, as described in the aforesaid Subsection A, are critical to the protection of the Bylaw wetland values and these characteristics are more specifically described in Subsection B(2) below. The Conservation Commission shall presume that protection of a vegetated wetland, whether bordering or isolated, is significant to the Bylaw wetland values specified in §1B. This presumption of significance may be rebutted upon a showing by clear and convincing evidence that the vegetated wetland does not play a role in the protection of the Bylaw wetland values.
  - (a) Where the Conservation Commission determines that the presumption of significance of the vegetated wetland to one or more, but not all, Bylaw wetland values has been overcome, the Commission shall make a written determination to this effect, setting forth its grounds as part of its findings in the permit for work or denial of the permit for work.
  - (b) Where the Conservation Commission determines that the presumption of significance of the vegetated wetland to all Bylaw wetland values has been overcome, the Commission shall make a written determination to this effect, setting forth its grounds in a determination of nonsignificance.
- (2) Vegetated wetlands are likely to be significant to wildlife, public or private water supply, to groundwater supply, to flood control, to storm damage prevention, to prevention of pollution, to the protection of fisheries, and to the protection of shellfish.
- (3) The plant communities, soils, and associated low, flat topography of vegetated wetlands remove or detain sediments, nutrients (such as nitrogen and phosphorus), and toxic substances (such as heavy metal compounds) that occur in run-off and flood waters. Some nutrients and toxic substances are detained for years in plant root systems or in the soils. Others are held by plants during the growing season and released as the plants decay in the fall and winter. This latter phenomenon delays the impacts of nutrients and toxins until the cold weather period, when such impacts are less likely to reduce water quality.
- (4) Vegetated wetlands are areas where groundwater discharges to the surface and where, under some circumstances, surface water discharges to the groundwater, thus protecting

groundwater quality and quantity and maintaining the flow of streams during dry seasons.

- (5) The profusion of vegetation and the low, flat topography of a vegetated wetland slow down and reduce the passage of flood waters during periods of peak flow by providing temporary flood water storage and by facilitating water removal through evaporation and transpiration. This reduces downstream flood crests and resulting damage to private and public property. During dry periods the water retained in a vegetated wetland is essential to the maintenance of base flow levels in rivers and streams, which base flow, in turn, is important to the protection of water quality and water supplies.
- (6) Wetlands vegetation provides shade that moderates water temperatures important to fish life. Vegetated wetlands flooded by adjacent water bodies and waterways provides flood, breeding habitat, and cover for fish. Fish populations in the larval stage are particularly dependent upon food provided by overbank flooding which occurs during peak flow periods (extreme storms), because most river and stream channels do not provide quantities of the microscopic plant and animal life required.
- (7) Wetlands vegetation supports a wide variety of insects, reptiles, amphibians, mammals, and birds that are a source of food for important game fish. Bluegills (*Lepomis macrochirus*), pumpkinseeds (*Lepomis gibbosus*), yellow perch (*Perca flavescens*), rock bass (*Ambloplites rupestris*), and all trout species feed upon nonaquatic insects. Largemouth bass (*Micropterus salmoides*), chain pickerel (*Esox niger*), and northern pike (*Esox Lucius*) feed upon small mammals, snakes, nonaquatic insects, birds, and amphibians. Vegetated wetlands are also important to the protection of rare and endangered wildlife species.
- (8) Vegetated wetlands, together with land within 100 feet of a vegetated wetland (the buffer zone) serve to moderate and alleviate thermal shock and pollution resulting from runoff from impervious surfaces, which may be detrimental to wildlife, fisheries, and shellfish downstream of the vegetated wetland.
- (9) The buffer zone to a vegetated wetland is likely to be significant to the protection and maintenance of the vegetated wetland and, therefore, to the protection of the Bylaw wetland values that the vegetated wetland serves to protect. Said one-hundred-foot buffer zone is regulated under §19.

C. Performance standards.

- (1) No activity or work, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of a vegetated wetland, or land within 50 feet of any vegetated wetland (the fifty-foot inner buffer zone), whether or not such lands are within or abut an estimated (rare species) habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage & Endangered Species Program, or Core Habitat or Critical Natural Landscape as designated on BioMap, shall be permitted by the Conservation Commission.
- (2) The Commission may allow activities upon an express determination that the applicant has made a clear and convincing showing that the proposed work in the “25 foot no touch zone” or the “25 – 50 foot no alteration zone” will not adversely affect the ability of the vegetated wetlands to function to protect the wetland values.

**§17 LANDS UNDER WATER BODIES AND WATERWAYS (UNDER ANY RESERVOIR, LAKE, POND, RIVER, OR STREAM).**

A. Definition, critical characteristics, boundary.

- (1) Land under water bodies and waterways is the land beneath any reservoir, lake, pond, river, or

stream (creek). Said land may be composed of organic muck or peat, fine sediments, rocks, or bedrock.

- (2) The boundary of land under water bodies and waterways is the mean low water level.

B. Presumption of significance; findings.

- (1) The Conservation Commission shall presume that protection of land under water bodies and waterways is significant to the Bylaw wetland values specified in §1.B .
- (2) Land under water bodies and waterways is likely to be significant to wildlife, wildlife habitat, public and private water supply, to groundwater supply, to flood control, to storm damage prevention, to prevention of pollution, and to the protection of fisheries.
- (3) Where land under water bodies and waterways is composed of pervious material, such land represents a point of exchange between surface and groundwater.
- (4) The physical nature of land under water bodies and waterways is highly variable, ranging from deep organic and fine sedimentary deposits to rocks and bedrock. The organic soils and sediments play an important role in the process of detaining and removing dissolved and particulate nutrients (such as nitrogen and phosphorus) from the surface water above. The organic soils and sediments also serve as traps for toxic substances (such as heavy metal compounds).
- (5) Land under water bodies and waterways, in conjunction with a bank, serves to confine flood water within a definite channel during the most frequent storms. Filling within this channel blocks flows which in turn causes backwater and overbank flooding during such storms. An alteration of land under water bodies and waterways that causes water to frequently spread out over a larger area at a lower depth increases the amount of property that is routinely flooded. In addition, such an alteration results in an elevation of water temperature and a decrease in habitat in the main channel, both of which are detrimental to fisheries, particularly during periods of warm weather and low flows.
- (6) Land under rivers, streams, and creeks that is composed of gravel allows the circulation of cold, well-oxygenated water necessary for the survival of important game fish species. River, stream, and creek bottoms with a diverse structure composed of gravel, large and small boulders, and rock outcrops provide escape cover and resting areas for game fish species. Such bottom type also provides areas for the production of aquatic insects essential to fisheries.
- (7) Land under ponds and lakes is vital to a large assortment of warm-water fish during spawning periods. Species such as largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieu*), bluegills (*Lepomis macrochirus*), pumpkinseeds (*Lepomis gibbosus*), black crappie (*Pomoxis nigromaculatus*), and rock bass (*Ambloplites rupestris*) build nests on the lake and bottom substrates within which they shed and fertilize their eggs.
- (8) Land within 100 feet of land under water bodies and waterways is likely to be significant to the protection and maintenance of the land under water bodies and waterways and, therefore, to the protection of the Bylaw wetland values that this Bylaw resource area serves to protect. Said hundred-foot buffer zone is regulated under §19.

C. Performance standards.

- (1) No activity or work, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of land under water bodies and waterways, or land within 50 feet of any land under water bodies and waterways (the fifty-foot inner buffer zone”), whether or not such lands are within or abut an estimated (rare species) habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage & Endangered Species Program, or Core Habitat or Critical Natural Landscape as designated on BioMap, shall be permitted by the Conservation Commission.



- (2) The Commission may allow activities upon an express determination that the applicant has made a clear and convincing showing that the proposed work in the “25 foot no touch zone” or in the “25 – 50 foot no alteration zone” will not adversely affect the ability of the land under water bodies and waterways to function to protect the wetland values.

## **§18 LANDS SUBJECT TO FLOODING (BOTH BORDERING AND ISOLATED).**

### **A. Definition, critical characteristics, boundary.**

#### **(1) Bordering land subject to flooding.**

- (a) Bordering land subject to flooding is an area with low, flat topography adjacent to and inundated by flood waters rising from rivers, streams (creeks), reservoirs, lakes, or ponds. Bordering land subject to flooding extends from the banks of these waterways and water bodies; where a bordering vegetated wetland is present, bordering land subject to flooding extends from said vegetated wetland.
- (b) The boundary of bordering land subject to flooding is the estimated maximum lateral extent of flood water that will theoretically result from the statistical one-hundred-year frequency storm.
  - [1] Said boundary shall be that determined by reference to the most recently available flood profile data prepared for the community within which the work is proposed under the National Flood Insurance Program (NFIP, currently administered by the Federal Emergency Management Agency, successor to the U.S. Department of Housing and Urban Development). The Conservation Commission shall presume this boundary accurate. This presumption may be overcome only by credible evidence from a registered professional engineer or other professional competent in such matters.
  - [2] Where NFIP profile data are unavailable, the boundary of bordering land subject to flooding shall be the maximum lateral extent of flood water that has been observed or recorded by a person competent in such matters.

#### **(2) Isolated land subject to flooding.**

- (a) Isolated land subject to flooding is an isolated depression or closed basin without an inlet or an outlet. It is an area that at least once a year confines standing water of any volume. Isolated land subject to flooding may be underlain by pervious material, which, in turn, may be covered by a mat of peat or muck.
- (b) The boundary of isolated land subject to flooding is the perimeter of the largest observed or recorded volume of water confined in said area or as such is evidenced by the physical characteristics of the basin.

### **B. Presumption of significance; findings. The Conservation Commission shall presume that protection of land subject to flooding, both bordering and isolated, is significant to the Bylaw wetland values specified in §1B.**

#### **(1) Bordering land subject to flooding.**

- (a) Bordering land subject to flooding is an area that floods from a rise in a bordering waterway or water body. The topography and location of bordering land subject to flooding are critical to the protection of the Bylaw wetland values of flood control and storm damage prevention.
- (b) Bordering land subject to flooding provides a temporary storage area for flood waters that have overtopped the bank of the main channel of a river or stream (creek) or the basin of a reservoir, lake or pond. During periods of peak run-off, flood waters are both retained (i.e.,

slowly released through evaporation and percolation) and detained (slowly released through surface discharge) by bordering land subject to flooding. Over time, incremental filling of these Bylaw resource 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.

(2) Isolated land subject to flooding.

- (a) Isolated land subject to flooding is an isolated depression or a closed basin that serves as a ponding area for surface water run-off or high groundwater that has risen above the ground surface. Such areas are likely to be locally significant to flood control and storm damage prevention.
- (b) Isolated land subject to flooding provides a temporary storage area where run-off and high groundwater pond and slowly evaporate or percolate into the substrate. Filling causes lateral displacement of the ponded water onto contiguous properties, which may result in damage to said properties.
- (c) Where isolated land subject to flooding is underlain by pervious material it is likely to be significant to public or private water supply and to groundwater supply. In such a situation, isolated land subject to flooding provides a point of exchange between ground and surface waters.
- (d) Where isolated land subject to flooding is underlain by pervious material covered by a mat of organic peat and muck, it is also likely to be significant to the prevention of pollution. Contaminants introduced into the soil, such as septic system discharges and road salts, find easy access into the groundwater and neighboring wells. Where these conditions occur and a mat of organic peat or muck covers the substrate of the isolated land subject to flooding, said mat serves to detain and remove contaminants, which might otherwise enter the groundwater and neighboring wells.
- (e) Isolated land subject to flooding provides important breeding habitat for amphibians and some rare plants.

C. Performance standards for bordering and isolated land subject to flooding.

- (1) No activity or work, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of land subject to flooding, or land within 50 feet of any land subject to flooding (the fifty-foot inner buffer zone), whether or not such lands are within or abut an estimated (rare species) habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage & Endangered Species Program, or Core Habitat or Critical Natural Landscape as designated on BioMap, shall be permitted by the Conservation Commission. The Commission may grant a waiver of this performance standard as provided in §21.
- (2) The Commission may allow activities upon an express determination that the applicant has made a clear and convincing showing that the proposed work in the “25 foot no touch zone” or the “25 – 50 foot no alteration zone” will not adversely affect the ability of the land subject to flooding to function to protect the wetland values.

## **§19 BUFFER ZONES (ONE-HUNDRED-FOOT).**

A. Definition, critical characteristics, boundary.

- (1) A buffer zone is land extending 100 feet horizontally outward from the boundary of the following Bylaw resource areas: vernal pools; reservoirs, lakes, and ponds; intermittent streams; banks; vegetated wetlands, whether bordering or isolated; lands under water bodies; and lands subject to flooding, both bordering and isolated.

- (2) Within the one-hundred-foot Buffer Zone is a twenty-five-foot-wide area adjacent to the Bylaw Resource Area known as a No Touch Zone. Directly adjacent to the No Touch Zone is a second twenty-five-foot-wide area known as the No Alteration Zone. Together the No Touch Zone and No Alteration Zone comprise the Inner fifty-foot Buffer Zone.
- (3) A Buffer Zone is an upland area adjacent to the wetland Bylaw resource areas listed in §19.A(1) that can, through various physical, chemical, or biological processes, reduce impacts to these wetlands from adjacent land uses. Buffer Zones also provide some of the terrestrial habitats necessary for wetland-dependent species that require both aquatic and terrestrial habitats. Massachusetts is experiencing increased incidence of heavy precipitation events and increased incidence of drought because of climate change as noted on the Massachusetts Energy and Environmental Affairs website as well as in the Plympton Municipal Vulnerability Program (MVP) Plan. Changing weather patterns increase the need for additional flood storage capacity and the water provisioning ecosystem provided by wetlands and adjacent Buffer Zones and Riverfront Areas. Backup flood storage capacity contributes to water quality protection by preventing flood waters from picking up pollutants in developed areas, recharges the groundwater for public and private drinking water supplies, and supports aquatic organisms that rely on seasonal cues and water level fluctuations for reproduction.

**B. Presumption of significance; findings.**

- (1) The Conservation Commission shall presume that the protection of the Buffer Zone is significant to the Bylaw wetland values specified in §1B. In reviewing activities within the Buffer Zone, the Commission shall presume the Buffer Zone is important to the protection of adjacent wetland resource areas because activities undertaken in close proximity have a high likelihood of adverse impact, either immediately, as a consequence of construction, or over time, as a consequence of the daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, loss of wildlife habitat, and other Cumulative Effects on Wetland Values.
- (2) A buffer zone is highly likely to be significant to the Bylaw wetland values listed in §1B, and in protecting these Bylaw wetland values in many ways, including but not limited to:
  - (a) Moderating water temperature by providing shade and cover through the riparian vegetation growing within the buffer zone. Cutting of vegetation in, or adjacent to, the buffer zone can result in increased sunlight, wind, and changes in habitat.
  - (b) Filtering sediments, pollutants, and other contaminants (e.g., pesticides and heavy metals) from surface flow.
  - (c) Preventing erosion in buffer zones and precluding development that could lead to increased contaminant loading.
  - (d) Reducing nutrient inputs into streams and groundwater by (i) filtering from surface flow the nutrient bound to sediments; (ii) removing nutrients from groundwater through uptake in vegetation and by de-nitrification, and (iii) precluding development that could increase nutrient loading, for example, septic systems, fertilized lawns, and landscaping.
  - (e) Maintaining stream flow by storing water, thus helping maintain the base flow and water quality during low-flow periods.
  - (f) Providing one of the richest habitat zones for aquatic organisms, mammals, birds, and amphibians in the vegetated uplands adjacent to vegetated wetlands. Uplands adjacent to a wetland resource area provide essential life-supporting habitat, or core habitat, for many semi-aquatic and terrestrial species. The combination of aquatic and terrestrial habitats is essential for a suite of species that would be absent from either habitat alone, and are known as water-dependent species. Amphibians, reptiles, birds, and mammals regularly use adjacent uplands for core habitat functions such as nesting, feeding, over-wintering, and reproducing.

- (g) Providing corridors critical for wildlife movement and increasing landscape connectivity. Many wildlife species rely on multiple wetland ecosystems in the landscape to survive and forage for food.
  - (h) Limiting damage from flooding by absorbing water during flooding and extreme weather events, and by reducing the energy associated with the high water flow.
  - (i) Protecting groundwater quantity and quality for public and private drinking water supply.
  - (j) Screening the wetland resource area from human disturbance such as noise or artificial light.
  - (k) Protecting the wetland values in a Buffer Zone can aid climate adaptation and resiliency in a number of ways that include, but are not limited to, the following: providing shade to protect the resource area microclimates and temperature or humidity gradients in the landscape; increasing landscape connectivity; supporting biodiversity; reducing other stressors such as nutrient enrichment or introduction of invasive species; providing additional flood storage capacity and upgradient land for wetland migration under flood or heavy precipitation conditions.
- (3) The closer a proposed activity is to the wetland resource area, the greater the potential impact to the wetland values during construction and over the operation of the activity. A Buffer Zone left in a naturally vegetated condition is a living filter that serves as a protective barrier between the wetland resource area and human activity. Buffers of less than 50 feet are more susceptible to degradation by human disturbance based on scientific literature. But width is not the sole factor to consider. Other factors that could adjust the width of a buffer needed to provide adequate protection include slope, soil type, vegetative structure and variety, level of existing disturbance, the sensitivity of the adjacent wetland resource area, and the extent of the proposed construction and post-construction activity. Potential impacts can be either direct- such as generation of pollutants, loss of native vegetation, or barriers to wildlife movement - or indirect - such as excess nutrients from water runoff, reduction in tree shading and water absorption, changes in leaf litter, woody debris, and organic matter, and increase in artificial light and noise.

#### C. Performance standards.

- (1) Except as authorized by the Commission, no activity subject to regulation under the Bylaw or these regulations shall be permitted within the Inner fifty-foot buffer zone. Nothing herein shall preclude the maintenance of an existing structure located within the No Touch Zone or No Alteration Zone.
- (2) Inner fifty-foot buffer zone for undisturbed lands.
  - (a) Undisturbed land is land determined by the Conservation Commission to be of a predominantly natural character or to have been altered after May 14, 2008, without a permit for work from the Commission or an Order of Conditions under the Wetlands Protection Act.
  - (b) No alterations are permitted within the inner 50-foot buffer zone, whether or not such lands are within or abut an estimated (rare species) habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage & Endangered Species Program, or Core Habitat or Critical Natural Landscape as designated on BioMap.
  - (c) Prohibited alterations include, but are not limited to, grading, landscaping, clearing or cutting of vegetation, filling excavating, and construction of roads or structures.
  - (d) The Commission may grant a waiver of this performance standard as provided in §21.
- (3) Inner fifty-foot buffer zone for disturbed lands.
  - (a) Disturbed land is land determined by the Conservation Commission to be of a legally

modified nature that was altered before May 14, 2008, or after that date with a permit for work from the Commission or an Order of Conditions under the Wetlands Protection Act. The Commission shall presume an existing cartpath does not qualify as disturbed land because it would need to be modified to meet current driveway standards.

- (b) The Conservation Commission shall not permit any alteration resulting in a net increase in impervious surface area, a net increase in the areal extent of fill, a net increase in non-native or invasive species, a net increase in stormwater runoff, a net increase in lawn area, or net decrease in vegetative cover within the inner 50-foot buffer zone, whether or not such lands are within or abut an estimated (rare species) habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage & Endangered Species Program, or Core Habitat or Critical Natural Landscape as designated on BioMap.
  - (c) No structures shall be constructed or placed on pervious surfaces and no driveways, roadways, fences, walls, and facilities for stormwater management may be allowed within the inner 50-foot buffer zone without compensatory restoration and mitigation.
  - (d) No components of a new septic system shall be constructed within the previously disturbed inner fifty-foot buffer zone to a BVW or a bank. Components shall include but are not limited to: connecting pipes, holding tanks, distribution boxes, and subsurface soil absorption systems.
  - (e) The Commission may allow limited activities within the Inner fifty-foot buffer zone on disturbed lands, which meets the standards of (a) through (d) above, upon an express determination that the applicant has submitted clear and convincing evidence that the proposed work in the Inner fifty-foot Buffer Zone will not adversely affect the ability of the buffer zone to function to protect the wetland values. The Commission may require a waiver request as provided in §21 if in its judgments the project can not be constructed in full compliance with the regulations.
- (4) Outer fifty-foot buffer zone. Activities within fifty- to one-hundred feet (50'-100') from a wetland resource area shall not adversely affect the form or function of the adjacent Bylaw resource area or the inner fifty-foot buffer zone. The Commission shall consider a multiple-zone approach when reviewing proposed work. The No Touch Zone and No Alteration Zone of the Inner fifty feet of the buffer zone shall be followed by an area where limited work and no impervious cover may be allowed. Any impervious structures shall be located as far from the wetland resource area as practicable, which shall be based on a review of alternative designs and locations and mitigation measures, and may require submission of a baseline report described in §19.C(5).
- (5) Baseline Report. The Commission may require the applicant to submit a baseline report, prepared by a qualified professional environmental scientist in order to determine the adequate width of a naturally vegetated buffer needed to protect the wetland values given the existing conditions of the project site and the proposed activity. Measurable metrics will be used to define the adequate width of the buffer beyond the Inner fifty-foot buffer zone. The baseline report shall describe the physical and biological conditions, outlined below, as well as an alternative analysis and any mitigation necessary to reduce the impact. The following factors of the project site, at a minimum, shall be described in both narrative and plan view.
- (a) vegetative structure and variety - identify the existing vegetation in terms of cover type, density, height (ground cover, mid-story, or canopy), and variety of type and age classes. Note any invasive species and their areal coverage. elevation change - identify the percent slope within the buffer zone between the wetland resource area and proposed limit of work, using a series of transects if the slope varies across the project site. If the slope is less than five percent, the No Alteration Zone shall be sufficient to remove pollutants. Slopes five percent or greater shall increase the width of the buffer zone by a multiplier of 1.3. Slopes fourteen percent or greater shall increase the width of the buffer zone by a

multiplier of 1.4.

- (b) soil structure - identify the type of soils found within the project site. When permeable, moderately coarse soils, such as glacial outwash, are present, the Inner fifty-foot BufferZone may be sufficient to filter pollutants. The width of the naturally vegetated buffer zone should be increased to protect water quality where soils have a low filtration rate (such as having high content of clay or are compacted glacial till), or a high filtration rate (such as sandy or coarse textured soils).
  - (c) location - identify the project site in the context to the surrounding area by locating the land uses on and abutting the project site, including potential pollution sources. Locate mapped resources areas, including the adjacent bylaw resource areas, flood zone, core habitat and critical landscape types identified in the BioMap, estimated or priority habitat mapped by the Natural Heritage and Endangered Species Program, and the location within the Groundwater Overlay District (Type 1, Type II, or Type III as referenced in Plympton Zoning Code s. 300-8.3). The landscape context may trigger the need for a wildlife habitat study as identified in §19.C(6).
  - (d) proposed activity - describe the proposed construction stages and anticipated long-term operation. Provide an alternative analysis and any mitigation necessary to reduce the potential impact on the wetland values listed in §19.B.
- (6) Wildlife Habitat Study. The Commission may require a wildlife habitat study of the project site, to be paid for by the applicant, whenever it deems appropriate, regardless of the type of bylaw resource area or the amount or type of alteration proposed. The Commission shall base its decision on its estimation of the importance of the habitat area, considering, but not limited to, such factors as proximity to other areas suitable for wildlife, importance of wildlife corridors in the area, and when the project site is located in or abuts estimated or priority habitat as mapped by the Natural Heritage and Endangered Species Program, or in or abuts Core Habitat or Critical Natural Landscapes as designated in BioMap. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the state wetland protection regulations at 310 CMR 10.60.
- (7) Vernal pool buffer zone. The Conservation Commission shall not permit any alteration within the entire one-hundred-foot buffer zone of a vernal pool, whether or not such lands are within or abut an estimated (rare species) habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage & Endangered Species Program, or Core Habitat or Critical Natural Landscape as designated on BioMap, unless the Commission grants a waiver under the provisions of **§21**. The Commission may require a wildlife habitat study for any vernal pool waiver request. If the waiver is granted, such waiver shall have the same conditions and performance standards as the inner fifty-foot zone for undisturbed lands, as identified above.
- (8) Intermittent stream buffer zone. An adequate width of the buffer zone varies based on the type of intermittent stream as identified below. The Commission may grant a waiver of this performance standard as provided in §21.
- (a) In the Buffer Zone for a Type 1 intermittent stream, no activity, other than the maintenance of an already existing structure, that will result in the building within or upon, or removing, filling, dredging, or altering of the Type I intermittent stream or within 75 feet of said intermittent stream within the buffer zone shall be permitted by the Conservation Commission.
  - (b) For the buffer zone for a Type II intermittent stream, no activity, other than the maintenance of an already existing structure, that will result in the building within or upon, or removing, filling, dredging, or altering of said intermittent stream or within 50 feet of the Type II intermittent stream within the buffer zone shall be permitted by the Conservation Commission.
  - (c) For the buffer zone for a Type III intermittent stream, no activity, other than the

maintenance of an already existing structure, that will result in the building within or upon, or removing, filling, dredging, or altering of the Type III intermittent stream or within 25 feet of the intermittent stream within the buffer zone shall be permitted by the Conservation Commission.

- (d) For the buffer zone for a Type IV intermittent stream, the Conservation Commission may allow the alteration of the intermittent stream but not the minimization of any of its functions to protect the wetland values of the Bylaw and these regulations and may allow the alteration of the associated buffer zone; provided, however, the Commission shall require filter strips of indigenous vegetation sufficient in width, based on slope and terrain factors, to prevent soil erosion and sedimentation of surface water without the need for man-made barriers. .
- (9) For proposed activity and work within the buffer zone of an intermittent stream that is allowed under the aforesaid Subsection C(8), the activity or work shall comply with the following performance standards:
  - (a) Other Bylaw resource areas. The work must meet the performance standards for all other resource areas subject to protection under the Bylaw that are located within the riverfront area, including the one-hundred-foot buffer zone.
  - (b) Where the proposed project is a redevelopment of a previously altered buffer zone to an intermittent stream, then the criteria found in 310 CMR 10.58(8) apply with the exception that no new structure may be placed on a pervious surface within the first 50 feet of the buffer zone to an intermittent stream Type I or Type II.
- (10) Stormwater from any new residential or commercial construction shall be managed according to the standards established by the Massachusetts Department of Environmental Protection.

## **§20 RIVERFRONT AREAS.**

### **A. Definition, critical characteristics, boundary.**

- (1) A riverfront area is the area of land between a river's (perennial stream) annual highwater line and a parallel line located 200 feet away, measured horizontally outward from the stream's mean annual highwater line. The riverfront area may include or overlap other areas subject to protection under the Bylaw, including the one-hundred-foot buffer zone.
- (2) Where a river (perennial stream) flows through a lake or pond, the riverfront area continues and the inner boundary of the riverfront area is measured from the bank of the reservoir, lake, or pond.

### **B. Presumption of significance; findings.**

- (1) The Conservation Commission shall presume that protection of the riverfront area is significant to the Bylaw wetland values specified in §1B.
- (2) A riverfront area is likely to be significant to protect the private or public water supply, to protect groundwater, to provide flood control, to prevent storm damage, to prevent pollution, to protect land containing shellfish, to protect wildlife habitat, and to protect the fisheries.
- (3) A riverfront area is critical to maintaining thriving fisheries. In that regard, maintaining vegetation along rivers promotes fish cover, increases food and oxygen availability, decreases sedimentation, and provides spawning habitat. Maintenance of water temperatures and depths is critical to many important fish species.
- (4) The riverfront area adjacent to perennial streams can protect the natural integrity of these water bodies. The presence of natural vegetation within such riverfront areas is critical to sustaining rivers as ecosystems and providing benefits to public health and welfare. The riverfront area can prevent degradation of water quality by filtering sediments, toxic substances (such as heavy

metals), and nutrients (such as phosphorus and nitrogen) from stormwater, nonpoint pollution sources, and the river itself. Sediments are trapped by vegetation before reaching the river or stream. Nutrients and toxic substances may be detained in plant root systems or broken down by soil bacteria. Riverfront areas can trap and remove disease-causing bacteria that otherwise would reach rivers and coastal estuaries where they can contaminate shellfish beds and prohibit safe human consumption of such shellfish and other aquatic animals and plants. Natural vegetation within the riverfront area also maintains water quality for fish and wildlife.

- (5) Where a river or stream serves as a water supply or provides induced recharge to wells, the riverfront area can be important to the maintenance of drinking water quality and quantity. Land along rivers in its natural state with a high infiltration capacity increases the yield of water supply wells. When a riverfront area lacks the capacity to filter pollutants, contaminants can reach human populations served by wells near rivers or by direct river intakes. The capacity of a riverfront area to filter pollutants is equally critical to surface water supplies, reducing or eliminating the need for additional treatment. In the watershed, mature vegetation within a riverfront area provides shade to moderate water temperatures and slow algal growth, which can produce odors and taste problems in drinking water.
- (6) By providing recharge and retaining natural flood storage, as well as by slowing surface water runoff, a riverfront area can mitigate flooding and damage from storms. The root systems of riverfront vegetation keep soil porous, increasing the infiltration capacity of the soil. Vegetation also removes excess water through evaporation and transpiration. This removal of water from the soil allows for more infiltration when flooding occurs. Increases in storage of flood waters can decrease peak discharges and reduce storm damage. A vegetated riverfront area also dissipates the energy of storm flows, reducing damage to public and private property.

#### C. Performance standards.

- (1) Performance standards for riverfront area of a river (perennial stream). No activity or work, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of riverfront area, whether or not such lands are within or abut an estimated (rare species) habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage & Endangered Species Program, or Core Habitat or Critical Natural Landscape as designated on BioMap, shall be permitted by the Conservation Commission. The Commission may grant a waiver of this performance standard as provided in §21.
- (2) Discretionary exception allowing alteration of the Riverfront Area of a river (perennial stream) up to ten percent for a protected lot. The Commission may, in unusual circumstances, allow, as a consideration and not as a right, the alteration of up to ten percent (10%) of the Riverfront Area within the lot, on a lot recorded on or before July 18, 2019, or up to ten percent (10%) of the Riverfront Area within a lot recorded after July 18, 2019, provided that:
  - (a) At a minimum, a one-hundred-fifty foot (150') wide area of undisturbed vegetation is provided. This area shall extend from the mean annual high water along the river unless another location would better protect the values identified in the Bylaw and regulations.
    - [1] If there is not a one-hundred-fifty-foot wide area of undisturbed vegetation within the Riverfront Area, existing vegetative cover shall be preserved or extended to the maximum extent feasible to approximate a one-hundred-fifty-foot wide corridor of natural vegetation.
    - [2] Replication and compensatory storage required to meet other Bylaw resource areas performance standards are allowed within this area. Structural stormwater management measures may be allowed only when there is no practicable alternative.
    - [3] Temporary impacts where necessary for the installation of linear site related utilities are allowed, provided that area is restored to its natural condition.
  - (b) Stormwater is managed according to standards established by the Massachusetts



- Department of Environmental Protection.
- (c) The proposed work does not impair the capacity of the Riverfront Area to provide important wildlife habitat functions. The Commission may require a wildlife habitat study as described in §19.C(6).
  - (d) The proposed work shall not impair groundwater or surface water quality by incorporating erosion and sedimentation controls and other measures to attenuate nonpoint source pollution.
  - (e) The calculation of square footage of alteration shall exclude areas of replication or compensatory flood storage required to meet performance standards for other resource areas, or any area of restoration within the Riverfront Area. The calculation also shall exclude areas used for structural stormwater provided there is no practicable alternative to locating these structures within the Riverfront Area and provided that a wildlife corridor is maintained (e.g, detention basins shall not be fenced.)
- (3) For proposed activity and work within the riverfront area of a river (perennial stream) that is allowed under the aforesaid Subsection C(1) and (2), the activity or work shall comply with the following performance standards:
- (a) Other Bylaw resource areas. The work must meet the performance standards for all other resource areas subject to protection under the Bylaw that are located within the riverfront area, including the one-hundred-foot buffer zone.
  - (b) Alternative analysis. Unless a redevelopment project under Subsection C(4) below, the applicant must show, by a preponderance of the credible evidence, that there is no practicable and substantially equivalent economic alternative to the proposed project with less adverse effects on the Bylaw wetland values.
    - [1] The Conservation Commission shall regard as practicable an alternative that is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purposes, logistics, existing technology, costs of the alternatives, and overall project cost. See Plympton Municipal Bylaw, Chapter 290-6 (previously Article XXVIII-VI).
    - [2] The scope of alternatives and the evaluation of alternatives are defined in 310 CMR 10.58(5)
    - [3] Notwithstanding this required alternatives analysis, the applicant must still meet the criteria for determining no significant or cumulative effect upon the Bylaw wetland values as specified in the aforesaid Subsection C(1).
- (4) Single-family house discretionary exception. The Conservation Commission may allow the construction of a single-family house, a septic system if no sewer is available, and a driveway, on a lot recorded before July 18, 2019, where the size or shape of the lot within the riverfront area prevents the construction from meeting the requirements, provided that: (a) the lot can be developed for such purposes under the applicable provisions of other municipal and state law; (b) the performance standards are met to the maximum extent feasible; and (c) the Commission is not otherwise prohibited from allowing such under another provision of Chapter 290 (previously Article XXVIII) . In difficult situations, the maximum extent of yard around houses should be limited to the area necessary for construction. Except where the lot contains vernal pool habitat or specified habitat sites of rare species, a wildlife habitat evaluation study shall not be required.
- (5) Performance standards for redevelopment. Where the proposed project is a redevelopment of a previously altered riverfront area, then the criteria found in Mass. Regs. Code tit. 310, §10.58(5), apply in lieu of the alternatives analysis performance standard stated in the aforesaid Subsection C(2)(c) with the exception that no new structure may be placed on a pervious surface within the first 50 feet of the Riverfront Area.

## **ARTICLE III**

### **WAIVERS**

#### **§21 WAIVER FROM PERFORMANCE STANDARD.**

- A. General provisions. The Conservation Commission adopted performance standards for the resource areas protected under the Bylaw to ensure that the Bylaw wetland values, as listed in §1B, are adequately protected. However, the Commission recognizes that, in certain situations, a waiver of a specific performance standard for a Bylaw resource area may be appropriate for a particular project where there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with these regulations; that avoidance, minimization, and mitigation have been employed to the maximum extent feasible and that the waiver is necessary to accommodate an overriding public interest and when the waiver is consistent with the intent and purpose of the Bylaw and these regulations.

When a waiver is sought for a performance standard where the proposed activity is within Core Habitat or Critical Natural Landscape as designated on BioMap, the Commission must be extra diligent in reviewing the evidence provided by the applicant under the requirements of Section 21B.

- B. Burden of proof. The applicant shall have the burden of demonstrating, by clear and convincing evidence, that the granting of the waiver is consistent with the intent and purpose of the Bylaw and these regulations and, further, the applicant must show, by clear and convincing evidence, that:
- (1) There are no practicable conditions or alternatives that would allow the project to proceed in compliance with the Bylaw or these regulations; and
  - (2) The proposed work, including necessary and required mitigation measures, and its natural and consequential cumulative effects, will have no significant adverse effects upon any of the Bylaw wetland values; and
  - (3) That the project provides benefits in the public interest as defined by §4B.
- C. Process.
- (1) An applicant shall file a written request for a waiver with the application for permit for work or request for a determination of applicability with the Commission. The waiver request shall be made in letter form and shall be a separate writing from the application or request forms. At any time after filing the waiver request, but in no event less than five business days prior to the date of commencement of the public hearing at which the waiver request is to be considered, the applicant or representative shall submit to the Commission a brief in support of the waiver request. Such brief shall be submitted to the Conservation Commission office and include but not be limited to the following items:
    - (a) A brief statement of the relief sought;
    - (b) A description of all reasonably identifiable alternatives to the applicant's proposal that were considered by the applicant that would avoid or minimize the necessity of the requested relief, along with the reasons why such alternatives were deemed to be inadequate, unworkable, or inadvisable;

- (c) A statement of all efforts that will be undertaken to minimize impact upon the affected resource areas subject to protection under the Bylaw (Bylaw resource area) arising out of the work proposed;
  - (d) Detailed plans for proposed mitigation measures;
  - (e) Adequate engineering and expert evidence to permit the Conservation Commission to evaluate the basis for applicant's contentions in support of the waiver requested.
  - (f) Any and all relevant information that the applicant wishes the Conservation Commission to consider in deliberating the waiver request.
- D. Standards. The Commission shall only grant a waiver from a performance standard if the applicant has met the burden of proof as provided in the aforesaid Subsections B and C. The standards as set forth herein shall be the sole basis upon which the Conservation Commission may grant a waiver.
- (1) It shall be the responsibility of the applicant to provide the Conservation Commission with any and all information which the Commission may request orally or in writing, in order to enable the Commission to ascertain such adverse effects, and the failure of the applicant to furnish any information that has been so requested shall result in the denial of a request for a waiver.
  - (2) The Conservation Commission shall impose all necessary mitigation measures. Where replication is required, it shall be at least twice that of the altered Bylaw resource area and shall offer additional protection to the Bylaw wetlands values. The Commission may require perpetual restrictions on the property by way of a conservation restriction under the provisions of MGL c. 184, §§30 through 33, or deed restrictions as necessary mitigation.

**§22 STANDARDS APPLICABLE TO NATURAL HERITAGE ENDANGERED SPECIES PROGRAM MAPPED HABITAT.**

- A. The areas within the Town of Plympton that have been designated "Natural Heritage Endangered Species Program mapped habitat" are areas that have been identified as habitat for rare species. These areas are not only important to the protection of the listed species, but to protecting the biodiversity of Plympton's natural resources.
- B. Standard of review. As a result of such designation, it is incumbent upon the Conservation Commission to be even more diligent in its review of projects proposed within NHESP mapped habitat of threatened or endangered species. The highest standards of scrutiny as to the impact of any proposal are required.
  - (1) The Commission shall require the applicant to meet the burden of proof required for a waiver for each Bylaw resource area located within a Natural Heritage Endangered Species Program mapped habitat. Therefore, the applicant shall follow the process outlined in §3.
  - (2) The applicant shall provide clear and convincing evidence that any application of new pavement or other impervious materials within a one-hundred-foot area beyond the one-hundred-foot buffer zone to a vernal pool, bank, vegetated wetland, or land under water shall have no natural and consequential cumulative impacts on said resource area.
  - (3) Stormwater discharges within a Natural Heritage Endangered Species Program mapped habitat shall be removed and set back from the Area Subject to Protection under the Bylaw, and receive the highest and best practical method of treatment.

## ARTICLE IV

### FILING REQUIREMENTS

#### **§23 FILING FEES; CONSULTANT FEES.**

##### A. Filing fees.

##### (1) General provisions.

- (a) The Bylaw Section 290-4, authorizes the Conservation Commission to charge a filing fee for a request for a determination and an application for a permit for work and to set the amount of this fee by regulation. The schedule of filing fees is found below, payable at the time of application, and such fees are nonrefundable. The Commission does not consider an application or request received until the filing fee is paid.

Project	Fee
<b>1. Minor Project</b>	
a. Residential Site	\$150
b. Commercial/Industrial	\$300
<b>2. Single-family dwelling</b>	
a. Any activity within a <b>resource area</b> excluding the buffer zone	\$525 plus \$10.00/s.f.*
b. Any activity within the <b>inner buffer zone or riverfront area</b> within the 50 ft. <b>“no-touch zone”</b>	\$525 plus \$0.50/s.f.*
c. Any activity within the <b>outer buffer zone or riverfront area</b> between the 50 ft. "no-touch zone" and the outer edge (100 ft. or 200 ft. depending on the resource area)	\$525 plus \$0.25/s.f.*
<b>3. Subdivisions; roadway &amp; utilities</b>	
a. Work within a <b>resource area</b>	\$750 plus \$10.00/s.f.*
b. Work within an <b>inner buffer zone’s 50 ft. “no-touch zone”</b>	\$750 plus \$6.00/s.f.*
c. Work within an <b>outer buffer zone</b>	\$750 plus \$3.00/s.f.*
<b>4. Commercial and Industrial Projects, Multi-unit dwelling structures</b>	
a. Any activity resulting in new disturbance within a <b>resource area</b> excluding the buffer zone	\$900 plus \$10.00/s.f.*
b. Any activity within a previously lawfully altered <b>resource area</b> excluding the buffer zone	\$900 plus \$1.00/s.f.*
c. Any activity resulting in new disturbance within the <b>inner buffer zone or riverfront area</b> within the 50 ft. <b>“no-touch zone”</b>	\$900 plus \$5.00/s.f.*
d. Any activity within a previously lawfully altered <b>inner buffer zone or riverfront area</b> within the 50 ft. <b>“no-touch zone”</b>	\$900 plus \$0.50/s.f.*
e. Any activity resulting in new disturbance within the <b>outer buffer zone or riverfront area</b> between the 50 ft. "no-touch zone" and the outer edge (100 ft. or 200 ft. depending on the resource area)	\$900 plus \$0.50/s.f.*
f. Any activity within a previously lawfully altered <b>outer buffer zone or riverfront area</b> between the 50 ft. "no-touch zone" and the outer edge (100 ft. or 200 ft. depending on the resource area)	\$900 plus \$0.25/s.f.*

<b>5. Solar Energy Facilities</b>	
a. Any activity resulting in new disturbance within a <b>resource area</b> excluding the buffer zone)	\$900 plus \$10.00/s.f.*
b. Any activity within a previously lawfully altered <b>resource area</b> excluding the buffer zone )	\$900 plus \$2,000/ac**
c. Any activity resulting in new disturbance within the <b>inner buffer zone or riverfront area</b> within the 50 ft. <b>"no-touch zone"</b>	\$900 plus \$5.00/s.f.*
d. Any activity within a previously lawfully altered <b>inner buffer zone or riverfront area</b> within the 50 ft. <b>"no-touch zone"</b>	\$900 plus \$1,500/ac**
e. Any activity resulting in new disturbance within the <b>outer buffer zone or riverfront area</b> between the 50 ft. "no-touch zone" and the outer edge (100 ft. or 200 ft. depending on the resource area)	\$900 plus \$0.50/s.f.*
f. Any activity within a previously lawfully altered <b>outer buffer zone or riverfront area</b> between the 50 ft. "no-touch zone" and the outer edge (100 ft. or 200 ft. depending on the resource area)	\$900 plus \$1,000/ac**
g. <b>Dual-Use Solar Energy Systems only:</b> The installation of solar arrays over cultivated areas in a manner that is compatible with ongoing agricultural practices. This can include ground crops as well as installation in regulated wetland resource areas, including cranberry bogs.(calculate the acreage** of the entire solar array)	\$900 plus \$1,000/ac**
<b>6. Ecological Restoration Projects***</b>	\$900
<b>7. Request for Extension to Permit/Order of Conditions</b>	
a. Single-family dwelling/minor project	\$100
b. Other	\$200
<b>8. Amended Order of Conditions</b>	\$100
<b>9. Refiling of previously denied projects within 3 years</b>	Original fee or \$1,250, whichever is less
<b>10. Abbreviated Notice of Resource Area Delineation</b>	
a. Single-family dwelling	\$2/ l.f. not to exceed \$400
b. Other	\$2/l.f.
<b>11. Request for Determination of Applicability</b>	
a. Single-family dwelling/minor project	\$100
b. Other	\$300
<b>12. Certificate of Compliance</b>	
a. Partial	\$100
b. Complete	\$125
<b>13. Duplicate Originals</b>	\$75

\* Where the proposed activities are intended to return previously lawfully disturbed resource areas to a natural state, the per linear foot, per square foot, and/or per acre charge will be calculated based on the **net** new disturbance within the resource areas.

\*\* Calculating Acreage: 1 acre is defined as 43,560 square feet

\*\*\* Ecological Restoration Projects are defined at 310 CMR 10.04 as a project whose primary purpose is to restore or otherwise improve the natural capacity of a Resource Area(s) to protect and sustain the interests identified in M.G.L. c. 131, § 40, when such interests have been degraded or destroyed by anthropogenic influences. The term Ecological Restoration Project shall not include projects specifically intended to provide mitigation for the alteration of a Resource Area authorized by a Final Order or Variance issued pursuant to 310 CMR 10.00 or a 401 Water Quality Certification issued pursuant to 314 CMR 9.00: 401 Water Quality

- (b) Town, county, state, and federal projects are exempt from filing fees.
- (c) Where a person has failed to comply with legal requirements of any federal, state, county, or municipal rule, regulation, or statute necessary as part of any request or application filed with the Conservation Commission under the Bylaw, after official notification the Conservation Commission shall assess filing fees twice the amount specified in the Filing Fee Table, above.
- (d) The Bylaw filing fees are in addition to the filing fees charged under MGL c. 131, §40, and 310 CMR 4.00 and 310 CMR 10.03(7).
- (e) The filing fee is based on the category of the proposed activity. The total filing fee that involves more than one activity is determined by adding the fees for each proposed activity.
- (f) If the initial measurements/calculations used for the application fees are determined to be inaccurate, the Conservation Commission may require additional sums to be paid during the hearing process. Additionally, if wetland delineation lines change during the hearing deliberation, then relevant filing fees may be adjusted to reflect those changes.

B. Consultant fees.

- (1) The Bylaw Section IV, authorizes the Conservation Commission to impose fees on the applicant to pay for expert consultants to the Commission to aid in and expedite the Commission's review of the proposed project. If the Commission elects to engage a consultant to assist with plan reviews, the Commission shall notify the applicant, and shall seek a quote from a qualified consultant to conduct the review. Upon receipt, the Commission shall share the quote with the applicant who then shall deposit with the Commission the full amount of the quote. Once the deposit is received the Commission shall authorize the consultant to proceed with the review. In the event the cost of the review exceeds the amount of the deposit, an additional deposit shall be made by the applicant based on an amended estimate provided by the consultant to complete their review. Failure of an applicant to pay a review fee shall be grounds for denial of the Permit.
- (2) The applicant may appeal the selection of the outside consultant to the Board of Selectman within 14 days of notification of consultant designation from the Conservation Commission. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications, as specified in M.G.L. c. 44, §53G.
- (3) Review fees may only be spent on services rendered in connection with the specific project for which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Commission's review of a project, any excess amount in the account, including interest, attributable to a specific project, shall be refunded to the applicant, or the applicant's successor in interest. A final report of said account shall be made available to the applicant or the applicant's successor in interest.

**§24 FILING REQUIREMENTS: INFORMATION, PLAN STANDARDS, CONDITIONS FOR SITE INSPECTION.**

A. Information.

- (1) Generally. The information provided to the Conservation Commission to enable it to review an application for a permit for work or a determination shall describe the proposed activity and its

effect on the environment. By effect on the environment, the Conservation Commission requires a discussion of the effect of the proposed project on all Bylaw wetland values, which are listed in §1B and defined in §4. In addition, due regard shall be shown for all natural features such as large trees, watercourses and water bodies, wildlife habitat, and similar community assets.

- (2) Minimal submittal requirements for applications for determinations and permits for work.
  - (a) Subsection A(2)(b) below contains a list of the minimum filing requirements, and applicants should refer to §§25 and 26 for more specific guidance. The applicant may submit, or be required to submit, any further information that will assist the Conservation Commission in its review and deemed necessary to determine the proposed effect on the Bylaw wetlands values, listed in §1B. However, the Conservation Commission may waive any of the plan requirements of Subsection B below for projects deemed insignificant.
  - (b) The applicant must submit one original and two hard copies, plus a pdf-digital copy emailed to the Conservation Commission office, of the application with all relevant materials to the Conservation Commission..
    - [1] An appropriate request or application form as provided in §§25 and 26
    - [2] An eight-and-one-half-inch by eleven-inch reproduction of the United States Geological Survey (USGS) quadrangle sheet showing the project locus.
    - [3] One original and two copies of plans stamped by a professional land surveyor of the project site and Bylaw resource areas. Where the project requires two or more plan sheets to show the locus, an eight-and-one-half-inch by eleven-inch sheet clearly identifying the proposed site and work in addition to the labeled boundaries of the resource areas.
    - [4] The names and addresses of the record owner(s), the applicant(s), and of all abutters, as determined by the most recent local tax list unless the applicant shall have a more recent knowledge of such abutters.
    - [5] A description of any alteration to flood storage capacity on the site. Include calculations if necessary.
    - [6] The maximum groundwater elevations. The calendar dates of measurements, samplings, and percolation tests shall be included, regardless of planned sewer connections.
    - [7] The soil characteristics in representative portions of the site.
    - [8] A runoff plan and calculations using the Rational Method for pipe size and the TR-55/TR-20 Soil Conservation Service methods for all drainage and flood storage design.
    - [9] The methods to be used to stabilize and maintain any embankments facing any area subject to protection under the Bylaw, except land subject to flooding, buffer zones, and riverfront areas, or show on a professionally prepared plan existing slopes of less than or equal to 3:1.
    - [10] The methods to control erosion during and after construction, which shall be in accordance with the Massachusetts Department of Environmental Protection's current guidelines.
    - [11] Where applicable, a description and calculation of peak flow and estimated water quality characteristics of discharge from a point source (both closed and open channel) when the point of discharge falls within a resource area subject to protection under the Bylaw.
    - [12] Where applicable, sufficient information to demonstrate compliance with Chapter 145 Earth Removal (previously Article VII) of the Town of Plympton General Bylaws, including but not limited to an Earth Removal Permit issued by the Board of

Selectmen.

- (c) Delay in opening public hearing if application incomplete. Where the Conservation Commission does not receive the minimum filing requirements it shall deem the application incomplete. The minimum filing requirements include payment of the filing fee as provided in §23.

B. Plans (drawings).

- (1) Scale, title, date, person preparing, and other general requirements.
  - (a) All plans (drawings) shall be drawn (one inch equals 40 feet maximum) with the title designating the name of the project location, the name(s) of the person(s) preparing the drawings, and the date prepared, including all revision dates.
  - (b) Drawings, whenever possible, should be stamped and signed by a registered professional engineer. In lieu of a registered professional engineer, the Commission may accept a plan signed by a land surveyor, registered in the Commonwealth of Massachusetts. Pencil notations will not be accepted.
  - (c) Assessor's map and lot number(s) shall be shown.
- (2) Delineation of Bylaw resource areas and areas subject to protection of the Act. All drawings must include a delineation of all resource areas subject to protection under the Bylaw, and areas subject to protection under the Act. The Bylaw resource areas should be clearly delineated as indicated below, regardless of whether the applicant believes the work is subject to the Wetlands Protection Act, MGL c. 131, §40, or the Bylaw:
  - (a) Vernal pools regulated under the Bylaw: purple.
  - (b) Reservoirs, lakes, ponds, rivers, streams: light blue.
  - (c) Vegetated wetlands: light green with swamp symbols superimposed.
  - (d) Lands subject to flooding: outline with a dashed blue line.
  - (e) Buffer zone: mark the one-hundred-foot boundary with a solid orange line; the fifty-foot inner "No Disturb Zone" boundary with a solid red line.
  - (f) Riverfront area: mark the two-hundred-foot boundary with a solid brown line.
- (3) Alterations.
  - (a) All plans must include a delineation of all alterations (such as filling, dredging, and placing of impervious surfaces) proposed in or within 100 feet of Bylaw Resource Areas, and those areas subject to protection under the Act. All alterations must be clearly explained in the accompanying text or footnotes.
  - (b) Cumulative Impacts.
    - [1] A plan illustrating the cumulative impacts, including reasonably foreseeable future impacts resulting from the project as a whole, must be provided for all housing development and redevelopment projects consisting of two or more lots, for any subdivision or multi-unit dwelling structures and for any commercial development. The plan(s) must depict the following locations, in addition to those requirements specified elsewhere in these regulations:
      - [a] Roadways, sidewalks, driveways;
      - [b] Maximum building envelopes;
      - [c] Pools, decks, patios, outbuildings;
      - [d] Tree line, limit of lawn and landscaping (existing and proposed);
      - [e] Utilities, drainage (including stormwater management required by §27);
      - [f] Septic (primary and reserve fields); and
      - [g] All other man-made structures, features or work which has the potential to



alter Resource Areas

- [2] In addition to the above items, applicants must provide information regarding the total impact to each Resource Area(s), expressed in square footage and/or percentages.

(4) Contours and elevations.

- (a) All drawings must indicate existing and final contours (after proposed alterations) and contour intervals used, including reservoir, lake, and pond bottom pollution pillows, and river and stream invert contours. The contour interval shall be no greater than two feet.
- (b) All drawings, where applicable, must indicate locations and elevations of sills and bottom of septic systems. The bottom of a septic system is the elevation of the leaching field substrate.
- (c) All drawings must indicate the location and elevation of the benchmark used for the survey.
- (d) All drawings must indicate invert elevations on catch basins.

(5) Soil characteristics. All drawings must indicate soil characteristics in representative parts of property, including depth of peat and muck in vegetated wetlands; include test borings, unless the Conservation Commission grants a waiver of this requirement.

(6) Culverts and pipes. All drawings must indicate locations, sizes and slopes of existing and proposed culverts and pipes.

(7) Cross-section of vegetated wetlands where work is proposed in a vegetated wetland. All drawings must include cross-section of all vegetated wetlands, showing slopes, and bank and bottom treatments.

(8) Water storage capacity of property calculation. All drawings must be accompanied by information showing the existing and proposed water storage capacity of the property, including calculations and data on which the capacity is based. If filling is proposed, determine the effect of loss of storage on downstream channels and culverts.

(9) Trees, walls, historic sites, etc. All drawings must indicate existing trees, stone walls, fences, buildings, historic sites, rock ridges, and outcroppings.

(10) Pollution control devices. All drawings must indicate proposed on-site control devices, such as hooded catch basins, oil absorption detention/retention basins, flow dissipaters or vegetative buffers.

(11) Erosion control. Show locations/details of erosion control devices.

(12) Water supply wells. All wells within 100 feet of any proposed septic system shall be shown.

(13) Dates of measurements. All drawings must be accompanied by the calendar dates of taking the measurements, samplings, contours, and so forth. All such data shall be stated in NGVD base.

C. Conditions required for site inspection. Before the Conservation Commission or the Commission's agent can conduct a site inspection, the following conditions must be met:

(1) Stakes shall be provided as follows. Failure to have the lot staked may result in no review and thus costly delay of the project. If the lot is not staked in accordance with the requirements below, the application shall not be considered complete and, therefore, the twenty-one-day period to open the public hearing, as provided in the Bylaw, does not begin.

- (a) Stakes indicating the corners of houses or other structures nearest the Bylaw resource area and area subject to protection under the Act;
- (b) Stakes indicating the septic tank and the leaching field location; and
- (c) Stakes for well location;
- (d) Stakes indicating the limit of work.

(2) Lot number or house number must be posted at location.

- (3) Boundaries of all Bylaw resource areas and areas subject to protection under the Act shall be marked appropriately.
- (4) Directions shall be made available to the Conservation Commission to locate property.

**§25 FILING GUIDELINES FOR REQUESTS FOR DETERMINATIONS (OF APPLICABILITY, FOR BYLAW RESOURCE AREA DELINEATION, OF SIGNIFICANCE).**

A. Forms.

- (1) Wetlands Protection Act. At the same time as the applicant files for a determination under the Bylaw, the applicant should file "Form I" issued by the Department of Environmental Protection (the "DEP") under MGL c. 131, §40, as follows:
  - (a) Supply two copies plus one electronic copy to the Plympton Conservation Commission Office.
  - (b) Mail one copy, or submit in any format as required, to the DEP Southeast Regional Office.
- (2) Bylaw. All applications for all determinations must be made on the applicable determination form, which may be obtained from the Conservation Commission, and the applicant must:
  - (a) Supply two copies plus one electronic copy to the Plympton Conservation Commission.
  - (b) Supply check payable to the "Town of Plympton" for the applicable filing fee to cover the cost of the processing as provided in the Bylaw..

B. Notice to abutters.

- (1) Any person filing a permit application or a request for determination with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested), certificate of mailing, or hand delivery, to all abutters.
  - (a) The notice to abutters shall include a copy of the application or request, with plans, or state that copies may be examined and obtained by abutters from the office of the Conservation Commission.
  - (b) Notice must be sent to abutters at their mailing addresses shown on the most recent applicable tax list of the Assessors.
  - (c) Abutters include owners of land directly opposite on any public or private way, and abutters to the abutters within 200 feet of the property line of the applicant, including any in another municipality or across a body of water.
- (2) Availability of copy of request for determination. Where the notice to abutters does not contain a copy of the request for determination, that notice shall state that a copy may be examined and obtained at the Conservation Commission office and at any other place where the applicant will make the document available.
- (3) Evidence of mailing. The Conservation Commission shall request that applicant supply evidence of mailing to all abutters and shall not open any public hearing until it receives such proof.

C. Notice to and participation of other Town boards.

- (1) Boards to be notified and information in notice. Any person filing a request for determination shall inform each of the following: the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, Director of Public Works, and Building Inspector, by certified mail,

certificate of mailing, or hand delivery, that same is on file in the Commission office for their immediate review.

- (2) Time for boards' response, disclosure of response to applicant.
  - (a) The Conservation Commission shall not take action on the application for a determination until 14 days have lapsed from the receipt by the Town boards of the notice specified in the foregoing Subsection C(1).
  - (b) The Conservation Commission shall provide the applicant with a copy of any response from any Town board.

D. Public hearing notice

- (1) The Commission shall conduct a public hearing on any application or request for determination, with written notice given at the expense of the applicant, five business days prior to the hearing, in a newspaper of general circulation in the municipality.
- (2) Payment of published notice. The applicant shall provide, when filing an application for a determination, a check to the Commission. The check shall be made payable to "The Plympton Halifax Express" in the amount of the prevailing rate to cover the cost of said legal notice

- E. Description of work. The applicant must provide information that completely describes the proposed work that may be the subject of the determination, in accordance with the aforesaid §25A and B.

## **§26 FILING GUIDELINES FOR APPLICATIONS FOR BYLAW PERMITS FOR WORK.**

A. Forms.

- (1) Wetlands Protection Act. At the same time as the applicant files for a permit for work under the Bylaw on the applicable form, which may be obtained from the Conservation Commission, the applicant should file either a notice of intent or an abbreviated notice of intent form issued by the Department of Environmental Protection ("DEP"), as follows:
  - (a) Supply two copies plus one electronic copy to the Plympton Conservation Commission office.
  - (b) Mail one copy or submit in the required format to the DEP Southeast Regional Office.
- (2) Bylaw. All applications for all permits for work must be made on either the application for permit for work form or abbreviated application for permit for work form, and the applicant must:
  - (a) Supply two copies plus one electronic copy to the Plympton Conservation Commission.
  - (b) Submit payment via the online permitting program in the amount of the applicable filing fee as provided in the aforesaid §23A.

B. Notice to abutters.

- (1) Any person filing a permit application or a request for determination with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested), certificate of mailing, or hand delivery, to all abutters at their mailing addresses shown on the most recent applicable tax list of the Assessors, including owners of land directly opposite on any public or private way, and abutters to the abutters within 200 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice to abutters shall enclose a copy of the application or request, with plans, or state where copies may be examined and obtained by abutters.

- (2) Availability of copy of request for permit. Where the notice to abutters does not contain a complete copy of the application for permit for work, that notice shall state that a copy may be examined and obtained at the Conservation Commission office and at any other place where the applicant will make the document available.
  - (3) Evidence of mailing. The Conservation Commission shall request that applicant supply evidence of mailing to all abutters and shall not open any public hearing until it receives such proof.
- C. Notice to and participation of other Town boards.
- (1) Any person filing an application for a permit for work shall inform each of the following: the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, Director of Public Works, and Building Inspector, by certified mail, certificate of mailing, or hand delivery, that same is on file in the Commission office for their immediate review.
  - (2) Time for boards' response, disclosure of response to applicant.
    - (a) The Conservation Commission shall not take action on the application for a permit for work until 14 days have lapsed from the receipt by the Town boards of the notice specified in the foregoing Subsection C(1).
    - (b) The Conservation Commission shall provide the applicant with a copy of any response from any Town board.
- D. Public hearing notice.
- (1) The Commission shall conduct a public hearing on any application for permit or request for determination, with written notice given at the expense of the applicant, five business days prior to the hearing, in a newspaper of general circulation in the municipality.
  - (2) Payment of published notice. The applicant shall provide, when filing an application for a permit for work, a check to the Conservation Commission. The check shall be made payable to " Plympton Halifax Express " in the amount of the prevailing rate to cover the cost of said legal notice.
- E. Description of work. The applicant must provide information that completely describes the proposed work that may be the subject of the permit for work, in accordance with §26A and B.
- F. Waiver request. If the applicant requests a waiver from any provision of the Bylaw or these regulations, the applicant shall comply with §21.

## **§27 STORMWATER MANAGEMENT STANDARDS.**

- A. Applicability.
- (1) No Area Subject to Protection under the Act or Bylaw may be altered or filled for the impoundment or detention of stormwater, the control of sedimentation or the attenuation of pollutants in stormwater discharges, and the applicable performance standards shall apply to any such alteration or fill.
  - (2) Except as expressly provided herein, stormwater runoff from all industrial, commercial, institutional, office, residential, and transportation projects that are subject to regulation under the Bylaw and these regulations, including site preparation, construction, and redevelopment and all point source stormwater discharges from said projects within an Area Subject to Protection under the Act and Bylaw shall be provided with stormwater best management

practices to attenuate pollutants and to provide a setback from the receiving waters and wetlands in accordance with the Stormwater Management Performance Standards referenced in §27B.

- (3) Compliance with the Stormwater Management Standards set forth in §27 does not relieve a discharger of the obligation to comply with all applicable Federal, State, and local laws, regulations, and permits.

#### B. Performance Standards

- (1) No new stormwater conveyances may discharge untreated stormwater directly to or cause erosion in Resource Areas Subject to protection under the Bylaw and Act.
- (2) Stormwater management systems shall be designed so that post-development peak discharge rates do not exceed pre-development peak discharge rates.
- (3) Loss of annual recharge to groundwater shall be eliminated through the use of infiltration measures including environmentally sensitive site design, low-impact development techniques, stormwater best management practices, and good operation and maintenance. At a minimum, the annual recharge from the post-development site shall approximate the annual recharge from the pre-development conditions based on soil type. This Standard is met when the stormwater management system is designed to infiltrate the required recharge volume as determined in accordance with the Massachusetts Stormwater Handbook.
- (4) Stormwater management systems shall be designed to remove 90% of the average annual post-construction load of Total Suspended Solids (TSS). This Standard is met when:
  - (a) Suitable practices for source control and pollution prevention are identified in a long-term pollution prevention plan and thereafter are implemented and maintained;
  - (b) Structural stormwater best management practices are sized to capture the required water quality volume determined in accordance with Massachusetts Stormwater Handbook; and
  - (c) Pretreatment is provided in accordance with the Massachusetts Stormwater Handbook.
- (5) For land uses with higher potential pollutant loads, source control and pollution prevention shall be implemented in accordance with the Massachusetts Stormwater Handbook to eliminate or reduce the discharge of stormwater runoff from such land uses to the maximum extent practicable. If through source control and/or pollution prevention, all land uses with higher potential pollutant loads cannot be completely protected from exposure to rain, snow, snow melt, and stormwater runoff, the proponent shall use the specific structural stormwater BMPs determined by the Commission to be suitable for such use as provided in the Massachusetts Stormwater Handbook.
- (6) Stormwater discharges within the Zone II or Interim Wellhead Protection Area of a public water supply and stormwater discharges near or to any Vernal Pools and their associated buffer zones require the use of the specific source control and pollution prevention measures and the specific structural stormwater best management practices determined by the Commission to be suitable for managing discharges to such area as provided in the Massachusetts Stormwater Handbook. A discharge is near a critical area, if there is a strong likelihood of a significant impact occurring to said area, taking into account site-specific factors.
- (7) Stormwater discharges to Outstanding Resource Waters, Special Resource Waters, and their buffer zones shall be removed and set back from the receiving water or wetland and receive the highest and best practical method of treatment. Stormwater discharges to a Zone I or Zone A are prohibited, unless essential to the operation of the public water supply.
- (8) A redevelopment project is required to meet the following Stormwater Management Standards: Standard 2, Standard 3, and the pretreatment and structural stormwater best management practice requirements of Standards 4, 5, and 6. Existing stormwater discharges shall comply with Standard 1 only to the maximum extent practicable. A redevelopment

- project shall also comply with all other requirements of the Stormwater Management Standards and improve existing conditions.
- (9) A plan to control construction-related impacts including erosion, sedimentation, and other pollutant sources during construction and land disturbance activities (construction period erosion, sedimentation, and pollution prevention plan) shall be developed and provided to the Issuing Authority for approval prior to commencement of work.
  - (10) A long-term operation and maintenance (O & M) plan shall be developed and implemented to ensure that the stormwater management system functions as designed.
  - (11) All illicit discharges to the stormwater management system are prohibited.
- C. The Stormwater Management Standards shall apply to the maximum extent practicable to the following:
- (1) Housing development and redevelopment projects comprised of detached single-family dwellings on one or two lots that may potentially affect, as determined by the Commission, a critical area as discussed in §27B(6).
  - (2) Multi-family housing development and redevelopment projects including condominiums, cooperatives, apartment buildings, and townhouses with three or fewer units, in total that may potentially affect, as determined by the Commission, a critical area as discussed in §27B(6);
  - (3) Footpaths, bike paths and other paths for pedestrian and/or non-motorized vehicle access.
- D. Exceptions - the Stormwater Management Standards shall not apply to:
- (1) Housing development and redevelopment projects comprised of detached single-family dwellings on one or two lots with stormwater discharges that do not potentially affect, as determined by the Commission, a critical area as discussed in §27B(6);
  - (2) Multi-family housing development and redevelopment projects, including condominiums, cooperatives, apartment buildings, and townhouses, that do not potentially affect, as determined by the Commission, a critical area as discussed in §27B(6);
  - (3) Emergency repairs to roads or their drainage systems.
- E. Phased Projects. For phased projects, the determination of whether the Stormwater Management Standards apply is made on the entire project as a whole including all phases. When proposing a development or redevelopment project subject to the Stormwater Management Standards, proponents shall consider environmentally sensitive site design that incorporates low-impact development techniques in addition to stormwater best management practices.
- F. Compliance
- (1) Project proponents seeking to demonstrate compliance with some or all of the Stormwater Management Standards to the maximum extent practicable must demonstrate that:
    - (a) They have made all reasonable efforts to meet each of the Standards;
    - (b) They have made a complete evaluation of possible stormwater management measures including environmentally sensitive site design and low impact development techniques that minimize land disturbance and impervious surfaces, structural stormwater best management practices, pollution prevention, erosion and sedimentation control and proper operation and maintenance of stormwater best management practices; and
    - (c) If full compliance with the Standards cannot be achieved, they are implementing the highest practicable level of stormwater management.
  - (2) Certificate of Compliance. As a standard condition of the issuance of a Certificate of Compliance, the Applicant shall submit the following
    - (a) A letter from a registered professional engineer certifying the structures and elements as constructed will meet the standards as intended by the approved plan and detailing

any deviations from the approved proposed plan and their potential effect. A statement the work is in "substantial compliance" with no detailing of the deviations shall not be accepted.

- (b) An "As-Built" plan signed and stamped by a registered professional engineer or land surveyor showing in detail the exact location of all structures or elements, elevations, and the topography of the finished grades.
- (3) Operations and Maintenance. The ability of Stormwater Management structures and elements to achieve the intended result is fully dependent on the system functioning properly on a continuing basis. To ensure the structures and elements are operated and maintained according to plan, the applicant shall submit an annual report to the Commission for review no later than January 31 of each year. This report shall correlate to the originally approved Operations and Maintenance plan and shall include:
  - (a) Reference to each structure or element comprising the overall stormwater management system
  - (b) Maintenance conducted over the past year, including dates and contractors
  - (c) Observations of function
  - (d) Recommendation and schedule for repairs, as necessary. Repairs must be documented in the next annual report.
- (4) Failure to provide the report by the date due will result in a fine of up to \$100 per business day beyond the January 31 due date.

#### G. Submittals.

- (1) Information. Every project subject to the Town of Plympton's Stormwater Management Regulations and/or the State Stormwater Management Regulations shall submit a Stormwater Management Report. This report should document the stormwater management system proposed and provide the Town and its consultants with the information necessary to adequately evaluate the design.
- (2) Minimal Submittal Requirements.
  - (a) Supply one copy of original material to the Plympton Conservation Commission, plus either six hard copies or one electronic version in Portable Document Format (PDF). Original material must conform to the submission requirements of §26 and be printed double-sided where feasible; electronic versions deemed illegible will be rejected by the Commission.
  - (b) Reports should not include any information that is not relevant to the particular project being proposed. For example, portions of the regulations should not be quoted within the report unless they provide meaningful relevance; items in the checklist which have not been checked as applying to the proposed project should not be included; do not include appendices if there is no associated or relevant content.
  - (c) The report shall be ordered such that there is a section labeled and referenced to correlate directly to each section of the Massachusetts Department of Environmental Protection Checklist for Stormwater Report. All sections and information listed below shall be included in the report, in the order listed. Each section should be clearly labeled and separated from the previous section. The following information, at a minimum, must be included in the report:
    - [1] Title. Identify the project name, location (i.e. street address and map and lot #), DEP/Plympton File Number, applicant, and engineer
    - [2] Introduction. This should be a summary narrative that includes:
      - [a] A description of existing topography and landscape at the site
      - [b] Existing stormwater drainage patterns

- [c] Existing soil conditions and times of concentrations
  - [d] Proposed topographic, landscape, and soil changes
  - [e] Proposed treatment methods and resulting stormwater drainage patterns
  - [f] Summary, in tabular format, of pre- and post-development curve numbers, runoff rates and times of concentration
- [3] MADEP Checklist for Stormwater Report and Certification.
- [4] Low Impact Design Measures.
  - [a] Summary of LID measures proposed
  - [b] Detailed Description of and relevant design information for each method proposed.
  - [c] Operations and Maintenance plans for each design element
- [5] Stormwater Management Standards.
 

For each standard cited at §27B. Performance Standards, address each in sufficient detail. At a minimum, the detail should include a summary of the supporting calculations. The full drainage analysis calculations should be provided in an addendum to the report.
- [6] Operations and Maintenance Plan
 

Must address operations and maintenance of all proposed stormwater management structures and elements, including erosion control methods, during construction and post-construction, including:

  - [a] Maintenance schedule
  - [b] Maintenance required to ensure proper function
  - [c] Party responsible for conducting maintenance, including address and telephone number