



## TOWN OF TEWKSBURY

1009 Main Street  
TEWKSBURY, MASSACHUSETTS 01876

### CONSERVATION COMMISSION

Joe Fontaine  
Planner/Conservation Agent

978-640-4370 x255  
jfontaine@tewksbury-ma.gov

## MARKED-UP VERSION OF PROPOSED TEWKSBURY WETLAND PROTECTION BYLAW UPDATES

This document is intended to reflect the proposed changes to the Tewksbury Wetland Protection Bylaw as submitted in the Town of Tewksbury's Warrant for the May 2024 Annual Town Meeting. This document shows the current Tewksbury Wetland Protection Bylaw text and shows proposed deletions as strikethroughs, proposed additions as underlined text, and scrivener's notes in parentheses.

### Chapter 18.04

#### CONSERVATION COMMISSION WETLANDS PROTECTION

Sections:

18.04.010 Purpose-

18.04.020 Definitions-

18.04.030 Jurisdiction-

18.04.040 ~~Exceptions-~~ Exemptions

18.04.045 ~~Performance Standards-~~

18.04.050 Buffer Zone Limitations

18.04.050 ~~Applications for permit and requests for determination-~~

18.04.060 ~~Notice and hearings-~~ Waiver

18.04.070 ~~Time of receipt-~~ Application and Fees

18.04.080 ~~Coordination with other boards-~~ Notice and Hearings

18.04.090 ~~Permits, determinations and Conditions-~~

18.04.100 ~~Modifications-~~ Coordination with Other Boards

18.04.110 ~~Registry of deeds-~~ Modifications

18.04.120 ~~Certificate of compliance-~~ Registry of Deeds

18.04.130 ~~Regulations-~~ Certificate of Compliance

18.04.140 ~~Enforcement-~~ Regulations

18.04.150 ~~Inspection-~~ Enforcement

18.04.160 ~~Burden of proof-~~ Proof

18.04.170 ~~Relation to the wetlands protection act-~~ Wetlands Protection Act

18.04.180 ~~Performance guarantee-~~ Guarantee

18.04.190 ~~Appeal-~~

18.04.200 ~~Amendments-~~

18.04.210 ~~Penalties-~~

18.04.220 ~~Preacquisition violation-~~ Severability

**18.04.010: Purpose.**

The purpose of the ~~Wetlands~~ Tewksbury Wetland Protection Bylaw ("Bylaw") is to protect the wetlands, ~~related water resources, flood prone areas, and adjoining land upland areas in the Town of Tewksbury ("Town"). The present state law is the Wetlands Protection Act, M.G.L. c.131,s.40, as amended ("Act"). The act sets minimum standards for every city and town in the Commonwealth of Massachusetts to follow. This Bylaw will enable the Town to protect local resource area and to reduce any significant or cumulative effect upon the wetlands in the Town.~~ by controlling activities deemed by the Tewksbury Conservation Commission (the "Commission") likely to have a significant or cumulative effect on Resource Area Values, including but not limited to the following: public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention including coastal storm flowage, water quality, prevention and control of pollution, fisheries, shellfisheries, wildlife habitat, rare species habitat including rare plant and animal species, agriculture, aquaculture, and recreation values, deemed important to the community.

~~The purpose of this Bylaw is to control activities deemed by the Tewksbury Conservation Commission (the "Commission") likely to have a significant or cumulative effect upon wetland values on Resource Area Values, including but not limited to, the following: public and or private water supplies supply, groundwater quantity, quality and supply, surface water quantity and quality, supply, flood control, erosion and sedimentation control, prevention of storm damage prevention including coastal storm flowage, water quality, prevention and control of pollution, fisheries, shellfisheries, wildlife habitat, rare species habitat including rare plant and animal species, fisheries, agriculture and aqua culture, aquaculture, and recreation values, deemed important to the community. (collectively, the "wetland values protection by this Bylaw"). (Art. 30 § A, ATM 1991, STM May 2009)~~

~~18.04.020 Definitions:~~ This Bylaw is intended to utilize the Home Rule authority of this municipality so as to protect the resource areas under the Wetlands Protection Act (M.G.L. Ch.131 §40; the "Act") to a greater degree, to protect additional resource areas beyond the Act recognized by the Town as significant, to protect all resource areas for their additional values beyond those recognized in the Act, and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and regulations thereunder (i.e., 310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth and other relevant Bylaws of the Town.

**18.04.020: Definitions.**

~~The definitions given in 310 CMR 10.04 for the following terms shall apply to this Bylaw and statutory amendment protecting wildlife habitat in wetland resource areas enacted July 16, 1986 (Section 44 of Chapter 44 of Chapter 231 of the Acts of 1986), amending Section 40 of Chapter 131 of Massachusetts General Laws, amendments and regulations promulgated there under: dredge, fill flood control, freshwater wetlands, lake, bordering land subject to flooding, marsh, meadow, private water supply, public water supply, river.~~

The following definitions shall apply in the interpretation and implementation of this Bylaw. Except as otherwise provided herein or in the Commission's regulations, the definitions of terms shall be as set forth in the ~~Wetlands Protection Act:~~ and 310 CMR 10.00.

~~"Abutter": means the owner of any property any portion of which lies within 100 feet radially from any lot line of the subject property— including owners of land directly opposite on any public or private street~~

or way ~~including any~~, in addition to properties in another municipality or across a body of water. ~~In the case of property that has frontage on a pond, abutters shall include all those properties with frontage on the pond or pond association if in existence. (ATM 5-9-12) – any portions of which lies within 100 feet radially from the Project Locus.~~

~~“Administrative Orders” shall include but not limited to enforcement orders, violation notices, orders of conditions, orders of resource delineation and Certificates of Emergency.~~

~~“Alter”:~~ includes, without limitation, the following activities, whether temporary or permanent, when taken to, upon or within, or when they affect ~~local resource areas~~ Resource Areas protected by this Bylaw:

- (1) Removing, excavating, or dredging of soil, sand, gravel, or aggregate materials of any kind;
- (2) Changing ~~preexisting~~ pre-existing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- (3) Draining or otherwise disturbing the ground or surface water level or water table;
- (4) Dumping, discharging, or filling with any material which may degrade water quality;
- (5) Placing or removing of fill or other material, which would alter the elevation or land surface;
- (6) Driving piles, erecting or repairing buildings (residential or commercial) or structures, ~~as defined in the regulations implementing the bylaw, of any kind;~~ that causes soil disturbance;
- (7) Placing of obstructions in water, whether or not they interfere with the flow of water;
- (8) Changing water temperature, biochemical oxygen demand, or any other physical, biological, or chemical characteristics of the water;
- (9) Destroying plant life, including cutting trees and shrubs;
- (10) Conducting any work or activity which may cause or tend to contribute to pollution of any body of water or groundwater;
- (11) Applying pesticides or herbicides;
- (12) Any activities, changes or work which cause alteration of wildlife habitat; ~~and~~
- (13) Any activities, changes or ~~work~~ works which pollute or cause displacement of any body of water or groundwater; and
- (14) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this ~~bylaw~~ Bylaw.

~~“Bank” means the land area which normally abuts and confines a body of water; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher. Buffer Zone: means the land area which normally abuts and confines a body of water; the lower located within 200 feet from the outer boundary being of any potential or certified Vernal Pools and the mean annual low flow level, and land located~~

within 100 feet from the upper outer boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

“Bogs” are areas where standing or slowly running water is near or at the surface during a normal growing season and where a vegetational community has a significant portion of the ground or water surface covered with sphagnum moss (*Sphagnum*), and where the vegetational community is made up of a significant portion of one or more of, but not limited to nor necessarily including all, of the following plants or groups of plants: aster (*Aster nemoralis*), azaleas (*Rhododendron condense* and *R. viscosus*), black spruce (*Picea Mariana*) bog cotton (*Eriophorum*), cranberry (*Vaccinium macrocarpon*) high bush berry (*Vaccinium corymbosum*), larch (*Larix laricina*) laurels (*Kalmia angustifolia* and *K. polifolia*), leatherleaf (*Chamaedaphne calyculata*), orchids (*Arethusa*, *Calopogon*, *Pogonia*), pitcher plants (*Sarracenia purpurea*), sedges (*Cyperaceae*), sundews (*Droseraceae*), sweet gale (*myrica gale*) white cedar (*Chamaecyparis thyoides*).

“Bordering Land Subject To Flooding” (BLSF) is an area with low, flat topography adjacent to and inundated by flood waters rising from creeks, rivers, streams, ponds or lakes. It extends from the banks of these waterways and water bodies; where a bordering vegetated wetland occurs, it extends from said wetland.

“Bordering Vegetated Wetlands” are freshwater wetlands which border on creeks, streams, rivers, ponds and lakes in areas where the topography is low and flat. Bordering vegetated wetlands are areas where the soils are annually saturated and/or inundated such that they support a predominance (50% or greater) of wetland indicator plants. Types of vegetated wetlands include wet meadows, marshes, swamps and bogs. Wetlands and their boundaries shall be identified in the manner designated in the Massachusetts Department of Environmental Protection (DEP) Handbook “Delineating Bordering Vegetated Wetlands under Massachusetts Wetlands Protection Act,” March 1995, and future amendments, other DEP guidance documents generally accepted by Conservation Commissions for purposes of bordering vegetated wetland.

**“Buffer Zone:”** means the land located within 200 feet from the outer boundary of any potential or certified Vernal Pools and the land located within 100 feet from the outer boundary of any:

- (1) Bordering freshwater wetlands, or isolated freshwater wetlands, wet meadows, marshes, swaps, or bogs;
- (2) Intermittent streams, brooks, and creeks;
- (3) Ponds and lakes; and
- (4) Banks

and shall also mean the land located within 200 feet from the outer boundary of any potential or certified Vernal Pools.

**Commission:** means the Tewksbury Conservation Commission.

**“Department:”** means the Massachusetts Department of Environmental Protection (DEP).

**“Dredge”** means to deepen, widen, or excavate, either temporarily or permanently.

**“Flooded”** means a condition in which the soil surface is temporarily covered with flowing water from any source, such as streams overflowing their banks, runoff from adjacent or surrounding slopes, inflow from high tides, or any combination of sources.

**“Freshwater wetlands”** are wet meadows, marshes, swamps and bogs.

**“Isolated Land Subject to Flooding”** is any isolated depression without an inlet or outlet which at least once a year confines standing water to a volume of at least ¼ acre foot of water with an average depth of at least six inches. The boundary is the perimeter of the largest observed or recorded volume of water confined in the basin.

**“Lake”** means any open body of fresh water with a surface area of ten acres or more, and shall include great ponds.

**“Land Under Waterbodies and Waterways”**: the definition, critical characteristics, and boundaries for this term shall be consistent with what is stated within 310 CMR 10.56(2).

**“Local Resource Areas”** means those areas of the Town referenced in the “Jurisdiction” section below. The Commission has jurisdiction over these local resource areas.

**“Marshes”** are areas where a plant community exists in standing or running water during the growing season and where a significant part of the vegetational community is composed of, but not limited to nor necessarily including all, of the following plants or groups of plants: arums (Araceae), bladder worts (Utricularia), burr reeds (Sparganiaceae), button bush (Cephalanthus occidentalis), cattails (Typha), duck weeds (Lemnaceae), eelgrass (Vallisneria), frog bits (Hydrocharitaceae), horsetails (Equisetaceae), hydrophilic grasses (Gramineae), leatherleaf (Cahmaedaphne calyculata) pickerel weeds (Pontederiaceae), pipeworts (Eriocaulon), pond weeds (Potamogeton), rushes (Junceaceae), sedges (Cyperaceae), smartweeds (Polygonum), sweet gale ((Myrica gale), water milfoil (Haloragaceae), water lilies (Nymphaeaceae), water starworts (Callitrichaceae), water willow (Decodon verticillatus).

**No Build Zone:** means that portion of the Buffer Zone upgradient of the No Disturb Zone and extending to a line fifty feet (50') from the edge of those Resource Areas incorporated into the definition of Buffer Zone, contiguous or intermittent, with a defined dimension, subject to restriction, defined in this Bylaw.

**No Disturb Zone:** means that portion of the Buffer Zone which extends twenty-five feet (25') from the edge of those Resource Areas incorporated into the definition of Buffer Zone, continuous or intermittent, with a defined dimension, subject to restriction, defined in this Bylaw.

**Person:** means an entity which includes 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, a municipality, and any other legal entity, its legal representatives, agents or assigns.

**“Ponds:”**

- (1) Shall include any substantially open body of fresh water with a surface area observed or recorded, within ten years prior to the date of application, of at least 5,000 square feet. Ponds may be either naturally occurring or man-made by impoundment, excavation, or otherwise. Ponds shall contain standing water except for periods of extended drought. For the purposes of this definition, extended drought shall be defined at 310 CMR 10.00 as it may be amended.
- (2) Notwithstanding the above, the following man-made bodies of open water shall not be considered ponds: swimming pools or other impervious man-made basins.

**Project Locus:** means the property boundaries of the lot(s) on which an applicant proposes to perform an activity subject to the ~~Tewksbury Wetland Protection~~ Bylaw, or in the case of a Notice of Intent application proposing work within a public roadway or easement, Project Locus shall mean the spatial extent of proposed activities that meet the definition of Alter herein within said roadway or easement.

**Quorum:** A majority of the Commission members in office.

**“Rare Species:”** means, without limitations, all vertebrate and invertebrate animals and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife., ~~regardless whether the site in which they occur has been previously identified by the Division.~~

**“Resource Areas (natural or created):”** include any natural or created bordering/isolated freshwater wetlands, marshes, wet meadows, bogs, swamps, lakes, ponds (natural or created), rivers, streams, banks, vernal pools, ~~Land Under Water~~ land under water in each resource area and Waterways, Riverfront Area, and Bordering/Isolated Land Subject to Flooding. ~~land subject to flooding or inundation by groundwater or surface waters, and buffer zones as defined in the Bylaw. Note that section 18.04.040(5) of the Bylaw shall be deferred to regarding whether a stormwater management system by itself may constitute a jurisdictional Resource Area or Buffer Zone.~~

**“Resource Area Values:”** include public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention including coastal storm flowage, water quality, prevention and control of pollution, fisheries, shellfisheries, wildlife habitat, rare species habitat including rare plant and animal species, agriculture, aquaculture, and recreation values deemed important to the community.

~~“Riverfront Area”, for the purpose of this Bylaw, shall mean the definition provided within 310 CMR 10.00 and as amended.~~

~~“Stream” means a body of running water, including brooks and creeks, which moves in a definite channel in the ground due to a hydraulic gradient. The definition of stream shall apply to both intermittent and perennial bodies of running water.~~

**“Structure:”** shall mean a combination of materials assembled at a fixed location to give support or shelter such as a building, house, barn, garage, or shed. The word “Structure” shall be construed, where ~~7 of 21~~ the context requires, as though followed by the words “or part or parts thereof”. However, in reference to the No Build Zone, “Structure” shall not include fences, retaining walls, decks, patios, ~~gazebos,~~ lawn furniture, children’s toys such as sandboxes and swing-sets, rip-rapped areas, driveways, parking areas, ~~sheds (not to exceed 120 square feet in floor area),~~ or the like. Additionally, sheds and

gazebos shall not be included in the definition of "Structure" in reference to the No Build Zone provided that they have a floor area of 120 square feet or less. This definition is not meant to be extended to how the term "Structure" is used for agricultural exemptions in Section 18.04.040 of the Bylaw.

"Swamps" are areas where ground water is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface, and where a significant part of the vegetational community is made up of, but not limited to nor necessarily include all of the following plants or groups of plants: alders (*Alnus*), ashes (*Fraxinus*), azaleas (*Rhododendron canadense* and *R. viscosum*), black alder (*Ilex verticillata*), black spruce (*Picea mariana*), buttonbush (*Cephalanthus occidentalis*), American or white elm (*Ulmus Americana*), white Hellebore (*Veratrum viride*), hemlock (*Tsuga Canadensis*), highbush blueberry (*Vaccinium corymbosum*), larch (*Larix laricina*), cowslip (*Caltha palustris*), poison sumac (*Toxicodendron vernix*), red maple (*acer rubrum*), skunk cabbage (*Symplocarpus foetidus*), sphagnum mosses (*Sphagnum*), spice bush (*Lindera benzoin*), black gum tupelo (*Nyssa sylvatica*), sweet pepperbush (*Clethra alnifolia*), white cedar (*Chamaecyparis thyoides*), willow (*Salicaceae*), common reed (*Phragmites communis*), and jewelweed (*Impatiens capensis*).

**"Vernal Pools:"** means a confined depression which provides habitat for vernal pool species, whether or not certified by the Massachusetts Natural Heritage program. Vernal pool species are those vertebrate and invertebrate species listed in the January 1991 edition of Massachusetts Audubon Society's "A Citizen's Step-by-Step guide to Protecting Vernal Pool's". In addition to the scientific definitions found in the Regulations Act's regulations, any confined basin or depression not occurring in existing lawns or driveways that, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contain at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife, and regardless of whether the site is contained within another resource area shall be defined as a vernal pool. The adjacent upland buffer zone resource area for vernal pools shall extend 200 feet outward from the mean annual high-water line defining the depression.

"Wetland Resource Area" is any resource area listed in 18.04.030(1) through 18.04.030(8).

"Wet Meadows" are areas where ground water is at the surface for the significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges, and rushes, made up of, but not limited to nor necessarily including all of the following plants or groups of plants: blue flag (*Iris*), vervain (*Verbena*), thoroughwort (*Eupatorium*), dock (*Rumex*), false loosestrife (*Ludwigia*), hydrophilic grasses (*Gramineae*), loosestrife (*Lythrum*), marsh fern (*Dryopteris thelypteris*), rushes (*Juncaceae*), sedges (*Cyperaceae*), sensitive fern (*Onoclea sensibilis*), and smartweed (*Polygonum*).

#### **18.04.030: Jurisdiction-**

~~(a) Except as permitted by the commission or as provided in this bylaw, no No person shall alter, dredge, fill, degrade, discharge into, and/or remove the following local resource areas: ( STM May 2009)~~

Resource Areas within the Town except as permitted by the Commission:

(1) ~~Within 200 feet of any river, perennial stream or vernal pool;~~ Any bordering freshwater wetlands, isolated freshwater wetlands, wet meadows, marshes, swaps, bogs, intermittent streams, brooks, creeks, ponds, lakes, and banks (banks of streams, ponds, lakes), in addition to lands within 100-feet of said Resource Areas;

(2) ~~Within 100 feet of any bordering vegetated wetlands, freshwater wetland, wet meadow, marsh, swamp or bog;~~ Vernal Pools, in addition to lands within 200-feet of this Resource Area;

(3) ~~Within 100 feet of any brook, stream (intermittent or spring), pond (natural or created) or lake~~ Riverfront Area;

(4) ~~Land under any of the bodies of water listed in (1) and (2) above~~ Land under Waterbodies and Waterways; and

(5) ~~Within 100 feet of bordering or isolated land subject to flowing or inundation by groundwater or surface water. The term "inundation by groundwater" means having groundwater at or near the surface of the ground at least six months of the year~~ Bordering and Isolated Land Subject to Flooding.

(6) ~~Buffer zone where an activity is proposed within the buffer zone, the Commission shall presume that the activity has a high likelihood of altering any resource area adjacent to the buffer zone unless the proponent proves by a preponderance of the credible evidence that either;~~

(a) ~~The buffer zone does not play a role in the protection of any of the wetland values of the Bylaw; or~~

(b) ~~The activity shall occur in such a manner that any potential adverse environmental impacts on any of the wetland values are avoided. (STM May 2009)~~

(7) ~~For the No Disturb Zone which extends twenty five feet (25') from the edge of the Wetland Resources Area, the Commission shall require the applicant to maintain a minimum continuous 25-foot wide No Disturb Zone of undisturbed, natural vegetation between the proposed activity and the resource area(s). The Commission shall also require a fifty feet (50') No Build Zone from the edge of the Wetland Resource Area, whereby the applicant is required to maintain any proposed building (residential or commercial) or structure, as defined in the regulations implementing the bylaw, at least 50 feet from the resource area(s). When partial encroachment into the No Build Zone setback is unavoidable, the applicant may mitigate this encroachment by increasing the size of the buffer strip area by an amount equal to or greater than the area of the encroachment, using the following guidelines:~~

1) ~~The encroachment shall not exceed 10% of the total area of the No Build Zone setback for the lot;~~

2) ~~The applicant shall demonstrate to the Commission's satisfaction that construction activities and future use of the site is not likely to result in intrusion into, or alteration of, the No Disturb Zone;~~

3) ~~The commission may require that permanent and visible demarcation of the No Disturb Zone is established and maintained in perpetuity so that current and future landowners are aware of the No Disturb Zone. 9 of 21 The applicant shall demonstrate to the Commission's satisfaction that future use of the site is not likely to result in intrusion into, or alteration of, the No Disturb Zone. The Commission may require the applicant to submit a use plan and narrative as part of that demonstration. At the Commission's request, the applicant shall demonstrate to the Commission's satisfaction that work or~~

activities proposed at the edge of the No Disturb Zone are necessary and that reasonable alternatives, including reducing the scale and scope of the project or adjusting other setbacks, do not exist.

(8) Where an activity is proposed within a vernal pool, the Commission shall presume that the activity has a high likelihood of altering the habitat for the vernal pool species unless the proponent proves by a preponderance of the credible evidence that either;

a) The vernal pool shall not have been used by vernal pool species as habitat;

b) The activity shall occur in such a manner that any potential adverse environmental impacts on any of the wetland values are avoided.

(9) For stormwater management purposes, the Commission may allow encroachment into the no build zone.

#### **18.04.040: Exemptions-**

(1) General Exceptions Provided that written notice with suitable plans and a project narrative (if applicable) has been received and reviewed by the Commission prior to the commencement of work, the application and permit otherwise required by this Bylaw shall not be required for:

a) Maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located building (residential/commercial) or facility used in the service of the public to provide electric, gas, water, sewer, telephone or other telecommunication services, provided said work utilizes the best practical measures to avoid or minimize impacts to Resource Areas outside the footprint of said structure or facility; and  
~~The permit and application required by this Bylaw shall not be required for: Maintaining, repairing or replacing but not substantially changing or enlarging, an existing and lawfully located building (residential/ commercial) or facility used in the service of the public to provide electric, gas, water, telephone or other telecommunication services; Work performed for normal maintenance or improvement of land in agricultural use or in aqua cultural use; Mosquito control projects when performed by the Town or the Commonwealth or political subdivision thereof, or Maintenance by the Town of its drainage system.~~

~~These exceptions shall be permitted only if written notice with suitable plans has been given to the Commission at least twenty (20) business days prior to the commencement of work and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.~~

b) Mosquito control projects when performed by the Commonwealth or political subdivision thereof.  
~~The following are exempt minor activities as long as they are located in the riverfront area or buffer zone, but not within any resource area. These activities are described in the State Wetland Regulations (310 Code of Massachusetts Regulations 10.00 Section 10.58(6)). The landowner can proceed with these tasks without prior review by the Conservation Commission.~~

~~i) Unpaved pedestrian walkways for private use;~~

~~ii) Fencing that does not create a barrier to wildlife movement Stone walls without mortared foundations; Stacks of cordwood; Vista pruning—the selective thinning of tree branches or understory shrubs to create a window to improve visibility—as long as it occurs more than 50 feet from the mean~~

annual high water line within a riverfront area or from a bordering vegetated wetland, whichever is farther. (This activity does not include the cutting of trees with reduces the leaf canopy to less than 90 percent of the existing crown cover or the mowing or removal of understory brush.)

Planting of native trees, shrubs, or groundcover, but not turf lawns;

Conversion of lawns to decks, sheds, patios, and pools that are accessory to single family homes, as long as:

House existed prior to August 7, 1996;

Activity located more than 50 feet from the mean annual high water of the riverfront area or bordering vegetated wetland (whichever is farther, and

Sedimentation and erosion controls used during construction

Conversion of patios, pools, sheds, or other impervious surfaces to lawn or natural vegetation

Activities, such as monitoring wells, exploratory borings, soil sampling, and surveying, that are temporary, have negligible impacts, and are necessary for planning and design purposes.

(Note; Maintenance of existing landscaping, including lawn mowing and pruning, is exempt from review regardless of location in the buffer zone or any wetland resource area.) (STM May 2009)

c) The following are exempt minor activities as long as they are located in the No Build Zone. These activities are described in the State Wetland Regulations (310 Code of Massachusetts Regulations 10.00 Section 10.58(6)). The landowner can proceed with these tasks without prior review by the Conservation Commission.

i) Unpaved pedestrian walkways for private use;

ii) Fencing that does not create a barrier to wildlife movement

Stone walls without mortared foundations;

Stacks of cordwood;

Vista pruning the selective thinning of tree branches or understory shrubs to create a window to improve visibility as long as it occurs more than 50 feet from the mean annual high water line within a riverfront area or from a bordering vegetated wetland, whichever is farther. (This activity does not include the cutting of trees with reduces the leaf canopy to less than 90 percent of the existing crown cover or the mowing or removal of understory brush.)

Planting of native trees, shrubs, or groundcover, but not turf lawns;

Conversion of lawns to decks, sheds, patios, and pools that are accessory to single family homes, as long as:

House existed prior to May 1, 2002;

Activity located more than 25 feet from the Wetland Resource Area or bordering vegetated wetland (whichever is farther, and

### ~~Sedimentation and erosion controls used during construction~~

~~Conversion of patios, pools, sheds, or other impervious surfaces to lawn or natural vegetation Activities, such as monitoring wells, exploratory borings, soil sampling, and surveying, that are temporary, have negligible impacts, and are necessary for planning and design purposes.~~

~~(Note; Maintenance of existing landscaping, including lawn mowing and pruning, is exempt from review regardless of location in the buffer zone or any wetland resource area.) (STM May 2009)~~

~~(2) The jurisdiction of the Bylaw shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture, including work performed for normal maintenance or improvement of land in agricultural or aquacultural uses as defined by the Act's regulations, found at 310 CMR 10.04. Emergency Projects. The permit and applications required by this bylaw shall not be required for emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, and provided that all the following conditions are met:~~

~~(a) Written notice has been given to the Commission prior to the commencement of work or within twenty four (24) hours after commencement. In cases determined by the Commission to be extreme emergencies, verbal notice may be accepted and written notice to be provided within five (5) business days;~~

~~(b) The Commission or its agent certifies the work as an emergency project;~~

~~(c) The work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and~~

~~(d) Within twenty one (21) days of commencement of an emergency project an application for permit shall be filed with the Commission for review as provided in this bylaw. Upon failure to meet these conditions, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.~~

~~(3) Minor Activities, as defined in the Commission's regulations, that occur only within the Buffer Zone and/or Riverfront Area, shall not be subject to the requirements of the Bylaw and the Commission's regulations relative to obtaining a permit. Public Good. Where a project is necessary for the protection of the health or safety of the public as determined by the Police Chief, Fire Chief, Superintendent of Public Works, or Board of Health, or a project substantially changes, enlarges, or creates a building, facility or structure as defined in the regulations a structure or facility used to provide local services of sewer, water, or stormwater drainage, or state or federally regulated public utilities such as electrical distribution or transmission lines, or communication, and natural gas lines, or public sidewalks, the Commission may waive the requirements associated with the No-Disturb Zone and No-Build Zone setbacks requirements of this bylaw, 18.04.30(6), and permit activities, provided that the applicant has proved by a preponderance of credible evidence that (1) there is no practicable alternative to the proposed project that would avoid or reduce the project's impact, and that (2) said project, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by the bylaw. The definition of practicable shall be the same as set forth in the Massachusetts Wetland~~

Regulations 310 CMR 10.58(4), General Performance Standard of the Riverfront Area. (Art. 30 § D, ATM 1991: Art. 14, STM 2003, STM May 2009

(4) Waiver The application and permit required by this Bylaw shall not be required for emergency projects necessary for the protection of the health or safety of the public, provided that the work is performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, and provided that all the following conditions are met:

- a. Written notice has been given to the Commission prior to the commencement of work or within twenty-four (24) hours after commencement. In cases determined by the Commission to be extreme emergencies, verbal notice shall be provided within five (5) business days; ~~Where the strict application of this Bylaw, or the rules and regulations adopted by the Tewksbury Conservation Commission, owing to the shape or topography of the applicant's property, would impose severe economic hardship, as defined either in statute or case law, on the applicant, taking into account an investment based expectation, or when a waiver would serve a substantial public benefit, the Commission may at its sole discretion grant a waiver from the dimensional requirements of the No Disturb Zone, No Build Zone and allow impacts on the wetland areas protected by this Bylaw. Impact to the wet lands areas shall be minimized to the furthest possible and practicable extent and any appropriate replication or mitigation will be confined to the property itself. This exception shall not apply to property where the applicant, owner, or predecessors in title to the property, created the hardship or rendered the property unusable by their own actions.~~
- b. The Commission or its agent certifies the work as an emergency project; ~~The Commission may grant a partial waiver from these By-Laws for alteration of a wetland resource area in situations where there are no feasible alternatives that provide fewer impacts to the resource area values. The applicant is responsible for conducting an alternatives analysis to show that there are no feasible alternatives. The Commission may, after considering the alternatives analysis, allow the alteration or temporary surface disturbance of up to a cumulative total no greater than 5,000 square feet of wetland resource area.~~
- c. The work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and Presumption of Significance: ~~Where a proposed activity involves the removing, filling, dredging, or altering of a Buffer Zone, the Commission shall presume that protection of the Buffer Zone as a resource area as identified in this Bylaw is significant to the interests specified Section 18.04.010 of this bylaw. This presumption may be overcome upon a showing of clear and convincing evidence demonstrating that the Buffer Zone does not play a role in the protection of said interests. In the event that the Commission determines that the presumption has been overcome, it shall make a written determination of its findings. (STM May 2009)~~

- d. Within twenty-one (21) days of commencement of an emergency project, the Commission may require the filing of an application for permit.

Upon failure to meet these conditions, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

(5) Additional Waiver Standards Notwithstanding Section 18.04.030, stormwater management systems designed, constructed, installed, operated, maintained, and/or improved in accordance with the Stormwater Management Policy (1996) or 310 CMR 10.05(6)(k) through (q) do not by themselves constitute Resource Areas or Buffer Zone under this Bylaw, provided that:

- a. The system was designed, constructed, installed, and/or improved on or after November 18, 1996; and Roadways The Commission may grant a waiver from these regulations for the construction and maintenance of a new roadway or driveway of minimum legal and practical width consistent with the Planning Board dimensional requirements to provide a single means of access from an existing public or private way to an upland area of the same owner, where no such means of access would otherwise be available or would have been available across other land formerly held in common ownership with such upland area. The applicant is still bound by the maximum alteration limit of 5,000 square feet as described in section 18.04.40 (4) b) above. Replication of altered wetland resource areas shall be required by the Commission to minimize adverse impacts and to protect the interests defined in the Bylaw.
- b. If the system was constructed in a Resource Area or Buffer Zone, the system was designed, constructed, and installed in accordance with all applicable provisions of the Bylaw.

Prohibited Wetland Alterations Wetland alterations intended to make lands buildable, as by fulfilling septic system setback requirements, flood elevation requirements, or other minimum construction setback requirements, or to achieve minimum lot area requirements, are prohibited. Wetland alterations required to access upland parcels will not be allowed if that landowner, or a preceding owner, landlocked the parcel by selling upland access. The Commission may require the filing of a request for a waiver of certain Planning Board requirements in order to minimize wetland impacts.

Wildlife Habitat Evaluation Where alterations exceed the maximum allowable thresholds described in the State Regulations 310 CMR 10.00 for bank, land under a water body, bordering land subject to flooding or riverfront area, or where the alteration of a habitat of rare species is involved, or where vernal pool or vernal pool habitat would be altered, a wildlife habitat evaluation shall be performed in accordance with 310 CMR 10.60. The Commission may also require a wildlife habitat evaluation to be conducted when the applicant proposes alterations to any wetland resource area that the Commission determines to be of exceptional value to the wildlife habitat interests of the Bylaw.

Upland Habitat Upland habitat shall, to the fullest extent possible, not be used to locate wetland replication areas. (STM May 2009)

If this citation is applicable to a proposed project, the applicant has the burden of proving that a subject stormwater management system meets the requirements outlined in Section 18.04.040(5) of this Bylaw.

**18.04.045-18.04.050: Performance Standards-Buffer Zone Limitations**

(1) The following limitations apply to the Buffer Zone identified in this Bylaw:

- a. ~~25Foot~~ No Disturb Zone: Except as Unless otherwise provided under the Bylaw herein, no alteration of Buffer Zone is permitted within 25-feet of the delineated edge of ~~the above-mentioned wetland resource areas~~ Resource Areas that are incorporated into the definition of Buffer Zone. Prohibited activities include, but are not limited to, grading, landscaping, vegetation clearing, cutting, filling excavating, road construction, and driveway construction. This standard has been adopted because the alteration of land immediately adjacent to a wetland is likely to result in the alteration of the wetland itself. Alterations typically result from extension of lawns, depositing/dumping of yard waste, over grading, siltation, deposition of construction debris, unregulated filling, and clearing of vegetation, all of which is prohibited.
  
- b. No Disturb Zone Demarcation: To maintain the perpetual integrity of the No Disturb Zone and to ensure that there will be no encroachments into this Zone by the applicant or future owners of the subject property, the Commission may require the No Disturb Zone to be marked on the ground, at the applicant's expense, with permanent markers. These markers shall be made of weather resistant material (i.e. granite, or concrete), and the Commission shall determine their number, size and location. The Commission may require one or more of these markers to bear, on their upland side, writing (i.e. permanent plaque or engraving) that shall read "No Disturbance beyond This Point by Order of the Tewksbury Conservation Commission." ( STM May 2009)No Build Zone: Unless otherwise provided under the Bylaw herein, no Structures are allowed to be built within 50-feet of the delineated edge of Resource Areas that are incorporated into the definition of Buffer Zone, with the following exceptions:
  - i. The cumulative area of Structures encroaching or within the No Build Zone of a lot is allowed to be no more than 10% of the total area representative of the No Build Zone within the lot where encroachment is proposed.
  - ii. Where the cumulative encroachment of Structures within a lot's No Build Zone is greater than 10% of the total area representative of the No Build Zone within the lot where encroachment is proposed, the Commission may approve of said encroachment provided that:
    1. Buffer Zone within the lot is enhanced and/or restored at a minimum ratio in square feet of 1:1 and a maximum ratio in square feet of 2:1 of Buffer Zone enhancement/restoration to areas encroaching into the lot's No Build Zone which exceeds the 10% threshold outlined in Section 18.04.050(b)(ii).

2. For projects approved by the Commission under Section 18.04.050(b)(ii)(1), the Commission shall require that these areas of enhancement/restoration shall remain unaltered in perpetuity. Said requirement can be incorporated into a permit issued by the Commission and/or included as an ongoing condition upon issuance of a Certificate of Compliance.

**18.04.050 Applications for permit and requests for determination.**

~~A person shall file with the Commission a written application form provided by the Commission requesting to perform activities regulated by the bylaw affecting local resource areas. The application shall include, in addition to the information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the local resource areas. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.~~

~~The Commission in its discretion may accept as the application for permit under this bylaw the Notice of Intent and plans filed under the Wetlands Protection Act.~~

~~Any person desiring to know whether or not a proposed activity or certain property is subject to this bylaw may request in writing a determination from the Commission. Such a "Request for Determination" shall contain information and plans specified in the Commission's regulations.~~

~~At the time of an application for permit or "Request for Determination", the applicant or requestor shall pay an application fee and, if necessary, a consultant fee. (Art. 30, § E, ATM 1991, STM May 2009)~~

**18.04.06018.04.080: Notice and hearings. Hearings (The section Notice and Hearings is being moved from between 18.04.050 and 18.04.070 to between 18.04.070 and 18.04.090)**

- (1) ~~Any person filing a application for permit or a "Request for Determination" NOI or ANRAD with the Conservation Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivery, certificate of mailing, and/or certified mail (return receipt requested), to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, ~~including owners of land directly opposite on any public or private street or way, and abutters to the abutters~~ within 100-feet of the property line of the applicant, including any in another municipality or across a body of water; however, if the owner's property line is more than 1500 feet from the applicant's or requestor's property line, he or she is not an abutter radially of the Project Locus. The notice to abutters shall include a copy of the application for permit or "Request for Determination", with plans, or shall state where copies may be examined and obtained by abutters free of charge shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date if known. ~~The Town shall not be responsible for providing free copies. A copy of the notice mailed or delivered and a list of all abutters and abutters to abutters as described above and their respective addresses, certified by the board of assessors from the most recent applicable tax list, shall be filed with the Commission at least one week prior to the public hearing date. (ATM 5-9-12).~~ The notice to abutters also shall include a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters. Notice to abutters shall be~~

made at least seven business days prior to the public hearing for the application. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission verifying that all applicable abutters were appropriately notified in accordance with the Bylaw. Said affidavit, in addition to copies of mailing receipts from abutter notifications obtained by the person filing the application, shall be provided to the Commission before the public hearing for the application.

- (2) The Commission shall conduct a public hearing on any NOI or ANRAD application for permit or "Request for Determination with written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the municipality. The applicant or requestor shall give, at his or her expense, written notice of the public hearing in a newspaper of general circulation in the Town. This written notice must be published at least five (5) business days prior to the public hearing. The Commission shall commence the public hearing within 21 days from receipt of a completed NOI or ANRAD application unless an extension is authorized in writing by the applicant and the public hearing shall be advertised in accordance with M.G.L. c. 39, § 23B. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials listed in Section 18.04.100.
- (3) "Request for Determination" of applicability filings submitted to the Conservation Commission exclusively for the purpose of septic system repair, shall be specifically exempted from the requirements of a public hearing including advertising and notification requirements. Within 21 days after the date of receipt of the Request for a Determination of Applicability, the Commission shall issue a Determination of Applicability (DOA). Notice of the time and place of the public meeting at which the Determination will be made shall be given by the Commission at the expense of the person making the request not less than five business days prior to such meeting, by publication in a newspaper of general circulation in the city or town in which the land is located, and by mailing a notice to the person making the request, the owner, the board of health, and the planning board of said city or town. Notice shall also be given in accordance with the open meeting law, M.G.L. c. 39, § 23B. The DOA shall be signed by a majority of the Commission.
- (4) The Commission shall commence the public hearing within twenty one (21) days from receipt of a completed application for permit or "Request for Determination". The Commission may continue the hearing if the applicant or requestor authorizes an extension in writing. (ATM 5-9-12) in its discretion may combine its public meeting and/or public hearing under the Bylaw or Tewksbury Wetland Protection Regulations (TWPR) with the public meeting and/or public hearing conducted under the Act and 310 CMR 10.00.

However, the Commission in its discretion may reject the applicant's or requestor's continuance request and proceed with the hearing. The Commission shall issue its permit or determination in writing within twenty one (21) days of the close of the public hearing unless a time extension is authorized in writing by the applicant or requestor.

~~The Commission in its discretion may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act.~~

~~The Commission shall have the authority to continue the hearing to a date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant, requestor or others, information and plans required of the applicant or requestor deemed necessary by the Commission in its discretion, or the comments and recommendations of the boards listed in Section 18.04.080. However, if the applicant or requestor objects to a continuance, the hearing shall be closed and the commission shall take action on such evidence as is then available.~~

~~Public Utilities (Roadways). Permit applications for constructing or maintaining public utilities in existing town roadways shall provide written notification to all abutters on both sides of the roadway for the extent of the Town road right-of-way that is located within the 100-foot buffer zone.  
Public Utilities (Easements). Permit applications for constructing or maintaining public utilities located within property easements shall provide written notification to property owners of the easement and all abutters within 100 feet in all directions of the easement right-of-way for the extent of the easement that is located within the 100-foot buffer zone. "Request for Determinations" shall require written notification to property owners of the easement in which they intend to work.  
(Art. 13,STM 12-8-97; Art. 9, ATM 1996; Art. 30 § F, ATM 1991, STM May 2009, ATM 5-9-12)~~

**18.04.060: Waiver**

- (1) The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in this Bylaw or its regulations, provided that:
  - a. The Commission finds in writing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations;
  - b. That avoidance, minimization, and mitigation have been employed to the maximum extent feasible; and
  - c. That the waiver is necessary to accommodate an overriding public interest, or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.
  
- (2) The Commission may waive the dimensional requirements of the No Disturb Zone and the No Build Zone where the Commission specifically finds, after the applicant has presented sufficient proof, that literal enforcement of the provision would involve demonstrated substantial hardship to an applicant, the applicant has demonstrated that no practicable alternative exists to comply with the No Disturb Zone and No Build Zone setbacks, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw. The applicant has the burden of proof regarding whether their proposed project satisfies the requirements of this waiver.

**18.04.070: ~~Time of receipt.~~ Applications and Fees**

The date of receipt of an application for permit or "Request for Determination" will be considered to be the date of the first regularly scheduled meeting of the Commission following submission of the completed filing at the Commission's office. (Art. 30 § G, ATM 1991, STM May 2009)

- (1) Any person desiring to know whether a proposed activity or specific area is subject to this Bylaw, or whether a proposed activity will alter Resource Areas (regardless of whether the activity is proposed in a Resource Area or Buffer Zone), may in writing submit a Request for Determination of Applicability (RDA).
- (2) Unless otherwise stated herein, activities within Resource Areas or Buffer Zone that will alter or affect Resource Areas shall require a Notice of Intent (NOI) application to be submitted to the Commission.
- (3) An Abbreviated Notice of Resource Area Delineation (ANRAD) application may be filed, in writing, to the Commission to confirm the boundaries of Resource Areas within a particular location of interest.
- (4) The Commission in an appropriate case may accept as the application and plans under this Bylaw any corresponding application and plans filed under the Act and 310 CMR 10.00 but the Commission is not obliged to do so.
- (5) RDA, NOI, and ANRAD applications shall include such information and plans as are deemed necessary by the Commission to describe or confirm the location of nearby Resource Areas, the proposed activities and their effects on jurisdictional areas protected by the Bylaw, in addition to information necessary to demonstrate full compliance with the Bylaw and regulations promulgated thereunder.
- (6) At the time of an application, the applicant shall pay a filing fee specified in regulations of the Commission. The fees are in addition to that required by the Act and 310 CMR 10.00. Pursuant to M.G.L. Ch. 44 §53G and regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists, or other experts in order to aid in the review of proposed projects. Such funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

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

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

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

(Note: this space is reserved for the 18.04.080, which is the former 18.04.060)

**~~18.04.080~~ 18.04.100 Coordination with ~~other boards.~~ Other Boards (Note: The section Coordination with Other Boards is being moved from between 18.04.070 and 18.04.090 to between 18.04.090 and 18.04.110)**

Any person filing an application for permit or a "Request for Determination" with the Commission shall provide copies thereof at the same time, by certified mail (return receipt, requested) or hand delivery, to the Select Board, Planning Board, the Board of Appeals, the Board of Health and the Building Inspector. The person providing such copies shall file an affidavit with the Commission stating that he or she has mailed or delivered the application for permit or "Request for Determination" to the above named boards. The Commission shall not take final action until such boards have had fourteen (14) days from receipt of the application for permit or "Request for Determination" to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant or requestor shall have the right to receive any such comments and recommendations and to respond to them at a hearing of the Commission, prior to final action. (Art. 30 § H, ATM 1991, STM May 2009)

- (1) The Commission may solicit the advice and opinions of appropriate boards, departments, and Town officials. Each shall be entitled to file written comments and recommendations with the Commission at least three days before the hearing. The Commission shall take these comments and recommendations into account but may not be bound by them. The applicant shall have the right to receive any such comments and recommendations and respond to them at the hearing.

**18.04.090: ~~Permits, determinations and Conditions.~~**

- (1) ~~If the Commission after a public hearing determines that the activities which are the subject of the application for permit are likely to have a significant or cumulative effect upon the wetland values protected by this By law, the Commission, within twenty one (21) days of the close of the hearing, shall issue or deny a permit for the activities requested. If the applicant gives a written authorization for an extension, the Commission may issue its permit or denial on the date specified in the authorization. If it issues a permit, the Commission shall impose~~

conditions which the Commission deems necessary or desirable in order to protect the wetlands values, and all activities shall be done in accordance with those conditions. The following permits are issued by the Conservation Commission: an Order of Conditions (OOC) is issued for a corresponding NOI application, a DOA is issued for a corresponding RDA application, and an Order of Resource Area Delineation (ORAD) is issued for a corresponding ANRAD application.

- (2) The Commission is empowered to deny an application for permit for failure to meet the requirements of this Bylaw; for failure to submit the necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards and other requirements in the Commission's regulations; for failure to avoid or prevent significant or cumulative effect upon the wetland values protected by this Bylaw; and for failure to pay all required fees. It also shall deny an application for permit where it finds no conditions are adequate to protect the wetland values. The Commission shall duly consider any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. As per Section 18.04.080(3), within 21 days after the date of receipt of the Request for a Determination of Applicability, the Commission shall issue a DOA. The DOA shall represent a written determination by the Commission as to whether a proposed activity or specific area is subject to this Bylaw, or whether a proposed activity will alter Resource Areas (regardless of whether the activity is proposed in a Resource Area or Buffer Zone).
- (3) A permit shall expire three (3) years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue an annual extension not to exceed six (6) years from the original date of issuance; provided, that it receives a written request for a renewal at least thirty (30) days prior to the permit's expiration and provided that all work to that date has been done within the scope of the permit. If the Commission, after a public hearing, determines that the activities which are the subject of a NOI application are likely to have a significant or cumulative effect upon the Resource Area Values protected by this Bylaw, the Commission, within twenty-one (21) days of the close of the hearing, shall issue an OOC that approves or denies the activities requested. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect. The Commission also shall take into account any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities. If the Commission issues an OOC approving the proposed activities, the Commission shall impose conditions which the Commission deems necessary or desirable in order to protect the Resource Area Values, and all activities shall be done in accordance with those conditions.
- (4) For good cause the Commission may revoke or modify a permit issued under this Bylaw. Before revoking or modifying a permit, the Commission must comply with Section 18.04.060 by giving notice to the permit holder, the public, town boards and the abutters and by holding a public hearing. Notwithstanding anything stated within the Bylaw herein, the Commission is empowered to deny a NOI application for failure to:
  - a. Meet the requirements of this Bylaw;

- b. Submit the necessary information and plans requested by the Commission;
  - c. Meet the design specifications, performance standards and other requirements in the Commission's regulations;
  - d. Avoid, minimize, or mitigate unacceptable significant or cumulative effects upon the Resource Area Values protected by this Bylaw;
  - e. Pay all required fees; and/or
  - f. Where the Commission finds no conditions are adequate to protect the Resource Area Values. The Commission shall duly consider any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.
- (5) The Commission in its discretion may combine the permit or other action issued under the Bylaw with the Order of Conditions issued under the Wetlands Protection Act. Within twenty-one (21) days of the close of the public hearing for an ANRAD application, the Commission shall issue an ORAD that represents the Commission's determination on whether Resource Areas subject to the ANRAD application have been identified and appropriately delineated, or whether modifications are necessary for the submitted delineations.
- (6) With respect to a "Request for Determination", the Commission, within twenty-one (21) days of the close of the hearing thereon, shall issue its determination in writing stating whether or not the proposed activity or property in question is subject to this Bylaw. If the applicant gives written authorization on or before the date specified in the extension. (Art.30 § 1, ATM 1991, STM May 2009) A DOA, OOC, or ORAD issued under the Bylaw shall expire three years from the date of issuance. Upon request, the Commission, in their discretion, may extend the expiration date of said DOA, OOC, or ORAD for one or more periods of up to three years each. The request for an extension shall be made at least 30-days prior to the expiration of the DOA, OOC, or ORAD.
- (7) In reviewing activities within the Buffer Zone, the Commission shall presume the Buffer Zone is important to the protection of other Resource Areas (where Resource Areas have an associated buffer zone) because activities undertaken in close proximity have a high likelihood of adverse impact, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. This presumption shall apply unless the proponent proves by a preponderance of the credible evidence that either:
- a. The Buffer Zone does not play a role in the protection of any of the wetland values of the Bylaw or;
  - b. The activity shall occur in such a manner that any potential adverse environmental impacts on any of the wetland values are avoided.

- (8) In reviewing activities within the Riverfront Area, the Commission shall presume the Riverfront Area is important to all the Resource Area Values unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this Bylaw, has proved by a preponderance of the evidence that:
- a. There is no practicable alternative to the proposed project with less adverse effects; and
  - b. That such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this Bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.
- (9) To prevent Resource Area loss, the Commission shall require applicants to avoid alteration wherever feasible, to minimize alteration, and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication.
- (10) The Commission shall presume that all areas meeting the definition of “Vernal Pools” under this Bylaw, including lands within 200-feet of Vernal Pool boundaries, perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Act’s regulations.
- (11) For good cause the Commission may revoke any DOA, OOC, or ORAD, or any other order, determination, or other decision issued under this Bylaw after a notice to the holder has been provided, in addition to satisfying the same notification requirements for the application of the issued permit being revoked, as set forth in Section 18.04.080. The holder of the permit being revoked must be notified at least two (2) weeks prior to the public meeting and/or public hearing.
- (12) The Commission in an appropriate case may combine the decision issued under this Bylaw with the DOA, OOC, ORAD, Certificate of Compliance (COC), or other determinations and decisions issued under the Act or the Act’s regulations.
- (13) At the time of a RDA, OOC, or ANRAD application, the applicant or requestor shall pay an application fee in accordance with Section 18.04.070 and, if necessary, a consultant fee (also in accordance with Section 18.04.070)
- (14) Where the Bylaw states that a DOA, OOC, or ORAD be issued by the Commission, the action to issue said DOA, OOC, or ORAD shall be taken by more than half the members present at a

meeting of at least a quorum. Where the Bylaw states that a DOA, OOC, or ORAD be signed by a majority of the Commission, that action is to be taken by a majority of the members then in office, who need not convene as a body in order to sign, provided they met pursuant to the open meeting law, M.G.L. c. 39, §§ 23A through 23C, when voting on the matter. Where the Bylaw states that the Commission is to receive a request, application, or notice, the Commission shall mean in this context a member of the Commission or an individual designated by the Commission to receive such request, application, or notice.

- (15) To maintain the perpetual integrity of the protected Resource Areas defined within this Bylaw and their associated Buffer Zones, the Commission may include conditions within a DOA or OOC to install permanent signage along the boundaries of said Resource Areas or within their Buffer Zones (e.g., along the No Disturb Zone or No Build Zone boundary), at the applicant's expense.

(This space is reserved for 18.04.100 which is the former 18.04.080)

**18.04.10018.04.110: Modifications**

- (1) If the applicant proposes to make significant changes in the Commission's originally approved plans, the applicant shall submit the amended plans to the Commission. The Commission, in its discretion, if it deems the amendments to the plan significant, may require the filing of a new application for permit or an application to amend an existing permit. This new application will be treated as a new application requiring a noticed hearing, application fee and, if necessary, a consultant fee. (Art. 30 § J, ATM 1991) An application to amend an existing permit follows the same procedures as was necessary for the original permit application.

**108.04.11018.04.120 Registry of deeds-Deeds**

- (1) No work proposed in any application NOI or ANRAD shall be undertaken until the permit corresponding OOC or ORAD issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court section of the registry for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the permit document has been so recorded and furnishes the recording data pertaining thereto. (Art. 30 § K, ATM 1991) If the applicant fails to perform such recording, the Commission may record the documents itself and require the Applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a COC.
- (2) COCs issued by the Commission must be recorded at the Registry of Deeds or Land Court, whichever is appropriate, by the applicant. Upon failure of the applicant to record the COC, the issuing authority may do so.

**18.04.120 18.04.130: Certificate of compliance- Compliance**

- (1) Upon completion of a project-Project managed under a OOC issued by the Commission, the applicant shall immediately request in writing a Certificate of Compliance COC from the Commission. If the activities were completed in accordance with plans stamped by a

registered professional architect, landscape architect, civil engineer, or land surveyor, a written notice by said professional certifying substantial completion with the plan and setting forth what deviations, if any, exist from the plan shall accompany the request for a COC.

- (2) The Commission, any of its members, or its agent may conduct an inspection to validate the completion of the Project and to determine if the Project substantially complied with the conditions of the OOC. The Commission shall take action on the respect within thirty (30) days of its submission at the Commission's office, in its discretion, may impose conditions on the COC to assure continued operation and maintenance of permanent measures to prevent or control significant or cumulative effect upon the wetland values protected by this Bylaw.
- (3) The Commission in its discretion may impose conditions on the Certificate of Compliance to assure continued operation and maintenance of permanent measures to prevent or control significant or cumulative effect upon the wetland values protected by this Bylaw. (Art. 30 § L, ATM 1991) Within twenty-one (21) days of the receipt of a request for a COC to the Commission, the Commission shall either:
- a. Issue a COC for the entire project managed under the OOC;
  - b. Issue a COC for portions of the project managed under the OOC; or
  - c. If the Commission determines that, after review and inspection, that the proposed work has not been done in compliance with the corresponding OOC, the Commission may refuse to issue a COC. Said refusal shall be in writing and shall specify the reasons for denial.
- (4) The Commission in an appropriate case may combine the issuance of a COC under the Bylaw with the COC issued under the Act or the Act's regulations.

#### **18.04.13018.04.140 Regulations.**

After public notice and hearing(s), the Commission shall promulgate regulations to effectuate the purposes of this Bylaw. Failure by the Commission to promulgate such regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate this Bylaw. ~~(Art. 30 § M, ATM 1991)~~At a minimum these regulations shall reiterate the terms defined in this Bylaw, define additional terms not inconsistent with the Bylaw, impose filing and consultant fees, and establish performance standards for work within Buffer Zone and Resource Areas.

#### **18.04.14018.04.150: Enforcement**

- (1) The Commission and its agents, only after showing proper identification, shall have the authority to enter upon privately owned land for the purpose of inspecting and monitoring property subject to a "Request for Determination". No person shall remove, fill, dredge, build upon, degrade, or otherwise alter Resource Areas protected by this Bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore

illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this Bylaw.

- (2) The Commission shall have the authority to enforce this Bylaw, the regulations promulgated hereunder, and the permits issued hereunder by issuing violation notices or administrative orders, and by bringing civil and criminal court actions, including those seeking the imposition of municipal liens, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this Bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.
- (3) Upon written request of the Commission, the Select Board, Town Manager and Town Counsel, may take legal action for enforcement under civil law. The Commission shall have authority to enforce this Bylaw, its regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, non-criminal citations under M.G.L. Ch. 40 §21D, and civil and criminal court actions, including those seeking the imposition of municipal liens. Any person who violates provisions of this Bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.
- (4) The Board and Officials of the Town shall have authority to assist the Commission in enforcement. Upon written request, the Police Chief or his designee may provide assistance to the Conservation Commission as it relates to court procedure. Upon written request of the Commission, the Board of Selectmen, Town Manager and Town Counsel, may take legal action for enforcement under civil law.
- (5) Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law.
- (6) Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- (7) For good cause, the Commission may issue a cease-and-desist order, violation notice, or an enforcement order with or without prior notification to the property owner or applicant. The Conservation Administrator, upon informing the Commission Chair, may generate either or both of these actions which shall remain in effect until the next regularly scheduled meeting of the Commission. The Commission shall give the property owner or applicant notice of the meeting at least forty-eight (48) hours before convening it. At the meeting, the Commission shall vote whether to continue the action.
- (8) The Commission may mandate the installation of temporary control measures if there is any danger of adversely affecting local resource areas Resource Areas. These measures are to remain in effect and be maintained in place until the Commission allows their removal.
- (9) Under conditions of a cease and desist order, violation notice, or an enforcement order, another party may be retained by the Commission to complete the temporary control measures if the property owner or applicant is unable or unwilling to do the work within a

reasonable time as stated in the Commission's order, and if there is an immediate hazard to the local ~~resource areas~~ Resource Areas, wetland values protected by this Bylaw, or public safety. The costs associated with this work shall be borne by the property owner or applicant. (~~Art. 30 § N, ATM 1991, STM May 2009~~)

- (10) Any person who purchases, inherits or otherwise acquires land upon which work has been done in violation of the provisions of this Bylaw or in violation of any permit issued pursuant to this Bylaw shall forthwith comply with any order of the Commission and restore such land to its condition prior to any violation; provided, however, that no action, civil or criminal, shall be brought against such person if corrective action commences within six (6) months following the date of acquisition of the land by such person or within the time specified in the Commission's order.

**~~18.04.150 Inspection.~~ (Note 18.04.150 Inspection is now located in 18.04.150 (2))**

~~The Commission, its agents and officers shall have the authority to enter privately owned land for the purpose of performing its duties under this Bylaw, and may make or cause to be made such examinations, surveys or samplings as the Commission deems necessary. (Art. 30 § O, ATM 1991)~~

**18.04.160: Burden of Proof**

- (1) The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application for permit will not have unacceptable, significant, or cumulative effect upon the local ~~resource areas~~ Resource Areas and ~~wetland values~~ Resource Area Values protected by this Bylaw. Failure to provide sufficient evidence to the ~~commission~~ Commission supporting this burden shall be good cause for the Commission to deny a permit, ~~or~~ grant a permit with conditions, or to continue the hearing to another date to enable the applicant or others to present additional evidence. However, if the applicant objects to a continuance, the hearing shall be closed and the Commission shall take action on such evidence as is then available. (~~Art. 30 § R, ATM 1991~~)

**18.04.170: Relation to the Wetlands Protection Act**

- (1) This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the ~~Wetlands Protection Act and promulgated hereunder.~~ (~~Art. 30 § S, ATM 1991, STM May 2009~~) Act and 310 CMR 10.00 thereunder.

**18.04.180: Performance Guarantee**

- (1) Bonds or Surety. The Commission may require the applicant to file a surety company performance bond or a deposit of money in an amount determined by the Commission to be sufficient to cover the cost of all or any part of the site alterations specified in the permit and/or shown on the plans approved by the Commission. Such bond or surety, if required to be filed or deposited, shall be approved, as to form and manner of execution by the Town Counsel, and as to sureties by the Town Treasurer, and shall be contingent upon the completion of such alterations within the time frame of the permit and extension, if granted. Such bond or surety shall remain in effect during an active order of conditions and any extension granted by the Commission. As part of a permit issued under the Bylaw, in

addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or both of the methods described below:

- (a) By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a COC for work performed pursuant to the permit.
  - (b) By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.
- (2) ~~Covenant. The Commission may require the applicant to secure the performance and observance of conditions imposed on the project, by a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town and members of the public, whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. Upon completion of work required in the permit, security for the performance of which was given by bond, deposit or covenant, or upon the complete performance of the covenants with respect to the site, the applicant may request and agree on terms of release with the Commission.~~
- (3) ~~Reduction of Bond or Surety. The penal sum of any required bond, or the amount of any deposit held hereunder may, from time to time, be reduced by the Commission and the obligations of the parties thereto released by the Commission in whole or in part. Upon the Commission's receipt of request to release a bond, deposit of money, or other negotiable security for the Project, if the Commission determines that Project alterations have not been completed in compliance with the permit, the Commission shall, within forty-five (45) days, specify to the applicant in writing the details wherein said alterations fail to comply with the permit. If the Commission determines that said alterations have been completed in compliance with the conditions of the permit, it shall release the interest of the Town in such bond and return the bond or the deposit to the person who furnished same or release the covenant, if appropriate.~~
- (4) ~~Release of Performance Guarantee. Upon completion of site alterations required in the permit, security for the performance of which was given by bond, deposit or covenant, or upon the complete performance of the covenants with respect to the site, the applicant may request and agree on terms of release with the Commission.~~

If the Commission determines that said alterations have been completed in compliance with the conditions of the permit, it shall release the interest of the Town in such bond and return the bond or the deposit to the person who furnished same, or release the covenant, if appropriate.

If the Commission determines that said alterations have not been completed in compliance with the permit, it shall, within forty five (45) days, specify to the applicant, in writing, the details wherein said alterations fail to comply with the permit. (Art. 30 § U, ATM 1991, STM May 2009)

**18.04.190: Appeal**

- (1) Any person aggrieved by the permit or decision of the Commission, whether or not previously a party to the proceeding, may appeal according to the Massachusetts General Laws. (Art. 30 § V, ATM 1991)

**18.04.200: Amendments**

- (1) The rules and regulations of the Conservation Commission (as described in Section ~~18.04.130~~18.04.140 of this chapter) may be amended from time to time by a majority vote of the Commission. Prior to taking a vote on an amendment, the Commission shall have held a public hearing on the proposed change(s). (Art. 30 § X, ATM 1991, STM May 2009)

**18.04.210: Penalties**

- (1) Any person who violates any provision of this Bylaw, the regulations promulgated hereunder, or the permits issued hereunder, shall be punished by a fine as specified in the Commission's regulations which shall not exceed \$300 for each offense. ~~Each day the violation continues shall constitute a separate offense, and each provision of the Bylaw, regulations or permit violated shall constitute a separate offense. Each day the violation alters a local resource area shall constitute a separate offense.~~ (Art. 30 § P, ATM 1991, STM May 2009) The Commission, in their discretion, may consider the following as separate offenses:

- (a) Each day the violation continues;
- (b) Each provision of the Bylaw, regulations, or permit violated; and/or
- (c) Each day the violation alters a local Resource Area.

**18.04.220 ~~Preacquisition violation~~ Severability (Note: the original "18.04.220 Preacquisition violation." is now located in 18.04.150 Enforcement (10))**

- (1) ~~Any person who purchases, inherits or otherwise acquires land upon which work has been done in violation of the provisions of this Bylaw or in violation of any permit issued pursuant to this Bylaw, and such violation notice is recorded at the registry of deeds or land court, shall forthwith comply with any order of the Commission and restore such land to its condition prior to any violation, provided, owever that no action, civic or criminal, shall be brought against such person if corrective action commences within six (6) months following the date of the acquisition of the land by such person or within the time specified in the Commission's order (Art. 30 § Q, ATM 1991) The invalidity of any section or provision of this~~

Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, approval or determination which previously has been issued.