

Holliston Wetlands Administration Bylaw Regulations

PREFACE

These Wetlands Administration Bylaw Regulations (hereinafter referred to as the "Regulations") are promulgated by the Town of Holliston Conservation Commission (hereinafter referred to as the "Commission") pursuant to the authority granted to it under Section 7 of Holliston's Wetlands Administration Bylaw (Article XXX of the General Bylaws, hereinafter referred to as the "Bylaw"), as amended.

As the Commonwealth's Wetlands Protection Act (hereinafter referred to as the "Act") gave the Massachusetts Department of Environmental Protection (DEP) the authority to make regulations, our local Bylaw gives the Conservation Commission the power to do the same. The state regulations, contained in the Code of Massachusetts Regulations at 310 CMR 10.00, declare that "nothing contained (in the state regulations) should be construed as preempting or precluding more stringent protection of wetlands or other natural resource areas by local by-law, ordinance or regulation" (310 CMR 10.01(2)).

The Bylaw was enacted in 1988 (and subsequently amended) as local legislation independent from the State's Act. The Bylaw provides the Holliston Conservation Commission with the authority to regulate projects in and adjacent to wetlands. To implement the Bylaw to the greatest effect and benefit specifics, including certain definitions, performance standards, and areas of interest, are needed to define the bounds of the authority to regulate, as well as to protect the public interest in wetland resources.

The Regulations will be used to implement and enforce the Bylaw and are intended to be read together with the Bylaw, which has many provisions that are not repeated in these Regulations. What follows will be known as the Regulations. Detailed requirements for submittals are set forth in Section 4 "Applications for Permits and Requests for Determination". Forms for submittals, which satisfy both the state and local requirements, are available from the Holliston Conservation Commission Office. The filing fee schedule (Section 4.7) reflects a portion of the direct costs to the Town of processing applications under the Bylaw. These Regulations also provide a detailed discussion of performance standards for activities proposed to take place in the buffer zone (as defined herein). Most of the Commission's review typically concerns proposed activities in the buffer zone.

SECTION 1. MEMBERSHIP (see Bylaw)

SECTION 2. PURPOSE

2.1 INCORPORATION

All of the definitions, resource area descriptions, procedures and requirements set forth in the Massachusetts Wetlands Protection Regulations at 310 CMR 10.00 et seq. are hereby incorporated and made a part of these Regulations, except where they differ from or depart from these Regulations. Where these Regulations differ from the State regulations, these Regulations will be applied in addition to the state regulations. In most instances, the applicant should first address the state regulations at 310 CMR 10.00 et seq. and then supplement them with these Regulations.

2.2 PURPOSE AND PROTECTED INTERESTS

The purpose of these Regulations is to aid in the consistent and effective implementation of the Bylaw by way of further definition; explanation and specification; and illustration and example of the Bylaw's provisions. The Bylaw protects the wetlands, related water resources, and certain adjoining land areas in the Town by providing for prior review and control of activities deemed to have a significant or cumulative adverse effect upon wetlands values, including but not limited to the following interests:

1. protection of public and private water supplies and quality
2. protection of ground water supply and quality
3. flood control
4. storm damage prevention
5. erosion and sedimentation control
6. prevention of water and soil pollution
7. protection of fisheries
8. protection and preservation of wildlife habitat and rare species habitat including rare plant species
9. recreation values, deemed important to the community

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2.3 DEFINITIONS

The following definitions shall apply in the interpretation and implementation of the Bylaw and its Regulations; the definitions applicable to the Regulations are the same as set forth in 310 CMR 10.00 et seq., except for the modifications to those definitions and additional definitions below. People should consult both the State and Town definitions. Where the Town Regulation definitions expand on the State Act definitions, the Regulations control.

Adjacent Upland Resource Area shall include all lands within 100 feet of wetland resource areas as enumerated in Section 3.1, except for perennial streams and rivers for which the adjacent upland resource area extends for 200 feet from the MAHWL, and except for vernal pools and ponds under 10,000 square feet in area for which special adjacent upland resource area definitions are described below.

Agent or Administrator. Anyone appointed or assigned by the Commission to serve as its representative.

Alter includes, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by the Bylaw:

1. removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
2. changing of preexisting drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
3. drainage, or lowering of water level or water table;
4. dumping, discharging, or filling with any material which may degrade water quality;
5. placing of fill, or removal of material, which would alter elevation;
6. driving of piles, erection, or repair of buildings, or structures of any kind;
7. placing of obstructions or objects in water;
8. destruction of plant life including cutting of trees within a resource area or within a buffer zone if a resource area could reasonably be affected thereby;
9. changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
10. any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or ground water including, without limitation, any activity that may cause surface water runoff contaminated with sediments, chemicals, or animal wastes;
11. application of pesticides or herbicides;
12. incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by the Bylaw;
13. storage of flood waters and storm water runoff waters in wetlands; and
14. temporary or permanent change in the use of land which may result in potential or actual adverse effect on the purposes and values of the Bylaw, including but not limited to any temporary or permanent change in use of land preserved pursuant to Article 97 of the Massachusetts Constitution.

Applicant. The individual or entity filing (or on whose behalf is filed) an application under the Bylaw.

Bank. The land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the Mean Annual High Water Line, whichever is higher.

Bankfull. For those stream types that exhibit a well-developed floodplain, bankfull stage is easily and reliably identified as the elevation of the floodplain. A river's bankfull condition occurs regularly; it is the only morphologic feature of a river that coincides with a constant recurrence interval of flow. If a person observes a stream at bankfull stage (which may only occur a few days per year – perhaps only a few minutes for a small stream), the water level can be easily noted and shall be considered to be the “mean annual high water line” of the perennial or intermittent stream.

Body of Water. Any naturally occurring confinement of surface water including those created by dams, impoundments, etc.

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Bordering Land Subject to Flooding (BLSF). The area inundated when a statistical 100-year frequency storm causes lakes, ponds, rivers, and streams to rise from their normal courses. The bordering land boundary is defined in one of three ways:

1. The boundary or high water mark of the 100-year floodplain as shown on the Holliston FEMA (Federal Emergency Management Agency) flood study map where that boundary is based on flood profile data.
2. For areas bordering other resource areas, where the boundaries of the 100-year flood plain are not based on FEMA flood profile data, historic observations of high water flood levels shall be used. Evidence includes high water marks, flood damage to structures or trees, flood debris deposition elevations, written depth measurements, photos, and other flood documentation.
3. For areas bordering other resource areas where the boundaries of the 100-year floodplain are not based on FEMA flood profile data, and where documented historic observations are not available, the floodplain boundaries may be based on hydrologic calculations using the new "Atlas of Precipitation Extremes for the Northeastern United States and Southeastern Canada" (updates TP-40), published by Cornell University. Copies of the new Atlas may be obtained from the Northeast Regional Climate Center, Cornell University (607) 255-1751 (publication RR 93-5).

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

Buffer Zone. Any land within 100 feet horizontally outward from the edge of any resource area as defined in this Section 2.3.

Direct Discharge includes, without limitation, any outfall of water that empties into the resource area or adjacent upland resource, including infiltration.

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

Discharges into Wetlands shall include, without limitation, any discharge from the project that flows to a wetland resource or adjacent upland resource through new or existing drainage structures, including existing road drainage pipes, that empty into wetland resources or adjacent upland resources, including infiltration, regardless of the distance between the project site and the wetlands resources or adjacent upland resources.

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

Floodplain. The floodplain is the level of the land area adjacent to the channel that is flooded at a frequency commensurate with bankfull discharge. The recurrence interval for bankfull flow or stage is in

the range of one to two years. In general, a value of 1.5 years is a good average. This means that the discharge in a river will equal or exceed bankfull two out of three years on the average.

Isolated Land Subject to Flooding (ILSF). An area, depression, or basin of any size that holds standing water for at least one month during the spring and/or fall of most years. Not included are swimming pools, artificially lined ponds or pools, or constructed wastewater lagoons.

Land Subject to Flooding shall include "isolated land subject to flooding", "bordering land subject to flooding" and "vernal pools" as defined in this section (2.3).

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No Disturbance Area. A continuous cover of locally indigenous vegetation 50 feet horizontally outward from the upland edge of a resource area, except for perennial streams and rivers, vernal pools (and their habitat and buffer zones) as described in this section.

Mean Annual High Water Line. The mean annual high water line (MAHWL) shall be the line represented by bankfull conditions when they occur above the first observable break in slope. If no break in slope exists, the MAHWL will be represented by other bankfull indicators as specified in these Regulations (see Bordering Land Subject to Flooding). The water level of a stream that has been observed at bankfull stage (which may only occur a few days per year, perhaps only a few minutes for a small stream) shall be considered to be the "mean annual high water line" of the perennial or intermittent stream.

Person. Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

Pond. Any open body of fresh water with a surface area observed or recorded within the last ten years of at least 5,000 square feet. Ponds shall contain standing water except for periods of extended drought. Not included are swimming pools, artificially lined ponds or pools, or constructed wastewater lagoons. The adjacent upland resource area for ponds under 10,000 square feet shall extend 100 feet from the mean annual high-water or one-half of the distance from existing house foundation, whichever is smaller, but in no case shall the adjacent upland resource area include existing lawns, gardens, landscaped or developed areas.

Rare Species shall include, without limitation, all vertebrate and invertebrate animal and 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.

Recreation connotes passive recreation activities that do not conflict with or diminish other wetland values and functions. Examples include, without limitation, bird watching and other nature studies, walking and hiking, swimming, canoeing, and fishing.

Resource Area shall include all lands (including uplands) within 100 feet of wetland resource areas as enumerated in Section 3.1, except for perennial streams and rivers, vernal pools and ponds under 10,000 square feet in area, for which special adjacent upland resource area definitions are described in this Section 2.3.

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

1. it has a watershed of one (1) square mile or greater,
2. it has upstream tributaries, making the stream "second order" or greater, or
3. groundwater elevation is at or near the surface.

For the purposes of the Bylaw, the protections afforded to River Front Areas under the 1996 amendment to the Massachusetts Wetlands Protection Act shall extend the reach of jurisdiction 200 feet from the MAHWL of a stream or river as specified by the Act.

A continuous cover of locally indigenous vegetation 100 feet horizontally outward from the MAHWL of a river or stream shall be the No Disturbance Area of the river or stream unless rare species are present. If a rare species has been found or if the MNHESP Estimated Habitat Map shows estimated habitat, within a distance determined by the Commission on a case by case basis, then the No Disturbance Area shall be 200 feet from the MAHWL of the river or stream.

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

Vernal Pool. The term “vernal pool” shall include, in addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131, §40 and regulations thereunder, 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways, which, at least in most years, holds water for a minimum of one month during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.

Vernal Pool Habitat. A vernal pool and the area within 100 feet (adjacent upland resource) of the mean annual boundaries or highest observed flood level, whichever is higher, of such pool shall be referred to as “vernal pool habitat”, regardless of whether or not any portion of this vernal pool habitat comprises a resource area as described in the Bylaw and/or The Massachusetts Wetlands Protection Act or its regulations (310 CMR 10.00). Such an area is an essential breeding habitat for amphibians, reptiles, or other vernal pool community species and provides other extremely important functions including providing food, shelter, migration, aestivation and hibernation habitat during the non-breeding season for a variety of these species as well as other wildlife and shall be a No Disturbance Area.

Vernal Pool Buffer Zone shall include the area within 100 feet of the boundary of the vernal pool habitat, regardless of whether or not any portion of this vernal pool buffer zone comprises a resource area as described in the Bylaw and/or The Massachusetts Wetlands Protection Act or its regulations (310 CMR 10.00). The vernal pool buffer zone is an essential breeding, feeding, migration, aestivation and hibernation habitat for amphibians, reptiles and other wildlife and shall be a No Disturbance Area.

Vernal Pool Species shall include any species of reptile, amphibian, or invertebrate that breeds in a vernal pool. These species may be obligate or facultative.

Volume Of A Detention/Retention Basin. Basin volume shall be calculated as that volume contained between the basin’s 100-year flood elevation and the lowest elevation of the basin floor, except that in the case of a wet detention basin 50% of the calculated volume shall be used for fee determination purposes.

Wet Detention Basin. A wet detention basin is a detention basin designed to hold water for at least two continuous months during the spring/summer, where the ponding area covers at least one-third of the basin floor to an average depth of six inches of water, which supports wetland vegetation, and which meets the other design requirements set by the Commission.

SECTION 3. AREAS SUBJECT TO PROTECTION AND REGULATION (JURISDICTION)

3.1 RESOURCE AREAS

The following areas which are referred to as resource areas are subject to protection under the Bylaw:

Land within 100 feet of any:
freshwater wetland
marsh
wet meadow
bog, or
swamp

Land within 100 feet of any:
bank
beach
dune
flat
lake
river
pond, or
stream

Any land under said waters listed above; or
within 100 feet of any land subject to flooding (including vernal pools) or inundation by ground water or surface water.

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In order to protect these resource areas, any altering activity within 100 feet horizontally outward from the edge of a resource area (200 feet horizontally outward from perennial streams and rivers) and certain adjacent upland areas (collectively "the adjacent upland resource areas protected by these Regulations") shall be reviewed by the Commission.

3.2 BUFFER ZONES

Any land within 100 feet horizontally outward from any resource area protected by the Bylaw shall be referred to as the "buffer zone".

The purposes of protecting buffer zones include maintaining a continuous cover of locally indigenous vegetation that shall:

1. Reduce water pollution by providing a natural filter to adsorb nutrients and chemicals contained in road runoff, fertilizers, pesticides and other contaminants
2. Slow surface water runoff to reduce soil erosion and siltation of surface waters
3. Maintain ambient shade conditions to preserve natural water temperature regimes, to protect indigenous aquatic amphibian and reptilian life
4. Provide wildlife habitat and corridors for wildlife movement
5. Act as a filter zone to protect water supplies and prevent pollution

3.3 ACTIVITIES WITHIN RESOURCE AREAS AND BUFFER ZONES

Within 100 feet horizontally outward (200 feet horizontally outward from the MAHWL of perennial streams and rivers) from an area identified as a resource area, any activity proposed or undertaken which, in the judgment of the Commission, alters an area subject to protection under the Bylaw, is subject to regulation under the Bylaw and requires the filing of a Notice of Intent. If the applicant is in any doubt as to whether an activity is subject to regulation, a Request for a Determination of Applicability should be filed (see Section 4.3.2 "Determination by Commission").

3.4 NO DISBURBANCE AREA

Unless specified elsewhere in these Regulations, it is presumed that significant adverse effects on the interests protected by the Bylaw result from any filling, dredging, building upon or other alteration within a resource area or within a minimum of 50 feet horizontally outward from the upland edge of a resource area, unless the applicant demonstrates by a preponderance of the credible evidence that such significant adverse effect will not occur, and the Commission accepts and approves such evidence.

3.5 PRESUMPTION OF VERNAL POOL HABITAT:

Where a freshwater wetland's physical characteristics conform with those defined for vernal pool in Section 2.3 (Definitions) of these Regulations, the Commission shall presume the existence of a vernal pool and vernal pool habitat. This presumption is unconditional, and shall be made notwithstanding certification or lack thereof by the Massachusetts Division of Fisheries and Wildlife's Natural Heritage & Endangered Species Program ("MNHESP") and whether or not the site is located within another wetland resource area as further described below:

1. the vernal pool has been certified by the MNHESP, or...
2. no such actual certification (as described in 1.) has yet been obtained, but the certification process has been begun (as outlined in the "Guidelines for Certification of Vernal Pool Habitat" as published by the MNHESP (revised and updated January 1, 2001), or
3. a preponderance of credible evidence has been presented at a public hearing testifying to the likelihood that a resource area would qualify as a vernal pool (according to the requirements of the certification process as described in 2., above). Such evidence may be presented by public comment, or the Commission may introduce the evidence itself (for example, but not limited to, if evidence of breeding vernal pool species – i.e., any species or group as found in The Natural Heritage Program's List of Vernal Pool Animals as found on p. 50 of "Certified – A Citizen's Guide to Protecting Vernal Pools", third Edition, April 1989, by the Massachusetts Audubon Society – was found during the on-site visit in preparation for the hearing).

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The presumptive definition for vernal pools is based on systematic field observations in the Town of Holliston by the Commission showing that virtually all basins that possess the above characteristics actually host breeding vernal pool species..

The presumption of vernal pool habitat may be overcome only upon a showing by a preponderance of credible evidence which, in the judgment of the Commission, demonstrates that such wetland does not provide, or cannot provide, vernal pool habitat functions.

3.5.1 Demonstrating that a Ponding Area is not a Vernal Pool:

For the purposes of overcoming the presumption of vernal pool habitat, the Commission will consider:

1. Evidence that the ponding area does not hold water for at least one month in most years (as a rule of thumb the term "most years" shall mean three out of five consecutive years).
2. Evidence that vernal pool species do not breed or have not bred in the ponding area. The Commission shall provide explicit guidelines for this evidence.
3. Evidence that the ponding area could not be a viable breeding site for vernal pool species due to incompatible physical, chemical, biological, or other persistent conditions at the site in most years. Such evidence could include, without limitation, several months of pH and dissolved oxygen measurements yielding values incompatible with amphibian or reptile breeding.

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

3.5.2 Timing of Evidence Collection:

Many of the indicators of vernal pool habitat are seasonal. For example: certain salamander egg clusters are only found between late March through late May. Wood frog chorusing only occurs between late March and April, and then is mostly at night. Consequently, failure to find evidence of breeding obligate species must be tied explicitly to those periods during which the evidence is most likely to be available.

Accordingly, in the case of challenges to the presumption of vernal pool habitat the Commission may require that the determination be postponed until the appropriate time period consistent with the evidence being presented. The Commission may also require its own site visits as necessary to confirm the evidence.

3.6 STREAMS (INTERMITTENT)

Intermittent streams are important for storm damage prevention, flood control, ground water 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 broad dispersal also allows for larger volumes of water to infiltrate into the ground, recharging groundwater supplies.

Intermittent streams are an essential source of food and water for wildlife, and are often the only source of water in higher elevation areas of town. 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. 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.

For these reasons the upland areas surrounding intermittent streams are heavily utilized by wildlife for living space, breeding, feeding, migrating, dispersal, and security.

Accordingly, these Regulations protect intermittent streams of all forms (Section 2.3 Definitions) and the adjacent upland resource within 100 feet of those streams. For the purposes of these Regulations, an intermittent stream is that segment of a flowing watercourse 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.

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The Commission recognizes two types of intermittent stream:

Type I: Stream segments in which continuous standing water disappears for at least five (5) but not more than thirty (30) consecutive days annually.

Type II: Streams in which continuous standing water disappears for more than thirty (30) consecutive days annually.

For the 100-foot adjacent upland resource area for Type I intermittent streams, the Commission may, based on the specific functions and values of the resource, use protection guidelines adopted for the 100-foot Riverfront area for a perennial stream. (See section 3.7 Perennial Streams, below, for specific evidence requirements to document intermittent streams.)

3.7 RIVERS (PERENNIAL STREAMS)

For the purposes of the Bylaw, the protections afforded to River Front Areas under the 1996 amendment to the Massachusetts Wetlands Protection Act shall extend the reach of jurisdiction 200 feet from the MAHWL of a stream or river as specified by the Act.

Under these Regulations all flowing watercourses shall be considered to be perennial streams unless a preponderance of evidence deemed acceptable by the Commission rebutting this presumption is presented. Information necessary to overcoming this presumption includes, but is not limited to, direct observation and documentation of:

The absence of a continuous sheet of surface water throughout the watercourse, or relevant segment, for a minimum of five (5) consecutive days annually in most years (excluding periods when local drought or other conditions abnormally lowering the water table are known to exist, or due to water withdrawals) as witnessed by a member of the Commission or its staff; which shall be considered definitive evidence in overcoming the presumption of perennial status.

Other information that may be relevant to overcoming the presumption of perennial stream status for a watercourse or a segment of that watercourse includes, but is not limited to, direct observation and documentation of:

1. absence of gravel, mineral, and riffle substrate;
2. absence of a clearly defined flow channel;
3. absence of bank undercutting;
4. presence of established non-aquatic plants in the flow path (i.e., plants that are unable to grow in continuously submerged conditions);
5. absence of continuous sheet of surface water in the stream channel or relevant segment at a time when Commission designated perennial streams of comparable characteristics are flowing, as witnessed by a member of the Commission or its staff.

The Commission will also consider estimates from modeling studies of surface water and ground water hydrology in the relevant watershed. However, such information will only be considered as evidence in conjunction with the observable indicators noted above.

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

The Commission shall consider all of the evidence available together, judging the validity and reliability of the information, and base its determination on the preponderance of acceptable evidence.

3.8 EXEMPTIONS AND CONDITIONAL EXEMPTIONS

Exemptions clearly stated in the Act are not extinguished by these Regulations.

3.8.1 Exemptions for Existing and Lawfully Located Structures

As stipulated in Section 3 of the Bylaw:

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The application and permit 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” unless said filing is otherwise required by state or federal law.

The intent of this partial exemption is to allow owners of single family homes, built prior to the Bylaw, to continue to live and work according to the rules, regulations, and assumptions under which they originally purchased their homes.

3.8.2 Definition and Application of the Term "Existing"

The term "existing" refers to structures placed in service prior to the effective date of these Regulations and refers to any structure claiming exemption.

Therefore, the application and permit required by the Bylaw shall apply to work associated with entirely new structures (those that are not replacing antecedents) placed in service on or after the effective date of these Regulations. In those instances where a state or federal filing is required for projects associated with existing and lawfully located structures, the full application and permit required by the Bylaw does apply.

The above notwithstanding there are a number of other special rules and exemptions in the Bylaw pertaining to structures that existed prior to the effective date of these Regulations, such as delineation of certain adjacent upland resource areas, that might still apply.

3.8.3 Farm & Fire Ponds – Stocking of Fish

Historically farm and fire ponds have served as vernal pools across the New England landscape. Some of Holliston’s most important salamander breeding sites, including those of rare species, are abandoned farm and fire ponds. Accordingly, stocking of farm and fire ponds with fish shall not be permitted except in those cases where the Commission determines that the pond does not currently, and in the future will not likely, serve vernal pool functions.

SECTION 4. APPLICATIONS FOR PERMITS AND REQUESTS FOR DETERMINATION (PROCEDURES)

Within 100 feet horizontally outward from the edge of a resource area, or 200 feet horizontally outward from the MAHWL of a river or perennial stream, any activity proposed or undertaken, which, in the judgment of the Commission, alters an area subject to protection under the Bylaw, is subject to regulation under the Bylaw and requires the filing of a Notice of Intent (NOI). If the applicant is in any doubt as to whether an activity is subject to regulation, a Request for a Determination of Applicability should be filed.

The procedures described below are designed to help the applicant and the Commission through the review process as quickly and efficiently as possible. Close adherence to the procedures is advised. The following procedures apply to all filings under the Bylaw (unless otherwise specifically stated).

4.1 TIMEFRAMES FOR SUBMISSION OF DOCUMENTATION

All documentation – including plans, maps, tables, charts, reports, etc. – to be considered as part of a permit filing by the applicant must be submitted to the Commission no later than four (4) business days prior to the scheduled public hearing, or its continuation. This is the minimum time needed to allow the Commission and staff to properly review, analyze, and check the information provided. Documentation submitted with fewer than the minimum four business days for review may be excluded from consideration at the scheduled hearing and held for discussion at a subsequently scheduled meeting.

4.2 WETLAND RESOURCE DESIGNATIONS ON PLAN

All plans submitted to the Commission for a permit under Section 4 of the Bylaw must show all wetland resources on the property and within 100 feet of the property lines (200 feet in the case of streams), *regardless of whether or not the proposed work is expected to occur within the jurisdictional areas associated with the resource.*

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In those instances where the project is part of a subdivision, a plan must be submitted to the Commission showing all wetland resources located within the subdivision boundaries and within 100 feet of those boundaries (200 feet in the case of streams).

Failure to provide this information, or providing erroneous or false information, shall be grounds for denying, suspending, or revoking the permit as outlined in Section 6 of the Bylaw.

4.3 REQUEST FOR DETERMINATION OF APPLICABILITY

The purpose of the Request for Determination of Applicability (RDA) is to allow the Commission to determine whether the proposed project will alter a resource area such that the filing of a Notice of Intent will be required. After the filing of the Request for Determination, a Commissioner or Agent will visit the site

and make a presentation to the Commission. The Commission will then vote to determine if an application under the Bylaw is required.

4.3.1 Submission Requirements

It is the applicant's responsibility to provide all of the information required for this review. This information is to be included in the Request for Determination Form, which is available at the Commission's office.

The applicant must complete all information on the Request for Determination and:

1. Return the original to:
Holliston Conservation Commission
Town Hall
Holliston, MA 01746
2. Send a copy and the plans to:
Department of Environmental Protection
Central Region
627 Main Street
Worcester, MA 01605
3. Include a plan for the Commission that shows (at a minimum):
 - a. Structures on the lot
 - b. North arrow on lot plan, with locus map and street name
 - c. Location of proposed work, and distance to wetlands or other resource to be protected
 - d. General vegetation types
 - e. Drainage directions
 - f. Spot elevations or contours (if available)

4.3.2 Determination by Commission

Within twenty-one (21) days of the filing of the Request for Determination, the site will be visited by a Commissioner or Agent, who, if satisfied that the submission is complete, will issue a Positive or Negative Determination to the applicant. If the land is snow-covered, a Positive Determination will be recommended. At the next regularly scheduled public meeting of the Commission, the Commissioner or Agent who reviewed the Request for Determination will present his/her findings, and recommend a specific Determination. The Commission will then vote upon the recommendation; a majority vote is required for acceptance of the Determination.

If a Positive Determination is issued, meaning that the project will impact an area subject to protection, the applicant must file an application under the Bylaw. A Negative Determination means the proposed project will have a minimal impact on an area subject to protection, and the project is approved as presented or approved with written conditions. A Negative Determination is valid for three (3) years.

If the Request for Determination is incomplete, a Positive Determination will be issued due to a lack of sufficient information.

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4.4 NOTICE OF INTENT

The role of the Commission is that of a reviewing agency. It is the applicant's responsibility to provide all of the information required for review in the Notice of Intent (NOI). It is in the applicant's interest to submit as complete and accurate description of the project as possible to ensure that requests for additional information do not result in unnecessary delays. In instances where the applicant is not the owner, the Commission may require proof of the owner's knowledge of the filing.

4.4.1 Notice of Intent Form

Filing under Bylaw and the Act is done on one form. This form can be obtained from the Conservation Commission's Office.

4.4.2 Abbreviated Notice of Intent

An Abbreviated Notice of Intent is provided to simplify the review of projects that are likely to result in limited impact on a resource area. This form may be used when all of the following apply:

- a. The proposed work is within the buffer zone (only) or is within Land Subject to Flooding (only), and will alter less than 1,000 square feet of surface area.
- b. The proposed work will not result in any alteration to a wetland resource area other than those noted in (a), above.
- c. A department of the Army (Corps of Engineers Section 10 or Section 404 permits) or Division of Waterways license (M.G.L. Ch. 91) are not required.

4.4.3 Procedure for Notice of Intent

In addition to information already required by the Commonwealth of Massachusetts, the following information is required with each Notice of Intent filed with the Commission. Omission of information deemed pertinent by the Commission will be grounds for not opening an advertised public hearing, or continuing a public hearing, or denying the permit

4.4.4 Information to Be Shown on Site Plans

All of the following will be required unless exempted in writing by the Commission.

4.4.4.1 Existing Conditions

- a. Title Box to include: The date, name and address, if available, of project; the name of the owner/ applicant, the name of the preparer, a scale (at least 1 inches = 100 feet with details), a north arrow, a reference to the assessor's map and to the parcel number
- b. Appropriate engineer's or land surveyor's stamp and signature (Note: The professional who stamped the original plans must also sign and date any revisions with the same date as the revision date.) At least one original signature copy of each plan must be submitted to the Commission.
- c. Lot size(s) and property boundaries
- d. Names and property lines of abutting property owners
- e. Two foot topographic contours (existing and proposed); elevation above mean sea level, if available, or assumed elevations; location of benchmark of elevations or assumed datum
- f. The border of any wetland resource area on or within 100 feet (200 feet for perennial streams and rivers) of applicant's property, with flow directions labeled, if applicable
- g. Limits of all wetland resource areas, including survey locations and numbers of flags/stakes; note date of flagging, and name/firm of botanist
- h. Delineation of buffer zone (100-foot radius from all wetland resources areas)
- i. Limits of Bordering and Isolated Lands Subject to Flooding, including 100-year storm elevation
- j. Department of Environmental Management (DEM) and Federal Emergency Management Agency (FEMA) wetlands and floodplain restrictions (FEMA maps are available at the Conservation Commission's and Building Inspector's Offices)
- k. High water mark for all water bodies, from best available data (data source must be cited)
- l. MAHWL of any inland bank or beach
- m. For projects that alter the water runoff from the site: identify total watershed area in which site is located, all sub-watersheds on site, and on- and off-site discharge points

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- n. Location, date and soil summaries of all soil borings and test pits on site; location, date and readings of groundwater level measurements on site
- o. Stone walls or other barriers located between the area of work and the area subject to protection under these Regulations
- p. Locations and types of easements on site and on other properties within 50 feet of property line

4.4.4.2 Proposed Conditions

- a. Work limits and location of temporary erosion controls; delineate areas where vegetation will be altered
- b. Proposed contours and amount of fill required to be added or removed (in cubic yards and maximum thickness); pre- and post- development grades on all slopes 4 to 1 or steeper; locations of stockpiles
- c. Construction details, including cross-sections and elevations, of drainage structures (including but not limited to catch basins, leaching basins, dry wells, swales, retention areas, ditches, etc.) and road crossings in wetland resource areas
- d. Equipment access routes and storage/parking areas during proposed work
- e. All above-ground structures, roadways, access ways, stone walls, fences, and other physical alterations proposed; identify roadway or surface material proposed; location and elevation of lowest floor of all structures
- f. Existing natural drainage patterns and proposed alterations
- g. All on-site below-ground alterations and structures, including but not limited to utility lines, drainage structures, septic systems, cesspools, wells, and storage tanks in the buffer zone
- h. Location, capacity, and design details of on-site septic system
- i. Distance of proposed on-site leaching facility to wetlands, watercourses, or other resource areas
- j. For new construction, location of leaching facilities on other properties within 50 feet of the lot line, or 200 feet of the proposed project
- k. For new construction, location of all existing and proposed wells on property and within 200 feet of project on abutting properties, and minimum distance to all septic systems

4.4.5 Information to Be Provided in Notice of Intent Text

4.4.5.1 Existing Conditions

- a. Topography, soils, and geology description
- b. Description of vegetation types, such as upland or wetlands community types and plant species list
- c. Section of the most recent version of a U.S.G.S. quadrangle map, with site location circled (i.e. a locus map)

4.4.5.2 Proposed Conditions

- a. Description of activities, construction sequencing and estimated timetable. Include description of future phases
- b. Description of indirect and direct impacts, both temporary and permanent, on wetland resource areas
- c. Description of soil erosion, sediment control plan, and mitigation plans for impacts to resource areas
- d. Details of mitigation plans for activities in the buffer zone to limit long term indirect impacts to adjacent resource areas
- e. Description of storm water management plan, including existing and proposed drainage areas
- f. Description of wastewater management plan
- g. Hydrologic calculations shall conform to Soil Conservation Service procedures
- h. Wetlands creation/restoration plan, including area, with existing and proposed topography at contours at 1-foot intervals, and plans showing proposed grading, stockpiling, planting (indicate source of plants), and timetable
- i. Volume of fill required and source of fill

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4.4.6 Natural Heritage Filing

A filing to the Natural Heritage Office is needed in some cases. Due to the scale of the Estimated Habitat of Rare and Endangered Species map, and the inaccuracies inherent in computer mapping at that scale, if a proposed project lies within or up to 1/8 mile outside of the boundary of the Estimated Habitat of Rare and Endangered Species on the latest computer map from the Natural Heritage Office, a filing to that office may be required by the Commission. This filing, made by the applicant, is to be made before the Notice of Intent is scheduled for a public hearing. Opening a hearing is contingent upon written response from the Natural Heritage Office.

4.4.7 Notice of Intent Submission Requirements

The applicant will submit two complete copies of the Notice of Intent with Site Plans, supporting documentation, and a check payable to the Town of Holliston, in the amount set forth in the fee schedule (see Section 4.7 "Filing Fee Schedule") to the Conservation Commission's Office. (The applicant must also send a separate check and copy of the Notice of Intent with Site Plans and supporting documentation to the Massachusetts Department of Environmental Protection (DEP). The completed Notice of Intent and supporting documents will be required at least 21 days before the next regularly scheduled public hearing.

4.4.8 Site Visits for Review of Notice of Intent

The following markings and flagging must be in place before the field inspection, where applicable. Failure to properly stake and mark the site may result in non-review and thus a delay or denial of the project.

- a. Edges of wetlands must be flagged with numbered flags, as reflected on submitted maps
- b. House number must be visible if it is an existing house; if no house is on property, the lot number must be posted and visible from the street
- c. Property boundaries must be staked with numbered stakes at all corners
- d. All proposed structures or additions, including decks, must be staked for identification purposes at all corners; stakes must be numbered and labeled
- e. Septic tank, leaching field, and well locations must be staked with labeled stakes if within the buffer zone

4.5 NOTICE OF RESOURCE AREA DELINEATION

A Notice of Resource Area Delineation (NRAD) or an abbreviated NRAD (ANRAD) must include all potential wetland and adjacent upland resource areas under a single comprehensive delineation.

4.6 DOCUMENTATION FOR VIOLATIONS

All filings associated with a Enforcement Order shall include an accurate plan that clearly and explicitly shows all jurisdictional resource areas on the property and the area(s) of disturbance including an explicit tabulation of the size of the disturbance. The Commission may require a surveyed/engineering plan.

4.7 FILING FEES SCHEDULE

At the time of the permit application, the applicant shall pay a filing fee according to the schedule on the following page. This fee is not refundable. The fee is in addition to that required by the Act, G.L. Ch. 131, Section 40, and regulations, 310 CMR 10.00. Town, county, state and federal projects are exempt from the filing fee.

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INSERT REVISED FILING FEES (4/01/03) HERE

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4.7.1 Category 1 - Resource Restoration and Enhancement Projects

For the purposes of fee determination work to remove debris and hazardous materials from wetlands, and wetland restoration projects, and similar projects for improving the natural capacity of a wetland resource to protect or enhance wetland values shall be considered a Category 1 activity.

Wetland and/or adjacent upland resource area restoration and enhancement projects that (1) are not the result of an Enforcement Order, and (2) are not part of a mitigation project tied to other work covered under another Notice of Intent, and (3) do not require a filing under the Act or received a negative determination of applicability, may file an abbreviated Notice of Intent for Resource Restoration and Enhancement with the Commission.

- The Agent, acting at the direction of the Commission, shall determine whether a project qualifies for this special NOI.
- A special Notice of Intent for Resource Restoration and Enhancement application shall be used for qualifying projects.
- All standard Bylaw NOI requirements and procedures, such as abutter notification, hearing publication, and final issuance of a certificate of compliance shall be followed.
- The fee shall be \$25 for a single minor project, as noted in these Regulations, Section 4.7.

4.7.2 Category 3 – Point Source Discharge

The \$500 fee will apply to each independent or each network of hydraulically connected detention basins, retention basins, catch basins, or combination of swales, infiltration pits, and dissipation fields that;

- are located in whole or in part in an adjacent upland resource area, and/or
- discharge into an adjacent upland resource area, directly or indirectly; and
- require substantial review of pre and post drainage calculations.

Swales, infiltration pits, and dissipation fields networked with detention, retention, or catch basins will not be assessed an additional fee.

The above notwithstanding, In no case shall the fee for projects involving drainage structures be less than \$500.

SECTION 5. NOTICE AND HEARINGS

5.1 PUBLIC NOTICE

A hearing date will be scheduled within twenty-one (21) days of the filing a complete Notice of Intent. The Commission will publish a public notice in a local publication at least five (5) days prior to hearing date. At the time of the hearing and before the hearing opens, the applicant must present a list of all abutters to the project, along with an Affidavit of Service (certifying that all abutters received notice of the hearing at least five (5) days prior to the hearing (see Section 4.1 for additional requirements). The applicant should send notices by certified mail, return receipt requested, and present the return receipts at the hearing meeting. (Applicants other than the property owner must submit a statement of proof of vested interest in the property, purchase and sale agreement, and notarized statement from the owner.)

5.2 CONDUCT OF HEARING

At the time of the hearing, the applicant or his or her representative will appear before the Commission and make a presentation relative to the Notice of Intent.

5.3 CONTINUANCES

Hearings may be continued at the request of the applicant or Commission. If a hearing is to be continued to allow preparation of revised plans, the project must be re-staked in accordance with changes made and all revised plans must be received four (4) days before the continued hearing.

SECTION 6. PERMITS, DETERMINATIONS and CONDITIONS

6.1 ISSUANCE OF ORDER

Within twenty-one (21) days of the close of the hearing, the Commission will issue an Order of Conditions. The written decision shall be signed by a majority of the Commission (said majority shall be comprised of Commission members familiar with the project, who have attended at least half of the project's hearings).

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Orders of Conditions written under the Bylaw and Regulations may be on the same form as Orders issued under the Wetlands Protection Act.

6.2 RECORDING IN REGISTRY OF DEEDS OR LAND COURT

The following forms issued by the Commission are required to be recorded in the South Middlesex County Registry of Deeds or the Land Court, whichever is appropriate: Orders of Conditions, Amended Orders of Conditions, Certificate of Compliance, Deed Restrictions, Conservation Easements, as requested, Enforcement Orders and Release of Enforcement Orders.

6.3 ORDERS OF CONDITIONS

Decisions will be made by the Commission simultaneously under the Act and the Bylaw. An Order of Conditions is designed to permit the proposed construction activity while, at the same time, ensuring that valuable wetland resources are protected from either deliberate or accidental damage. Wetlands protection is achieved by a combination of design elements within the approved plan and by additional conditions imposed by the Commission. All construction activities must be completed in compliance with the existing valid Order of Conditions.

Compliance with an Order of Conditions may be monitored by periodic visits by members of the Commission or its Agent. All wetlands flags are to stay in place until the Commission issues a Certificate of Compliance. In addition, at the time it issues the Order, the Commission may strictly control construction activities by outlining stages of the work and by requiring periodic inspections and proof of compliance of each separate stage. A Partial Certificate of Compliance may be requested at discrete points of the project.

The Commission holds the applicant to strict accountability for complying with the conditions contained in the Order. Orders of Conditions are valid for three (3) years from date of issue. Any permit may be renewed for additional one (1) year periods, provided that a request for a renewal is received in writing by the Commission thirty (30) days prior to expiration. An expired Order of Conditions is void and the applicant must refile.

6.3.1 Performance Standards & Design Criteria for Adjacent Upland Resource Areas

As stated in the Bylaw, Section 3 Jurisdiction, lands within 100 feet of any wetland are "resource areas" and are presumed important to the protection of these resources because activities undertaken in close proximity to wetlands and other resources have a high likelihood of adverse impact upon the wetland or other resource, 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 harm to wildlife habitat.

The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover in part or all of the 100-foot (200 feet for rivers and perennial streams) adjacent upland resource area that shall:

1. reduce water pollution by providing a natural filter to absorb nutrients and chemicals contained in road runoff, fertilizers, pesticides and other contaminants;
2. slow surface water runoff to reduce soil erosion and siltation of surface waters;
3. maintain ambient shade conditions to preserve natural water temperature regimes, to protect indigenous aquatic amphibian and reptilian life;
4. provide wildlife habitat and corridors for wildlife movement; and
5. act as a filter zone to protect water supplies and prevent pollution; and

set other conditions on this area, unless the applicant provides evidence deemed sufficient by the Commission that the area or part of it may be disturbed without harm to the values protected by the Bylaw.

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In some circumstances some types of activities, when properly conditioned, may be acceptable in adjacent upland resource areas. Under other circumstances even minimal adjacent upland resource area disturbance may have serious harmful effects on resource area values and functions. When the presumption of significance is questioned the actual determination of impact must be made on a project- and site specific basis. In this respect the actual impact of proposed adjacent upland resource area work or activities on wetland values and functions can often be reduced substantially, and thus made permissible, when appropriate conditions are imposed.

Therefore the traditional approach of "all or nothing" adjacent upland resource area restrictions unnecessarily creates conflicts between property use and resource protection. Accordingly the Bylaw gives the Commission broad discretion to permit, condition, and prohibit work within the adjacent upland resource area as the specific situation warrants.

Therefore the Commission shall consider proposals for work in the adjacent upland resource area in terms of four broad forms of disturbance areas. This approach is intended to allow maximum flexibility for property use while maintaining adequate levels of resource protection.

6.3.1.1 No Disturbance Area

Virtually no activities or work, other than passive passage, are permitted in this area (defined in Section 2.3). No vegetation may be disturbed, leaf litter and debris remains in place, etc. The no disturbance area should remain unchanged from its pre-project state.

6.3.1.2 Temporary Disturbance Area.

This is an area in the adjacent upland resource where temporary disturbance for a limited period of time is permitted, such as for regrading or travel by heavy machinery. Once the activity is completed, however, the area will be allowed to return to natural vegetation and function. Any subsequent disturbance or activity shall require a new filing.

The Commission shall establish specific time frames and conditions for allowing temporary disturbances, as well as setting criteria for assessing the successful return of the adjacent upland resource area to natural functions.

6.3.1.3 Limited Disturbance Area

This is an area in the adjacent upland resource where a limited set of activities and work is permitted in perpetuity. For example understory clearing of poison ivy might be allowed, but no clearing of overstory and no planting of lawn. Limited (sustainable) harvesting of wood, composting of brush, and storing firewood are other examples of limited activities that might be allowed.

6.3.1.4 Permanent Disturbance Area.

This is an area in the adjacent upland resource in which most, if not all, legal activities and permanent disturbances are permitted. Houses, porches, driveways, gardens, and lawns in the adjacent upland resource area represent permanent disturbance areas.

Nevertheless, within the context of permanent disturbance the Commission may set specific conditions prohibiting or restricting those forms of work and activities in the adjacent upland resource area deemed potentially harmful to the resource area values, such as the use of herbicides and pesticides, use of interceptor drains, or installation of in-ground sprinkler systems for irrigating areas in the adjacent upland resource.

6.3.2 Considerations in Setting Disturbance Restrictions

A growing body of research evidence suggests that even "no disturbance" areas reaching 100 feet from wetlands may be insufficient to protect many important wetland resource characteristics and values. Problems of nutrient runoff, water pollution, siltation, erosion, vegetation change, and habitat destruction are greatly exacerbated by activities within 100 feet of wetlands. Thus, in general work and activity within 100 feet of wetlands should be avoided and discouraged and reasonable alternatives pursued.

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Accordingly, the Commission shall begin with the presumption that lands within the adjacent upland resource area of a wetland are best left in an undisturbed and natural state.

However the Commission shall designate areas of the adjacent upland resource to be suitable for temporary, limited, or permanent disturbance as appropriate when the applicant can demonstrate to the Commission's satisfaction that the proposed work or activity will not affect wetland values singularly or cumulatively and that reasonable alternatives to the proposed work or activity do not exist.

In considering designation of adjacent upland resource disturbance areas, the types of work and activities allowable, and conditions to apply, the Commission shall consider:

6.3.2.1 Values and Functions of the Resource Area

The quantity and quality of resource values and functions should be considered explicitly in placing conditions on adjacent upland resource area work. Some isolated land subject to flooding, for example, may serve for temporary flood storage only. Minimal adjacent upland resource area restrictions within several feet of the resource might be necessary only to prevent erosion.

Other isolated land subject to flooding might provide vernal pool habitat. It might also provide important flood storage capacity and intersect ground water. In this instance far stronger adjacent upland resource area restrictions would be appropriate because a larger number of functions are involved and some functions, such as habitat, are more sensitive to adjacent upland resource area activity and require greater protection. If rare or endangered species, such as blue spotted salamanders, were found at the site then still greater levels of restrictions would be appropriate.

6.3.2.2 Pre-Project Characteristics of the Site

Ground slope, soil conditions, vegetation, and prior disturbance are just a few of the site specific characteristics that shall be considered in setting conditions for work in the adjacent upland resource area.

For example land that slopes toward a wetland demands greater restrictions on work and activity and larger no-disturbance distances to prevent pollution and silt from stormwater runoff from harming wetlands values. Larger slopes imply greater restrictions.

6.3.2.3 Wildlife Habitat and Rare Species

The near-upland areas around wetland resources often play important roles in determining and maintaining the wildlife habitat values of associated wetlands. While it is common to think of the protective or "buffering" value of adjacent upland resource areas in terms of area undisturbed, habitat values may be equally affected by the configuration of the adjacent upland resource area perimeter, the inclusion or exclusion of specific topographical and ecological features (such as an abutting sandy knoll or tree canopy), etc.

Therefore where significant wildlife habitat values and functions are present delineation of non-disturbance areas within the adjacent upland resource area shall, as is reasonable, minimize the length of perimeter to area left undisturbed, exclude fingers, islands, or other projections or indentations of the non-disturbance zone, and in general avoid delineating oddly shaped non-disturbed areas. The Commission shall give special attention to inclusion inside the no disturbance area of those topographical and ecological features that it deems important for maintaining the wildlife habitat value of the resource.

The potential presence of rare or endangered species and their specific sensitivity to adjacent upland resource area activity shall be considered in determining adjacent upland resource area restrictions. Evidence of the presence of such species or evidence of likely habitat shall be considered by the Commission. Prior designation of rare or endangered species habitat by the Division of Fisheries and Wildlife Natural Heritage Program is not necessary.

The Commission may consult with the Division of Fisheries and Wildlife Natural Heritage Program or other sources of expertise as it deems necessary for guidance and recommendations.

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6.3.2.4 No Significant Adverse Impact On Wildlife Habitat

Wildlife habitat serves a variety of functions in support of wildlife. Food, water, breeding space, shelter, security, movement and migration space, and connections to other habitat areas are all equally important. All of these wildlife habitat functions are presumed to exist in all resource areas.

Therefore in accordance with the Bylaw's fundamental purposes (see Section 2.2) no project may have a significant adverse impact -- either project-specific or cumulative -- on wildlife habitat for more than two (2) growing seasons.

For wildlife habitat purposes, a significant adverse project-specific impact is defined as an impact caused by work in a resource area that would under reasonable assumptions (a) result in a measurable decrease in the extant wildlife populations or biological composition, structure, or richness on the site or in the vicinity exclusive of the present or future state of adjacent and nearby properties, or (b) impair, damage, destroy, or reduce in value for wildlife purposes certain specific habitat features.

Wildlife studies have shown that direct impacts from work – filling, grading, vegetation removal, construction of barriers to movement, etc. – in resource areas can severely harm wildlife populations. For example, low stone walls bisecting a resource area can prevent amphibians that live in upland areas from reaching breeding pools, marshes, and streams. Or, removal of large snags (dead trees) can virtually eliminate nesting by barred owls, pileated woodpeckers, mink, etc. Accordingly, the Commission may prohibit the placement of fences or other barriers to wildlife movement within and between resource areas and the destruction of specific habitat features.

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

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

But indirect impacts – the effects of human activities near wildlife habitat – can have equally harmful effects. Therefore the Commission shall take into account indirect effects on a project by project basis. So, for example, no work within resource areas shall be permitted within 100 feet of existing beaver, mink or otter dens, or within 200 feet of existing osprey or great blue heron nests.

The purpose of the Bylaw is to preserve for future generations of residents the natural resources and amenities – including wildlife – we presently enjoy in Holliston. The Bylaw protects future values as well as current ones. Therefore, the Commission must be especially cognizant of the likely cumulative impact of work within resource areas.

This method for assessing cumulative impacts avoids the pitfall of placing an unreasonable burden of resource protection on subsequent applicants/projects in the vicinity while subsidizing those who are first to develop land. It allows the Commission to level the marginal impact of all proposed projects in the vicinity while ensuring appropriate protection – present and future -- of the values and interests protected by the Bylaw.

6.3.2.5 Projects to Enhance or Benefit Wildlife Habitat

The Commission may, as part of the permitting process, require at its discretion any project that proposes to alter the extant wildlife populations or biological composition, structure, or richness of an area as a wildlife benefit to have that plan approved by the Massachusetts Division of Fisheries and Wildlife.

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6.3.2.6 The Character of the Work or Activities Proposed and Alternatives

The applicant shall carry the burden of proof for demonstrating to the Commission's satisfaction that the proposed work or activities in the adjacent upland resource area are necessary and that reasonable alternatives, including reducing the scale and scope of the project, do not exist.

The Commission shall consider the specific characteristics of the work proposed for immediate and cumulative impact on the wetland resource. For example, understory clearing and shrub landscaping in sensitive sections of the adjacent upland resource area might be appropriate where a lawn might not, due to concerns about nutrient runoff. Similarly, clearing a flat section of the adjacent upland resource area to establish a vegetable garden might not threaten adjacent wetland values and functions. However, construction of a tennis court with extensive impervious surface on the same site and covering the same area might not be acceptable.

The Commission may offer suggestions and advice for altering plans and proposals to reduce impact on wetlands values and functions toward the goal of modifying the project to make it acceptable. However, the Commission is not obligated to do so and shall not be bound in its decision-making by any prior advice or suggestions offered to applicants.

6.3.3 Subdivision Roadways

The construction of impervious surfaces such as roadways in watersheds can significantly alter the quantity and quality of stormwater runoff and affect important ground water characteristics. Impervious surfaces reduce surface infiltration, potentially worsening flooding problems by increasing stormwater runoff volumes and by redirecting flows within a watershed.

The increase in surface flows from impervious surfaces may create new erosion problems where storm flows are directed and discharged.

Impervious surfaces increase the opportunities for various pollutants to mix in water flows. Roadways, for example, will retain a surface coating of petroleum and combustion-byproduct pollutants that will flush during the early stages of a storm. Roof runoff can pick up a variety of chemicals used in fertilizers, pesticides, and herbicides as it transverse lawns and landscape areas.

Impervious surfaces that direct water flows into wetlands may inundate sensitive resources and thereby destroy vital vegetative and wildlife characteristics, reduce preexisting flood storage capacity, and contaminate ground water recharge areas.

Conversely, impervious surfaces may direct traditional water flow patterns away from wetlands and thereby destroy the necessary hydrological conditions needed to maintain wetland functions and values.

Therefore, for purposes of flood control, erosion control, water quality protection, and wildlife habitat preservation the Commission shall review all roadway construction plans for impact, immediate and cumulative, on wetland functions and values. In particular, the Commission shall enforce the following general performance standards:

6.3.3.1 Minimize Pre-Project to Post-Project Changes in Site Hydrology

Pre-project and post-project hydrology should remain fundamentally the same as it pertains to protecting wetlands functions and values. Of course some minor degree of change in hydrology is inevitable in any engineering/construction project and within reasonable limits the Commission shall permit such variation when in its judgment such changes will not produce a significant impact of wetlands functions and values.

Erosion control may require limiting stormwater discharge volumes and velocities. Therefore the Commission may require the construction of such stormwater control structures, and specify particular engineering and design details, as it deems necessary to protect wetland resources, values, and functions.

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6.3.3.2 Minimizing Change In Runoff Water Quality.

The physical, chemical, and biological qualities of stormwater runoff are altered by encounters with impervious surfaces, especially roadways and related structures. Increases in water temperature, reduction in pH, chemical and nutrient contamination, and transport of silt are just a few of the degrading shifts that may occur.

Where such stormwater runoff is likely to contact wetland resources or adjacent upland resource areas, the Commission shall impose conditions that, in its judgment, reduce undesirable water quality changes to levels that will not harm wetland functions or values, immediately or cumulatively. The Commission may require the construction of specific structures to improve stormwater runoff quality, such as wet detention basins for pollutant removal and broad riprap swales for aeration.

6.3.3.3 Requirements for Hydraulic Calculations

In accordance with the above, the Commission shall require as part of the application for permit, complete hydrological calculations for the one, two, five, ten, twenty-five, and one-hundred year storm events, using rainfall amounts found in the new "Atlas of Precipitation Extremes for the Northeastern United States and Southeastern Canada" published by Cornell University. Such calculations shall include:

1. runoff from all impervious surfaces associated the project including individual lot construction; and
2. both pre- and post-project calculations for discharge volumes, concentration times, discharge velocities, and other quantities that the Commission may require for complete information.

6.3.4 Site Visits

The Commission may deny a permit if the applicant fails to provide the information requested.

"Information" in this instance includes site visits by the Commission and its staff or representatives for the purpose of directly observing pre-project and post-project conditions on the property, at seasonally appropriate times.

6.3.5 Replications

The history of wetland replication is mixed. Scientific reviews conclude that for the most part replications fail to reproduce the range of values — in quantity and quality — of the wetlands they ostensibly replace. In particular, difficulties in replicating proper hydrological conditions in a consistent and enduring fashion seem to be the source of the problem.

Accordingly, the Commission strongly discourages any plan that requires replication. in those instances where replication is approved by the Commission the following conditions must be met:

1. *The replicated wetland must be constructed in full and conditionally approved prior to construction of any structures.*
2. *At minimum the replicated wetland must reproduce all the values and functions of the original wetland as determined by the Commission.*

Site conditions permitting, the Commission may require that additional values and functions be incorporated into the replication design.

In particular, in circumstances where replacement of specific functions and values would require substantial amounts of time before being completely replicated (for example, those provided by large mature trees) the Commission may require additional compensation of area, functions, values, etc. beyond those required in other sections of the Bylaw and its Regulations:

3. *The area of replication must be at least twice as large as the area of the original resource that will be destroyed.* The actual area ratio of replacement shall be decided on a case-by case basis in accordance with 6.3.5(2), above.

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4. *In most instances the replication of wetland resource areas will result in the destruction of adjacent upland resource areas. In such instances replication of new adjacent upland resources shall follow 6.5.3(2) and 6.5.3(3), above.*
5. *The top 12" of soil from the original wetland must be transplanted with soil structure – especially lamination and density profile – intact to the replication.*

This is intended to preserve plant, invertebrate, and planktonic communities of the wetland and inhibit the blossoming of invasive species.

6. *Any replication or restoration work that creates a resource on abutting properties shall require an easement from the abutting property owner covering the full extension of the resource on that property prior to commencement of the work.*
7. *A bond shall be posted that will enable the Commission to complete the replication should the applicant fail to fulfill obligations set forth in the Order of Conditions.*

Standards for the replication shall be specified and verified in terms of functions, values, and actual performance. Technical and engineering specifications used for design and construction shall be considered approximate. Criteria for acceptance and approval shall be based solely on function and performance as specified in the Order of Conditions. In other words replications will be evaluated on what they are expected to do, not how closely actual construction matched the plan.

For example, although elevations may be used for design and planning of a pond the standards shall be set in terms of volume and depth of water over the course of a year. In vernal pool replication the pool must be capable of sustaining full development of vernal pool species, regardless of design elevations or siting.

Replications that do not properly perform the approved functions and values as specified in the order of conditions will not be deemed acceptable no matter how closely they adhere to approved engineered plans.

The Commission may waive any or all of the above or set other conditions on a project/site specific basis.

6.3.6 Orders of Conditions for Enforcement Orders

Orders of Conditions for permits associated with violations shall include explicit dates for milestones and completion of work.

6.3.7 Orders of Conditions and Bonding

In the specifying of an Order of Conditions and setting of bond the Commission may, at its choosing, take into account the prior history of the applicant and the applicant's representatives, consultants, builders, or other contractees. When, in the Commission's opinion, prior instances of disregard for Orders of Conditions, violations of wetlands Regulations and policies, practices known to threaten wetlands values and functions, or other failures to fulfill legal obligations pursuant to wetlands protection raise questions about the applicant's willingness or ability to abide by permit requirements, the Commission can set additional conditions and impose bond requirements to ensure adherence to permit requirements.

6.3.8 Permitting in the Context of Outstanding Enforcement Orders

No permit shall be issued for any project to an applicant who has an outstanding Enforcement Order of this Bylaw for which either (a) no corrective Order of Conditions has been recorded at the Registry of Deeds, or (b) which is not under legal appeal.

6.3.9 Stormwater Runoff Best Management Practices

All storm water runoff systems shall, at minimum, conform to best management practices as specified in the Massachusetts DEP Stormwater Management guides, "Volume One: Stormwater Policy Handbook"

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and "Volume Two: Stormwater Technical Handbook". The Commission may impose more stringent conditions where resource values and functions warrant it.

6.3.10 Alternative Analysis

In the Notice of Intent submitted to the Commission under the Bylaw, practical alternatives to locate the project outside any resource that falls under the jurisdiction of the Bylaw must be evaluated. If, in the determination of the Commission, one or more alternative(s) prove feasible, the plan must be amended to relocate all activities accordingly.

The Commission shall consider as practical alternatives options that were available to the applicant but appear to be precluded due to self-imposed hardships and constraints (e.g., lot, roadway, and drainage layouts engineered without prior regard to impact on Bylaw resources.)

If, in the Commission's view, there are no practical alternatives project impacts must be minimized and mitigated so there are no adverse impacts to the resources. If, notwithstanding the imposition of conditions and mitigation measures, the Commission determines that the project will have significant adverse impacts on the resources then the project shall be denied.

6.4 AMENDED ORDERS OF CONDITIONS

Quite often, modifications must be made to projects during construction. The Commission recognizes the need for such changes and sets forth the following procedures for assessing them. Because each modification is unique, it is impossible to determine in advance how any particular change will be addressed by the Commission. With any proposed modification, the applicant will first contact the Commission and explain the modification. The Commission has the authority to determine the appropriate category for the modification.

6.4.1 Minor Changes

These changes are modifications that the Commission determines have no likelihood of an impact on any wetland resource and need only the authorization of the Commission. Applicants will contact the Commission to determine the nature of the modification. The Commission will record this determination in the applicant's file and mail a copy to the applicant and to the Massachusetts Department of Environmental Protection's regional office. The Commission shall consider the following criteria in making this determination:

1. extent of modification
2. proximity to resource area
3. type of equipment required for construction

6.4.2 Moderate Changes

These changes are modifications that the Commission determines have some likelihood of an impact on a wetland resource. These changes require an Amended Order of Conditions, which requires a request for a public hearing, payment of a separate filing fee of \$100, and abutters notices sent by the applicant or their agent. Following receipt of the separate filing fee, the Commission will schedule a public hearing to be held within 21 days of the receipt of such fee and will publish a notice thereof in a local publication in the same general manner as for a Notice of Intent. The Commission will make a decision on the request for an Amended Order of Conditions following a public hearing. An Amended Order of Conditions must be filed by the Commission at the Registry of Deeds with a marginal reference to the original Order of Conditions.

The following may require an Amended Order of Conditions:

1. Decrease in the distance from resource area
2. Increase in potential for erosion
3. Decrease in the size of no alteration zone
4. Alteration of land form
5. Change in size and location of structure and appurtenances
6. Increase in amount of vegetation removed
7. Activity beyond the limit of work

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6.4.3 Significant Changes

Changes that are not related to the originally permitted activity may require a new Notice of Intent rather than an Amended Order of Conditions (that is, a deck appurtenant to a permitted dwelling would require a separate filing). Any modification that will change or increase the impact of the project on any wetland resource is considered a Significant Change. The applicant will follow the procedures set forth in Section 4 "Procedures".

6.5 DENIALS

6.5.1 Procedural Denials

When a Notice of Intent and supporting plans are reviewed and found incomplete, or if the on-site requirements (Section 4 "Procedures") are not met, the Commission will call the applicant and advise him or her to address the inadequacies with an amended Notice of Intent and/or revised plan or corrected on-site preparation before the scheduled hearing date. The Commission may follow this verbal recommendation with a letter describing the inadequacies of the filing. The hearing may be rescheduled due to lack of information.

If the applicant at the time of the hearing has not addressed the inadequacies of the Notice of Intent filing, the Commission may deny the project for lack of information.

If 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 interests identified in the Act and the Bylaw, it may issue an Order of Conditions denying the work. The denial will specify the information that is lacking and why it is necessary.

In writing the procedural denial, the Commission will:

1. State that the denial is specifically based on lack of information describing the site, the work and/or the effect of the work on the interests of the Bylaw and the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.00).
2. List specific information needed citing appropriate sections of the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.00) and/or Holliston Wetlands Administration Bylaw Regulations.

A procedural denial is without prejudice (i.e., a new Notice of Intent can be filed).

6.5.2 Substantive Denials

The Commission may deny permission for any activity within areas under its jurisdiction if, in its judgment, such denial is necessary to protect resource areas and interests, as cited in Section 2.2 "Purpose and Protected Interests". Due consideration is given to all possible effects of the proposal on all values protected under the Bylaw. The applicant is given opportunity to present competent and relevant oral and written arguments to refute presumptions made in the Bylaw and these Regulations. Substantive denials are based on a reasoned analysis of the proposed activity and the possible effects of this activity on the listed area and environmental interests (see Section 3 "Areas Subject to Protection and Regulation"). In most cases, neither the assumption of protection nor the assumption of damage can be proven with certainty. The Commission bases its judgment on the best scientific information available to it at the time, and in all cases the Commission acts to protect the public interests, as defined in the Bylaw and these Regulations.

6.6 APPEAL PROCEDURE

An appeal may be taken from a decision under the Bylaw in accordance with the provision of Massachusetts General Laws, Chapter 249.

6.7 CERTIFICATE OF COMPLIANCE

6.7.1 Criteria

The Commission will issue the Certificate of Compliance when a project is completed within the constraints of an Order of Conditions. The Certificate may be used to continue permanently certain conditions from the original Order that are deemed appropriate by the Commission.

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If the project is not completed in accordance with Order of Conditions, the Commission has the authority to withhold the Certificate of Compliance.

6.7.2 Procedures

1. Upon completion of the work permitted the applicant requests, in writing, that the Commission issue a Certificate of Compliance stating that the work has been satisfactorily completed.
2. The Commission may require as-built plans stamped by a registered professional engineer, architect, landscape architect or land surveyor, including a written statement by such a professional certifying substantial compliance with the plans, or setting forth what deviation, if any, exists from the plans approved in the applicable Order of Conditions.
3. Prior to the issuance of a Certificate of Compliance, an Agent or Commission member will make a site inspection. All wetlands flags must be in place at the time of the site inspection.
4. If the Commission determines, after review and inspection, that the work has been done in compliance with the Order, a Certificate of Compliance will be issued within thirty (30) days of receipt of a written request therefore, and will certify that the activity or portions thereof described in the Notice of Intent and submitted plans have been completed in compliance with the Order. The Certificate of Compliance must be signed by a majority of the Commission (such majority having attended 50% of the project's hearings). A copy of the Certificate of Compliance is sent to the Massachusetts Department of Environmental Protection by the Commission.
5. If the Commission determines, after review and inspection, that the work has not been done in compliance with the Order, it may refuse to issue a Certificate of Compliance. Such refusal must be issued within thirty (30) days of receipt of a request for a Certificate of Compliance, must be in writing, and must specify the reasons for denial.
6. If the final Order contains conditions that continue past the completion of the work, such as maintenance or monitoring, the Order will specify which conditions remain. These conditions will also be specified in the Certificate of Compliance.
7. The Certificate of Compliance (together with any continuing conditions) will be recorded by the applicant in the Land Court or Registry of Deeds, whichever is appropriate. Certification of recording will be sent to the Commission.

6.8 PERFORMANCE GUARANTEE

The performance guarantee is a tool available to the Commission to insure that proposed work is done in compliance with the Order of Conditions. The performance guarantee may be used in large, complex projects, or where the threat to particular resource areas warrants additional security.

6.8.1 Procedures

At the discretion of the Commission, the performance guarantee will be either in the form of a cashier's check, a letter of credit from a bank, or a performance bond. The Commission has the authority to use any such funds held under this section for the purposes stated by a vote of the Commission.

If the performance bond is in the form of a cashier's check, letter of credit or performance bond, the Town Clerk records and files the original in the Clerk's office. If a letter of credit is given to the Commission, it will include the following items:

1. The credit extended to "The Town of Holliston Conservation Commission" based on the Order of Conditions, Massachusetts Department of Environmental Protection File, Special Condition No. ____.
2. The specific work covered by the bond is stated.

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3. The guarantee, which may be released by a vote of the Commission. (If the bank requires that a time period be stated, it is the responsibility of the applicant to insure that the bond be continued if the work is not successfully completed at the end of that period.)
4. The amount of the guarantee, rationally related to the work to be done, as voted by the Commission.

SECTION 7. REVISIONS AND EFFECTIVE DATE OF REGULATIONS

The effective date of these Regulations will be the date on which these Regulations are approved by vote of the Commission. ***These Regulations will apply to all business of the Commission conducted after that date.***

These Regulations supersede all existing rules and practices previously applicable to procedures and proceedings before the Commission and are intended to clarify but not expand, extend, modify, or replace any provision of the Holliston Wetlands Administration Bylaw.

These Regulations may be revised from time to time by a majority of a quorum of the Commission, provided that one advertised public hearing has been held (previous to or at the time of the vote) for discussion of the proposed revisions, said hearing having been advertised at least 48 hours before.

SECTION 8. ENFORCEMENT

8.1 PURPOSE AND GUIDELINES

The ultimate goal of enforcement is prompt and continued compliance with the Bylaw and its Regulations; the intent of this section is to establish as much uniformity as possible, consistent with effective and appropriate enforcement actions. This section incorporates information contained in the DEP's "Wetlands Enforcement Manual" (hereinafter referred to as the "Manual") dated November 2004

Experience has shown that enforcement situations are rarely alike; each can present its own combination of characteristics such as type of violation, availability and reliability of evidence, severity and immediacy of the threat posed, ability to identify and contact responsible parties, and applicability of town laws and regulations. Therefore, this section of the Regulations is meant to provide an adaptable model, rather than a strict recipe to be followed in all cases.

8.2 RESPONSIBLE PARTIES

The current owner(s) of a property on which a violation has occurred is the party responsible and therefore liable for any fines and/or legal action regardless of any contract with a second party to obtain necessary permits, perform work, or adhere to conditions of a permit.

8.3 VIOLATIONS

8.3.1 Violations include, but are not limited to:

1. Failure to obtain a valid Permit prior to conducting an activity subject to Regulation under the Bylaw.
2. Activities regulated by the Bylaw and its Regulations within a buffer to a Resource Area without a permit.
3. Activities outside the one hundred (100) or two hundred (200) foot buffer, which has a direct or indirect adverse impact on a Resource Area.
4. Leaving in place unauthorized fill, or otherwise failing to restore illegally altered land to its original condition.
5. Failure to comply with a Final Order, such as failure to observe a particular condition or time period specified in the Order.
6. Failure to complete work described in a Final Order, when such failure causes damage to the interests identified in the Bylaw and its Regulations.
7. Failure to extend an Order of Conditions, or to file a new NOI for an expired Order of Conditions.
8. Failure to obtain a valid Order of Conditions or Extension Permit prior to conducting an activity subject to Regulation.
9. Failure to request a Certificate of Compliance upon completion of a project with a Final Order.
10. Failure to comply with any conditions, including perpetual conditions, in a Certificate of Compliance.

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11. Failure to comply with any conditions contained in any Order of Conditions or Negative Determination issued pursuant to Section 4 of the Bylaw is a violation; each condition violated is a separate offense.
12. Refusal to comply with an Enforcement Order issued by the Commission or its agents; each day that the Enforcement Order has not been complied with is a new and separate violation.
13. Failure to file a new NOI for a significant change to an originally permitted activity, as described in Section 6.5.3.

8.3.2 Commencement of Violation(s)

(Refer also to Section 9D of the Manual) An offense begins when a party fails, or refuses, to comply with any provision of the Bylaw and its Regulations, or permit issued by the Commission.

1. **In the case where restitution is possible**, each day or portion thereof during which a violation continues or is repeated shall constitute a separate offense and each provision of the Bylaw and its Regulations, or permit violated, shall constitute a separate offense.
2. **In the case where restitution is impossible or inadvisable**, the Commission will decide what procedural or legal remedies to take. For example, in the case of destruction of vegetation, the Commission may request that all activity on the site cease until the vegetation has reemerged, grown, or otherwise replenished itself to the Commission's satisfaction.
3. **Active Violations**: Each day that the active violation takes place is a separate violation that generates a different starting date for determining whether an enforcement action can be taken for that particular day.

8.4 FINES

If a fine or an adjustment of fine for a violation is contemplated, the Commission shall hold an Administrative Hearing to discuss the violation. The owner will be given at least forty-eight (48) hours' notice in writing of the date, time, and place of an Administrative Hearing, by certified mail return receipt requested or hand delivery. If a majority of the Commission present at the Hearing finds, by a preponderance of the evidence, that a violation has occurred then the responsible party shall be fined not more than three hundred dollars (\$300) per violation per day.

8.4.1 The Commission shall consider the following factors in imposing fines:

1. Whether the violation was willful or negligent;
2. any economic benefit gained by the defendant as a result of the violation;
3. actual and potential harm to the public health, safety, or the environment resulting from the violation;
4. actual and potential cost to the Town of Holliston resulting from the violation, including enforcement costs and attorneys fees;
5. actual and potential damages suffered by the Town of Holliston or any other person(s), resulting from the violation, including enforcement costs and attorneys fees;
6. whether the responsible party took steps to prevent the violation(s);
7. whether the responsible party promptly took steps to come into compliance after the occurrence of the violation(s);
8. whether the responsible party took steps to remedy and mitigate whatever harm occurred as a result of the violation(s);
9. any history of noncompliance by the responsible party;
10. as a means to deter future non-compliance by both the responsible party and others; and/or
11. the public interests.

Determination of serious impact will be at the discretion of a majority of the Commission. Failure of the responsible party to attend the meeting scheduled, or to arrange an alternative acceptable time, may result in an Enforcement Order being issued at the stated meeting time and date.

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8.4.2 Calculation of Fines

Upon a determination that such violations have occurred, the Commission may assess fines therefore in accordance with the provisions of the Bylaw and its Regulations. The Commission hereby establishes guidelines for calculating the appropriate amount of the fine if levied by the Commission after a public hearing. Each day of the violation constitutes a separate violation under the Bylaw and its Regulations.

8.4.3 Fines for Violations without a Permit or Valid Order of Conditions

1. Any activity, which alters a Resource Area (as defined by these Regulations): \$300.00 per violation as provided under the Bylaw and its Regulations. Restoration of the area to its pre-existing condition shall be required under a Restoration Enforcement Order.
2. Alteration of the No Disturbance Area (as defined in these Regulations), not including the areas above: \$250.00 per violation. Restoration of the area to its pre-existing condition shall be required under a Restoration Enforcement Order.
3. Alteration of one hundred (100) foot buffer zone, not including the areas above: \$200.00 per violation. Restoration of the area to its pre-existing condition shall be required under a Restoration Enforcement Order.

8.4.4 Fines for Violations which occur on a project with a Permit or a valid Order of Conditions:

1. Any activity which alters a Resource Area (as defined by these Regulations): \$300.00 per violation. Restoration of the area to its pre-existing condition shall be required under a Restoration Enforcement Order. In addition, a fine of \$300.00 per numbered condition violated in the Order of Conditions shall be assessed.
2. Alteration of the No Disturbance Area (as defined in these Regulations), not including the areas above: \$250.00 per violation. Restoration of the area to its pre-existing condition shall be required under a Restoration Enforcement Order. In addition, a fine of \$300.00 per numbered condition violated in the Order of Conditions shall be assessed.

The Commission may accept a written plan with timetable for full remediation of the violation and may then withhold sending the notice of fine(s) for a specified time period. If a satisfactory remediation plan is not provided to the Commission within ten (10) business days, the notice of fines shall be retroactive to the start of the violation.

The notice of a fine or fines and explanation thereof, including the date or approximate date of the violation from which daily violations are counted, will be sent in writing to the responsible party(s) by certified mail or hand delivery.

The Commission reserves the right to adjust any fine in response to new information or new circumstances at a public hearing to which the responsible party will be given notice as outlined above. A written notice of the adjustment of fine shall be sent to the responsible party by certified mail or hand-delivery.

8.4.5 Payment of Fines

The fine or fines are payable to the "Town of Holliston" within twenty-one (21) days of the date of issuance of the notice of a fine or fines.

8.4.6 Recording of Fines

The Tax Collector may, upon request of the Commission, record in the Middlesex Registry of Deeds a conservation lien for non-payment of accumulated fines. The lien shall be against all property in the Town of Holliston held by the responsible party at the time of the violation which is contiguous to the area of the violation. The Commission shall hold an Administrative Hearing, to which the responsible party will be given written notice as described above, in order to decide the amount of the lien, which may not exceed the amount of accumulated fines to date.

8.4.7 Release of Enforcement Order

An Enforcement Order will not be waived/released until the property and the violation are completely mitigated and restored, and all assessed fines are paid.

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8.5 ENFORCEMENT PROCESS/ADMINISTRATIVE PROCEDURE

8.5.1 Guidelines

The following guidelines outline the response that the Commission and/or its agent will take to violations or apparent violations of the Bylaw and its Regulations. The Commission and/or its agent will respond swiftly and consistently to any violations, or apparent violations, that occur:

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

Step 2 and Continuing: Gather Evidence. Keeping in mind that the Commission bears the burden of proof in an enforcement case to prove each element of a violation (see Step 6, below).

Step 3: Informal Contact. Contact the responsible party by phone to arrange a meeting (on site, in office, or at a Commission meeting). Discuss with the contact the site activity, the legal requirements, and possible remedial action. If full cooperation and agreement is achieved, Commission may issue a Restoration Enforcement Order (see below).

Step 4: Document Site Access, including a written notation to the file that identifies who visited the site and when, and who authorized access. If consent has not been obtained, it is very important to document attempts to gain access and the responsible party's response.

Step 5: Violation Letter. Whether or not informal contact has been made, send a violation (form) letter, informing the responsible party of the wetlands protection laws and the apparent violation. It should include a cease and desist request, a requirement to prevent further damage, a request for the responsible party to attend the Commission's next meeting, and the scheduled date and time of the administrative hearing. A violation letter, issued under the Bylaw, will constitute a warning that a public hearing will be held and that fines could result from any violation.

Step 6: Administrative Hearing. When the Commission determines that an activity could be in violation of the Bylaw and its Regulations, the Commission shall hold a public hearing to give the responsible party, or their representative, an opportunity to respond to the evidence and circumstances. The Commission will then consider whether a violation actually occurred and, if so, whether the responsible party will be issued an Enforcement Order and/or fined for the violation.

During public hearings, site observations should be reduced to a memorandum and documents should be entered into the record in such a manner that the applicant and other participants are aware of their contents and have an opportunity to respond to them. It should be noted that since Commissioners frequently have specialized knowledge of the site of the violation or the area from site visits, previous proceedings, other documentary materials, or merely general experience, they can rely on those sources of knowledge to some extent. At least one court has upheld a commission's denial of a project even though there had been no testimony before it on certain of the issues. It noted that that "the Commission is not required either to ignore history or its own expertise in determining the likely impact of actions plaintiffs take."

Step 7: Consult with the DEP's Environmental Strike Force. The DEP's enforcement department (currently referred to as the "Environmental Strike Force") should be consulted regarding all violations prior to taking action at the local level.

Step 8: Notify Town Boards. All applicable town boards shall be notified of violations and/or enforcement actions.

Step 9: Enforcement Order. Failing an adequate response to Step 5, or if no action is taken by the DEP's Environmental Strike Force, or for serious violations the Commission may issue an Enforcement Order under the Bylaw. An As-Built Plan and Certificate of Compliance will be required for the release of an Enforcement Order.

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

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

Step 10: Restoration Enforcement Order. If full cooperation and agreement is achieved, the Commission may issue a Restoration Enforcement Order, setting forth specific requirements for the restoration of the site to its original condition within a specified time period (typically ten business days). This Order would require a detailed Restoration Plan, prepared by a qualified professional, including specific dates for submissions, construction, and compliance milestones. Once an acceptable Restoration Plan is received, the plan should be incorporated as a dated attachment to the original Enforcement Order. If the specified timeframe is not met, then a formal Enforcement Order will be issued and recorded, per Step 9, above.

8.5.2 Additional Enforcement Options

If a project under construction deviates from the approved plans, or if an Order was obtained under fraudulent circumstances, then the Commission should consult with the Board of Selectmen and/or Town Counsel regarding revocation of the Order.

8.5.2 Further Enforcements under the Bylaw and its Regulations

If the above actions do not secure compliance, the following remedies are available to the Commission, and will be selected as the Commission finds appropriate.

1. Civil Suit - Injunctive Order, no penalties available.
2. Criminal Action - penalties up to \$300 per day per violation.

8.6 APPEAL PROCEDURE FOR ENFORCEMENT ORDERS

Enforcement Orders issued by the Commission can only be appealed to the Superior Court, not to the DEP. Many appeals of Enforcement Orders will be brought pursuant to the "certiorari" statute, G.L. c.249, §4. Such appeals must be filed in Superior Court within sixty (60) days of the issuance of an Order.

A "certiorari" proceeding is a limited review of the Commission's record, i.e. all proceeding notes, minutes and transcripts, plus information and documents obtained and issued by the Commission (see information contained in Step 6, above). The burden of proof is on the plaintiff (i.e. the responsible party bringing the appeal) to show that the Commission either failed to follow proper procedures, or that its decision was arbitrary or capricious or not based on substantial evidence. An appeal of a Commission's Order is a legal action against the Town, not individual Conservation Commissioners. As stated in the Bylaw: "Upon request of the Commission, the Board of Selectmen and Town Counsel shall take legal action for enforcement under civil law."