TOWN OF HOLLISTON
WETLANDS PROTECTION REGULATIONS

Adopted October 18, 2022

Table of Contents

Page

Part 3 – Waivers

Part 4 – Fees

Part 1. General Provisions and Procedures

1.01 Introduction and Purpose

A. These Wetlands Protection Bylaw Regulations (hereinafter, the "Regulations") are promulgated by the Town of Holliston Conservation Commission (hereinafter, the "Commission") pursuant to the authority granted to it under Section 9 of Holliston's Wetlands Protection Bylaw (Article XXXI of the General Bylaws, hereinafter the "Bylaw"), as amended. These 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.

B. The Bylaw sets forth a public review and decision-making process by which activities having an impact or cumulative effects upon Areas Subject to Protection Under the Bylaw are to be regulated in order to ensure the protection of the following public values:

- Public or Private Water Supply
- Groundwater Supply
- Flood Control
- Erosion and Sedimentation Control
- Storm Damage Prevention
- Water Quality
- Prevention and Control of Pollution
- Fisheries
- Wildlife and Wildlife Habitat, including Rare Species Habitat
- Agriculture
- Aquaculture
- Recreation

C. The purpose of these Regulations is to define and clarify that process by establishing standard definitions and uniform procedures by which the Commission may carry out its responsibilities under the Bylaw. These Regulations are separate and distinct from the Massachusetts Wetlands Protection Act regulations promulgated by the Massachusetts Department of Environmental Protection and filed under 310 Code of Massachusetts Regulations 10.00 *et seq.*, although these Holliston Regulations may refer to and/or incorporate by reference certain provisions of those state regulations.

D. These Regulations may be amended by a majority vote of the Commission if, prior to such a vote, the Commission has held a public hearing on the proposed changes.

1.02 Jurisdiction

A. Areas subject to protection under the Bylaw. The following areas named in Article XXXI, Section III A-E and restated herein are resource areas protected by the Bylaw:

(1) Any wetland, marsh, wet meadow, bog, swamp, vernal pool, spring, bank, reservoir, lake, pond of any size, beach, and any lands under water bodies and/or intermittent or perennial streams, brooks, and creeks;
(2) Lands adjoining the resource areas specified in Section 1.02(A)(1) out to a distance of one hundred (100) feet, known as the Buffer Zone;
(3) Perennial rivers, streams, brooks, and creeks;
(4) Lands adjoining the resource areas specified in Section 1.02(A)(3) out to a distance of two hundred (200) feet, known as the Riverfront Area;
(5) Any lands subject to flooding or inundation by groundwater or surface water.

Collectively the areas specified in Article XXXI, Section 3 A.-E. and restated herein constitute the areas subject to protection under the Bylaw and are interchangeably termed herein "resource areas" protected by this Bylaw. Said resource areas shall be protected whether or not they border surface waters.

B. Activities subject to regulation under the Bylaw. The following activities, when proposed in resource areas protected by this Bylaw (Section 1.02A(1)-(5) above), are subject to regulation under the Bylaw:

(1) remove;
(2) fill;
(3) dredge;
(4) build upon;
(5) discharge into;
(6) alter.

1.03 Exemptions and Exceptions

A. Other than as stated in Article XXXI, Section 4 and promulgated here, the exceptions provided in the Wetlands Protection Act (M.G.L. c. 131, § 40) and regulations (310 CMR 10.00) shall not apply under this Bylaw. The applications and permits required by this Bylaw shall not be required for -

(1) Work performed for normal maintenance or improvement of land in existing agricultural and/or aquacultural use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04.
(2) Maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, sewer, drainage, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Commission prior to commencement of work, and the work conforms to any performance standards and design specifications in regulations adopted by the Commission.
(3) Emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24

hours after commencement; the Commission or its agent certifies the work as an emergency project; the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and within 21 days of commencement of an emergency project an appropriate application shall be filed with the Commission for review. If these and/or other requirements of the Commission are not met, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

(4) Maintaining or repairing, but not replacing or enlarging an existing and lawfully located structure or facility provided that written notice has been given to the Conservation Commission prior to commencement of work, and the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

(5) Exemptions under the Rivers Protection Act (310 CMR 10.58[6]).

(6) Any "exempt minor activity" in Riverfront Areas and Buffer Zones as defined pursuant to the Massachusetts Wetlands Protection Act and its implementing regulations (310 CMR 10.02(2)(b)2.) and/or policies promulgated by the Massachusetts Department of Environmental Protection.

1.04 Definitions

A. Except as otherwise provided in the Bylaw or in these Regulations, the definitions of terms in these Regulations shall be as set forth in the Wetlands Protection Act (M.G.L. c. 131, § 40) and regulations (310 CMR 10.00).

B. The following definitions shall apply in the interpretation and implementation of these Regulations.

50-Foot No-Disturbance Zone means that portion of the Buffer Zone which extends fifty (50) feet from the edge of those wetland resource areas identified in Section 3.A of the Bylaw.

100-Foot No-Disturbance Zone means that portion of the Buffer Zone that extends one hundred (100) feet from the edge of any Vernal Pool that is located in an upland area or, in the case of a larger wetland resource area that encompasses the pool, within one hundred (100) feet from the edge of the said larger wetland resource area.

Agriculture refers to the definition provided by M.G.L. c. 128, § 1A.

Aquaculture refers to the definition provided in 310 CMR 10.04.

Alter means and 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, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics

(3) Drainage, or other disturbance of water level or water table

(4) Dumping, discharging, or filling with any material which may degrade water quality

(5) Placing of fill, or removal of material, which would alter elevation

(6) Driving of piles, erection, expansion or repair of buildings or structures of any kind

(7) Placing of obstructions or objects in water

(8) Destruction of plant life including cutting or trimming of trees, shrubs, or undergrowth

(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 groundwater

(11) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this Bylaw.

Approval(s) See Permits.

Bank means 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 flood level, whichever is higher.

Buffer Zone, as defined in Article XXXI, Section 3.B, means that adjacent land area that extends one hundred (100) feet from the edge of those wetland resource areas identified in Article XXXI, Section 3.A and restated in Section 1.02A(2) above.

Build upon means constructing, placing or installing any kind of structure (temporary or permanent), whether on land or in water; and/or placing of obstructions or objects in water (other than fish or shellfish traps, pens or trays used in conjunction with aquaculture, or aids to navigation).

Cumulative adverse effect means an effect on a resource area(s) that is significant when considered in combination with other activities that have occurred, are occurring simultaneously, or that are reasonably likely to occur within that resource area(s), whether such other activities have occurred or are contemplated as a separate phase of the same project or activities, or as a result of unrelated projects or activities.

Discharge into means, without limitation, any outfall of water that empties into a resource area or Buffer Zone, including infiltration.

Ecological Restoration Project means a proposal to do work that has the sole purpose of enhancing the ability of a property to function in the protection of the public interests set forth in Section 1.01B above. Such projects include, but are not limited to, the restoration, enhancement or management of Rare Species habitat, the restoration of hydrologic and habitat connectivity, the removal of aquatic nuisance vegetation to retard pond and lake eutrophication, the thinning or planting of vegetation to improve habitat value, riparian corridor re-naturalization, river floodplain reconnection, in-stream habitat enhancement, fill removal and regrading, flow restoration, and the installation of fish passage structures. An Ecological Restoration Project that is not listed in 310 CMR 10.53(4)(e)1-5. that will improve the natural capacity of a Resource Area(s) to protect the interests identified in Section 1.01B above may be permitted as an ecological restoration limited project provided that the project meets the eligibility criteria set forth in 310 CMR 10.53(4)(a)1-5.

Erosion control means the prevention of the detachment or movement of soil or rock fragments by water, wind, ice, or gravity.

Groundwater means all subsurface water contained in natural geologic formations or artificial fill including soil water in the zone of aeration.

Hydric soil means a soil that is saturated, ponded, or flooded long enough during the growing season to cause anaerobic conditions in the upper part.

Hydrologic regime means the depth, duration and frequency of surface flooding and/or soil saturation.

Orders See Permits.

Permits include, collectively, any permits, approvals and/or orders issued by the Commission, including: Orders of Conditions, Determinations of Applicability, Emergency Certifications, and/or Orders of Resource Area Delineation issued under the Bylaw.

Person means 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 follows the definition at 310 CMR 10.04 except that the minimum size threshold of 10,000 square feet does not apply.

Private water supply means any source or volume of surface or groundwater demonstrated to be in any private use or shown to have potential for private use for domestic purposes.

Public interest means something of benefit to the health, welfare, or safety to the Holliston community at large as opposed to the applicant, the landowner, or any one individual, special interest group, organization, or other entity.

Public water supply means any source or volume of surface water or groundwater demonstrated to be in public use or approved for water supply pursuant to M.G.L. c. 111, §160 by the Division of Water Supply of the Department of Environmental Protection or shown to have a potential for public use.

Rare species 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.

Rare Species habitat means areas subject to protection under the Bylaw having plant community composition and structure, hydrologic regime, or other characteristics sufficient to provide shelter, nutrient sourcing, growing conditions, nesting, or breeding sites conducive to the propagation and preservation of rare species, regardless of whether or not the site in which such habitat occurs has been previously identified by the Massachusetts Division of Fisheries and Wildlife.

Recreation means any leisure activity or sport taking place in, on, or within one hundred (100) feet of a resource area which is dependent on the resource area and its values directly or indirectly for its conduct and enjoyment. Recreational activities include, but are not limited to, the following: noncommercial fishing and hunting, boating, swimming, walking, painting, birdwatching, and aesthetic enjoyment.

Reservoir means a lake or pond or other basin, naturally occurring or man-made, where water is collected and stored for future use.

Riverfront Area as defined in Article XXXI, Section 3.D, means that adjacent upland resource area which extends two hundred (200) feet from the edge of those wetland resource areas identified in Article XXXI, Section 3.C.

Seasonal wetland means an isolated depression or closed basin that temporarily confines water during periods of high groundwater or high input from spring runoff, snowmelt, or heavy precipitation, and that may support populations of non-transient macro-organisms and provide breeding habitat for select species of amphibians. Cf. Vernal Pool.

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

Significant means plays a role in the provision or protection of a wetland resource value.

Spring means any point in the natural environment where water discharges to the surface of the earth from underground.

Vegetated wetland means all wet meadows, marshes, swamps and bogs, or intergrades or combinations of such areas, where the soils are saturated and/or inundated such that they support a predominance of wetland indicator plants. The ground and surface water regime and the vegetation community that occur in each type of freshwater wetland are specified in M.G.L. c. 131, § 40.

Vernal pool means and includes, in addition to definitions found in regulations issued pursuant to the Massachusetts Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways that, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, is free of adult predatory fish populations, and provides both essential breeding and rearing habitat functions for obligate and/or facultative vernal pool amphibians or reptiles, or other recognized vernal pool community species (MA-DFW Guidelines for the Certification of Vernal Pool Habitat, 2009), or as amended, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area Seasonal Wetlands which function as Vernal Pools shall be defined as per the requirements of Section 2.06B.(8) of these Regulations, below.

Wetlands are areas where groundwater is at or near the surface, or where surface water frequently collects for a significant part of the growing season, and where a significant part of the vegetative community is made up of plants adapted to life in saturated soil.

Wetland indicator plants means any plant species contained within one or more of the following groups:

(1) plants listed in M.G.L. c. 131, § 40, the MA Wetlands Protection Act;
(2) plants in the State of Massachusetts 2016 Wetland Plant List (US ACOE, 2016), or as amended, with a wetland indicator category of FAC, FAC+, FACW-, FACW, FACW+, OBL, and;
(3) plants with morphological or physiological adaptations to life in saturated conditions.

Wildlife means all non-domesticated mammals, birds, reptiles, amphibians, fishes, or invertebrates. Special consideration shall only be given to members of the class *Insecta* if they are rare or endangered as defined by the Massachusetts Natural Heritage Program or its successor, or if they are a major food

source of other wildlife, but not if the insect species is determined by the Commission and the Board of Health to constitute a pest whose protection under the Bylaw would be a risk to people likely to live or work at the proposed project site.

Wildlife habitat means areas having the soil composition and characteristics, plant community composition and structure, water quality, hydrologic regime, or other characteristics sufficient to provide shelter, nutrient sourcing, growing conditions, nesting, or breeding sites conducive to the propagation and preservation of wildlife.

1.05 Burden of Going Forward and Burden of Proof

A. Burden of Going Forward. The applicant shall have the burden of proving by a preponderance of the credible evidence from a competent source in support of all matters asserted pursuant to Subsection B below. Failure to provide adequate evidence to the Conservation Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with additional conditions.

B. Burden of Proof.

(1) Determination of Applicability. The applicant shall have the burden of proving by a preponderance of the credible evidence that
    a. the area under consideration is not an area subject to protection under the Bylaw, (Article XXI, Sect. III,A-E.), or
    b. the proposed action will have no adverse effect on the public interests protected under the Bylaw (Article XXI, Sect. II, para.1).

(2) Order of Resource Area Delineation. The applicant shall have the burden of proving by a preponderance of the credible evidence that the boundaries of the resource areas protected by the Bylaw are accurate.

(3) Permit. For any permit application under which work is proposed, the applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative effects upon the resource area values protected by this Bylaw.

(4) Waiver. For burdens of proof assumed by the applicant in the filing of a Waiver request, see Part 3 of these regulations.

1.06 Time Periods

A. All time periods of 10 days or less as specified in the Bylaw and these Regulations shall be computed using business days only. Where the time is 10 days or less, such period shall commence on the first day after the date of the event, such as the issuance of a document, and shall end at the close of business on the 10th business day thereafter.

B. All other time periods specified in the Bylaw and these Regulations shall be computed on the basis of calendar days with the period commencing on the first day after the date of the event but shall end at the close of business on the last calendar day, unless the last day falls on a Saturday, Sunday, or legal holiday, in which case the last day shall be the next business day following.

1.07 Actions by Conservation Commission

A. Where the Bylaw states that the Commission is to take a particular action (except receipt of a request for a determination or an application for a permit), that action is to be taken by more than half the members present at a meeting of at least a quorum. A quorum is defined as a majority of the members then in office.

B. Execution and issuance of permits, other orders and determinations. Where the Bylaw states that a permit, other order, notification or determination shall be issued by the Commission, that action is to be taken by a quorum who need not convene as a body in order to sign said determination, permit, order or notification, provided they met pursuant to the Open Meeting Law, M.G.L. c. 39, §§ 23A through 23C, when voting on the matter.

C. Receipt of request, application, or information. Where the Bylaw states that the Commission is to receive a request, application, notice, or information, "Commission" means a member of the Holliston Conservation Commission, its Agent, or an individual designated by the Holliston Conservation Commission to receive such request, application, notice, or information.

1.08 Determinations

A. Request for Determination. A request for determination may be filed with the Commission for a determination of Bylaw applicability or for a determination of significance or non-significance of Bylaw resource area(s).

(1) Any person who desires a determination as to whether the Bylaw applies to land, or to work that may affect a resource area subject to protection under the Bylaw, or a determination of significance or non-significance of a Bylaw resource area to protect any Bylaw wetland values may submit to the Conservation Commission, by certified mail or hand delivery, a request for a determination on the appropriate Commission's form and other application materials in accordance with the submittal requirements set forth in the filing guidelines for request for determinations of applicability, Bylaw resource areas delineation, or Bylaw resource area significance as provided in Section 4 of these Regulations.
(2) Boundary determinations for wetland resource areas shall require the filing of an Abbreviated Notice of Resource Area Delineation. A Request for Determination of Applicability shall not be considered a valid method for such actions.
(3) The person making the request shall also give notice to abutters in accordance with the Article XXXI, Section 6.

B. Commission Action on Requests for Determinations. The Commission considers the request for determination application received when the proper fee and all filing requirements, as outlined in Section 4 of these regulations, are submitted. Upon receipt of a complete request for determination of applicability application, the Commission shall:

(1) Schedule a public hearing and publish notice.
    (a) Within 21 calendar days after the date of receipt of a complete request for

determination application, the Commission shall hold a public hearing, unless otherwise agreed in writing between the applicant and/or the applicant's representative and the Commission.

(b) Notice of the time and place of the public hearing shall be given by the Commission, at the expense of the applicant, not less than five business days prior to such meeting, by publishing a notice, in accordance with the requirements of the Open Meeting Law, M.G.L. c. 30A, §§ 18-25, in a newspaper of general circulation in Holliston and by mailing, e-mailing, or hand delivering a notice to the applicant, the landowner, the Board of Health, the Planning and Zoning Board, the Board of Appeals, the Select Board, and Building Inspector.

(2) Continue the public hearing (if/when necessary). The Commission, at its sole discretion, may continue any public hearing in accordance with the Open Meeting Law, M.G.L. c. 30A, §§ 18-25, on any request for a determination; provided, however, that the person requesting such determination may require the Commission to close the hearing.

(3) Issue Determination of Applicability.

(a) When no work is proposed, the Commission shall find that the Bylaw applies to the land, or a portion thereof, if it is a resource area subject to protection under the Bylaw as listed in Article XXXI, Section 3.

(b) When work is proposed, the Commission shall find that the Bylaw applies to the work or the portion thereof if it is an activity subject to the regulations under the Bylaw as defined in Article XXXI, Section 3 and determine if such work will alter a Bylaw resource area.

(c) When the Commission finds that the Bylaw applies (positive determination) and work proposed will alter a Bylaw resource area, the Commission shall;

i. Issue a Determination of Applicability with such conditions as are necessary to protect the resource area values in wetland resource areas at the site, or

ii. Require the submission of an application for a permit for work. Following this determination, all of the procedures set forth in the Bylaw and Section 1.09 of these Regulations shall apply before any work may commence on the site.

(d) Said determination shall be valid for a period of three (3) years. Upon request of the applicant, extensions may be granted pursuant to the procedures and requirements of Section 1.10 below.

1.09 Permits

A. Application submittal information.

(1) Any person who proposes to do work that will remove, fill, dredge, build on, or alter any resource area subject to protection under the Bylaw shall submit an application for permit on the appropriate form and other application materials in accordance with the submittal requirements set forth in the general instructions for completing applications for a permit for work provided in Section 4 of these Regulations. The Commission also requires the

submission of the proper filing fee, as authorized under Article XXXI, Section 5.A, para. 5 and Section 4.04A of these Regulations. Where the Commission requires a consultant fee, as authorized under Article XXXI, Section 5.B, the calculation, submission, and administration of consultant fees shall be subject to the terms and requirement of Section 4.04B.

(2) If only a portion of a proposed project or activity lies within a resource area subject to protection under the Bylaw and the remainder of the project or activity lies outside those Bylaw resource areas, all aspects of the project must be described in sufficient detail, as provided Article XXXI, Section 5.A, para. 2. and any other of the general instructions provided on the appropriate Commission's forms; provided that in such circumstances the application for a permit shall also contain a description and calculation of peak flow and estimated water quality characteristics of discharge from a point source (both closed and open channel) when the point of discharge falls within a resource area subject to protection under the Bylaw.

(3) Issuance of Bylaw file number. Upon receipt of the application materials referred to in Subsection A above, the Commission shall issue a file number if the project is solely under the jurisdiction of the Bylaw. Otherwise, the file number issued by the Massachusetts Department of Environmental Protection for processing under the Wetlands Protection Act shall suffice. The designation of file number shall not imply that the plans and supporting documents have been judged adequate for the issuance of a permit for work but only that copies of the minimum submittal requirements have been filed.

B. Public hearing.

(1) Scheduling. A public hearing shall be held by the Conservation Commission within 21 calendar days of receipt of the minimum submittal requirements as referenced in Section 4 of these Regulations, unless otherwise agreed in writing between the applicant and/or the applicant's representative and the Commission.

(2) The public hearing shall be advertised in accordance with the Bylaw and the requirements of the Open Meeting Law, M.G.L. c. 30A, §§ 18-25.

(3) Continued hearing. The Commission may continue a public hearing as follows:

(a) With the written consent of the applicant, to an agreed upon date, which shall be announced at the hearing; or

(b) With the consent of the applicant for a period not to exceed 21 days after the submission of specified information or the occurrence of a specified action. The date, time, and place of said continued hearing shall be publicized in accordance with Article XXXI, Section. 6, para. 1, and the requirements of the Open Meeting Law, M.G.L. c. 30A, §§ 18-25, and written notice shall be sent to any person at the hearing who so requests such notice.

(c) Without the consent of the applicant to a certain date announced at the hearing, within 21 days of the receipt of the application, either for receipt of additional information

offered by the applicant or others or for information required of the applicant deemed necessary by the Commission at its discretion,; or

(d) Without the consent of the applicant, a public hearing may be closed by the Conservation Commission if requested information is not provided by the fourth consecutive continuance of the public hearing.

C. Decision of Commission after close of public hearing.

(1) The Commission, after a public hearing, shall determine whether the activities that are subject to the permit application, or the land and water uses which will result therefrom, are likely to have a significant individual or cumulative effect on the resource area values protected by this Bylaw. The Commission shall take into account the extent to which the applicant has avoided, minimized, and mitigated any such effect. The Commission also shall take into account any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted, or exempt, and foreseeable future activities. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

(a) In reviewing activities within the Buffer Zone, the Commission shall presume such areas are important to the protection of other resource areas because activities undertaken in close proximity have a high likelihood of adverse impact, immediately, as a consequence of construction, or over time; as a consequence of daily operation; or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss or degradation of wildlife and wildlife habitat. This presumption is rebuttable and may be overcome by credible evidence from a competent source that such Buffer Zones are not important to protection of other resource areas.

(b) In reviewing activities within the riverfront area, the Commission shall presume the Riverfront Area is important to all the resource area values unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this Bylaw, has proved by a preponderance of the credible evidence that (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this Bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.

(c) To prevent resource area loss, the Commission shall require all applicants to avoid alteration wherever feasible; to minimize proposed alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may

authorize or require replication of wetlands as a form of mitigation but, because of the high likelihood of failure of replication, only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success. No Certificate of Compliance shall be issued by the Commission if such replication is not performed or otherwise fails to meet the performance standards for wetland mitigation under 310 CMR 10.55(4)(b)(6).

(d) The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless of the type of resource area or the amount or type of alteration proposed. The decision to require a wildlife habitat study shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife corridors in the area, or actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who meets or exceeds the minimum qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60) and, when required by the Commission, has direct professional experience with the wildlife species or wildlife habitat at issue.

(e) The Commission shall presume that all areas meeting the definition of "vernal pools" under Section 10 of the Bylaw, including the adjacent Buffer Zone area, perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential vernal pool habitat functions. Any formal evaluation should be performed by an individual who meets or exceeds the minimum qualifications under the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60) and, when required by the Commission, has direct professional experience with the wildlife species or wildlife habitat at issue.

(2) The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in Part 3 of these regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; avoidance, minimization, and mitigation have been employed to the maximum extent feasible; and the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

(3) The Commission may combine the decision issued under this Bylaw with any Order, Determination, or Certificate of Compliance issued under the MA Wetlands Protection Act and regulations.

D. Time of decision. Within 21 days of the close of the public hearing, or any extension thereof, the Commission shall both vote at a public meeting to either issue the permit or deny the application and issue said permit or denial of permit, unless otherwise granted an enlargement of time by the applicant for the issuance.

E. Decision to approve work. Within 21 days of the close of the public hearing or any continuance thereof, the Commission may vote to approve the proposed work and issue a permit. In making such the decision, the Commission shall:

(1) Make a determination that the resource area subject to protection under the Bylaw on which the work is proposed to be done or which the proposed work will remove, fill, dredge, or alter is not significant to any of the Bylaw wetland values and shall so notify the applicant on the appropriate form titled "Notification of Non-Significance" and allow the work to go forward as proposed; or

(2) Make a determination that the resource area subject to protection under the Bylaw on which the work is proposed to be done or which the proposed work will remove, fill, dredge, or alter is significant to one or more of the Bylaw wetland values and a determination that said activities, or uses which will result therefrom, will not have a significant individual or cumulative effect on the resource area values protected by this Bylaw and comply with the procedures, design specifications, performance standards, and other requirements in regulations of the Commission.

(3) The Commission shall condition said proposed work to protect the applicable Bylaw wetland values and shall issue the permit. In its permit, the Commission shall, at a minimum:
   (a) Impose such conditions as are necessary for the protection of the Bylaw resource areas found to be significant to one or more of the Bylaw wetland resource area values;
   (b) Prohibit any work or any portion thereof that cannot be conditioned to meet the standard of protection of the Bylaw wetland resource area values;
   (c) Impose conditions upon the work or the portion thereof that will, in the judgment of the Commission, result in any alteration of a resource area subject to protection under the Bylaw; and
   (d) Impose conditions setting limits on the quantity and quality of discharge from point sources (both open and closed channel) as necessary to protect the Bylaw wetland resource area values.

F. Decision to deny the work. The Commission is empowered to deny a permit for failure to meet the requirements of this Bylaw. The Commission may issue a decision denying the proposed work where the Commission finds:

   (a) That the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the Bylaw wetland values. The denied work decision shall specify the information that is lacking and why it is necessary.
   (b) A failure to comply with the procedures, design specifications, performance standards, and other requirements in regulations of the Commission.
   (c) A failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values protected by this Bylaw.
   (d) That no conditions are adequate to protect said resource area values.

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

(1) Issuance of permit.

(a) The date of issuance of any Bylaw permit, decision,, determination, certificate of compliance, or enforcement order is the date it is mailed, as evidenced by a postmark, or the date it is hand-delivered, as evidenced by a signed or initialed notation to that effect.

(b) The permit for work shall be valid for three years from the date of its issuance.

(a) Notwithstanding the above, the Commission in its discretion may issue a permit valid for five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission.

(b) Notwithstanding the above, a permit may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all present and future owners of the land.

The permit for work or denial of permit for work shall be signed by a majority of the members of the Commission then in office and shall be mailed by Certified Mail or hand delivered to the applicant and his/her agent, representative, or attorney, as designated.

A copy of the plans describing the work and a copy of the permit, decision,, determination, certificate of compliance, or enforcement order shall be kept on file by the Commission and shall be available to the public at reasonable times during the normal business hours of the Commission.

(2) Recording of permits. Prior to the commencement of any work permitted or required by any permit, the permit shall be recorded in the Middlesex County South Registry of Deeds or the Land Court. This requirement shall not apply to Determinations of Applicability or Enforcement Orders under which work is permitted.

(a) Certification of recording shall be sent to the Commission on the detachable sheet at the end of permit for work. If the applicant fails to perform such recording, the Commission may record the document itself and require the applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of any certificate of compliance. If work is undertaken without the applicant first recording the permit for work, the Commission may issue an enforcement order or may itself record the permit at the expense of the landowner/applicant.

(b) In the case of recorded land, the permit for work shall also be noted in the Registry's Grantor Index under the name of the owner of land upon which the proposed work is to be done.

(c) In the case of registered land, the permit for work shall also be noted on the Land Court certificate of title of the owner of the land upon which the proposed work is to be done.

E. Revocation of Permits. For good cause, the Commission may revoke any permit or any other order, determination, or other decision issued under this Bylaw after notice to the permit holder, the public, abutters, and town boards involved pursuant to notification requirements contained in Section 4.02D and 4.03D or by prior participation, and after a public hearing.

F. Amendments. Amendments to permits, orders, and determinations issued under this Bylaw shall be handled in the manner set out in the Wetlands Protection Act regulations and policies thereunder.

1.10 Extension of Permit

A. Request for Extension. The Commission may extend a permit for work for up to three years. The request for an extension shall be made to the Commission at least thirty (30) days before the expiration of the permit. Where the activity permitted by the permit for work cannot commence because of an appeal of the order of conditions or an order by the Superior Court enjoining activity in an appeal of a permit for work, that period while the appeal(s) is pending shall not be counted toward any initial or extension period, and the Commission shall issue an appropriate extension permit for work to that effect.

B. Denial of Extension. The Commission may deny the request for an extension and require the filing of a new application for a permit for the remaining work in the following circumstances:

(1) Where no work has begun on the proposed project, except where such failure is due to an unavoidable delay, such as appeal of the order of conditions issued by the Commission under the Wetlands Protection Act or in the obtaining of other necessary permits;
(2) Where new information, not available at the time the Commission issued the permit for work, has become available and indicates that the permit for work is not adequate to protect the Bylaw wetland values;
(3) Where incomplete work is causing damage to the Bylaw wetland values; and/or
(4) Where work has been done in violation of the permit for work.

C. Issuance of Extension. If issued by the Commission, the extension permit for work shall be signed by a majority of the members of the Commission then in office.

D. Recording. The extension permit for work shall be recorded in the Registry of Deeds or the Land Court, whichever is appropriate. Documentation of recording shall be provided to the Commission. If work is undertaken without the applicant so recording the extension permit for work and providing documentation of same to the Commission, the Commission may issue an enforcement order or may itself record the extension permit for work at the expense of the landowner/applicant.

1.11 Certificate of Compliance

A. Request for Certificate of Compliance. Upon completion of a permitted project which alters or has altered a resource area subject to protection under this Bylaw, the applicant or the current landowner shall request a certificate of compliance from the Commission. This requirement does not apply to projects permitted under a Determination of Applicability. Upon written request by the applicant or the

current landowner, the Commission shall issue or deny a certificate of compliance within 21 days of receipt thereof.

(1) The person making the request shall certify that the work or portions thereof described in the application for the permit for work was completed in compliance with the permit. This certification shall be on the Commission's applicable form. The applicant or current landowner shall request in writing that the Commission issue a certificate of compliance.
(2) If a project has been completed in accordance with plans stamped by a registered professional engineer or a land surveyor, a written statement by such a professional person certifying substantial compliance with the plans and setting forth what deviation, if any, exists from the plans approved in the permit shall accompany the request for a certificate of compliance.

B. Site inspection. Before the Commission may issue a certificate of compliance, the Commission or its agent(s) shall inspect the site. Said site inspection shall be made in the presence of the landowner or the landowner's agent whenever possible.

C. Denial of certificate of compliance. If the Commission determines, after review and inspection of the site, that the work has not been done in compliance with the permit for work, it shall refuse to issue a certificate of compliance. The Commission shall issue such refusal within the time limitation as stated (21 days from receipt of the request) and such refusal shall be in writing and shall specify the reasons for denial.

D. Issuance of certificate of compliance. If the Commission determines, after review and inspection of the site, that the work has been done in substantial compliance with the permit for work, as certified by the person requesting the certificate of compliance and, where appropriate, a professional engineer or surveyor as stated above, it shall issue a certificate of compliance. If issued by the Commission, the extension permit for work shall be signed by a majority of the members of the Commission.

(1) If the permit for work contains conditions that continue past the completion of the work, such as maintenance or monitoring, the certificate of compliance shall specify which, if any, of such conditions shall continue.
(2) The certificate shall also specify to what portion of the work it applies, if it does not apply to all the work regulated by the permit for work. Such certificate shall be clearly titled a "Partial Certificate of Compliance".

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

1.12 Security

A. Forms of Security. In accordance with Section 11 of the Bylaw, as part of a permit or variance issued under the Bylaw, in addition to any security required by any other municipal or state board, agency, or

official, the Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work and conditions that are intended to be ongoing following project completion) be secured wholly or in part by one or both of the methods described below:

(1) By a proper bond or deposit of money or negotiable securities under a written third-party escrow arrangement or other undertaking of financial responsibility sufficient in the opinion of the Commission.
(2) Such bond or surety, if required to be filed or deposited, shall be approved as to form and manner of execution by the Town Counsel, and as to sureties by the Town Treasurer.
(3) Release of such security, in whole or in part, shall be contingent upon the satisfaction of such conditions within the time frame of the permit and extension, as evidenced by the Commission's issuance of a partial or complete certificate of compliance.
(4) Such bonds shall be approved by the Commission prior to the close of the public hearing.
(5) By acceptance of a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town, whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. Such method, to be used only with the consent of the applicant, shall not impose on the Town any monitoring, reporting, or maintenance duties or obligations, and a charitable corporation or trust must be a grantee in addition to the Town.

1.13 Severability; Compliance with Court Decisions

A. Severability. The invalidity of any section or provision of the Bylaw or of these Regulations shall not invalidate any other section or provisions thereof, nor shall it invalidate a determination or permit for work that the Commission previously issued.

B. Compliance with Court decisions. If any Court of the Commonwealth shall invalidate any provisions of the Bylaw or of these Regulations, the Commission shall promulgate additional regulations, or present to the next Town Meeting after such invalidation, amendments to the Bylaw that are designed to comply with any Court decision invalidating such provisions of the Bylaw or Regulations, as the case may be.

1.14 Effective Date

A. Effective Date. These Regulations, as such may be amended from time to time, take effect when voted by the Commission and filed with the Town Clerk as provided in Article XXXI, Section 9.

B. Amendments. These Regulations, as promulgated by the Commission following a public hearing, and as such may be amended from time to time, complement the Bylaw and shall have the force of law upon their effective date.

C. Applicability. The effective date of these Regulations shall be October 18, 2022, and the provisions of these Regulations shall apply to all applications for determinations and permits for work filed after that date. The effective dates of substantive amendments made after October 18, 2022, are noted and those added or changed provisions shall apply to requests for determinations and applications for permits for work filed after the applicable amendment date.

Part 2 – Performance Standards

2.01 Land Under Water Bodies and Waterways

A. Preamble.

Land under water bodies and waterways is likely to be significant to the protection of public or private water supply, to groundwater supply, to flood control, to erosion and sedimentation control, to storm damage prevention, to water quality, to prevention and control of pollution, to agriculture, to aquaculture, to fisheries, to wildlife, to wildlife habitat, and to recreation values. Where such land is composed of concrete, asphalt, or other artificial impervious material, said land is likely to be significant to flood control, to storm damage prevention, to prevention and control of pollution, and to erosion and sedimentation control.

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

Where land under water bodies and waterways is composed of pervious material, it functions as a point of exchange between surface and ground water.

Land under water bodies and waterways, in conjunction with a bank, functions to confine flood water within a definite channel during the most frequent storms. Filling within this channel blocks flows which in turn causes backwater and overbank flooding during such storms. An alteration of land under water bodies and waterways that causes water to frequently spread out over a larger area at a lower depth increases the amount of property that is routinely flooded. In addition, such an alteration results in an elevation of water temperature and a decrease in habitat in the main channel, both of which are detrimental to fisheries, particularly during periods of warm weather and low flows.

Land under rivers, streams, brooks, and creeks that is composed of gravel functions to allow the circulation of cold, well-oxygenated water necessary for the survival of important game fish species. River, stream, brook, and creek bottoms with a diverse structure composed of gravel, large and small boulders, and rock outcrops provide escape cover and resting areas for game fish species. Such bottom type also functions to provide areas for the production of aquatic insects essential to fisheries.

Land under ponds and lakes is vital to a large assortment of warm-water fish during spawning periods. Species such as largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieui*), blue gills (*Lepomis marcrochirus*), pumpkinseeds (*Lepomis gibbous*), black crappie (*Promoxis nigromaculatus*), and rock bass (*Ambloplites rupestris*) build nests on the lake and bottom substrates within which they shed and fertilize their eggs.

The plant community composition and structure, hydrologic regime, topography, soil composition, and water quality of land under water bodies and waterways each function to provide important food, shelter, migratory and overwintering areas, and breeding areas for invertebrates, fish, game, and non-game wildlife and for aquaculture. Certain submerged, rooted vegetation is eaten by invertebrates, fish, waterfowl, and some mammals. Some amphibians (as well as some invertebrate species eaten by vertebrate wildlife) attach their eggs to such vegetation. Some aquatic vegetation protruding out of the water is also used for nesting, and many species use dead vegetation resting on land under water but protruding above the surface for feeding and basking. Soil composition is also important for hibernation and for animals that begin to burrow their tunnels under water.

The physical nature of land under water bodies and waterways, hydrologic regime, topography, and water quality also determine which species feed in an area, and further function together to protect on-site or downstream resource areas currently used for or suitable for agriculture, aquaculture, and/or recreation.

B. Definition, critical characteristics, boundary.

(1) Land under water bodies and waterways is the land beneath any reservoir, lake, pond, river, brook, or stream (creek). It may be composed of organic muck or peat, fine sediments, rocks, bedrock, or impervious man-made channel linings.
(2) The physical characteristics, hydrologic regime, vegetative community, and location of land under water bodies and waterways are critical to the protection of the resource area values specified in Article XXXI, Section 2.
(3) For any permanently flooded reservoir, lake, or pond, or any perennial river, brook, or stream (creek), the boundary of land under water bodies and waterways resource area is the mean annual low water level. In any such environment, land under water bodies and waterways resource area shall be described by length and width as an area.
(4) For any brook or stream (creek) with intermittent flow not persisting throughout the year, the boundary of land under water bodies and waterways Bylaw resource area is the central flowpath of the waterway. In any such environment, land under water bodies and waterways Bylaw resource area shall be described as a linear length.

C. Presumption of significance.

(1) The Commission shall presume that protection of land under water bodies and waterways is significant to the Bylaw resource area values specified in Article XXXI, Section 2.

(2) The Commission shall presume that land within one hundred (100) feet of any land under water bodies and waterways is significant to the protection and maintenance of the land under water bodies and waterways and, therefore, to the protection of the resource area values identified in the Bylaw. Said 100-foot Buffer Zone is regulated under Article XXXI, Section 3.B.

(3) Each of the presumptions stated in Subsections C(1)-(2) is rebuttable and may be overcome upon a clear showing that the land under water bodies and waterways does not play a role in the protection of said interests. If the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

D. Performance standards.

(1) No activity or work, other than the maintenance of an already existing structure, that will result in the building within or upon, removing, filling, or altering of land under water bodies and waterways or land within fifty (50) feet of any land under water bodies and waterways (the 50-Foot No-Disturbance Zone) shall be permitted by the Commission.

(2) Upon any waiver of Subsection D(1), any activity that the Commission allows pursuant to the criteria in Part 3 of these regulations upon or within the 50-Foot No Disturbance Zone "shall not impair… in any way the ability of this land to perform any of the functions…" that contribute to the protection of the resource area values protected by Article XXXI, Section 2.

(3) Where a presumption set forth in Sect. C(1) – C(2) is not overcome, any proposed work permitted by the Commission on land under water bodies or within one hundred (100) feet of land under water bodies and waterways shall not impair the following:

   (a) the water-carrying capacity within the defined channel, as provided by said land in conjunction with the banks;
   (b) ground and surface water quality;
   (c) the capacity of said land to provide breeding habitat, escape cover, and food for fisheries; or
   (d) the capacity of said land to provide important wildlife habitat functions.

(4) A project or projects on a single lot that (cumulatively) alter up to 10% or one hundred (100) square feet (whichever is less) of the area of land under water bodies and waterways found to be significant to the protection of wildlife habitat shall not be determined to impair its capacity to provide important wildlife habitat functions. Additional alterations beyond the above threshold may be permitted if they will have no adverse effects on wildlife habitat as determined by procedures contained in 310 CMR 10.60.

(5) Rare species; Additional Standards. Notwithstanding the above, where the Bylaw resource area of land under water bodies and waterways is within or abuts an estimated habitat area as designated on the most current map prepared by the MassWildlife's Natural Heritage & Endangered Species Program (NHESP), the Commission shall be diligent in its review of the proposed activity. The Commission shall not allow the application of new pavement or other

impervious materials within the land under water bodies and waterways or the 50-Ft. No-Disturbance Zone to the land under water bodies and waterways and shall regulate the application of impervious materials in the entire 100-foot Buffer Zone.

(6) These provisions shall not apply to maintenance of existing stormwater detention, retention, or sedimentation ponds, or to maintenance of stormwater emergency dissipating structures, that have been constructed in accordance with a valid Order of Conditions.

2.02 Banks of Water Bodies and Waterways

A. Preamble.

Bank resource areas are likely to be significant to the protection of public or private water supply, to groundwater supply, to flood control, to erosion and sedimentation control, to storm damage prevention, to water quality, to prevention and control of pollution, to agriculture, to aquaculture, to fisheries, to wildlife, to wildlife habitat, and to recreation values.

The physical nature of banks is highly variable, ranging from organic and sedimentary deposits to gravel, cobbles, bedrock, and/or man-made channel linings. Where banks are composed of concrete, asphalt, or other artificial impervious material, they are likely to be significant to flood control, storm damage prevention, prevention and control of pollution, and erosion and sedimentation control.

Where banks are composed of pervious material, groundwater discharges to the surface and, under some circumstances, surface water recharges the groundwater. Organic soils and sediments play an important function in the process of detaining and removing dissolved and particulate nutrients (such as nitrogen and phosphorous) from the surface water above. Organic soils and sediments also function as traps for toxic substances (such as heavy metal compounds). Where a bank is vegetated, the vegetation functions to increase the bank's stability, which in turn functions to protect water quality by reducing erosion and siltation.

Banks composed of gravel function to allow the circulation of cold, well-oxygenated water that important game fish species need for their survival. Banks with a diverse structure composed of gravel, large and small boulders, and rock outcrops provide escape cover and resting areas for game fish species. Such banks also function to provide areas for the production of aquatic insects essential to the protection of fisheries.

Bank topography and soil structure impact the bank's vegetative structure as well. Shrubs and other undergrowth, trees, vegetation extending from the bank into the water, and vegetation growing along the water's edge are important to a wide variety of wildlife. Many tubers and berry bushes also grow in banks and serve as important food for wildlife. Banks may provide important shelter or migratory corridors for wildlife to move between wetland areas.

Banks may also provide shade, breeding habitat, escape cover, and food, all of which are significant to the protection of fisheries. Banks that drop off quickly or overhang the water's edge often contain numerous undercuts, which are favorite hiding spots for fish.

Banks, in conjunction with land under water bodies and waterways, function to confine flood water within a definite channel during the most frequent storms. By confining water during storms to an established channel, banks maintain water temperatures and depths necessary for the protection of fisheries. The maintenance of cool water temperatures during warm weather is critical to the survival of many species. Filling within this channel blocks flow, which in turn causes backwater and overbank flooding during such storms. Bank alterations that cause water to spread out frequently over a larger area at a lower depth increase the amount of property that is flooded routinely. In addition, such an alteration results in an elevation of water temperature and a decrease in habitat in the main channel, both of which are detrimental to fisheries, particularly during periods of warm weather and low flows.

The physical stability, topography, plant community composition and structure, and soil structure of banks together provide important food, shelter, migratory and overwintering areas, and breeding areas for invertebrates, fish, game and non-game wildlife and for aquaculture. Additionally, certain submerged, rooted vegetation is eaten by invertebrates, fish, waterfowl, and some mammals. Some amphibians (as well as some invertebrate species eaten by vertebrate wildlife) attach their eggs to such vegetation. Aquatic vegetation protruding out of the water is used for nesting, and many species use dead vegetation resting on or protruding above the bank surface for perching, feeding, and basking. Soil composition is also important for hibernation and for animals which burrow tunnels into banks. Topography affects the suitability of banks to serve as burrowing or feeding habitat. Soil structure affects the suitability for burrowing, hibernation, and other cover.

The physical nature of banks, the hydrologic regime, topography, and water quality not only affect vegetation, but also determine which species feed in an area, and further function together to protect on-site or downstream resource areas currently used for or suitable for agriculture, aquaculture and/or recreation.

B. Definition, critical characteristics, boundary.

(1) A Bank is the portion of the land surface that normally abuts and confines a water body or waterway. It occurs between a water body or waterway and a vegetated bordering wetland and adjacent flood plain, or, in the absence of these, between a water body and an upland.
(2) A Bank may be partially or totally vegetated, or it may be comprised of exposed soil, gravel, stone, or sand rocks, bedrock, or impervious man-made channel linings.
(3) The physical characteristics, hydrologic regime, vegetative community and location of Bank resource areas are critical to the protection of the public interests specified in the aforesaid Preamble and in Article XXXI, Section 2.
(4) For any permanently flooded reservoir, lake, or pond, or any perennial river, brook or stream (creek), the upper boundary of Bank resource area is the first observable break in the slope or the mean annual flood level, whichever is higher. The lower boundary of a Bank is the mean annual low flow level. In any such environment, Bank resource area shall be described by length and width as an area.
(5) For any brook or stream (creek) with intermittent flow not persisting throughout the year, the boundary of bank Bylaw resource area is the average width on or across the site of the

central flowpath of the waterway. In any such environment, Bank resource area shall be described by length and average width as an area.

C. Presumption of significance.

(1) The Commission shall presume that protection of Bank resource area is significant to the Bylaw resource area values specified in Article XXXI, Section 2.

(2) The Commission shall presume that land within one hundred (100) feet of any Bank resource area is significant to the protection and maintenance of the Bank and, therefore, to the protection of the resource area values that this Bylaw resource area serves to protect. Said 100-foot Buffer Zone is regulated under Article XXXI, Section 3.B.

(3) Each of the presumptions stated in Subsections C(1)–(2) above is rebuttable and may be overcome upon a clear showing that the Bank is not significant in the protection of said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

D. Performance standards.

(1) Where the presumption set forth in C(1) – C(2) is not overcome, no activity or work, other than the maintenance of an already existing structure, that will result in the building within or upon, removing, filling, or altering of Bank, or land within fifty (50) feet of any Bank (the 50-Foot No-Disturbance Zone), shall be permitted by the Commission.

(2) Upon any waiver of Subsection D(1) above, any activity that the Commission allows pursuant to the criteria in Part 3 of these regulations upon or within fifty (50) feet of Bank "shall not impair… in any way the ability of this land to perform any of the functions…" that contribute to the protection of the resource area values protected by Article XXXI, Section 2.

(3) Any proposed work permitted by the Commission on a Bank or within one hundred (100) feet of the upper boundary of a Bank (200 feet in riverfront), shall not impair the following:
   (a) the physical stability of the Bank;
   (b) the water-carrying capacity of the existing channel within the Bank;
   (c) groundwater and surface water quality;
   (d) the capacity of the Bank to provide breeding habitat, escape cover, and food for fisheries; or
   (e) the capacity of the Bank to provide important wildlife habitat functions.

(4) A project or projects on a single lot that (cumulatively) alter(s) up to 10% or one hundred (100) square feet (whichever is less) of the area of the Bank found to be significant to the protection of wildlife habitat shall not be deemed to impair its capacity to provide important wildlife habitat functions. Additional alterations beyond the above threshold may be permitted if they will have no adverse effects on wildlife habitat as determined by procedures contained in 310 CMR 10.60.

(5) No structure of any kind shall be permitted on an eroding Bank to protect any building or other structure built pursuant to a Permit granted after the effective date of these Regulations.
(6) Rare species; Additional Standards. Notwithstanding the above, where the Bank resource area is within or abuts an estimated habitat area as designated on the most current map prepared by the MassWildlife NHESP, the Commission shall be diligent in its review of the proposed activity. The Commission shall not allow the application of new pavement and shall regulate the application of impervious materials in the entire 100-foot Buffer Zone.
(7) These provisions shall not apply to maintenance of existing stormwater detention, retention, or sedimentation ponds, or to maintenance of stormwater emergency dissipating structures, that have been constructed in accordance with a valid Order of Conditions.

2.03 Vegetated Wetlands

A. Preamble.

Vegetated freshwater wetlands are likely to be significant to the protection of public or private water supply, to groundwater supply, to flood control, to erosion and sedimentation control, to storm damage prevention, to water quality, to prevention and control of pollution, to agriculture, to aquaculture, to fisheries, to wildlife, to wildlife habitat, and to recreation values.

Vegetated freshwater wetlands are areas where ground water discharges to the surface and where, under some circumstances, surface water discharges to the ground water. Based on watershed hydrology and influent water quality, the plant communities, soils, and associated low topography, vegetated freshwater wetlands function to remove or detain sediments, nutrients (such as nitrogen and phosphorous) and toxic substances (such as heavy metal compounds) that occur in stormwater runoff and flood waters. Some nutrients and toxic substances are detained for years in plant root systems or in the soils. Others are held by plants during the growing season and released as the plants decay in the fall and winter. This latter phenomenon delays the impact of nutrients and toxins until the cold weather period, when such impacts are less likely to reduce water quality.

The profusion of vegetation and the low topography of vegetated freshwater wetlands function to slow down and reduce the passage of flood waters during periods of peak flows by providing temporary flood water storage and by facilitating water removal through evaporation and transpiration. This process reduces downstream flood crests and the resulting damage to private and public property. Filling within vegetated wetlands is likely to block access to or displace temporary flood water storage, which will in turn increase backwater and overbank flooding elsewhere during flood events. Wetland alterations that cause water to frequently spread out over a larger area at a lower depth negatively alter the extent of property that is routinely flooded. During dry periods the water retained in vegetated freshwater wetlands is essential to the maintenance of base flow levels in rivers and streams, which in turn is important to the protection of water quality and water supplies.

Wetland vegetation provides shade that moderates water temperatures important to fish life. Wetland vegetation supports a wide variety of insects, reptiles, amphibians, mammals, and birds that are a

source of food for important game fish. Bluegills (Lepomis macrochirus), pumpkinseeds (Lepomis gibbosus), yellow perch (*Perca flavescens*), rock bass (*Ambloplites rupestris*), and all trout species feed upon nonaquatic insects. Large-mouth bass (*Micropterus salmoides*), chain pickerel (*Esox niger*), and northern pike (*Esox lucius*) feed upon small mammals, snakes, nonaquatic insects, birds, and amphibians. Fish populations in the larval stage are particularly dependent upon food and cover provided by over-bank flooding that occurs during peak flow periods (seasonal flooding and/or extreme storms).

Vegetated freshwater wetlands are Holliston's most important habitat for wildlife. The hydrologic regime, plant community composition and structure, soil composition and structure, topography, and water chemistry of vegetated freshwater wetlands interact to provide important food, shelter, migratory and overwintering areas, and breeding areas for many invertebrates, fish, birds, mammals, amphibians, and reptiles. A wide variety of vegetative wetland plants, the nature of which are determined in large part by the depth and duration of flooding but are also influenced by soil saturation and water composition, are used by various species as important areas for mating, nesting, brood rearing, shelter, and (directly and indirectly) food. The diversity and interspersion of the vegetative structure are also important in determining the nature of its wildlife habitat. Soil structure, soil composition, and, to an extent, topography also interact to determine the suitability of wetlands to serve as burrowing, feeding or overwintering habitat. Different habitat characteristics are used by different wildlife species during summer and winter, in addition to migratory seasons.

The extent and physical nature of vegetated wetlands, the hydrologic regime, topography, and water quality further function together to protect on-site or downstream wetland resource areas currently used for or suitable for agriculture, aquaculture, and/or recreation.

B. Definition, critical characteristics, boundary.

(1) Vegetated Wetlands are freshwater wetlands. They may border on rivers, streams, lakes or ponds, or may be isolated from larger riverine or lacustrine systems. A vegetated wetland may be partially or totally vegetated, and it may be underlain by mineral or organic soils, gravel, stone, bedrock, or impervious man-made materials. Vegetated Wetlands are areas that meet both of the following requirements:
   (a) fifty percent or more of the natural vegetative community consists of obligate or facultative wetland or facultative plant species as included or identified in the State of Massachusetts 2016 Wetland Plant List (US Army Corps of Engineers, 2016), as most recently amended; and
   (b) saturated or inundated soil conditions exist, as evidenced by the presence of hydric soils.

(2) Isolated Vegetated Wetlands are areas of one thousand (1,000) square feet or more that meet the aforementioned requirements under B(1)

(3) The presence, extent, characteristics, and composition of the plant community in Vegetated Wetlands are critical to the protection of the public interests specified in Article XXXI, Section 3. Initial plant community data shall be based on procedures published in

Delineating Bordering Vegetated Wetlands under the Massachusetts Wetlands Protection Act, Chapter 2 (MassDEP, March 1995). In situations where the natural vegetative community may have been destroyed, such as by lawn or agricultural use, the Commission may determine an area to be a freshwater wetland on the basis of hydric soils alone or, at the request of the applicant or landowner, may defer the determination until the natural vegetation has regrown. In situations where the Commission determines that the natural vegetative community has been destroyed in violation of the Bylaw, the Commission itself may elect to defer any determination of the presence or absence of a freshwater wetland and its boundaries until the natural vegetation has regrown, and until that time may determine the area to be a freshwater wetland on the basis of hydric soils alone.

(4) The presence, extent, characteristics, and composition of hydric soils in Vegetated Wetlands are critical to the protection of the resource area values specified in the aforesaid Preamble and in Article XXXI, Section 2. Hydric soils are those soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

(5) Initial site soil mapping and soil data shall be based on public information made available in the Soil Survey of Middlesex County (USDA Natural Resources Conservation Service). The Commission, however, holds that:

(a) soil boundaries mapped on a county-wide basis are not presumed accurate at a larger, site-specific scale, and so reserves the right to make a case-by-case determination of a soil's drainage classification; and

(b) some hydric soils in Holliston may not meet these published guidelines, and so reserves the right to make case-by-case hydric soil determinations.

(c) for site-specific soil investigations and/or soil map verification, the drainage classification of a soil shall be determined as designated in *Delineating Bordering Vegetated Wetlands under the Massachusetts Wetlands Protection Act: A Handbook* (MassDEP, March 1995), or as most recently amended.

(d) As mapped for Middlesex County by the USDA's Natural Resources Conservation Service (NRCS), Poorly and Very Poorly Drained Soils are presumed to be hydric soils unless they have been artificially drained or otherwise altered.

(e) Any soil underlying a wetland plant community that is dominated by plant species rated as FACW by the Fish and Wildlife Service and that contains obligate wetland plant species is presumed to be a hydric soil.

(f) "Upper part" is defined as six (6) inches for Somewhat Poorly Drained Soils and twelve (12) inches for Poorly Drained and Very Poorly Drained Soils.

(g) Field evidence of anaerobic soil conditions includes indicators and conditions described in:

i. *Delineating Bordering Vegetated Wetlands under the Massachusetts Wetlands Protection Act: A Handbook*, Chapter 4 (MassDEP, March 1995), or as most recently amended; and

ii. *Field Indicators for Identifying Hydric Soils in New England*, Version 4 (New England Hydric Soils Technical Committee, NEIWPCC, May 2017), or as most recently amended.

(6) The physical characteristics of Vegetated Wetlands are critical to the protection of the public interests specified in Article XXXI, Section 2. For the purposes of this Regulation, critical physical characteristics include location, extent, topography, and the presence of any existing structures.

(7) The hydrologic regime of Vegetated Wetlands is critical to the protection of the public interests specified in Article XXXI, Section 2. For the purposes of this Regulation, critical characteristics of a vegetated wetland's hydrologic regime include existing and proposed water quality considerations, the wetland's annual hydroperiod (depth, duration and frequency of flooding or soil saturation), and existing and proposed storm flow and flood flow characteristics for rainfall/runoff events based on the 2-year, 10-year, 25-year, and 100-year rainfall events.

(8) Boundary definitions

(a) The boundary of a vegetated wetland is that line within which:

i. fifty percent or more of the natural vegetative community consists of obligate or facultative wetland plant species as included or identified in the State of Massachusetts 2016 Wetland Plant List (US Army Corps of Engineers, 2016), or as most recently amended, and

ii. saturated or inundated soil conditions exist, as evidenced by the presence of hydric soils.

(b) Regarding a vegetated wetland that has been disturbed (e.g., by cutting, filling, cultivation, or any alteration), the boundary is the line within which there are:

i. indicators of saturated or inundated conditions sufficient to support a predominance of wetland indicator plants;

ii. a predominance of wetland indicator plants; or

iii. credible evidence from a competent source that the area supported such a predominance of wetland indicator plants before the disturbance or would under undisturbed conditions.

C. Presumptions of significance.

(1) The Commission shall presume that protection of vegetated wetland resource area is significant to the resource area values specified in Article XXXI, Section 2.

(2) The Commission shall presume that land within one hundred (100) feet of any vegetated wetland resource area is significant to the protection and maintenance of said wetland and, therefore, to the protection of the resource area values that this resource area serves to protect. Said 100-foot Buffer Zone is regulated under Article XXXI, Section 3.B.

(3) Each of the presumptions stated in Subsections C(1) – (2) above is rebuttable and may be overcome upon a clear showing that the bank does not play a role in the protection of said

interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

D. Performance standards.

(1) Where the presumptions set forth in Subsections C(1) – (2) are not overcome, any proposed work in a vegetated wetland shall not destroy or otherwise impair any portion of said area. No activity or work, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of a vegetated wetland, or land within fifty (50) feet of any vegetated wetland (the 50-Foot No-Disturbance Zone), shall be permitted by the Commission.

(2) Upon any waiver of Subsection D(1), any activity that the Commission allows pursuant to the criteria in Part 3 of these regulations upon or within fifty (50) feet of a Vegetated Wetland "shall not impair… in any way the ability of this land to perform any of the functions…" that contribute to the protection of the resource area values protected by Article XXXI, Section 2.

(3) Notwithstanding D(1) – (2) above, the Commission may issue a permit allowing work that results in the loss of up to 5,000 square feet of vegetated wetland when said area is replaced in accordance with the following general conditions, as well as any additional conditions the Commission deems necessary to ensure that the replacement area will function in a manner similar to the area being lost:
   (a) the surface of the replacement area being created shall be double that of the lost area;
   (b) the groundwater and surface water elevation of the replacement area shall be approximately equal to that of the lost area;
   (c) at least 75% of the surface of the replacement area shall be reestablished with indigenous wetland plant species within two growing seasons. Prior to said vegetative reestablishment, any exposed soil in the replacement area shall be temporarily stabilized to prevent erosion in accordance with U.S. Soil Conservation Service methods; and
   (d) the replacement area shall be provided in a manner that is consistent with all other general performance standards for each resource area described in these Regulations.

(4) If the Commission determines that it is infeasible to create a replacement wetland on site, it may require the applicant to contribute financially to the construction of an offsite replacement area in wetlands under the control of the Commission, with the contribution not to exceed the actual cost of the wetland replacement.

(5) The Commission may, at its discretion, issue a permit if the vegetated wetland in question has a surface area of less than 500 square feet; takes the form of a narrow, linear finger-like wetland extending into an adjacent upland; or, in the judgment of the Commission it is not reasonable to scale down, redesign, or otherwise change the proposed work so that it could be completed without loss of said wetland.

(6) Rare species; additional standards. Notwithstanding the above provisions, no project may be permitted that might have adverse effect on habitat sites of rare plant species as

identified on NHESP "Priority Habitats of Rare Species" Maps and/or habitat sites of rare vertebrate or invertebrate species as identified on the NHESP "Estimated Habitats of Rare Wildlife" on file with the Commission.

(7) These provisions shall not apply to maintenance of stormwater detention, retention, or sedimentation ponds, or to maintenance of stormwater emergency dissipating structures, that have been constructed in accordance with a valid Order of Conditions.

2.04 100-Foot Buffer Zone

A. Preamble.

Wetland buffer zones are areas within close proximity to wetlands. The protection of buffer zone areas is likely to contribute to the protection of public or private water supply, to groundwater supply, to flood control, to erosion and sedimentation control, to storm damage prevention, to water quality, to prevention and control of pollution, to agriculture, to aquaculture, to fisheries, to wildlife, to wildlife habitat, and to recreation values. Any project undertaken near a wetland resource area has a significant likelihood of altering that area, either as an immediate consequence of construction, or as a consequence of daily operation of the completed project over a longer period of time.

The physical nature of buffer zones is highly variable, ranging from natural soil deposits to gravel, cobbles, crushed stone, bedrock, and/or man-made materials. Where buffer zones are composed of concrete, asphalt, or other artificial impervious material, they are likely to be significant to flood control, to storm damage prevention, to prevention and control of pollution, and to erosion and sedimentation control.

Where buffer zones are composed of pervious material, surface water recharges the groundwater and, under some circumstances, groundwater discharges to the surface. Buffer zone soils play an important function in the process of detaining and removing dissolved and particulate nutrients (such as nitrogen and phosphorous) from downgradient wetland areas. Organic soils and sediments also function as traps for toxic substances (such as heavy metal compounds). Where buffer zones are partially or totally vegetated, the vegetation functions to increase the buffer zone's stability, which in turn functions to protect water quality by reducing erosion and siltation.

Existing vegetation present within one hundred (100) feet of wetland resource areas is likely important habitat for wildlife. The plant community composition and structure, soil composition and structure, and topography interact to provide important food, shelter, migratory and overwintering areas, and breeding areas for many invertebrates, birds, mammals, amphibians, and reptiles. A wide variety of plants, as well as the underlying soils, are used by various species as important areas for mating, nesting, brood rearing, shelter, and (directly and indirectly) food. The diversity and interspersion of the vegetative structure are also important in determining the nature of buffer zone wildlife habitat.

Soil structure, soil composition and, to an extent, topography also interact to determine the suitability of buffer zones to serve as burrowing, feeding or overwintering habitat. Different buffer zone habitat characteristics are used by different wildlife species during summer, winter, and migratory seasons.

Vegetative cover and soils within buffer zones filter runoff, thus protecting water quality within the resource area. The vegetation and soils may also slow surface runoff, thereby permitting infiltration of precipitation, thus maintaining the hydrologic regime to which the downgradient resource area is adapted.

Existing vegetation present within buffer zones is also likely significant to important habitat for wildlife. Trees, saplings, shrubs and other undergrowth vegetation within buffer zones moderate climatic shifts and extremes, mitigate changes in nearby light regimes and reduce impacts to wildlife from changes in nearby noise levels.

The physical nature of buffer zones, the topography, and any existing vegetation further function together to protect on-site or downstream resource areas currently used for or suitable for agriculture, aquaculture, and/or recreation.

Accordingly, these Regulations require that any person intending to perform work within one hundred (100) feet of a resource area must submit to the Commission either a request for determination of applicability or a permit application. In this way the Commission has an opportunity to review the proposed project to determine whether any alteration of a neighboring resource area will occur, and whether any resulting alteration is in compliance with other applicable performance standards.

If, in response to a Request for Determination of Applicability, the Commission finds that work within the Buffer Zone will not alter the resource area, it may issue a Negative Determination of Applicability, with or without conditions.

B. Definition, critical characteristics, boundary.

(1) The Buffer Zone is an area of land extending one hundred (100) feet horizontally outward from the boundary of any resource area specified in Section 3.B of the Holliston Wetlands Protection Bylaw, Article XXXI of the Code of the Town of Holliston and such resource area is said to be buffered. A Buffer Zone may be partially or totally vegetated, and it may be underlain by mineral or organic soils, gravel, stone, bedrock or impervious man-made materials.

(2) The presence, extent, characteristics and composition of the plant community in Buffer Zones are critical to the protection of the resource area values specified in the aforesaid Preamble and in Article XXXI, Section 2.

(3) The presence, extent, characteristics and composition of existing soils in Buffer Zones are critical to the protection of the resource area values specified in the aforesaid Preamble and in Article XXXI, Section 2I. Initial site soil mapping and soil data shall be based on public information made available in the Soil Survey of Middlesex County (USDA Natural Resources Conservation Service). The Commission holds, however, that:

   (a) soil boundaries mapped on a county-wide basis are not presumed accurate at a larger, site-specific scale and the Commission reserves the right to make a case-by-case determination of a soil's drainage classification;

(b) for site-specific soil investigations and/or soil map verification, soil conditions shall be determined as designated in *Delineating Bordering Vegetated Wetlands under the Massachusetts Wetlands Protection Act* (MassDEP, March 1995), or as most recently amended

(4) The physical characteristics of Buffer Zone areas are critical to the protection of the resource area values specified in the aforesaid Preamble and in Article XXXI, Section 2. For the purposes of this regulation, critical physical characteristics include location, extent, topography and the presence of any existing structures within a Buffer Zone.

(5) The boundary of the Buffer Zone is that line extending horizontally outward one hundred (100) feet from the boundary of any resource area specified in Article XXXI, Section 3.A. The Bylaw further provides for additional Buffer Zone definitions as follows:

(a) 50-Foot No-Disturbance Zone is that portion of the Buffer Zone area that extends fifty (50) feet from the edge of those wetland resource areas identified in Section III.A; however, it is possible that these resource areas will overlap in some instances (e.g., Riverfront Area and Land Subject to Flooding).

(b) 100-Foot No-Disturbance Zone is that portion of the Buffer Zone area that extends one hundred (100) feet from the edge of any Vernal Pool that is located in an upland area or, in the case of a larger wetland resource area that encompasses the pool, within one hundred (100) feet from the edge of the said larger wetland resource area.

C. Presumptions of significance.

(1) The Commission shall presume that protection of Buffer Zone resource area is significant to the Bylaw resource area values specified in Article XXXI, Section 2.

(2) The Commission shall presume that work in the Buffer Zone for the types of projects listed below, within the designated distances from the buffered resource area, will result in alteration of the buffered resource area. For purposes of the table below: "work" means filling, excavating, grading, construction and/or operating construction equipment, and storing or stockpiling earth or construction materials.

Type of Project	No Work Distance	Building Setback
Existing Residential Lot	50 ft	70 ft
Subdivision Lot	50 ft	70 ft (with lot preparation done)
Subdivision Lot	50 ft	70 ft (in conjunction with road/infrastructure construction)
Commercial/Industrial	50 ft	75 ft
Driveways/Utilities	50 ft	50 ft (except for permitted crossings)
Other roads	50 ft	50 ft (except for permitted crossings)
Parking Lot	50 ft	50 ft

Any near vernal pools	100 ft	100 ft

(3) The following activities in the Buffer Zone are presumed not to alter a buffered resource area, but still require (as a minimum) filing of a Request for Determination of Applicability for the Commission to determine whether this presumption applies:
   (a) discharge of subsurface drainage from a single house lot or residential building containing three (3) or fewer residential units and meeting the above separation distances;
   (b) discharge of roof and driveway runoff from a total impervious area of less than 4000 square feet (per project) meeting the above separation distances;
   (c) construction or installation of structures not requiring a building permit.

(4) Each of the presumptions stated in Subsections C(1) – C(3) above is rebuttable and may be overcome. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

D. Performance standards.

(1) Where the presumption set forth above is not overcome, any proposed work in a Buffer Zone shall not destroy or otherwise impair any portion of a buffered resource area. No activity or work, other than the maintenance of an already existing structure, which will alter land within fifty (50) feet of any buffered resource area (the 50-Foot No-Disturbance Zone), shall be permitted by the Commission.

(2) The 100-Foot No-Disturbance Zone is that portion of the Buffer Zone area that extends one hundred (100) feet from the edge of any Vernal Pool that is located in Vegetated Wetland or an upland area or, in the case of a larger wetland resource area that encompasses the pool, within one hundred (100) feet from the edge of the said larger wetland resource area) Disturbance of any kind is prohibited within this Zone including but not limited to grading, landscaping, vegetation removal, pruning, cutting, filling, excavating, roadway construction and/or driveway construction. The extent and location of this 100-Foot No-Disturbance Zone is subject to change based on the results of a biological and/or habitat evaluation, which may be required to determine the migratory pathways and other important habitat usage of Vernal Pool breeders.

(3) Work within the Buffer Zone shall result in either no alteration of a buffered resource area, or in alteration permitted by the Commission that complies with the applicable performance standards for the buffered resource area and any other conditions the Commission may require to enforce those performance standards.

(4) For work within the Buffer Zone for small projects (e.g., single-family residential lots), point discharge of surface runoff within or through a Buffer Zone shall be controlled to minimize increase in peak flow in the watercourse downstream of the discharge point for the runoff, as determined for the 2-year, 10-year, and 100-year storms, to control erosion and limit sedimentation, and to cause no increase in flood elevations outside the project site.

(5) For work within the Buffer Zone for applicable projects, the Massachusetts Stormwater Management Standards and the Holliston Stormwater Bylaw (Article [check this article]) shall apply.

(6) Rare species; Additional Standards. Notwithstanding the above provisions, no project may be permitted in the Buffer Zone that might have adverse effect on:
   (a) habitat sites of rare plant species as identified on the MA Natural Heritage and Endangered Species Program "Priority Habitats of Rare Species" Maps, and/or
   (b) habitat sites of rare vertebrate or invertebrate species as identified on the MA Natural Heritage and Endangered Species Program "Estimated Habitats of Rare Wildlife" on file with the Commission and identified under the MA Wetlands Protection Act Regulations (310 CMR, s. 10.59)

(7) These provisions shall not apply to maintenance of stormwater detention, retention, or sedimentation ponds, or to maintenance of stormwater emergency dissipating structures, that have been constructed in accordance with a valid Order of Conditions.

2.05 200-Foot Riverfront Area

A. Preamble.

The riverfront area extends outward 200 feet from the annual high water line of any river or perennial stream. Riverfront areas are likely to be significant to the protection of public or private water supply, to groundwater supply, to flood control, to erosion and sedimentation control, to storm damage prevention, to water quality, to prevention and control of pollution, to agriculture, to aquaculture, to fisheries, to wildlife, to wildlife habitat, and to recreation values.

Riverfront area adjacent to perennial and intermittent streams can protect the natural integrity of these waterways and associated water bodies. The presence of natural vegetation within such riverfront areas is critical to maintaining many ecosystem functions that provide benefits to public health and welfare. The riverfront area can prevent degradation of water quality by filtering sediments, toxic substances (such as heavy metals), and nutrients (such as phosphorus and nitrogen) from stormwater, nonpoint pollution sources, and the river itself. Sediments are trapped by vegetation before reaching the river or stream. Nutrients and toxic substances may be detained in plant root systems or broken down by soil bacteria.

Where a river or stream serves as a water supply or provides induced recharge to wells, the riverfront area can be important to the maintenance of drinking water quality and quantity. Land along rivers in its natural state with a high infiltration capacity increases the yield of water supply wells. When a riverfront area lacks the capacity to filter pollutants, contaminants can reach human populations served by wells near rivers or by direct river intakes. Natural vegetation within the riverfront area also maintains water quality for fish and wildlife.

The capacity of a riverfront area to filter pollutants is equally critical to surface water supplies, reducing or eliminating the need for additional treatment. In the watershed, mature vegetation within a riverfront area provides shade to moderate water temperatures and slow algal growth, which can

produce odors and taste problems in drinking water. Riverfront areas can trap and remove disease-causing bacteria that otherwise would reach water supply wells and prohibit safe human use. Sediment and pollution trapping functions remove disease-causing bacteria that otherwise would reach nearby rivers and downgradient coastal estuaries where they can contaminate shellfish beds and prohibit safe human consumption of such shellfish and other aquatic animals and plants.

By providing recharge and retaining natural flood storage, as well as by slowing surface water runoff, a riverfront area can mitigate flooding and damage from storms. The root systems of riverfront vegetation keep soil porous, increasing the infiltration capacity of the soil. Vegetation also removes excess water through evaporation and transpiration. This removal of water from the soil allows for more infiltration when flooding occurs. Increases in storage of flood waters can decrease peak discharges and reduce storm damage. A vegetated riverfront area also dissipates the energy of storm flows, reducing damage to public and private property.

Riverfront area is critical to maintaining thriving fisheries. Maintaining vegetation along rivers promotes fish cover, increases food and oxygen availability, decreases sedimentation, and protects spawning habitat. Maintenance of water temperatures and depths is critical to many important fish species.

The hydrologic regime, plant community composition and structure, soil composition and structure, topography, and existing conditions within the riverfront area interact to provide important food, shelter, migratory and overwintering areas, and breeding areas for many invertebrates, birds, mammals, amphibians, and reptiles. A wide variety of plants are used by various species as important areas for mating, nesting, brood rearing, shelter, and (directly and indirectly) food. The diversity and interspersion of the vegetative structure are also important in determining the nature of riverfront area wildlife habitat. Soil structure, soil composition and, to an extent, topography also interact to determine the suitability of riverfront areas to serve as burrowing, feeding or overwintering habitat. Different habitat characteristics are used by different wildlife species during summer, winter, and migratory seasons.

The extent and physical nature of riverfront areas, elements of the hydrologic regime, and water quality further function together to protect on-site or downstream wetland resource areas currently used or suitable for agriculture, aquaculture, and/or recreation.

B. Definitions, critical characteristics, boundary.

(1) A Riverfront Area is the area of land between the mean annual high water line of a river or perennial stream and a parallel line located 200 feet away, measured horizontally outward from the mean annual high water line. The Riverfront Area may include or overlap other areas subject to protection under the Bylaw, including the 100-foot Buffer Zone.
(2) Rivers begin at the point an intermittent stream becomes perennial or at the point a perennial stream flows from a spring, pond, or lake. Downstream of the first point of perennial flow, a stream normally remains a river except where interrupted by a lake or pond.
(3) The presence, extent, characteristics, and composition of the plant community in Riverfront Areas are critical to the protection of the wetland area values specified in Article XXXI,

Section 2. If the Commission determines that a natural vegetative community has been destroyed in violation of the Bylaw, the Commission itself may elect to defer any deliberations regarding the Riverfront Area until the natural vegetation has regrown, and until that time may define an operational vegetative community based on regional ecology, site history, local observations, and soil characteristics alone.

(4) The presence, extent, characteristics and composition of existing soil types in Riverfront Areas are critical to the protection of the resource area values specified in the aforesaid Preamble and in Article XXXI, Section 2.

(a) Initial site soil mapping and soil data shall be based on public information made available in the Soil Survey of Middlesex County (USDA Natural Resources Conservation Service). The Commission holds, however, that:

i. soil boundaries mapped on a county-wide basis are not presumed accurate at a larger, site-specific scale, and so reserves the right to make a case-by-case determination of a soils series classification.

ii. some soils in Holliston may not meet these published guidelines, and so reserves the right to make a case-by-case soil series of determinations.

(b) For site-specific soil investigations and/or soil map verification, on-site soils data shall be collected as per standards published in *Field Book for Sampling and Describing Soils, Version 3.0* (Schoeneberger*, et al*, 2012, NRCS National Soil Survey Center, Lincoln, NE), or as most recently amended.

(5) The physical characteristics of Riverfront Areas are critical to the protection of the resource area values specified in the aforesaid Preamble and in Article XXXI, Section 2. For the purposes of this regulation, critical physical characteristics include location, extent, topography, and the presence of any existing structures, utilities, and/or other evidence of existing or past land uses.

(6) The hydrologic regime of Riverfront Areas is critical to the protection of the resource area values specified in the aforesaid Preamble and in Article XXXI, Section 2. For the purposes of this regulation, critical characteristics of a Riverfront Area's hydrologic regime include existing and proposed water quality considerations, the site's annual hydroperiod (depth, duration, and frequency of flooding or soil saturation), and existing and proposed storm flow and flood flow characteristics for rainfall/runoff events based on the 2-year, 10-year, 25-year, and 100-year rainfall events.

(7) The boundary of a Riverfront Area is a parallel line, measured horizontally outward, located 200 feet away from the mean annual highwater line of a river or perennial stream.

(a) The Riverfront Area may include or overlap other areas subject to protection under the Bylaw, including the 100-foot Buffer Zone.

(b) Where a river or perennial stream flows through a lake or pond, the Riverfront Area is interrupted but resumes at the point where a river or perennial stream discharges from said lake or pond.

C. Presumptions of significance.

(1) The Commission shall presume that protection of the Riverfront Area is significant to the Bylaw resource area values specified in Article XXXI, Section 2.

(2) The presumption stated in Subsection C(1) is rebuttable and may be overcome upon a clear showing that the Riverfront Area does not play a role in the protection of said values. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

D. Performance standards.

(1) Where the presumptions set forth in Subsections C(1) – (2) are not overcome, no activity or work that will result in a negative impact on a Riverfront Area shall be permitted by the Commission.

(2) Upon any waiver of Subsection D(1), any activity that the Commission allows pursuant to Part 3 of these regulations within the Riverfront Area "shall not impair… in any way the ability of this land to perform any of the functions…" that contribute to the protection of the resource area values protected by Article XXXI, Section 2.

(3) Upon any waiver of Subsection D(1), any activity that the Commission allows within the Riverfront Area shall comply with the following performance standards:

(a) Other Bylaw resource areas. The work must meet the performance standards for all other resource areas subject to protection under the Bylaw that are located within the Riverfront Area, including the 100-foot Buffer Zone.

(b) Rare species prohibitions. The Commission shall not permit any project within the Riverfront Area that will have any adverse effect on specified habitat sites of rare wetland or uplands vertebrate or invertebrate species and plants as certified by NHESP or that will have any adverse effect on vernal pool habitat whether certified or identified by the Commission before or during the public hearing.

(4) Alternative analysis. Unless defined as redevelopment under 310 CMR 10.04, the applicant must show, by a preponderance of the credible evidence that there is no practicable and substantially equivalent economic alternative to the proposed project with less adverse effects on the Bylaw wetland values.

(a) The scope of alternatives and the evaluation of alternatives are defined and specified in 310 CMR 10.58(5).

(b) The Commission shall regard as practicable an alternative that is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purposes, logistics, existing technology, cost of the alternatives, and overall project cost. (See Article XXXI, Section XIII, para. 6.)

(c) Notwithstanding the required alternatives analysis, the applicant must still meet the burden of demonstrating no cumulative adverse impact upon the Bylaw wetland values as specified in the definition provided at Article XXXI, Section II.

(5) Notwithstanding D.(1)-(3) above, the Commission may issue a permit or grant a waiver, in unusual circumstances and as a consideration and not a right, the alteration of up to 10% of the Riverfront Area within the lot or 5,000 sq.ft. (whichever is greater), on a lot recorded on

or before October 18, 2022 or up to 10% of the Riverfront Area within a lot recorded after October 18, 2022, provided that:

(a) at a minimum, a 150-foot-wide area of undisturbed vegetation is provided. This area shall extend from mean annual high water along the river unless another location would better protect the values identified in the Bylaw and Regulations;

(b) if there is not a 150-foot-wide area of undisturbed vegetation within the Riverfront Area, existing vegetative cover shall be preserved or extended to the maximum extent feasible.

(c) the calculation of square footage of alteration shall exclude areas of replication or compensatory flood storage required to meet performance standards for other resource areas or any area of restoration within the Riverfront Area;

(d) the calculation of square footage of alteration shall also exclude areas used for structural stormwater management measures, provided there is no practicable alternative to locating these structures within the Riverfront Area and a wildlife corridor is maintained (e.g., detention basins shall not be fenced);

(e) temporary impacts where necessary for installation of linear site related utilities are allowed, provided the area is restored to its natural conditions;

(f) stormwater is managed according to standards established by the Department of Environmental Protection; and

(g) the proposed work does not impair the capacity of the Riverfront Area to provide important wildlife habitat functions.

(6) Performance standards for redevelopment. Where the proposed project is a redevelopment of a previously altered Riverfront Area, then the criteria found in 310 CMR 10.58(5) apply in lieu of the alternatives analysis performance standard stated in the aforesaid Subsection C(3)(c) with the exception that no new structure may be placed on a pervious surface within the first fifty (50) feet of the Riverfront Area.

(7) Rare species; Additional Standards. Notwithstanding the above provisions, no project may be permitted that might have adverse effect on:

(a) habitat sites of rare plant species as identified on the MA Natural Heritage and Endangered Species Program “Priority Habitats of Rare Species” Maps, and/or

(b) habitat sites of rare vertebrate or invertebrate species as identified on the MA Natural Heritage and Endangered Species Program “Estimated Habitats of Rare Wildlife” on file with the Commission and identified under the MA Wetlands Protection Act Regulations (310 CMR 10.59).

(8) These provisions shall not apply to maintenance of existing stormwater detention, retention, or sedimentation ponds, or to maintenance of stormwater emergency dissipating structures, that have been constructed in accordance with a valid Order of Conditions.

2.06 Land Subject To Flooding

A. Preamble.

Lands subject to flooding are areas with low, flat or depressional topography subject to flooding and inundation by flood waters rising from rivers, streams, ditches, lakes and, ponds, or isolated depressions

subject to flooding and inundation by groundwater discharge and/or surface runoff. Land flooding from waters rising from rivers, streams, ditches, lakes and, ponds is hereinafter termed Bordering Land Subject To Flooding. Isolated depressions subject to flooding and inundation by groundwater discharge and/or surface runoff are hereinafter termed Seasonal Wetlands.

Lands subject to flooding may include areas meeting the biological criteria necessary to be defined as Vernal Pools. Seasonal Wetlands occurring in closed basin depressions may also be large enough to meet the definitions of the state-regulated wetland resource area Isolated Land Subject to Flooding found at 310 CMR 10.57(b)1.

Vernal pools, which are Seasonal Wetlands that confine water for a minimum of two continuous spring months but lack vertebrate predators such as adult fish, are significant in the support of duckweed, caddis flies, and mollusks, thus providing habitat for members of the fingernail and pea clam family (Sphaeriidae), numerous amphibians, reptiles (including spotted turtle, painted turtle, and snapping turtle) and a number of other animals.

Vernal pools, in addition, provide critical breeding habitat for the Jefferson salamander (*Ambystoma jeffersonianum*), blue-spotted salamander (*A. laterale*), marbled salamander (*A. opacum*), spotted salamander (*A. maculatum*), and wood frog (*Rana sylvatica*), as well as feeding and occasional breeding habitat for the gray treefrog (*Hyla versicolor*), spring peeper *(H. crucifer*), American toad (*Bufo americanus*), and four-toed salamander (*Hemidactylium scutatum*).

Land under vernal pools is crucial breeding habitat for amphibian species, and, as most of these amphibians remain near the breeding pool during the remainder of their lifecycle, areas immediately surrounding vernal pools are critical in serving all of the non-breeding habitat functions of amphibians that require the pools for breeding. Such areas also provide food for many reptiles, birds, and mammals.

Lands subject to flooding are likely to be significant to the protection of public or private water supply, to groundwater supply, to flood control, to erosion and sedimentation control, to storm damage prevention, to water quality, to prevention and control of pollution, to agriculture, to aquaculture, to fisheries, to wildlife, to wildlife habitat, and to recreation values

Bordering Land Subject To Flooding adjacent to lakes, ponds, perennial and intermittent streams can protect the natural integrity of the waterways and water bodies. The presence of natural vegetation within such areas subject to flooding is critical to maintaining many ecosystem functions that provide benefits to public health and welfare. The area subject to flooding can prevent degradation of water quality by filtering sediments, toxic substances (such as heavy metals), and nutrients (such as phosphorus and nitrogen) from floodwaters, stormwater runoff and nonpoint pollution sources. Sediments are trapped by vegetation before reaching the river or stream. Nutrients and toxic substances may be detained in plant root systems or broken down by soil bacteria.

Where a river or stream serves as a water supply or provides induced recharge to wells, or an isolated depression exists within the Zone 2 of a public water supply well, land subject to flooding can be important to the maintenance of drinking water quality and quantity. Land subject to flooding in its

natural state with a high infiltration capacity increases groundwater recharge and, in public water supply watersheds, the yield of water supply wells. When areas subject to flooding area lack the capacity to filter pollutants, contaminants can reach human populations served by wells near rivers or by groundwater withdrawal. Natural vegetation within land subject to flooding also maintains water quality for fish and wildlife.

The capacity of all lands subject to flooding to filter pollutants is critical to surface water supplies, reducing or eliminating the need for additional treatment. In the watershed, mature vegetation within land subject to flooding provides shade to moderate water temperatures and slow algal growth, which can produce odors and taste problems in drinking water. Lands subject to flooding can trap and remove disease-causing bacteria that otherwise would reach water supply wells and prohibit safe human use. Sediment and pollution trapping functions remove disease-causing bacteria that otherwise would reach nearby rivers and downgradient coastal estuaries where they can contaminate shellfish beds and prohibit safe human consumption of such shellfish and other aquatic animals and plants.

By providing recharge and retaining natural flood storage, as well as by slowing surface water runoff, lands subject to flooding mitigate flooding and damage from storms. The root systems of vegetation keep soil porous, increasing the infiltration capacity of the soil. Vegetation also removes excess water through evaporation and transpiration. This removal of water from the soil allows for more infiltration when flooding occurs. Increases in storage of flood waters can decrease peak discharges and reduce storm damage. In the case of bordering land subject to flooding, dense vegetation also dissipates the energy of storm flows, reducing damage to public and private property.

Protection of lands subject to flooding is critical to maintaining thriving fisheries. Maintaining vegetation along rivers promotes fish cover, increases food and oxygen availability, decreases sedimentation, and protects spawning habitat. Maintenance of water temperatures and depths is critical to many important fish species. Fish populations in the larval stage are particularly dependent upon food and cover provided by lands subject to flooding during peak flow periods (seasonal flooding and/or extreme storms).

The hydrologic regime, plant community composition and structure, soil composition and structure, topography, and existing conditions within lands subject to flooding interact to provide important food, shelter, migratory and overwintering areas, and breeding areas for many invertebrates, fish, birds, mammals, amphibians, and reptiles. A wide variety of plants are used by various species as important areas for mating, nesting, brood rearing, shelter, and (directly and indirectly) food. The diversity and interspersion of the vegetative structure are also important in determining the nature of included wildlife habitat. Soil structure, soil composition and, to an extent, topography also interact to determine the suitability of land subject to flooding to serve as burrowing, feeding, or overwintering habitat. Seasonal wetlands often support less-common assemblages of wildlife species specifically adapted to life in temporary waters. Different wildlife species use distinct habitat characteristics during the summer, winter, and migratory seasons.

The extent and physical nature of lands subject to flooding, elements of the hydrologic regime and water quality further function together to protect on-site or downstream wetland resource areas currently used for or suitable for agriculture, aquaculture, and/or recreation.

B. Definition, critical characteristics, boundary.

(1) Bordering Land Subject To Flooding is an area with a low, flat topography adjacent to and subject to inundation by flood waters rising from rivers, streams, ditches, ponds, or water courses. It extends outward across the land surface from the Banks of said waterways or water bodies, or from any bordering vegetated wetlands adjacent to said waterways or water bodies.

(2) Seasonal wetlands are lands that do not border on a river, stream, or pond, but that contain a depression or closed basin which holds water for an extended period of time or even continuously but is too small or ephemeral to be called a pond or lake. Seasonal wetlands (isolated depressions subject to flooding, temporary ponds, vernal pools) include a depression or closed basin where:
   (a) groundwater, snowmelt and/or surface runoff pools on the surface at least once a year; or
   (b) groundwater, snowmelt, and/or surface runoff is contained in the top 12 inches of soil for some portion of the growing season. The depression may occur in elevated, rolling or flat topography, or on a downslope of a sidehill seep.

(3) The presence, extent, characteristics and composition of the plant community in lands subject to flooding are critical to the protection of the resource area values specified in Article XXXI, Section 2. In situations where the Commission determines that the natural vegetative community has been destroyed in violation of the Bylaw, the Commission itself may elect to defer any deliberations regarding Land Subject To Flooding until the natural vegetation has regrown, and until that time may define an operational vegetative community based on regional ecology, site history, local observations and soil characteristics alone.

(4) The presence, extent, characteristics, and composition of existing soil types underlying lands subject to flooding are critical to the protection of the resource area values specified in Article XXXI, Section 2.
   (a) Initial site soil mapping and soil data shall be based on public information made available in the Soil Survey of Middlesex County (USDA Natural Resources Conservation Service). The Commission holds however that
      i. soil boundaries mapped on a county-wide basis are not presumed accurate at a larger, site-specific scale and so the Commission reserves the right to make a case-by-case determination of a soils series classification;
      ii. some soils in Holliston may not meet these published guidelines, and so the Commission reserves the right to make a case-by-case soil series determinations;

(b) For site-specific soil investigations and/or soil map verification, on-site soils data shall be collected as per standards published in *Field Book for Sampling and Describing Soils, Version 3.0* (Schoeneberger*, et al*, 2012, NRCS National Soil Survey Center, Lincoln, NE), or as most recently amended.

(5) The physical characteristics of lands subject to flooding are critical to the protection of the resource area values specified in Article XXXI, Section 2. For the purposes of this regulation, critical physical characteristics include location, extent, topography and the presence of any existing structures, utilities and/or other evidence of existing or past land uses.

(6) The hydrologic regime of lands subject to flooding is critical to the protection of the resource area values specified in Article XXXI, Section II. For the purposes of this regulation, critical characteristics of a lands subject to flooding's hydrologic regime include existing and proposed water quality considerations, the site's annual hydroperiod (depth, duration and frequency of flooding or soil saturation) and existing and proposed storm flow and flood flow characteristics for rainfall/runoff events based on the 2-year, 10-year, 25-year and 100-year rainfall events.

(7) The boundary of Bordering Land Subject to Flooding is the estimated maximum lateral extent of flood water which will theoretically result from the statistical 100-year frequency storm. Said boundary shall be determined by reference to the most recently available flood profile data prepared for Holliston under the National Flood Insurance Program (NFIP), currently administered by the Federal Emergency Management Agency (FEMA).

(a) the boundary of Bordering Land Subject to Flooding as determined by NFIP shall be presumed accurate. This presumption may be overcome only by credible evidence from a registered professional engineer or other qualified professional.

(b) Where NFIP profile data is unavailable, the boundary shall be the maximum lateral extent of flood water which has been observed or recorded. In the event of a conflict, the Commission may require the applicant to determine the boundary by engineering calculations.

(c) For the purpose of wildlife habitat evaluation, the boundary of the ten year floodplain is the estimated maximum lateral extent of the flood water that will theoretically result from the statistic ten-year frequency storm. Said boundary shall be determined as specified under 310 CMR 10.57 (2)(a)3, except that where NFIP Profile data in unavailable, the boundary shall be the maximum lateral extent of flood water which has been observed or recorded during a 10 year frequency storm and, in the event of conflict, engineering calculations under 310 CMR 10.57 (2)(a)3 shall be based on a design storm of 4.8 inches of precipitation in 24 hours.

(8) The boundary of a Seasonal Wetland shall be defined as one of the following (depending upon available information), with the measurement method describing the largest area being adopted:

(a) an area consisting of at least 50% of the natural vegetative community of obligate or facultative wetland species;

(b) the broadest extent of pooling observed or recorded in said area;

(c) the extent of the presence of water stained leaves;

(d) the extent of the presence of caddis fly cases and/or living fingernail or pea clams or their shells;
(e) the area calculated to be inundated by runoff from the 100-year storm;
(f) the area of hydric soil.

C. Presumptions of significance.

(1) Where a proposed activity involves removing, filling, dredging, or otherwise altering any Land Subject To Flooding, the Commission shall presume that such an area is significant to the protection of the interests specified in Article XXXI, Section 2.
(2) Provided a Seasonal Wetland is not a vernal pool and is less than 1,000 square feet in size, it is presumed not to be significant to the resource area values protected by the Bylaw.
(3) Where a proposed activity involves the removing, filling, dredging, or otherwise altering of a significant Seasonal Wetland (>1,000 square feet), the Commission shall presume that such an area, as well as the area within one hundred (100) feet of the mean annual boundary of said wetland, is significant to the resource area values identified in the Preamble and Article XXXI, Section 2, and, in the case of Vernal Pools, specifically to the protection of wildlife and wildlife habitat. As such, a 50-Foot No Disturbance Buffer Zone and 100-Foot Buffer Zone shall be applied to these Seasonal Wetlands. In the case of Seasonal Wetlands functioning as Vernal Pools, the 100-Foot Buffer Zone is further regulated as a No-Disturbance Zone.
(4) The presumptions stated in Section C(1) – C(3) above are rebuttable and may be overcome upon a clear showing that the Land Subject To Flooding does not play a role in the protection of said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.
(5) Since a seasonal wetland may also be significant to the prevention of flooding and flood damage, protection of public and private water supplies and groundwater, aquaculture, agriculture, recreation, and the prevention of pollution, if a presumption of wildlife habitat is overcome, a determination for these other interests may be considered as set forth under Section D below.

D. Performance standards.

(1) Where the presumptions set forth in C(1) – C(3) above are not overcome, any proposed work permitted by the Commission on Seasonal Wetlands or within one hundred (100) feet of Seasonal Wetlands shall not result in the following:
(a) any impairment of the capacity of the seasonal wetland, as well as the area within one hundred (100) feet of the mean annual boundary of said wetland, to provide wildlife habitat;
(b) flood damage due to filling that causes lateral displacement of water that would otherwise be confined within said area;

(c) an adverse effect of public and private water supply or groundwater supply, where said area is underlain by pervious material;

(d) an adverse effect on the capacity of said area to prevent pollution of groundwater, where said area is underlain by pervious material covered by a mat of organic peat and muck; or

(e) an adverse effect on specified wildlife habitat of rare vertebrate or invertebrate species, as identified by procedures established under 310 CMR 10.59.

(2) Where the presumptions set forth in C(1) – C(3) above are not overcome, any proposed work permitted by the Commission on Bordering Land Subject to Flooding shall meet the following performance standards:

(a) compensatory storage shall be provided for all flood storage volume that will be lost as the result of a proposed project within Bordering Land Subject To Flooding, when in the judgment of the Commission said loss will cause an increase or will contribute incrementally to an increase in the horizontal extent and level of flood waters during peak flows. Compensatory storage shall mean a volume not previously used for flood storage and shall be incrementally equal to the theoretical volume of flood water at each elevation, up to and including the 100-year flood elevation, which would be displaced by the proposed project. Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or water body. Further, with respect to waterways, such compensatory volume shall be provided within the same reach of the river or stream.

(b) work within Bordering Land Subject to Flooding, including the work required to provide compensatory storage, shall not restrict flows so as to cause an increase in flood stage or velocity.

(c) any activity undertaken on Land Subject To Flooding shall not result in the following:

i. flood damage due to filling causing lateral displacement of water that would otherwise be confined;

i. an adverse effect on public or private water supply or groundwater supply, where said area is underlain by pervious material;

ii. an adverse effect on the capacity of said area to prevent pollution of groundwater, where the area is underlain by pervious material covered by a mat of peat or muck; or

iii. an impairment of the area's capacity to provide wildlife or rare plant species habitat.

(3) Upon any waiver of Subsection D(1) or D(2) above, any activity that the Commission allows pursuant to Part 3 of these regulations within any Land Subject To Flooding "shall not impair… in any way the ability of this land to perform any of the functions…" that contribute to the protection of the resource area values protected by Article XXXI, Section 2.

Part 3 – Waivers

3.01 Waivers

A. General. The Commission adopted performance standards for the resource areas protected under the Bylaw to ensure that the Bylaw wetland values, as listed in Article XXXI, Section 2, are adequately protected. However, the Commission recognizes that, in certain situations, a waiver of a specific performance standard for a Bylaw resource area may be appropriate for a particular project where:

1. there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with these Regulations;
2. avoidance, minimization, and mitigation have been employed to the maximum extent feasible;
3. the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation; and
4. the waiver is consistent with the intent and purpose of the Bylaw and these Regulations.

B. Mitigation. In the case where a waiver is granted, the Commission shall require mitigation measures to be implemented to offset impacts or potential impacts to resource areas. The mitigation must maintain or improve the natural capacity of a resource area to protect the interests identified in the Bylaw. The ultimate goals of mitigation are long-term or perpetual (a) naturalization of impaired, developed, or degraded areas and/or (b) improvement of degraded areas.

3.02 Burden of proof.

A. Burden of Proof. The applicant shall have the burden of demonstrating, by clear and convincing evidence, that the granting of the waiver is consistent with the intent and purpose of the Bylaw and these regulations and, further, the applicant must show, by clear and convincing evidence, that:

(1) There are no reasonable conditions or alternatives that would allow the project to proceed in compliance with the Bylaw and these Regulations;
(2) Avoidance, minimization, and mitigation have been employed to the maximum extent feasible, including all mitigation measures, and
(3) The project provides benefits in the public interest as defined in Section 1.04 of these Regulations, or that a waiver is required to avoid a decision that causes undue hardship.

3.03 Waiver Request

A. Initial Waiver Request. An applicant shall file a request for a waiver with the Commission with the application for permit for work or request for a determination of applicability.

B. Waiver Request Documentation. Either with the initial waiver request or between filing the waiver request and five business days prior to the date of commencement of the public hearing at which the waiver request is to be considered, the applicant or representative shall submit to the Commission electronically, in a file format acceptable to the Commission, a brief in support of the waiver request and submit two (2) paper copies of the waiver request and supporting brief to the Commission office. Such brief shall include but not be limited to the following items:

(1) A statement of the relief sought;

(2) A written analysis of all reasonably identifiable alternatives to the applicant's proposal that were considered by the applicant that would allow the proposed project to proceed in compliance with the Regulations or minimize the necessity of the requested relief, along with the reasons why such alternatives were deemed to be inadequate, unworkable, or inadvisable. The Commission shall consider as practicable 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 resource areas);

(3) A statement of all efforts that have been undertaken during project design and that will be undertaken during project construction and long-term operation and management to avoid, minimize, and mitigate impact upon the affected Bylaw resource areas arising out of the work proposed;

(4) Detailed plans for proposed mitigation measures;

(a) Such mitigation must maintain or improve the natural capacity of a jurisdictional area and/or buffer zone to protect the interests and values identified in the Bylaw and these Regulations.

(b) Mitigation shall occur in close proximity to the subject site's Bylaw resource areas.

(c) Required mitigation may involve permanent land protection in the form of a deed restriction on the area of mitigation.

(5) Adequate engineering and expert evidence to permit the Commission to evaluate the basis for applicant's contentions in support of the waiver requested; and

(6) Any and all relevant information that the applicant wishes the Commission to consider in deliberating the waiver request.

3.04 Standards.

A. The Commission shall grant a waiver from a performance standard if the applicant has met the burden of proof as provided in Section 3.02 above. The standards as set forth herein shall be the sole basis upon which the Commission may grant a waiver.

(1) It shall be the responsibility of the applicant to provide the Commission with any and all information, which the Commission may request orally or in writing, in order to enable the Commission to ascertain the proposed project's impacts and effects, and the failure of the applicant to furnish any information that has been so requested shall result in the denial of a request for a waiver.

(2) The Commission shall impose all necessary mitigation measures. Where replication is required, it shall be at least twice that of the altered Bylaw resource area and shall offer additional protection to the Bylaw wetlands values. The Commission may additionally require as necessary mitigation perpetual restrictions on the property by way of a conservation restriction under the provisions of M.G.L. c. 184, §§ 30 through 33, or by way of deed restrictions.

Part 4. Filings and Fees

4.01. Filing requirements: information, plan standards, conditions for site inspection

A. Information.

(1) Generally, the information provided to the Commission to enable it to review an application for a permit shall describe the existing conditions, the proposed activity, if any, and its effect on the environment. In order to review site-specific and/or cumulative effects on the environment, the Commission requires a discussion of the effect of the proposed project on all Bylaw wetland values, as are listed in Section II, para.1 of the Bylaw. In addition, due regard shall be shown for existing natural features such as large trees, watercourses and water bodies, wildlife habitat, and similar community assets.

(2) For all applications filed under the Bylaw, the applicant must submit two (2) complete copies of the application, with all relevant materials, as printed application packages.

(3) In addition to the printed applications, for all applications the applicant must also submit the application package, with all relevant materials, electronically on portable media acceptable to the Commission or online, as such system may become available in the future. The requirement for electronic submissions will be waived by the Commission only where the applicant can demonstrate they do not have access to or the means to access a computer

(4) Minimal submittal requirements for applications for determinations and permits for work. Subsections (a) through (l) below contain a list of the minimum filing requirements. In addition, applicants should refer to Sections 4.02, 4.03, and 4.04 below for more specific guidance. The applicant may submit, or be required to submit, any further information that will assist the Commission in its review and is deemed necessary to determine the proposed effect on the Bylaw wetlands values. However, the Commission may waive any of the plan requirements of Subsections (a) through (l) below under site-specific conditions and/or for projects or project impacts deemed insignificant.

(a) An appropriate determination request or Notice of Intent form as provided by the Commission office.

(b) An eight-and-one-half-inch by eleven-inch reproduction of the United States Geological Survey (USGS) quadrangle sheet with marking and label showing the project locus. May be omitted from applications for a request for determination.

(c) Appropriate drawings or plans of the project site and Bylaw resource areas. Where the project requires two or more plans or drawings to show the locus, an eight-and-one-half-inch by eleven-inch sheet clearly identifying the proposed site and work in addition to the labeled boundaries of the resource areas.

(d) The names and addresses of the record owner(s), the applicant(s) and of all abutters, as determined by the most recent local tax list unless the applicant shall have a more recent knowledge of such abutters.

(e) A description of all wetland resource area impacts, including square footage calculations and a count of the number of trees greater than 10” caliper to be removed from wetland

resource areas.

(f) A description of any alteration to flood storage capacity on the site, whether or not located within the limits of the 100-year floodplain as most recently mapped by the Federal Emergency Management Agency for the Town of Holliston. Include flood storage, displacement and compensatory calculations if necessary.

(g) Surface and subsurface soil characteristics in representative portions of the site upon request of the Commission.

(h) The methods to be used to stabilize and maintain any embankments within and/or facing any area subject to protection under the Bylaw.

(i) The methods to control erosion during and after construction, which shall be in accordance with the Massachusetts Department of Environmental Protection's current guidelines.

(j) Where applicable, a runoff plan and calculations using the Rational Method for pipe size and the TR-55/TR-20 Soil Conservation Service methods for all open or closed drainage and flood storage design.

(k) Where applicable, a description and calculation of peak flow and estimated water quality characteristics of discharge from a *point* source (both closed and open channel) when the point of discharge falls within a resource area subject to protection under the Bylaw.

(l) Where applicable, the maximum groundwater elevations. The calendar dates of measurements, samplings, and percolation tests shall be included, regardless of planned sewer connections.

(5) Delay in opening public hearing if application incomplete. The Bylaw at Section VI, para. 2 states that the "The Commission shall commence the public hearing within 21 days from receipt of a completed permit application...." Where the Commission does not receive the minimum filing requirements, it shall deem the application incomplete. The minimum filing requirements include payment of the filing fee as provided in Section V(A), para. 5 of the Bylaw and Section 4.04 of these Regulations.

B. <u>Plans (drawings).</u>

(1) Scale, title, date, person preparing, and other general requirements.

(a) All plans (drawings) shall be drawn (one inch equals 40 feet maximum) with the title designating the name of the project location, the name(s) of the person(s) preparing the drawings, and the date prepared, including all revision dates.

(b) All plans (drawings) shall show relevant property boundary lines, rights-of-way, easements, etc., as may be applicable,

(c) Assessor's map and lot number(s) must be shown.

(d) Drawings to accompany application for permits for work (including requests for determinations that propose work) should be stamped and signed by a registered professional engineer. In lieu of a registered professional engineer, the Commission may, where appropriate, accept a plan signed by a land surveyor, landscape architect, or

sanitarian registered in the Commonwealth of Massachusetts. Pencil notations will not be accepted.

(2) Delineation of Bylaw resource areas and areas subject to protection of the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40).

(a) All drawings must include a delineation of all resource areas subject to protection under the Bylaw (Bylaw resource areas) as defined in Article XXXI, Section II, para. 1 of the Code of the Town of Holliston, and areas subject to protection under the Wetlands Protection Act.

(b) All Wetlands Protection Act resource areas and separately identified Bylaw resource areas should be clearly delineated, regardless of whether the applicant believes the work is subject to the Wetlands Protection Act, M.G.L. c. 131, § 40, or the Holliston Wetlands Protection Bylaw, Article XXXI, Section II, para. 1 of the Code of the Town of Holliston.

(3) Existing & Proposed Conditions.

(a) All plans must include a delineation of all alterations (such as filing, dredging, and placing of impervious surfaces, construction of stormwater management systems, mitigation/compensation areas, etc.) proposed in or within 100 feet of Bylaw Resource Areas, and those areas subject to protection under the Act. All alterations must be clearly described and explained in the accompanying text or footnotes.

(b) Where filling, removing, or other grade changes are proposed, all drawings must indicate existing and final contours (after proposed alterations) and contour interval used, including, where applicable, reservoir, lake and pond bottom contours and river and stream cross-sections and invert contours. The contour interval shall be no greater than two feet.

(c) All drawings, where applicable, must indicate locations and elevations of sills and bottom of septic systems. The bottom of a septic system is the elevation of the leaching field substrate.

(d) All drawings must indicate the location and elevation of the benchmark used for the survey.

(e) All drawings must indicate invert elevations on catch basins.

(f) Culverts and pipes. All drawings must indicate locations, sizes and slopes of existing and proposed stormwater drainage structures, pipes and culverts.

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

(h) Water storage capacity calculations. Where work is proposed in any wetland, water body or waterway, or any land subject to flooding mapped within the 100-year FEMA floodplain, all drawings must be accompanied by information showing the existing and proposed water storage capacity of the property, including calculations and data on which the capacity is based. If filling is proposed without onsite flood storage compensation, determine the effect of loss of storage on downstream channels and culverts.

(i) Trees, walls, historic sites, or other points of interest. All drawings must indicate existing tree line and trees greater than 10" DBH, stone walls, fences, buildings, historic sites, rock ridges and outcroppings.

(j) Pollution control devices. All drawings must indicate existing on-site pollution control devices associated with stormwater management systems, such as hooded catch basins, oil absorption detention/retention basins, flow dissipaters or vegetative buffers. Where work proposed includes construction of any open or closed stormwater management system, all drawings must be accompanied by information documenting compliance with the most-recently adopted Stormwater Management Guidelines and Manuals for Massachusetts and regulations under the MA Wetlands Protection Act at 310 CMR 10.05(k) through (q).

(k) Erosion and sedimentation control. Show locations/details of temporary (construction period) erosion/sedimentation control practices and/or devices and post-construction surface stabilization measures.

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

(m) Dates of measurements. Any water level data shown on drawings or described in accompanying text (water surface elevations, groundwater observations, etc.) must be accompanied by the calendar dates of measurements, observations, etc. All such water level data shall be referenced to the benchmark required in Section (c) above.

(4) Cumulative Impacts. For all housing development and redevelopment projects consisting of two or more lots, for any subdivision or multi-unit dwelling structures and for any commercial development, a plan illustrating the cumulative impacts, including reasonably foreseeable future impacts resulting from the project as a whole, must be provided.

(a) The Cumulative Impact Plan(s) must depict the following information, details and locations, in addition to those requirements specified elsewhere in these regulations:

i. Roadways, sidewalks, driveways,
ii. Maximum building envelopes,
iii. Pools, decks, patios, outbuildings,
iv. Tree line, limit of lawn and landscaping (existing and proposed),
v. Utilities, drainage (including stormwater management measures),
vi. Septic (primary and reserve fields); and
vii. All other man-made structures, features or work which has the potential to alter Resource Areas.

(b) In addition to the above items, applicants must provide information regarding the total, built-out project impact to each Resource Area(s), expressed in square footage and/or on-site percentages.

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

(1) Stakes shall be provided as follows. Stake-out should be coordinated with the office of the

Conservation Commission. Failure to have the lot staked may result in postponement of review and delay in processing the application. If the property is not staked in accordance with the requirements below ten (10) days prior to the public hearing, the application shall not be considered complete and, at its sole discretion, the Commission may elect to continue the public hearing.

(a) Stakes indicating the corners of houses or other structures nearest the Bylaw resource area and area subject to protection under the Act;

(b) Stakes indicating any septic tank and leaching field location; and

(c) A series of stakes indicating the limit of work.

(2) For new construction, lot number or house number must be posted at location.

(3) Boundaries of all Bylaw resource areas and areas subject to protection under the Act shall be marked onsite with stakes or, as appropriate, sequentially-numbered plastic flags.

4.02. Filing guidelines for Requests for Determinations

A. Forms.

(1) Wetlands Protection Act. At the same time as the applicant files for a determination under the Bylaw, the applicant should file "Form I" issued by the Department of Environmental Protection (the "DEP") under M.G.L. c. 131, § 40, as follows:

(a) Supply two copies to the Holliston Conservation Commission Office.

(b) Mail one copy to the DEP Southeast Regional Office.

(2) Bylaw. The applicant must submit the application with all relevant materials;

(a) electronically on portable media acceptable to the Commission or online, as such system may become available in the future and

(b) by supplying two (2) printed copies to the Holliston Conservation Commission.

B. Fee. Submit payment or request a waiver of the fee, as provided in Article XXXI, Section 5(A), stating the reasons for the request.

C. Notice to and participation of other Town boards.

(1) Boards to be notified and information in notice.

(a) As provided in Section VII of the Bylaw, "Any person filing a permit application with the Conservation Commission shall provide at the same time, by certified mail (return receipt requested) or hand delivery, notice of such filing to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, Building Inspector and other Town of Holliston officials or boards as designated by the Commission in its regulations."

(b) An affidavit of the person providing notice, with a copy of the notice, shall be filed with the Commission.

(2) Time for boards' response, disclosure of response to applicant.

(a) The Conservation Commission shall not take action on the application for a determination until 14 days have lapsed from the receipt by the Town boards of the

notice specified in the foregoing Subsection C(1).

(b) The Conservation Commission shall provide the applicant with a copy of any response from any Town board.

D. Notice to adjoining municipality.

(1) Notice shall be provided in the same manner to the Conservation Commission of an adjoining municipality if the permit application pertains to property within 300 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission.

(2) Time for adjacent municipality response, disclosure of response to applicant.

(a) The Conservation Commission shall not take action on the application for a determination until 14 days have lapsed from the receipt by the adjacent municipality of the notice specified in the foregoing Subsection D(1).

(b) The Conservation Commission shall provide the applicant with a copy of any response from any adjacent municipality.

E. Public meeting notice.

(1) Bylaw. The Bylaw, at Section 6, para.2, states that "[t]he Commission shall conduct a public meeting on any permit application provided that written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the Town of Holliston." Upon receipt of a complete permit application, the office of the Conservation Commission shall arrange for the publication of the required public notice.

(2) Payment of published notice. The public hearing notice will be advertised in a newspaper of general circulation in Holliston and the applicant will be billed directly for the cost of the legal notice and shall tender such payment upon request prior to publication.

(3) Description of work. If work is proposed, the applicant must provide information that completely describes the proposed work that may be the subject of the permit application.

4.03. Filing guidelines for applications for Bylaw Permits

A. Forms.

(1) Wetlands Protection Act. At the same time as the applicant files for a permit for work under the Bylaw, the applicant should file either a notice of intent or an abbreviated notice of intent form issued by the Department of Environmental Protection ("DEP"), as follows:

(a) Provide one (1) copy to the DEP Central Regional Office.

(b) Supply 2 copies to the Holliston Conservation Commission.

(2) All applications for all permits for work, together with all relevant materials, must be submitted;

(a) electronically on portable media acceptable to the Commission or online, as such system may become available in the future and

(b) by supplying two (2) printed copies to the Holliston Conservation Commission.

B. Fee. Submit payment of the appropriate filing fee, as defined in Section 4.04 below, or request a waiver of the fee, as provided in Article XXXI, Section 5(A), stating the reasons for the request.

C. Notice to abutters.

(1) Bylaw requirement. As stated in the Bylaw at Section 5I, para. 1, "Any person filing a permit application with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivery, to all abutters ...."

(a) Abutters include owners of land directly opposite on any public or private way, and abutters to the abutters within 100 feet of the property line of the applicant, including any in another municipality or across a body of water.

(b) Notice must be sent to abutters at the mailing addresses shown on a certified list of abutters prepared and provided by the Holliston Assessors Office.

(c) If the abutters identified include residents of an adjoining municipality, then notice must be sent to those abutters at the mailing addresses shown on a certified list of abutters prepared and provided by the Assessors Office of the adjoining municipality.

(2) The notice to abutters may include a copy of the permit application, with plans, or state that copies may be examined and obtained by abutters from the office of the Conservation Commission. Where the notice to abutters does not contain a copy of the permit application or plans, that notice shall state that a copy may be examined and obtained at the Conservation Commission office and also at any other place where or by any other means by which the applicant will make the document available to abutters.

(3) Evidence of mailing. The Conservation Commission shall require that applicant supply evidence of mailing to all abutters and shall not open any public hearing until it receives such proof. Such suitable proof shall consist of;

(a) a printed copy of the mailed notice,

(b) a copy of the certified list of abutters prepared and provided by the Holliston Assessors Office,

(c) certified mail receipts or, if appropriate, a certificate of mailing, or

(d) if hand-delivered, a signed affidavit of service from the party making said hand-deliveries.

D. Notice to and participation of other Town boards.

(1) Boards to be notified and information in notice.

(a) As provided in Section VII of the Bylaw, "Any person filing a permit application with the Conservation Commission shall provide at the same time, by certified mail (return receipt requested) or hand delivery, notice of such filing to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, Building Inspector and other Town of Holliston officials or boards as designated by the Commission in its regulations."

(b) An affidavit of the person providing notice, with a copy of the notice mailed or delivered,

shall be filed with the Commission.

(2) Time for boards' response, disclosure of response to applicant.

(a) The Conservation Commission shall not take action on the permit application until 14 days have lapsed from the receipt by the Town boards of the notice specified in the foregoing Subsection C(1).

(b) The Conservation Commission shall provide the applicant with a copy of any response from any Town board.

E. Notice to adjoining municipality.

(1) Notice shall be provided in the same manner to the Conservation Commission of an adjoining municipality if the permit application pertains to property within 300 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission.

(2) Time for adjacent municipality response, disclosure of response to applicant.

(a) The Conservation Commission shall not take action on the permit application until 14 days have lapsed from the receipt by the adjacent municipality of the notice specified in the foregoing Subsection D(1).

(b) The Conservation Commission shall provide the applicant with a copy of any response from any adjacent municipality.

F. Public hearing notice.

(1) Bylaw. The Bylaw, at Section 5I, para.2, states that "[t]he Commission shall conduct a public hearing on any permit application provided that written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the Town of Holliston." Upon receipt of a complete permit application, the office of the Conservation Commission shall arrange for the publication of the required public notice.

(2) Payment of published notice. The public hearing notice will be advertised in a newspaper of general circulation in Holliston and the applicant will be billed directly for the cost of the legal notice and the applicant shall tender payment upon request prior to publication.

(3) Description of work. If work is proposed, the applicant must provide information that completely describes the proposed work that may be the subject of the permit application.

G. Waiver request. If the applicant requests a waiver from any provision of the Bylaw or these Regulations, the applicant shall comply with Section 3 of these Regulations.

H. Amendments. For any application submitted to request an amendment to an existing permit for work resulting in an increased encroachment into areas subject to jurisdiction, the Commission shall assume the previously approved plan under the existing permit for work is the most suitable set of plans for the proposed project. Amendments and alterations resulting in increased encroachment into areas subject

to jurisdiction shall require higher burden of proof, including an alternatives analysis, to demonstrate no adverse impact to resource areas subject to jurisdiction under the Bylaw."

4.04. Filing fees; consultant fees

A. Filing fees.

(1) General provisions.

(a) The Bylaw at Section V(A), para.5, authorizes the Conservation Commission to charge a filing fee for a request for a determination and an application for a permit for work and to set the amount of this fee by regulation. The schedule of filing fees is found below, payable at the time of application, and such fees are nonrefundable. The Commission does not consider a permit application or request for determination or Notice of Intent complete until the filing fee is paid.

(b) Table of Fees

TABLE 4.04(A) Holliston Wetlands Protection Bylaw Filing Fees

APPLICATION	TYPE	BYLAW FEE
Determination of Applicability	a. Residential lot (single family) b. Commercial/ Industrial/Other	$100 $150
Notice of Intent/Permit Fees assessed are grouped by categories. Fees are calculated per activity in each category	Category 1: a. Work on existing single family lot, including but not limited to: • Addition • Pool • Tennis court • Deck • Garage b. Septic system installation or modification c. Control vegetation d. Well installation	$250 per activity*
	Category 2: a. Construction of a single family house b. Driveway c. Parking lot with 10 spaces (additional fee of $50 for each additional parking space within Buffer Zone or Resource Area) d. Impervious recreational facility, including but not limited to tennis courts, basketball courts, skate parks, etc.	$500 per activity*

	e. Any activity not otherwise described in Categories 1, 3, 4 or 5	
	Category 3: a. Construction of each building for any commercial, industrial, institutional or condo/townhouse development b. Road construction, not including resource area crossing or single family house driveway c. Water supply development d. Detention basin	$1,050 per activity*
	Category 4: a. Resource area crossing for development or commercial road, including bridges b. Electric generating facility activities c. Dam, sluiceway work d. Landfill operations e. Sand and gravel operation f. Railroad line construction g. Dredging h. Package treatment plant and discharge i. Tree clearing for aircraft	$1,450 per activity*
	Category 5: a. Work on docks, piers, dikes or other engineering structures in inland resource areas, including placement of "rip rap" or other material on resource areas	
Abbreviated Notice of Resource Area Delineation	a. Single-family dwelling b. Other	$2.00/l.f.(Max,$200) $2.00/l.f. (Max,$2,000)

(2) Town, county, state, and federal projects are exempt from filing fees under this Bylaw.

(3) Bylaw filing fees are in addition to the filing fees charged under MGL c. 131, § 40, and Mass. Regs. Code tit. 310, §§ 4.00, 10.03(7).

(4) All fees for Notices of Intent/Permit (Categories 1-5) and Requests for Determination of Applicability are subject to a 50% increase in fee if in Riverfront Area in addition to another resource area.

(5) All fees for Notices of Intent/Permit (Categories 1-5) and Requests for Determination of Applicability are subject to an additional fee on a sliding scale if within 50' No Disturbance Zone:

Square Footage:	Additional Fee:
1 – 500	Add 25% fee per activity in No Disturbance Zone
501 – 1500	Add 50% fee per activity in No Disturbance Zone

1501 - 3000	Add 75% fee per activity in No Disturbance Zone
3000 +	Add 100% fee per activity in No Disturbance Zone

(6) Where a person has failed to comply with legal requirements of any federal, state, county, or municipal rule, regulation, or statute necessary as part of any request or application filed with the Conservation Commission under the Bylaw, after official notification the Conservation Commission shall assess filing fees twice the amount specified at Subsection A(1)(b) above.

B. Administrative Fees.

(1) General provisions.

(a) The Bylaw at Section V(A), para.5, authorizes the Conservation Commission to charge a fee for additional administrative applications relative to permits. and to set the amount of this fee by regulation. The schedule of administrative fees is found below, payable at the time of application, and such fees are nonrefundable.

(b) Table of Fees

TABLE 4.04(B) Holliston Wetlands Protection Bylaw Administrative Fees

APPLICATION	TYPE	BYLAW FEE
Certificate of Compliance (including Partial)	a. Residential lot (single family) b. Commercial/ Industrial/Other	$100 $150
Request for extension of Permit/Order NOTE: Must be valid.		$100
Request for amendment of Permit/Order NOTE: Must be valid.	a. Residential lot (single family) b. Commercial/ Industrial/Other	$100 $150
Request to reissue any Order/Permit, Determination or Certificate (includes true copy attest)		$50

C. Consultant fees.

(1) General. The Bylaw, under Section V(B), para.1, authorizes the Conservation Commission to impose fees on the applicant to pay for expert consultants to the Commission to aid in and expedite the Commission's review of the proposed project.

(a) If the Commission elects to engage a consultant to assist with plan reviews, the Commission shall notify the applicant, within 21 days of the filing of the application, of its designation of an outside consultant. The Commission shall provide an applicant with written notice of the selection of a consultant, identifying the consultant, an estimate of the amount of the fee to be charged to the applicant, and a request for payment of that fee.

(b) Notice shall be deemed to have been given on the date it is mailed or hand delivered.

(c) The applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.

(d) The entire fee must be received before the initiation of consulting services.

(e) In the event the cost of the review exceeds the amount of the initial estimate, an additional deposit shall be made by the applicant based on an estimate provided by the consultant to complete the review.

(f) Failure by the applicant to pay the requested consultant fee or, when necessary, submit an additional deposit, within ten (10) business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and DEP of such a decision in writing.

(2) Accounting.

(a) Peer review consultant fees collected from the applicant shall be deposited with the town treasurer, who shall create an account specifically for this purpose.

(b) Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected shall be paid from this account, and expenditures are to be made at the sole discretion of the Commission. Accrued interest may also be spent for this purpose.

(c) At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project, shall be refunded to the applicant, or the applicant's successor in interest.

(d) A final report of said account shall be made available to the applicant or the applicant's successor in interest.

(3) Appeal. The applicant may appeal the selection of the outside consultant to the Board of Selectmen within 14 days of notification of consultant designation from the Conservation Commission. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications, as specified in M.G.L. c. 44, § 53G. Any such appeal shall extend the applicable time limits for Commission action upon the application.

END

Date of adoption: October 18, 2022

Date of amendment: