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**Bolton Conservation Commission**

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**TOWN OF BOLTON  
CONSERVATION COMMISSION  
WETLANDS BYLAW REGULATIONS**

PART ONE: GENERAL PROVISIONS

1.01 Introduction and Purpose

(1) Introduction.

(a) Authority to Promulgate Regulations. The Bolton Conservation Commission (“Commission”) promulgates these regulations pursuant to the authority granted to it under the Town of Bolton Wetlands Bylaw (“Bylaw”) at Section 1.18.7. These regulations complement the Bylaw and have the force of law in implementing and enforcing the Bylaw.

(b) Relationship with State’s Wetlands Protection Act. All of the standards, requirements and procedures set forth in the Massachusetts Wetlands Protection Act and regulations published at 310 CMR 10.00 et seq. are incorporated and made part of these regulations. Where these regulations differ from the state regulations, these regulations will be applied in addition to the state regulations.

(c) Severability and Compliance with Court Decisions.

1. 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 such invalidate any Bylaw Order that the Commission previously issued.

2. If any court of the Commonwealth invalidates any provision of the Bylaw, the Commission shall amend the bylaw at the next annual town meeting after such invalidation to comply with any court decision invalidating such provisions.

(2) Purpose.

(a) Set Process Criteria. The Bolton Wetlands Bylaw sets forth a public review and decision-making process by which the Commission regulates activities affecting areas subject to protection under the Bylaw. The purpose of these regulations is to define and clarify this process by establishing standard definitions and uniform procedures by which the Commission shall carry out its responsibilities under the Bylaw.

(b) Protect Wetland Interests. The purpose of this regulatory process is to ensure the conservation and protection of resource areas, the resource interests, and natural resource services.

1. This conservation and protection of all resource areas under the Bylaw includes no net loss of functions, which contribute to the protection of the interests.

2. This conservation and protection includes no net loss of a resource area under the Bylaw, except that the Commission may permit loss in the resource area if excepted in the Bylaw (Section 1.18.3).

3. This conservation and protection contributes to the following critical wetland resource interests:

- a. Protection of public and private water supplies
- b. Protection of groundwater

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- c. Protection of water quality
  - d. Protection of fisheries
  - e. Preservation of wildlife habitat
  - f. Preservation of rare species habitat including rare plant species
  - g. Flood control
  - h. Prevention of storm damage
  - i. Prevention of pollution and sedimentation
4. This conservation and protection includes assuring that the following areas are properly utilized, preserved, and maintained to protect the resource interests listed in Section 1.01(2)(b)3 above.
- a. Passive recreation areas adjoining resource areas deemed important to the community
  - b. Land and water bodies in agricultural use
  - c. Land and water bodies used for aquaculture

1.02 Jurisdiction

- (1) Resource Areas Under the Bylaw are the wetland resource areas and adjacent upland resource areas described in Section 1.18.2 of the Bylaw.
- (2) Activities Regulated by the Commission.
  - (a) Alteration of A Resource Area Under The Bylaw. Any activity proposed or undertaken that constitutes building upon, within, or under; removing anything from; filling; degrading; polluting; discharging; dredging into any area specified in Section 1.18.2 of the Bylaw, including maintenance of such resource areas where the resource area was created for the purpose of stormwater management, is subject to regulation under the Bylaw and requires a filing of a Bylaw Notice of Intent.
  - (b) Activities Outside Bylaw Protected Resource Areas That May Alter Such Resource Areas: Any activity proposed or undertaken outside the areas specified in Section 1.18.2 of the Bylaw, where in the judgment of the Bolton Conservation Commission, said activity has the potential of altering or has resulted in the removing, filling, degrading, polluting, discharging, dredging, building upon, or otherwise altering any area specified in Section 1.18.2 of the Bylaw.
    - 1. Where there is a question as to whether an activity outside a resource area will alter an area specified in Section 1.18.2 of the Bylaw, the individual should submit a Request for Determination of Applicability.
    - 2. Where an activity outside resource area under the Bylaw, specified in Section 1.18.2 of the Bylaw, causes an alteration to that protected resource area, the responsible person and the owner of the property upon which the activity occurred, shall be subject to enforcement action by the Bolton Conservation Commission.

1.03 Exceptions

- (1) Exceptions to the Bylaw shall be limited to:

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- (a) Maintaining, repairing or replacing, adding to, but not substantially changing or enlarging, an existing single-family residential structure.
- (b) Maintaining, repairing or replacing, adding to, but not substantially changing or enlarging, an existing single-family residential septic system.
- (c) Maintaining, repairing or replacing, adding to, but not substantially changing or enlarging, an existing single-family residential appurtenance.
- (d) Maintaining landscaping and gardens accessory to an existing single-family residential structure.
- (e) Lands lawfully in agricultural (commercial and non-commercial) at the time the work takes place.
- (f) Forest cutting as defined in 310 CMR 10.04 Agriculture (b)(14).
- (h) Maintaining or repairing, but not substantially changing or enlarging an existing structure in a resource area, such as drainage structures, culverts, bridges, driveways, or roadways.
- (i) Maintaining or repairing, but not substantially changing or enlarging fire protection water holes, artificial ponds.
- (j) Clearing of watercourses.
- (k) Conservation and outdoor recreation.
- (l) Public utilities as defined in 310 CMR 10.53 (3)(d).
- (m) Projects carried out under the direction of U.S. Natural Resource Conservation Service.
- (n) Emergency projects necessary for the protection of the health and safety of the public and subject to the provisions and conditions in 310 CMR 10.06.

1.04 Burdens of Proof and Presumptions

(1) Burdens of Proof. Any individual filing a request for Determination of Applicability or Notice of Intent under the Bylaw to perform any work within an area specified in Section 1.18.2 of the Bylaw, has the burden of going forward with a preponderance of evidence from a competent source(s). See Part 2 for submission requirements and sufficient information to protect resource interests and enable the Commission to evaluate potential impacts to the resource area(s).

(2) Presumptions.

(a) Resource Area Presumed Significant to Resource Interests. Resource areas shall be presumed to be significant to the extent that they:

1. Protect private and/or public water supplies
2. Protect groundwater
3. Protect water quality
4. Protect fisheries
5. Protect wildlife habitat
6. Preserve rare species habitat including rare plant species
7. Provide flood control
8. Prevent storm damage

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9. Prevent pollution and sedimentation

10. Provide natural resource services classified as ecological services or public services. Ecological services are the physical, chemical or biological functions that one resource provides for another and for the environment. Public services are the public uses of natural resources or functions of natural resources that benefit the public.

Resource areas presumed to be significant shall be protected to fullest extent under the Bylaw. Activities which may reasonably be expected to impact significant resources shall be subject to the review and control of the Commission in accordance with the Bylaw, regulations and as may be required to protect the interests described in the Bylaw. The presumption of significance may be overcome as described below in Section 1.04(2)(b).

(b) Presumption Rebutted by Clear and Convincing Evidence. This presumption may be rebutted by a preponderance of evidence showing that the resource area does not play a role in the protection of one or more of the interests identified in Section 1.01(2)(b).

1. Presumption Wholly Rebutted. If the Commission finds that the presumption of significance has been rebutted by preponderance evidence as to all the interests protected by that resource area, the Commission may determine that the presumption of significance of that resource area is overcome. The Commission shall make a written determination to this effect, setting forth its reasons for that decision.

2. Presumption Partially Rebutted. If the Commission finds that the presumption of significance has been rebutted by a preponderance of evidence as to only part of the interests protected by that resource area, the Commission may determine that the presumption of significance of that resource area partially overcome. The Commission shall make a written determination to this effect, setting forth its reasons for that decision.

1.05 Definitions

In addition to the definitions contained in 310 CMR 10.04, *et seq.*, as used in these regulations, the following terms shall have the meanings stated: (Also see Part 3 of these Regulations for Resource Area Definitions)

Act– means The Massachusetts Wetlands Protection Act, Mass. Gen. Laws, c. 131, §40. This Act also protects Riverfront Areas, and is sometimes referenced as the Rivers Protection Act. When used in these regulations, the term “Act” includes the regulations promulgated by the Department of Environmental Protection at 310 CMR 10.00.

Activity– In addition to those activities enumerated in 310 CMR 10.04 and Section 1.18.2 of the Bylaw, the term activity shall also include anything that changes the physical, chemical, or biological characteristics of the resource area or the public use of the resource area.

Adjacent Upland Resource Area– Adjacent Upland Resource Areas include all lands within seventy-five feet (75’) of wetland resource areas, as described in 1.18.2, except for perennial streams and rivers for which the adjacent upland resource area extends for two hundred feet (200’) from the top of the bank.

Alter– To change the condition of any area subject to protection under the Bylaw. The term “alter” shall include, without limitation, the following activities when undertaken to, within or affecting resource areas protected by the Bylaw:

- (a) Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind.
- (b) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics.

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- (c) Drainage or other disturbances of water level or water quality.
- (d) Dumping, discharging, or filling with any material which may degrade water quality.
- (e) Placing of fill or removal of material that would alter elevation.
- (f) Driving of piles or the erection or repair of buildings or structures of any kind.
- (g) Placing of obstructions or objects in water.
- (h) Destruction of plant life, including but not limited to cutting of trees, shrubs, or emergent vegetation.
- (i) Activities that change plant communities from serving as shelter, nesting, or breeding areas; or food sources for wildlife.
- (j) Changing of water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water.
- (k) Any activities, changes or work that may cause or tend to contribute to pollution of any resource area.
- (l) Application of pesticides or herbicides.
- (m) Changes or loss of cavity nesting vegetation, loss of detritus, fallen logs, crevasses, hollow logs, flat rocks.
- (n) Changes in habitat.
- (o) Changes in biodiversity.
- (p) Incremental activities that may or may not have a cumulative adverse impact on the resource areas protected by this Bylaw.

Alternative Analysis– An analysis provided in writing by all applicants showing that the proposed project offers the best mitigation measures to assure compliance with the standards of the Bylaw and these regulations over all other possible configurations of the project.

Applicant– The individual who files a Request for Determination or Notice of Intent, or on whose behalf such a determination or notice is filed

Appurtenance– A right, privilege, or property that is considered incident to the principal property. Anything attached to the land and therefore part of the property and subject to being passed to a new owner if the property is sold. May be something tangible, such as a barn, garage, driveway or septic system, or something abstract such as an easement.

Area of Critical Environmental Concern (ACEC)– An area so designated by the Secretary of Environmental Affairs of the Commonwealth of Massachusetts pursuant to regulations (301 CMR 12.00), said designation being due to the particular environmental factors that impact upon the areas in question and that highlight the importance of each area so designated.

Bank– A Bank is the portion of a land surface, which normally abuts and confines a water body. It occurs between a water body and an adjacent upland resource area, freshwater wetlands, and lands subject to flooding or inundation by ground water or surface water. A Bank may be partially or totally vegetated, or it may be comprised of exposed soil, gravel, stone or sand. Further definition, critical characteristics, boundary, and regulation of these Areas Protected Under the Bylaw are found in 310 CMR 10.54

Beach– A Beach is a bank that primarily consists of sand and is primarily non-vegetated. A Beach serves for recreational value as well as a site where surface water recharges the ground water. Beaches

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are wetland resources including land under water, banks, beaches, marshes, land under ponds, and land on the banks of fish runs.

Best Management Practices– The use of design and maintenance criteria that minimize to the greatest extent possible adverse effects on the environment, including without limitation controlling and abating the discharge of pollutants and inadvertent alterations of Resource Areas under the Bylaw.

Bogs– Are freshwater wetlands that are poorly drained and characterized by a buildup of peat.

Bylaw– The Bolton Wetlands Bylaw as that may be amended from time to time.

Commission– The Conservation Commission of the Town of Bolton or its designee(s).

Cumulative Adverse Effect– The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonable foreseeable future actions. Cumulative adverse effects can result from individually minor but collectively significant actions taking place over a period of time.

Creek– Any small stream whether perennial or intermittent. See definition of stream

Evidence–

Clear and Convincing Evidence– Proof beyond a reasonable well-founded doubt that is more than a preponderance of the evidence but less than needed in to establish criminal liability.

Credible Evidence from Competent Source– Evidence from state or federal agencies or the Conservation Commission members or staff, or from a professionally qualified individual that was collected using acceptable scientific methodology or best available reliable practices or that which is based on personal knowledge.

Preponderance of Evidence– Greater weight of the evidence; evidence that is more credible and convincing to the mind.

Substantial Evidence– Evidence showing the existence of a fact (as opposed to discrediting a witness) that supports the decision of the Conservation Commission so that considering the total evidence presented during the administrative hearing process, a court of competent jurisdiction would not find that the Commission acted arbitrarily or capriciously in making its decision.

Freshwater Seeps– A seep is an area where groundwater oozes or trickles to the surface, sometimes to from a pool. The circumference of such a pool may be small and water may evaporate in periods or drought. Seep boundaries are to be determined by the area of increased wetness due to water trickling from the seep. Seep boundaries shall be determined between March 21 and June 21, and when overall precipitation conditions are normal.

Freshwater Wetlands– As defined in M.G.L. c. 131. s.40, para. 7.

Intermittent Stream– An intermittent stream is an ephemeral stream, with a hydraulic gradient through which water flows part of the year and which either flows out of or into, or within a wetland resource area. A portion may flow through a culvert or under a bridge.

Lake– A “Lake” is any open body of fresh water, either naturally occurring or man-made by impoundment or excavation, with a surface area of ten (10) acres or more, and shall include Great Ponds. A Lake is never without standing water due to natural causes.

Lands Under Water Bodies and Waterways (LUW)– As defined in 310 CMR 10.56.

Lands Subject to Flooding or Inundation by Ground Water or Surface Water– Lands Subject to Flooding or Inundation by Ground Water or Surface Water are areas where there is a depression in topography, isolated depression, low lying land, or closed basin which floods periodically and/or serves as a ponding area of ground or surface water. This area may also border areas subject to

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protection under the Bylaw as a result of a hydrologic connection during any storm event up to and including the 100-year storm event.

Such areas shall be 1000 square feet or greater in surface area and hold an average depth of six inches. Such areas may include vernal pools.

Lands Subject to Flooding or Inundation by Ground Water or Surface Water shall include the area shown on the Federal Emergency Management Agency Flood Profile, Town of Bolton 100 year flood elevation, as most recently amended.

These areas may be characterized by evidence of standing or ponding water during any storm event (up to and including the 100-year storm event based upon a 24 hour 7 inch rainfall. The lateral extent of flooding may be determined by: the most recent Federal Management Flood Profile 100 year flood elevation for the Town of Bolton, the elevation that is reached by the amount of water from a 100 year storm event determined either by visual observation, or by calculation using the Soil Conservation Service hydrologic model TR-20 computer program (Computer Program for Project Formulation – Hydrology, Soil Conservation Service Technical Release 20, Washington, D.C., 1983) for a 24 hour, 7 inch rainfall event , as it may be updated from time to time.

Maintenance– The work or activity of maintaining but not expanding.

Marshes – As defined in M.G.L. c. 131, s. 40, para 10

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

Passive recreation– Those activities requiring minimal use of physical facilities that do not have a detrimental impact on the environment, and which emphasize an interaction with nature. Appropriate activities include, but are not limited to hiking, picnicking, walking, jogging, canoeing, bird watching, nature photography, and fishing.

Performance Standards– Those physical characteristics and functions of a Resource Area under the Bylaw and Wetland Resource Areas protected by the Wetlands Protection Act that must not be impaired by any activity permitted by the Commission under the Bylaw or Act.

Pond - A “Pond” is an open body of fresh water, natural or man-made, and is never without standing water due to natural causes except during extended drought. Notwithstanding the above, the following man-made bodies of open water shall not be considered ponds: basins or lagoons that are part of wastewater treatment plants, swimming pools, or other impervious man-made retention basins as ponds.

Protection of Wildlife Habitat– The measures necessary to safeguard and otherwise preserve any and all of the following:

- (a) Rare species: Any plant or animal species listed as endangered, threatened or special concern, or on the Watch List by the Massachusetts Natural Heritage Program; listed as Federally Endangered or Federally Threatened by the U.S. Fish and Wildlife Service; deemed locally threatened, in writing, by the Commission.
- (b) Wildlife: Any non-domesticated mammal, bird, reptile, amphibian, fish, mollusk, arthropod, or other invertebrate, other than a species of the Class *Insecta* or predaceous arachnids of the Order *Araneida*, that have been determined by the Commonwealth of Massachusetts or any agency thereof to be a pest whose protection under the provisions of the Bylaw would be a risk to man.
- (c) Habitat: The ability of any resource area to provide food, breeding habitat, shelter, or escape cover for species falling within the definition of wildlife set forth in these regulations.

See also definition of “alteration” above.

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Quorum– Majority of the members of the Commission then in office.

Rare Species Habitat– Includes all habitat shown on the MA Division of Fisheries and Wildlife’s Priority Habitat and Estimated Habitat Maps, for endangered species and species of special concern and rare plants, as these Maps may be amended from time to time. Unmapped rare species habitat may be documented by other reputable sources.

Repair– (See definition of Maintenance)

Reservoir– A “Reservoir” is a man-made open body of fresh water that may be either a Lake or a Pond.

Rivers– A river is any natural flowing body of water that empties to any ocean, lake, pond or other river and which flows throughout the year.

Riverfront Area– As defined in 310 CMR 10.58(2)

Substantial Vegetation–Substantially Changing or Enlarging– The activity or work will alter the existing structure or land use so as to increase the area of disturbance, the footprint, the zone of drainage, or the intensity of use or capacity in manner that would have an adverse impact on the resource area.

Streams– A stream is a body of running water, including brooks and creeks, which moves in the ground due to a hydraulic gradient, and which flows into or out of an resource area under the bylaw. A portion of a stream may flow through a culvert or beneath a bridge. Such body of water that does not flow throughout the year is intermittent (see intermittent stream).

Swamps– As defined in M.G.L., c. 131s. 40, para. 8

Vernal Pool– A confined basin or depression that, at least in most years, holds water for a minimum of two continuous months, and that is free of adult fish populations. Vernal pools are quite often small and shallow, vernal pools that support rich communities of vertebrate and invertebrate animals may measure only a few yards across.

Vernal Pool Habitat– The Vernal Pool and the area within 100 feet of the mean annual boundaries of a vernal pool. It can be located in any forested or open area.

Wet Meadows– As defined in M.G.L. c. 131, s. 40, para 9.

PART TWO: PROCEDURES

2.01 Receipt and Acceptance of Request for Determination of Applicability or Notice of Intent

(1) Receipt. Where the Commission receives a Request for Determination of Applicability (RDA) or Notice of Intent (NOI) either under the Bylaw and the Act or only under the Bylaw, that receipt may be by one member of the Commission or an individual designated by the Commission to receive such request or notice.

(2) Application Must Be Complete.

(a) Inspection. That designated person or the Commission shall inspect the submission for completeness in accordance with the requirements of these regulations.

(b) Incomplete Submission. Where the designated person or the Commission decides that the RDA or NOI is not complete, the RDA or NOI may not be accepted and may be returned to the applicant with a written reason for the non-acceptance.

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- (3) File Number Issuance for Notice of Intent. Upon receipt of complete application materials, the Commission shall use the file number issued by the DEP to designate the application. For applications that are not subject to the Act, the Commission shall issue a file number. The designation of a file number shall not imply that the plans and supporting documents have been judged adequate for the issuance of a Bylaw Order, but only that copies of the minimal submittal requirements have been filed.

2.02 Requests for Determinations of Applicability under the Bylaw

- (1) Determinations. Any person may request the Commission to determine whether a proposed activity is subject to the Bylaw or is exempted by the Bylaw. Any person also may request the Commission to verify a wetland boundary delineation. The procedures for these requests may be found at 310 CMR 10.05 and in Section 2.02(2) of these regulations. The filing fees for such requests are found at Section 4.02(2) of these regulations.

(2) Filing Procedures.

(a) In Hand or Certified Mail. The applicant shall submit, in hand or by certified mail, the RDA to the Commission.

(b) Contents of Request. The applicant shall submit, at a minimum, the following documents to the Commission:

1. A completed Request for Determination of Applicability form.
2. A plan or a sketch showing the approximate location of the wetlands, property lines, and nearby streets in accordance with Section 2.05(3) of these regulations.
3. The names and addresses of the applicant(s), the applicant's representative(s), and the owner(s) of the property.
4. The appropriate fees to include those associated with the Act, the Bylaw, and legal noticing.

(3) Public Meeting Process.

(a) The Commission shall hold a public meeting within twenty-one (21) days of the submittal of a complete RDA or by a later date agreed upon by the applicant in writing.

(b) Notice. The Commission shall give notice of the time and place of the public meeting at the expense of the applicant not less than five business days before such meeting, by publication in a newspaper of general circulation in Bolton and by mailing a notice to the applicant; the owner, if different from the applicant; and the appropriate Town Boards to include but not be limited to: Board of Health, Planning Board, Zoning Board of Appeals, Board of Selectmen, and Building Inspector.

(4) Closing the Public Meeting; Issuing the Decision

a) Closing the Meeting. The Commission shall close the public meeting when sufficient information is received and reviewed in order to issue a decision.

(b) Issuing the Decision. The Commission shall issue its Determination within twenty-one (21) days of the closing the public meeting, or by a later date agreed upon by the applicant.

1. Decision Where Land Lies Within a Resource Area. The Commission shall find that the Bylaw applies to the land, or a portion thereof, if it is Resource Area under the Bylaw.

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2. Decision Where Activity May Alter a Resource Area. The Commission shall find that the Bylaw applies to the work, or a portion thereof, if it is an activity subject to these regulations. A Bylaw NOI shall be filed if the Commission makes a positive determination, and all the procedures applicable to the NOI filing shall apply.

3. Decision Whether Activity is Exempted Under the Act. The Commission shall find that the Bylaw does not apply to the work, or a portion thereof, and therefore is not subject to these regulations, if it is an activity listed in Section 1.03 of these regulations.

(5) Appeal of Decision. Any person with standing may appeal a decision of the Commission regarding a Request for Determination of Applicability to Superior Court according to the provisions of Mass. Gen. Laws, c. 249, §4.

2.03 Emergency Certification under the Bylaw

Any single member of the Commission, its agent or employee may certify that the project is an emergency. The criteria and procedures of 310 CMR 10.06 shall apply to such certification.

2.04 Notice of Intent Under the Bylaw

Any person who proposes to perform work within a Resource Area shall submit a Notice of Intent that shall conform to the requirements of the Wetlands Protection Act and 310 CMR 10.00, and of the Bylaw and these regulations. A Notice of Intent form may be obtained from the Commission.

2.05. Filing Procedures for Notices of Intent under the Bylaw

(1) In Hand or Certified Mail. The applicant shall submit, in hand or by certified mail, the Notice of Intent to the Commission.

(2) Filing Requirements. The applicant must submit the original material to the Commission, plus one copy of the following:

(a) A completed Notice of Intent form (the WPA Form 3).

(b) The names and addresses of the record owner(s) and the applicants.

(c) A certified abutters list, meaning those owners of land sharing a common boundary or corner with the site of the proposed activity in any direction including land located across a street, way, creek, river, stream, brook, or canal, or whose properties touch the property, where that Resource Area is contained (e.g., where the Resource Area is a stream or riverfront area, the applicant need only include those properties within 100' from the project site). This list is available from the Bolton Assessors Office.

(d) The appropriate fees (see Section 4.02(2)(a)).

(e) An eight-and five-tenths-inch by eleven-inch reproduction of the USGS quadrangle sheet showing the project locus.

(f) Bylaw Notice of Intent form must include, where applicable:

1. Description of any alteration to flood storage capacity on the site. Include calculations and watershed maps if necessary.

2. Maximum and minimum groundwater elevations. The calendar dates of measurements, samplings, and percolation tests shall be included.

3. Soil characteristics in representative portions of the site.

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4. A runoff plan and calculations using the Rational Method (small areas) or the Modified Soil Cover Complex Method (areas greater than 20 acres) and based on the ten-year, fifty-year, and one-hundred-year flood frequency event period. Calculations shall show existing and proposed runoff conditions for comparative purposes.
  5. Methods to be used to stabilize and maintain any embankments facing any Resource Area(s), or show slope on plans of less than or equal to 3:1.
  6. Methods to control erosion during and after construction.
  7. The Bylaw considers wildlife, passive recreation areas, agriculture, and aquaculture as values of the Resource Areas. The applicant should include a discussion of the effect of the proposed project on these values.
  8. An alternative analysis showing that the proposed project offers the best mitigation measures to assure compliance with the standards of the Bylaw and these regulations over all other possible configurations of the project.
- (3) Plans. Plans shall describe the proposed activity and its effect on the environment. Due regard shall be shown for all natural features such as large trees (i.e., 12 inches, DPH), watercourses, and water bodies, wildlife habitat, and similar community assets. The following items are a *minimum* standard. The applicant is encouraged to submit or may be required to submit, any further information that will assist in the Commission in its review and that is deemed necessary to determine the proposed effect on the Resource Area(s) protected by the Bylaw. The Commission may waive any of these plan requirements for projects the Commission deems insignificant.
- (a) All plans shall be of a maximum scale of one inch equals 40 feet and shall have the title designating the name of the project, location, the name(s) of the person(s) preparing the plans, and the date prepared, including all revision dates. Plans, should be stamped and signed by a registered professional engineer or a registered land surveyor of the Commonwealth of Massachusetts. Pencil notations will not be accepted.
  - (b) Plans must include a delineation of all Resource Areas Under the Bylaw as well as those under the Act and should be clearly marked as indicated below.
    1. Open or flowing water, or vernal pools: light blue
    2. Fresh water wetlands, marshes, wet meadows, bogs, or swamps: green with swamp symbols superimposed
    3. Lands subject to flooding: outline with a dashed medium blue line
  - (c) Alterations. Plans must include a delineation of all alterations proposed in or adjacent to Resource Areas as indicated below:
    1. Areas to be dredged: outlined in black.
    2. Areas to be filled: outlined in brown.
    3. Areas to be altered in any way, other than dredging or filling: outlined in red.
    4. All alterations should be clearly explained in text or footnotes.
  - (d) Other Necessary Information. All plans must show, where applicable the following:
    1. Delineation of the 75-foot Adjacent Upland Resource Area.
    2. Datum shall be stated in NGVD base. The contour interval shall be no greater than two feet.

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3. Existing and final contours and contour interval used, including pond bottom and stream invert contours.
4. Locations, sizes, and slopes of existing and proposed culverts and pipes.
5. Cross-section of all storm water features showing slopes, bank, and bottom treatments.
6. Existing and proposed water storage capacity of the property, including calculations and data on which the capacity is based. If filling is proposed, determine the effect of loss of storage on downstream channels and culverts, and abutting properties.
7. Location and elevation of the bench mark used for surveying.
8. Existing trees, stone walls, fences, buildings, historic sites, archaeologically significant areas, rock ridges, and outcroppings.
9. Invert elevations on catch basins.
10. Proposed on-site pollution control devices, such as hooded catch basins, oil absorption pillows, detention/retention basins, flow dissipaters, or vegetative buffers.
11. Locations and details of erosion control devices.
12. Assessors Map and Lot numbers(s).
13. All wells within 100 feet of any proposed septic system.
14. Whether the property is within an Area of Critical Environmental Concern, a Sole Source Aquifer, Threatened or Endangered Species Habitat, or priority habitat as defined by the Massachusetts Natural Heritage and Endangered Species Program (NHESP).

2.06 Public Hearing Process

The Commission shall hold a public hearing within twenty-one (21) days of the submittal of a completed Notice of Intent, or by a later date if necessary.

(1) Opening the Hearing.

(a) Notice.

1. Duties of Commission. The Commission shall give notice of the time and place of the public hearing at the expense of the applicant not less than five business days before such hearing, by publication in a newspaper of general circulation in Bolton; by mailing a notice to the applicant and to the owner, if different from the applicant; and contacting the appropriate Town Boards: Board of Health, Planning Board, Zoning Board of Appeals, Board of Selectmen, and Building Inspector.

2. Duties of Applicant. The applicant shall obtain notice of the time and place of the public hearing and provide it to all abutters by certified mail or hand delivery and shall provide proof of such notice to the Commission at the beginning of the hearing.

(2) Hearing Process.

(a) Procedure. The Commission determines the order of the presentations and public participation at the public hearing. Said hearing shall be orderly and the Commission may terminate such hearing for cause. The Chair may delegate the responsibility for conducting any hearing to any other Commissioner.

(b) Postponement of Opening the Hearing. The Commission may open the public hearing beyond the twenty-one (21) day-period.

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(c) Additional Information and Submittals. The Commission may require additional information and submittals. Information required by the Commission or information that any party wishes to submit as part of the hearing, must be delivered to the Conservation Commission office no later than 12:00 p.m. on the Thursday preceding the hearing date. Said information shall be submitted in a format that can be easily distributed to the Commission. The Commission, at its sole discretion, may choose to continue the hearing to a later date in order to properly review this information.

(d) Continued Hearings for Notice of Intent Applications. Where the public hearing is continued, the date, time, and place of said continued hearing shall be announced at the hearing to a date and time specific or in the case that the meeting is not held the continued hearing shall be posted at Town Hall to a date and time specific.

(e) Closing the Hearing; Issuing the Decision. The Commission shall close the public hearing upon receiving sufficient information and deliberating upon the same.

1. Significance of Area Subject to Protection. Within twenty-one (21) days of the close of the public hearing, the Commission shall either:

a. Make a decision that the area 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 interests identified in the Bylaw, and shall so notify the applicant in a Bylaw Order as provided in Part Five of these regulations; or

b. Make a decision that the area on which the work is proposed to be done, or which the proposed work will remove, fill, dredge, or alter is significant to any of the interests identified in the Bylaw, and shall so notify the applicant in a Bylaw Order as provided in Part Five of these regulations.

2. Conditions. The Commission shall impose conditions in the Bylaw Order as are necessary for the protection of those areas found to be significant to one or more of the interests identified in the Bylaw.

a. The Commission shall impose conditions upon work or the portion thereof that will, in the judgment of the Commission, result in the filling, dredging, removing, building, within or upon, or otherwise altering a Resource Area.

b. The Commission shall impose conditions setting limits on the quantity and quality of discharge from a point source (both open and closed channel) when said limits are necessary to protect the interests identified in the Bylaw.

3. Work Prohibition and Bylaw Order Denial.

a. The Commission shall prohibit any work or any portion thereof that cannot be conditioned to meet the applicable Performance Standards or has not overcome the presumptions of the Bylaw.

b. If the Commission finds that the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Bylaw, it may issue a Bylaw Order prohibiting the work. The Commission shall specify the information that is lacking and why it is necessary.

c. If the Commission finds that the project in its entirety cannot be conditioned to meet the applicable Performance Standards, the Commission shall issue a Bylaw Order Denial.

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Any person with standing may appeal any decision of the Commission regarding a Notice of Intent to Superior Court according to the provisions of Mass. Gen. Laws, c. 249, §4. A Bylaw Order is not final until the disposition of all court appeals.

2.08 Amendment of Bylaw Order

The Commission must assess necessary modifications to projects that may occur during construction in accordance with the following.

(1) Preliminary Review by Commission. Because each modification is unique, it is impossible to determine in advance how the Commission will address any particular change. Therefore, the applicant will first contact the Commission and explain the modification. The Commission shall determine the appropriate category for the modification.

(2) Categories of Changes.

(a) Minor. Minor changes to a project are modifications that the Commission determines will have no likelihood of an impact or less impact on any interest protected under the Bylaw. Minor changes are within the scope of deviations allowed for the receipt of a Certificate of Compliance. The Commission shall consider the following criteria in making this determination: the extent of modification, the proximity to Resource Areas, and the type of equipment required for the modification. Minor changes need only the authorization from the Commission or its agent as documented in a Memorandum to the file.

(b) Moderate. Moderate changes to a project are modifications that the Commission determines will have some likelihood of an impact on any Resource Area. Moderate changes require an Amended Bylaw Order, which requires a request for a public hearing, payment of a separate filing fee, and notice to the abutters following the same requirements as a request for a Bylaw Order pursuant to a Notice of Intent filing. The following may require an Amended Bylaw Order: a decrease in the distance from the Resource Area, a change that results in an increase in potential for erosion, an alteration of a land form, a change in size and location of structure and appurtenances, an increase in amount of vegetation removed, and activity beyond the limit-of-work.

1. Following receipt of the separate filing fee and completed request for an Amended Bylaw Order, the Commission shall schedule a public hearing.
2. The Commission shall publish notice of such hearing in a local publication and the applicant shall bear the cost of such notice.
3. The Commission shall make a decision on the request for an Amended Bylaw Order following a public hearing.
4. The applicant shall be responsible for recording the Amended Bylaw Order in the Worcester Registry of Deeds with a marginal reference to the original Bylaw Order.
5. If the Commission denies the request to amend the Bylaw Order, the applicant must follow the provisions of the Bylaw Order or file another Notice of Intent.
6. Any Amended Order of Conditions does not extend the date of the life of the order.

(c) Significant. Changes that are not related to the originally permitted activity may require a new request for a Wetlands Bylaw Order in the form of new Notice of Intent, rather than an Amended Bylaw Order. The Commission considers any modification that will significantly increase the adverse impact of the project on any wetland interest protected by the Bylaw as requiring a new filing.

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2.09 Extension of Bylaw Order

A Bylaw Order may be extended for a one-year periods by the Commission in accordance with the provisions of 310 CMR 10.05(8). In addition to the reasons cited in 310 CMR 10.05(8)(b) for denial of the extension, the Commission may deny the extension if new wetland resources have been identified since the original Bylaw Order was issued. Applicant shall request an extension at least 30 days prior to the expiration date of the Order.

2.10. Certificate of Compliance

A Bylaw Certificate of Compliance may be issued separate from a Certificate of Compliance as provided in the Act.

(1) Written Request; Content.

(a) The applicant or owner of the property shall request, in writing, the Commission to issue a Certificate of Compliance.

1. If the original plans for the project had not been stamped by a registered professional engineer, architect, landscape architect, or land surveyor, then a written statement by the applicant certifying that the work has been satisfactorily completed shall accompany the request for a Certificate of Compliance; or

2. If the original plans for the project had been stamped by a registered professional engineer, architect, landscape architect, or land surveyor, then a written statement by such a professional person certifying substantial compliance with the Bylaw Order and plans and describing what deviation, if any, exists from the plans approved in the Bylaw Order shall accompany the request for a Certificate of Compliance.

3. As-Built Plan. For projects with original plans stamped by a registered professional engineer, architect, landscape architect, or land surveyor, a certified "as-built" plan shall be provided to the Commission as part of the request for a Certificate of Compliance. The as-built plan shall include but not be limited to: location of all buffer zone work, final grades, crossing locations, culvert inlet and outlet elevations, utility placement, replication areas, and any additional information necessary to aid the Commission's evaluation of the project before issuance of a Certificate of Compliance for the work under this Order. Where possible, as-built plans shall be submitted in a digital format such as a dbf, tif or autocad drawings in the Mass GIS state plane coordinate system.

(b) If needed, a request for a letter to the bank commenting on the status of the work and whether the project is in compliance to date may be issued after either (a) a written statement by the applicant, or (b) as-built plans signed and stamped by a registered professional engineer, architect, landscape architect, or land surveyor, or individual acceptable to the Commission, has been submitted to an agent of the Commission. The as-built plans must be accompanied by a written statement by such a professional engineer, architect, landscape architect, or land surveyor, or individual acceptable to the Commission, certifying substantial compliance with the plans and setting forth what deviation, if any, exists from the plans approved in the Order. In the case of wetland replication work, a letter from a competent source (i.e., wetland specialist) should be submitted providing a status report of the condition of the replication/restoration area. After receipt of the above and prior to the issuance of the letter, a site visit should be made with the applicant and the engineer (or other professional) in attendance.

(2) Review Process.

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(a) Time Limitation. Upon written request by the applicant or owner of the property, the Commission shall issue or refuse to issue a Certificate of Compliance within twenty-one (21) days of receipt of a completed request.

(b) Site Inspection. Before the Commission may act upon a Certificate of Compliance, a member of the Commission or its agent, in the presence of the applicant or the applicant's agent, shall make a site inspection.

(3) Decision.

The Commission shall make its decision at a public meeting.

(a) Denial. If the Commission determines, after review and inspection, that the work has not been done in compliance with the Bylaw Order, it shall refuse to issue a Certificate of Compliance.

1. The Commission shall issue such refusal within twenty-one (21) days of receipt of a request for a Certificate.

2. Such refusal shall be in writing, shall specify the reasons for the denial, and identify the steps to be taken to come into compliance.

(b) Partial. If the Commission issues a Certificate of Compliance for part of the work, then the Certificate shall be titled "Partial Certificate of Compliance" and shall specify to what portion of the work it applies.

(c) Continuing Conditions. If the Bylaw Order contains conditions that continue past the completion of the work, the Commission shall specify which conditions shall continue in the Certificate of Compliance. Examples of such conditions are operation and maintenance and monitoring.

(4) Recording. The Certificate of Compliance shall be recorded in the Worcester District Registry of Deeds or in the Land Court, whichever is appropriate. Certification of such recording shall be sent to the Commission.

2.11. Enforcement Procedures

The following steps are to be followed for every case of alleged violation when there has been no filing made with said Commission. The Commission reserves the right to proceed directly to step 3 if there has been a filing made, a Determination of Applicability or an Order Of Conditions has already been issued.

Steps to be followed in pursuing an alleged violation:

(1) An informal telephone call to the property owner and the alleged violator, if different from the property owner and known to the Commission, notifying them of the alleged violation, asking them to immediately stop the activity and contact the Commission. The Commission will evaluate the violation and provide guidance on rectification.

If there is no response (i.e., the property owner/alleged violator fails to contact the Commission) within 24 hours then;

(2) A certified letter, "Violation Notice" is to be sent requesting the alleged violator to immediately stop the activity and contact the Commission. At a minimum the Violation Notice shall contain the extent and type of activity that is observed in violation, corrective measures, and deadlines for compliance. The Violation Notice should note the Commission's authority and the consequences of not responding.

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If there is no response within 5 business days of receipt of written issuance of that guidance, or if the alleged violator fails to stop the activity; then;

(3) An Enforcement Order/Cease and Desist is issued to the property owner and the alleged violator, if different from the property owner and known to the Commission, for the activity ordering the property owner to contact the Commission within 48 hours. If the activity is a violation of the Wetlands By-laws 1.18.1 the Order will include a statement that explains that 5 business days after receipt of the Order, a fine of \$300.00 per violation, per day may be assessed. Said fine shall not be assessed if the property owner and the alleged violator comply with the Order.

Upon notice of appeal of the fine the Commission shall not issue any additional fines for the activity or violation. The appeal of the fine shall not negate compliance with the Enforcement Order. The Commission will abide by the ruling of the local district court.

**PART THREE: PERFORMANCE STANDARDS FOR AREAS PROTECTED UNDER THE BYLAW**

**3.01 Protected Resource Interests and Performance Standards**

The Resource Areas under the Bylaw function to protect those Resource Interests specified in Section 1.01.B.2 of these regulations.

(1) Performance Standards.

(a) The Commission must find that any proposed activity shall not impair in any manner the ability of the Resource Area to perform any of the its functions that protect relevant Resource Interests.

(b) The Commission shall not permit any activity, other than the maintenance of an already existing structure, that will result in building within or upon, removing, filling, or otherwise altering a Resource Area, except for activity that the Commission allows under a Bylaw Order of Condition and, in appropriate circumstances, under a Bylaw Determination of Applicability.

**3.02 Adjacent Upland Resource Area**

(1) Preamble.

In earlier versions of the Wetlands Bylaw the Adjacent Upland Resource Area (AURA) was part of "land within 100 feet of a resource area." In May of 2005, the Town revised the Wetlands Bylaw making the first 25 feet from wetlands, excepting riverfront areas (RFA's), part of the wetland resource area and the remaining 75 feet the upland resource area or AURA. Land extending between 25 and 100 feet from wetland resource areas, (excepting RFA's which extend 200 feet from the top of bank or mean annual high water), provides critical functions that protect wetland characteristics and values in addition to providing important habitat. AURA's prevent, either immediately or overtime, excessive nutrient runoff, erosion, sedimentation and siltation, loss of groundwater recharge, poor water quality, changes to vegetation, changes to wildlife habitat. In addition, they filter chemical pollutants and moderate temperatures. The AURA is the core habitat for many semi-aquatic and terrestrial "ecotone" species. They are essential for the survival of a number of species and preservation of biological diversity. Growing research suggests that work and/or alteration within 100 feet of wetlands should be avoided and reasonable alternatives pursued.<sup>1</sup>

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<sup>1</sup> National Wetlands Newsletter, vol. 23. no. 4 Copyright 2001 Environmental Law Institute, Washington D.C., USA

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(2) Presumptions.

The Adjacent Upland Resource Areas (AURA's) are important to the protection of wetland interests. The AURA's are presumed to protect private and/or public water supplies; protect groundwater; protect water quality; protect fisheries; protect wildlife habitat; preserve rare species habitat including rare plant species; provide flood control; prevent storm damage; prevent pollution and sedimentation; provide natural resource services and public services, and are best left in an undisturbed and natural state. However, the Commission may find that temporary or limited disturbance is appropriate when the applicant can demonstrate to the Commission's satisfaction that the proposed work or activity will not affect wetland and habitat values singularly or cumulatively and that reasonable alternatives to the proposed work or activity do not exist.

(3) Performance Standards.

In addition to the performance standards specified in Section 3.01, the Commission must find:

- (a) Mitigation shall be commensurate with the size and scope of the project.
- (b) Replication shall be within the reach of the wetland system and shall improve Bylaw resource interests.
- (c) Replication and Restoration of AURA's shall be stabilized and functional within two growing seasons from when they are disturbed.
- (d) Any portions of the AURA disturbed by temporary or limited action shall be at a minimum restored to the original condition of the site within two growing seasons from when they are disturbed.
  1. Proposed work shall not cause a significant adverse effect or cumulative adverse effect on the interests identified
  2. Notwithstanding the above provisions, no project may be permitted which will have any adverse effect on a rare species habitat.

3.03 Banks (Beaches)

(1) Preamble.

Banks and Beaches are resource areas, whether bordering on surface waters or isolated from surfaced waters, are subject to protection under the Bolton Wetland Bylaw. Banks are likely to be significant to public or private water supply, to ground water supply, to flood and storm damage control, to the prevention of pollution and to the protection of fisheries and wildlife habitat. Residents and visitors of Bolton primarily use Beaches for passive recreation such as fishing, bird watching, sunbathing, and picnicking.

Banks are an area where ground water discharges to the surface and where, under some circumstances, surface water recharges the ground water. Where Banks are partially or totally vegetated, the vegetation serves to maintain the Bank's stability by holding soil in place and reducing erosion.

Naturalized vegetation on a bank aids in pollution prevention and in the protection of water quality by capturing sediment to which pollutants such as phosphorus, petrochemicals, pathogens and some heavy metals are known to adhere. Excessive amounts of phosphorus fertilize noxious aquatic weeds and promote algal blooms. Vegetation also buffers the temperature of storm water runoff, which might otherwise alter chemical and biological composition of the wetland.

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Banks provide wildlife habitat, offering cover for wildlife and a transitional area for food sourcing. Banks may play a role in the propagation of wildlife by providing nesting or breeding sites for birds, reptiles and mammals. Overhanging vegetation along the waterline serves to provide shade, thereby moderating water temperature.

Banks act to confine floodwaters during storms, preventing the spread of water to adjacent land. Land within 100 feet of a bank is likely to be significant to the protection and maintenance of the bank, and therefore to the protection of the interests which these resource areas serve to protect.

(2) Presumptions.

The Commission shall presume that all these areas are significant to protect the following resource interests: public or private water supply, to ground water supply, to flood and storm damage control, to the prevention of pollution and sedimentation and to the protection of fisheries, wildlife habitat, rare species habitat, rare plant species, water quality, adjoining land areas, and recreation deemed important to the community.

Applicants must avoid altering these areas wherever feasible, shall minimize alteration, or where alteration is unavoidable, provide full mitigation.

The presumption is rebuttable with a preponderance of evidence.

(3) Performance Standards.

In addition to the performance standards specified in Section 3.01, the Commission must find that the proposed activity will not impair in any manner the following:

- (a) No herbicides or pesticides are permitted from use within 100 feet of the resource area.
- (b) A proposed project shall be permitted only if there is no adverse effect on bank stability, bank height, ground water and surface water quality, and the capability of the bank to provide habitat for fisheries and/or wildlife.
- (c) Proposed work shall not cause a significant adverse effect or cumulative adverse effect on the interests identified.

Notwithstanding the above provisions, no project may be permitted which will have any adverse effect on a rare species habitat.

3.04 Lakes and Ponds (Reservoirs)

(1) Preamble.

Lakes, Ponds and Reservoirs are resource areas protected by the Bylaw and are significant in providing important natural functions including ground water recharge, attenuation of pollutants, and wildlife and fisheries habitat, and they are a destination for residents and visitors seeking outdoor recreation opportunities including beaches, bird watching, swimming, ice skating, fishing and other water sports.

Where the land under water bodies is composed of pervious material, such land represents a point of exchange between surface and groundwater. Depending upon the hydrological conditions and water levels at a given time, these areas may serve as recharge or discharge points, or both, with groundwater. An area may serve as recharge area at one season and a discharge point at another time. This allows pollutants and nutrients easy access into private wells or the general groundwater supply. The physical nature of land under water bodies is highly variable, ranging from deep organic and fine sedimentary deposits to gravel and large rocks. The organic soils and

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sediments play an important role in the process of detaining and removing dissolved and particulate nutrients from the surface water above. These also serve as traps for toxic substances.

Land under water bodies in conjunction with banks serves to confine floodwater 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 that causes water to frequently spread out over a larger area at a lower depth increases flooding. Additionally, it results in an elevation of water temperatures and decrease in habitat, both of which are detrimental to fisheries and other wildlife, particularly during periods of warm weather and low flows. It may also flood waterfowl nesting sites which otherwise would not be disturbed. Land under ponds and lakes is vital to a large assortment of warm water fish during spawning periods. Species such as large-mouth bass (*Micropterus salmoides*), chain pickerel (*esox niger*), blue gills (*Lepomis macrochirus*), pumpkinseed (*Lepomis gibbosus*), black crappie (*Pomoxis nigromaculatus*), and rock bass (*Ambloplites rupestris*) build nests on the lake and bottom substrates within which they shed and fertilize their eggs. Land within 100 feet of any bank abutting land under a water body is significant to the protection of the values, which these water bodies serve to protect.

Characteristics of water bodies, which are critical to protection of wildlife and fisheries, include water circulation and flushing rates, distribution of sediment grain size, water quality (including concentrations of dissolved oxygen, turbidity, nutrients, temperature, and pollutants). Leaving ponds and the land bordering ponds in an unobstructed state may be important to recreational swimming, fishing, and boating. Water bodies and the area around them also provide other recreational opportunities such as wildlife observation. Vegetated borders of ponds are important in reducing shoreline erosion and storm damage by dissipating the high energy of storm waves and by anchoring the sediments. Water bodies provide important feeding and/or drinking areas for many types of aquatic wildlife, birds, and animals. Ponds and other water bodies provide habitat for insects, which serve as food by several species of birds, particularly swallows. Ducks, geese, swans, and herons all use water bodies and surrounding borders for feeding, shelter, and/or nesting areas. Many other birds, animals, reptiles, and amphibians use land under water bodies, water bodies, and the borders of water bodies for parts of their life cycles. Such areas may be suitable for aquaculture of fresh aquatic plants for animals. Changes in sediments, water quality, water level, or species composition of food sources or ground cover may be detrimental to any of the above wildlife and to any rare species of plants or animals, which occur in water bodies.

Ponds and the lands surrounding them often provide important aesthetic wetland scenic views, particularly when they are in a natural condition. Ponds provide recreational swimming, boating, fishing, and sightseeing opportunities. The enclosed area and limited size of most fresh water bodies in the town of Bolton make them particularly sensitive to pollution or nutrient inputs. These inputs can change the plant and animal species composition of the water body and thus can be detrimental to fish and wildlife. Bioaccumulation of pollutants through food webs can also create dangerous levels of pollutants or toxins for wildlife and humans.

(2) Presumptions.

Whenever a proposed project involves removing, filling, dredging, building upon, degrading, polluting, discharging into, or otherwise altering upon lakes, ponds, reservoirs, or the land beneath them or land within a minimum of 100 feet from such land, the Commission shall presume that all these areas are significant to protect the following resource interests: flood control, storm damage prevention, private and/or public water supplies, groundwater, water quality, prevention of pollution and sedimentation, fisheries, wildlife habitat, rare species habitat (including rare plant species), aquaculture, adjoining land areas, and recreation deemed important to the community. The presumption may be overcome only by a preponderance of the evidence showing the resource area does not play a role in the protection of these interests.

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(3) Performance Standards.

When a Lake, Pond, or Reservoir is determined to be significant to a wetland interest, the following regulations apply:

- (a) Motors that utilize fossil fuels are not allowed on any Lake, Pond or Reservoir in the Town of Bolton unless used for emergency purposes by certified emergency personnel (police, fire, first responder)
- (b) All boats must be thoroughly washed, cleaned, and inspected for weeds and other non-native plants and species before being launched on any Bolton Pond, Lake, or Reservoir.
- (c) The Commission may impose such additional requirements as are necessary to protect the wetland interests protected under the Bylaw.
- (d) No work or action shall be permitted that allows for the introduction of non-native species of plants, animals, or fish
- (e) No draw down activities may be permitted without permit from the Commission, and no draw down activities will be permitted that affect fish or wildlife.
- (f) Proposed work shall not cause a significant adverse effect or cumulative adverse effect on the interests identified.
- (g) Notwithstanding the above provisions, no project may be permitted which will have any adverse effect on a rare species habitat.

3.05 Lands Subject to Flooding or Inundation by Ground Water or Surface Water

(1) Preamble.

Lands subject to Flooding or Inundation by Ground Water or Surface Water can be either bordering a water body or isolated.

Bordering lands subject to flooding or inundation by ground water or surface water provide temporary storage areas for floodwater, which has overtopped the bank of the main channel of a river, stream, or creek or the basin of a pond, lake, vernal pool or isolated wetland. During periods of stormwater run-off, floodwaters are both retained (i.e., slowly released through evaporation and percolation) and detained (slowly released through surface discharge). Overtime, incremental filling of these areas causes displacement of flooding, effects and increases the extent and level of flooding by eliminating flood storage volume or by restricting flows, thereby causing increases in damage to public and private properties due to flooding and erosion. Pollutants or contaminants located on bordering lands subject to flooding or inundation may be washed into surface waters and subsequently into groundwater, or percolate directly into groundwater. Sources of pollutants within these areas will have widespread effect on wetland and adjacent upland resource area values. Where bordering lands subject to flooding and inundation by ground water or surface water are composed of mineral soils they provide important areas for groundwater recharge.

Bordering lands subject to flooding and inundation by ground water or surface water provides an important source of microscopic plant and animal material, which enriches the nearby water body and serves as the basis for a food web which supports fish and wildlife. Bordering lands subject to flooding and inundation by ground water or surface water provides important wildlife habitat and wildlife access to surface water resources. Bordering lands subject to flooding and inundation by ground water or surface water are often low and level and thus help prevent erosion of soil and sedimentation of water bodies from surface water run-off. The topography and location of bordering lands subject to flooding and inundation by ground water or surface water provide flood

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control capabilities. Bordering lands subject to flooding and inundation by ground water or surface water are often near, adjacent to or part of farming activities.

Isolated lands subject to flooding or inundation by ground water or surface water provide temporary storage area where run-off and high groundwater collect and slowly evaporate or percolate into the ground. These areas, often small, are usually numerous and thus very important in preventing more serious flooding somewhere else. Filling causes lateral displacement of ponded water or increased run-off onto contiguous properties, which may result in damage to those properties, which were not significantly affected. The additive nature of the flood protection provided by isolated lands subject to flooding or inundation by ground water or surface water and the fact that filling one may redirect water so as to radically change watershed sizes means that small changes in one area may have a direct impact on another area. Isolated lands subject to flooding or inundation by ground water or surface water help prevent erosion by breaking up watersheds so that run-off does not become so great as to have enough force to erode soil and cause sedimentation. Areas where the isolated lands subject to flooding or inundation by ground water or surface water is pervious are likely to serve as significant recharge points to the ground water aquifer. Contamination in these areas may easily migrate into ground water and neighboring wells. Isolated lands subject to flooding or inundation by ground water or surface water covered by a mat of organic peat or muck may help remove contaminants before the floodwater enters the ground water.

Isolated lands subject to flooding or inundation by ground water or surface water may provide important habitat for amphibians, particularly during their breeding period and some rare species. It may also provide important habitat for wildlife in particular waterfowl. The degree of isolation from human-caused disturbances is a desirable feature of land subject to flooding, which is a critical element for the protection of wildlife, rare plant and animal species. Both bordering and isolated lands subject to flooding and inundation by ground water or surface water provide opportunities for passive recreational activities such as hiking, wildlife viewing or bird watching.

(2) Presumptions.

**Bordering Lands Subject to Flooding or Inundation by Ground Water or Surface Water.** The Bolton Conservation Commission presumes that whenever work or an activity is proposed in Lands Subject to Flooding or Inundation by Ground Water or Surface Water that Such areas are likely to be significant to flood control, public and private water supplies, groundwater, water quality, storm damage prevention, prevention of pollution and sedimentation, fisheries, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, adjoining land areas and recreation.

**Isolated Lands Subject to Flooding or Inundation by Ground Water or Surface Water.** The Bolton Conservation Commission presumes that whenever work or an activity is proposed in Lands Subject to Flooding or Inundation by Ground Water or Surface Water that Such areas are likely to be significant to flood control, public and private water supplies, groundwater, water quality, storm damage prevention, prevention of pollution and sedimentation, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, adjoining land areas and recreation.

(3) Performance Standards.

The following performance standards are in addition to those identified in the Massachusetts Wetlands Protection Act regulations 10.57(4)(a) and (b):

- (a) No project shall reduce the ability of the land to absorb and contain floodwaters.
- (b) No project shall displace or direct floodwaters to areas beyond Lands Subject to Flooding or Inundation by Ground Water or Surface Water.

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(c) Compensatory storage shall be provided within the same immediate watershed of the Lands Subject to Flooding or Inundation by Ground Water or Surface Water.

(d) Projects shall not obstruct floodways within Lands Subject to Flooding or Inundation by Ground Water or Surface Water.

(e) Any structure permitted in Lands Subject to Flooding or Inundation by Ground Water or Surface Water shall be adequately anchored to prevent floatation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls and any mechanical or utility equipment in a structure must be elevated to or above the flood levels of the area.

(f) Proposed work shall not cause a significant adverse effect or cumulative adverse effect on the interests identified.

(g) Notwithstanding the above provisions, no project may be permitted which will have any adverse effect on a rare species habitat.

3.06 Freshwater Seeps

(1) Preamble.

A freshwater seep is a place where water emerges to the surface, often at a hillside or bank, and without perceptible current. A seep may be perennial or intermittent.

The area around a seep provides for groundwater recharge. Seeps provide a steady source of water for wildlife. Seep habitats can harbor an unusual collection of small aquatic plants and animals not normally found in other freshwater habitats. Removal of vegetation around seeps could increase temperatures and reduce leaf and moss cover that provides habitat for these life forms.

(2) Presumptions.

The Commission shall presume that seeps are significant to protect the following resource interests: public and private water supply, groundwater, wildlife habitat, and rare species habitat.

(3) Performance Standards.

(a) No seep shall be covered over or redirected.

(b) No removal of vegetation, litter, moss from area within seep boundaries.

(c) No removal of tree cover or other permanent shading that affects seep characteristics, even if this is outside the seep boundaries.

(d) Proposed work shall not cause a significant adverse effect or cumulative adverse effect on the interests identified.

(e) Notwithstanding the above provisions, no project may be permitted which will have any adverse effect on a rare species habitat.

3.07 Vernal Pool Habitat

(1) Preamble.

A Vernal Pool Habitat is an essential breeding habitat for amphibian, reptile, or other vernal pool community species and provides other extremely important functions during the non-breeding season for a variety of these species as well as other wildlife. Vernal pools are temporary bodies of freshwater that provide critical habitat for many vertebrate and invertebrate wildlife species.

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Vernal pools are found across the landscape where small woodland depressions, swales or kettle holes collect spring runoff or intercept seasonally high groundwater tables. They may not be connected to other wetlands. Any wetland resource exhibiting these characteristics can be considered a vernal pool and may or may not be certified.

Vernal pools constitute a unique and increasingly vulnerable type of wetland. They are inhabited by many species of wildlife, some of which are totally dependent on vernal pools for their survival. The lack of fish populations as predators for the eggs and larvae of these wildlife species allows for their successful breeding in these vernal pools. They are also an important habitat resource for many birds, mammals, reptiles and amphibians, including many state listed rare species. Vernal pools are often a resource habitat for state listed endangered species and are also protected in the Massachusetts Endangered Species Act (MESA), 321CMR 10.00 which is administered by the MA Division of Fisheries and Wildlife (DFW) Natural Heritage & Endangered Species Program (NHESP).

(2) Presumptions.

Rebuttable Presumption.

(a) Presumption. Where a freshwater wetland's physical characteristics conform to those defined for vernal pool habitat, the Conservation Commission shall presume the existence of a vernal pool and vernal pool habitat. This presumption is unconditional and shall be made notwithstanding certification or lack thereof by the Massachusetts Division of Wildlife and Fisheries and notwithstanding the site might not be located within another Resource Area.

(b) Rebuttal Criteria. The Vernal Pool Habitat presumption may be overcome only upon a showing by clear and convincing credible evidence that in the judgment of the Commission demonstrates that such resource area does not provide, or cannot provide, vernal pool habitat functions.

(c) Evidence Collection. Evidence that the vernal pool is a thriving active habitat could include, without limitation, several months of pH and dissolved oxygen measurements yielding values compatible with amphibian or reptile breeding.

(d) Timing of Evidence collection. Many of the indicators of vernal pool habitat are seasonal. Accordingly, in the case of challenges to the presumption of vernal pool habitat the Conservation Commission may require that the determination be postponed until the appropriate time period consistent with the evidence being presented. The Commission may also require its own site visits as necessary to confirm the evidence. Evidence gathered at inappropriate times could be considered faulty or invalid

(3) Performance Standards.

(a) Any discharge of solid or liquid fill, storm drainage from roads, driveways, or rooftops into or within the boundaries of the pool or its habitat is prohibited.

(b) The removal of trees can be limited to the cutting of no more than 50% of trees within 50 feet of a vernal pool. It is also required that trees or treetops not be felled into vernal pools and the use of pools for staging areas or skidder trails is prohibited.

(c) Septic tanks and distribution boxes must be located a minimum of 50' and the leaching field a minimum of 100' from the boundary of a vernal pool.

(d) The Conservation Commission may not allow any work within 100 feet of a Vernal Pool Habitat that includes or abuts an estimated or priority habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage and Endangered Species Program, and the Commission shall not consider a variance for such activity.

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(e). Vernal pools need not to be certified by the DFW NHESP to be protected under this by law regulation.

**PART FOUR: FILING AND SITE VISIT REQUIREMENTS**

4.01 Forms and Policies

The forms and policy statements of the Commission are on file in the office of the Commission at Town Hall and may be obtained during normal business hours.

4.02 Filing Fees

(1) Rules.

- (a) All Bylaw fees are payable at the time of application and are nonrefundable.
- (b) The Commission shall calculate Bylaw fees according to the schedule in Section 4.02(2).
- (c) Town, county, state, and federal projects are exempt from the filing fee.
- (d) Failure to comply with the Bylaw within the timeframe specified in any official notification shall result in fees twice those normally assessed.

(2) Fee Schedule

(a) Notice of Intent (NOI) Categories and Fees

PROJECT CATEGORY

DESCRIPTION

Category 1

Fee per activity:

Bolton: \$165.00

- a. Work on single-family lot, addition, pool, etc.
- b. Site work without a house
- c. Control vegetation
- d. Resource Area improvement, mitigation
- e. Work on septic system separate from building; new only
- f. Monitoring well activities minus roadway
- g. New agricultural or aquaculture projects

Category 2

Fee per activity:

Bolton: \$325.00

- a. Construction of single family house
- b. Parking lot construction
- c. Beach nourishment
- d. Electric generating facility activities
- e. Inland limited projects minus road crossings and agriculture
- f. Each crossing for driveway to single family house
- g. Each project source (storm drain) discharge

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- h. Control vegetation in development
- i. Water level variations
- j. Any other activity not in Category 1, 3, 4, 5, or 6
- k. Water supply exploration

Category 3

Fee per activity:

Bolton: \$755.00

- a. Site preparation (for development) beyond Notice of Intent scope
- b. Each building (for development) including site
- c. Road construction not crossings or driveways
- d. Hazardous cleanup
- e. Water supply development

Category 4

Fee per activity:

Bolton: \$1615.00

- a. Each crossing for development or commercial road
- b. Man-made dam, sluiceway, tidegate (safety) work
- c. Landfill operations/closures
- d. Sand and gravel operations
- e. Railroad line construction
- f. Bridge construction
- g. Hazardous waste alterations to Resource Areas
- h. Dredging
- i. Package treatment plant and discharge
- j. Airport tree clearing
- k.. Oil and/or hazardous material release response actions

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Category 5

Fee per activity: Docks, piers, revetments, dikes, etc. (inland).  
Bolton: \$100 (1 to 25 feet)  
          \$200 (25 to 50 feet)  
          \$300 (50 to 75 feet)  
          \$600 (75 to 150 feet)  
          \$2000 (150 feet and more)

Category 6

Fee per activity: Fee is additional 50% of fee calculated thus for projects within the Riverfront Area.  
Bolton: additional 50% of calculated fee

Category 7

Fee per activity: Fee is additional 100% (double) of fee calculated thus for After-the-Fact filings.  
Bolton: additional 100% of calculated fee

(b) Amended Bylaw Orders. Twenty-five percent (25%) of the original filing fee.

(c) Extensions.

- a. Single Family Dwelling or Minor Project: \$75.00
- b. Other: \$150.00

(e) Certificates of Compliance.

- a. 25% of the original filing fee
- b. Letter to bank (not notarized: \$50.00; notarized: \$60.00)

(f) Request for Determination of Applicability. \$45.00

4.03 Consulting Fees

As provided by GL Ch. 44 sec. 53G, the Bolton Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of the Bolton Wetlands Bylaw (1.18), or regulation, as they may be amended or enacted from time to time.

Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. The consultant shall be chosen by, and report on to, the Commission and/or its Administrator.

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The Conservation Commission shall give written notice to the applicant of the selection of an outside consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five (5) days of the date notice is given.

Funds received by the Conservation Commission pursuant to these rules shall be deposited with the town treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriation as provided in GL Ch. 44 sec. 53G. Expenditures from this account shall be made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant.

The fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay or appeal the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to deny the permit application.

The applicant may appeal the selection of the outside consultant to the Board of Selectmen, who may disqualify the outside consultant selected only on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the Board of Selectmen and a copy received by the Conservation Commission, so as to be received within ten (10) calendar days of the date consultant fees were requested by the Conservation Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

4.04 Site Visit; Marking Proposed Structures; Delineating Wetland Boundaries

- (1) Before the Commission will make a site inspection, the applicant or his representative must provide directions to the property and, at the direction of the Commission, shall perform the following tasks, including but not limited to:
  - a. Ensure the safety of the Commission. (i.e. dogs shall not be loose)
  - b. Stake or flag the corners of houses or other structure(s) closest to the Resource Area.
  - c. Stake the septic tank and the leaching field location.
  - d. Stake or flag the limit of work within the Resource Areas.
  - e. Post the lot number or house number.
  - f. Delineate all areas subject to protection under the Bylaw and Resource Areas.
  - g. Center line of the driveway or roadway.
  - h. Identify the location of the stockpile area.
  - i. Identify the location of erosion controls.
- (2) Failure to have (complied with a –i) may result in the Commission refusing to review the proposed project and denial of the proposed project.