

WATER RESOURCES PROTECTION BYLAW
Chapter XVIII of Town of Wenham Bylaws
REGULATIONS

PART 1: GENERAL REGULATIONS (Effective 11/28/1998, revised through May 10, 2010)

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PART 1: GENERAL REGULATIONS

10.01 Introduction and Purpose

(1) Introduction.

These Regulations are promulgated by the Wenham Conservation Commission pursuant to the authority granted to it under Wenham General Laws Chapter XVIII, the Water Resources Protection Bylaw (hereinafter referred to as the Bylaw). These Regulations shall complement the Bylaw, and shall have the force of law upon their effective date.

Part 1 of these Regulations provides definitions and procedures. Except where otherwise stated in the Bylaw or in the rules and regulations promulgated under the Bylaw, the definitions, procedures, and performance standards of the Wetlands Protection Act, M.G.L. Chapter 131, section 40 and associated Regulations, 310 CMR 10.00, et seq. as amended from time to time, shall apply additionally to these regulations.

(2) Purpose.

The purpose of these regulations is to define and clarify the public review procedures and decision-making process that the Conservation Commission utilizes when it regulates activities affecting Areas Subject to Protection Under the Bylaw by establishing standard definitions and uniform procedures by which the Conservation Commission may carry out its responsibilities under the Bylaw. These regulations are intended to clarify but not expand, extend, modify, or replace any provision of the Wenham Water Resource Protection Bylaw.

10.02 Statement of Jurisdiction

(1) Areas Subject to Protection Under the Bylaw.

The following areas are subject to protection under the Bylaw:

(a) Any and all freshwater wetlands as determined by vegetational community, soil composition, or hydrologic regime, including, but not limited to, any:

1. marsh;
2. wet meadow;
3. bog;
4. swamp; and/or
5. vernal pool

(b) Any and all waterways or waterbodies, including any:

1. lake;
2. stream, whether it be intermittent or continuous, natural or man-made;
3. river;
4. pond, whether it be intermittent or continuous, natural or man-made; and
5. reservoir

(c) Land under such waterbodies and waterways listed above;

(d) Any bank;

(e) Any beach;

(f) Any land subject to flooding or inundation by groundwater, surface water or storm water; and

(g) Any area that qualifies as an Adjacent Upland Resource Area, as that term is defined by the Bylaw and 100 CCR: 10.04.

(2) Activities Subject to Regulation Under the Bylaw.

(a) Activities Within the Areas Subject to Protection under the Bylaw.

Any activity proposed or undertaken within an area specified in 100 CCR:10.02(1) that will remove, fill, dredge, discharge into, build upon, otherwise alter, pollute, or degrade that area is subject to regulation under the Bylaw and requires the filing and approval by the Commission of an Application for Permit (Notice of Intent) through the issuance of an Order of Conditions unless otherwise addressed through a Request for Determination of Applicability or an Abbreviated Notice of Resource Area Delineation.

(b) Activities Outside the Areas Subject to Protection under the Bylaw.

Any activity proposed or undertaken outside the areas specified in 100 CCR: 10.02(1) is not subject to regulation under the Bylaw and does not require the filing of an Application for Permit (Notice of Intent) unless it is reasonably foreseeable that the activity will alter, pollute or degrade an area subject to regulation under the Bylaw.

In the event that the issuing authority determines that such activity has altered or is likely to alter, pollute or degrade an Area Subject to Protection Under the Bylaw, after hearing in accordance with procedures set forth herein, it shall impose such conditions on the activity or any portion thereof as it deems necessary to protect the area in accordance with the values of the Bylaw. Any action that alters an Area Subject to Protection under the Bylaw without first obtaining an Order of Conditions or Negative Determination may be subject to an enforcement action.

10.03 General Provisions.

(1) Burden of Proof.

(a) Any person who files an Application for Permit (Notice of Intent) to perform any work within an area subject to jurisdiction under Section 2 of the Bylaw and 100 CCR 10.02(1) has the burden of demonstrating to the Commission that:

1. the area is not significant to the protection of any of the values identified in the Bylaw; or
2. the proposed work will contribute to the protection of any of the values identified in the Bylaw.

(2) Presumption Concerning Title 5 of the State Environmental Code.

(a) A subsurface sewage disposal system that is to be constructed in compliance with the requirements of 310 CMR 15.000 *Subsurface Disposal of Sanitary Sewage (Title 5)*, or more stringent Wenham Board of Health requirements, shall be presumed to protect the interests identified in the Bylaw when all components of that system are located more than 100 feet in a horizontal direction from the boundary of any area subject to protection under this Bylaw identified in CCR 10.02(1) (a)–(f). Depending on factors including the physical characteristics of the site and the proposed location of the components of the subsurface sewage disposal system, the Commission may allow a setback of less than 100 feet horizontally, but not less than 50 feet, from these areas. These factors include, but are not limited to the, the following:

1. slope;
2. soil characteristics;
3. type of vegetation;
4. surface hydrology;

5. the size of the Area Subject to Protection Under the Bylaw, Adjacent Upland Resource Area and surrounding watershed as compared to the size of the components within 100 feet of the areas subject to protection;
6. the location of the Area Subject to Protection Under the Bylaw within the watershed; and
7. whether the Area Subject to Protection Under the Bylaw is an Outstanding Resource Water pursuant to 314 CMR 4.06.

Where the Commission finds that it is not technically or economically feasible to locate the subsurface sewage disposal system more than 50 feet from areas identified in this section CCR 10.03(a), it may in its sole discretion allow placement of the subsurface disposal system components within 50 feet of those areas upon a filing of a request for a variance from these regulations.

- (b) To protect wildlife habitat within riverfront areas, the soil absorption system shall not be located within 100 feet of the mean annual high-water line unless there is no alternative location on the lot that conforms to 310 CMR 15.000 without requiring a variance as determined by the Wenham Board of Health, with less adverse impacts on resource areas.

This presumption, however, shall apply only to impacts of the discharge from a sewage disposal system, and not to the impacts from construction of that system, such as erosion and siltation from the excavation, placement of fill, or removal of vegetation. Impacts from construction shall be minimized by the placement of erosion and sedimentation controls during excavation, limiting the placement of fill, confining the removal of vegetation to that necessary for the footprint of the system, and taking other measures deemed necessary by the Commission.

The setback distance specified above shall be determined by measuring from the boundary of the area in question, or from the contour at the mean annual flood elevation in inland areas, whichever is further from the water body.

The setback distance specified above shall not be required for the renovation or replacement (but is required for the enlargement) of septic systems constructed prior to the effective date of 310 CMR 10.00, provided no feasible alternative location is available on the lot and such work has been approved by the Wenham Board of Health and the Commission, as required by law.

This presumption may be overcome only by credible evidence from a competent source that compliance with 310 CMR 15.000: *Subsurface Disposal of Sanitary Sewage (Title 5)* or more stringent local requirements will not protect the interests identified in M.G.L. c. 131, § 40.

- (3) Presumption of Significance. Each Area Subject to Protection Under the Bylaw is presumed to be significant to one or more of the values identified in the Bylaw.

(4) Vernal Pool Habitat

The Bylaw presumes that a vernal pool habitat exists if a wetland's physical characteristics conform with those defined for vernal pools in Section 9 (Definitions) of the Bylaw:

“The term ‘vernal pool’ shall include, in addition to scientific definitions found in the Regulations under the Wetland Protection Act, M.G.L. c.131, §40, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, hold water for a minimum of two continuous months during the Spring and/or Summer, contains at least 150 cubic feet of water (approximately 1000 gallons) at sometime during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be 100 feet outward from the mean annual high-water line defining the depression, but shall not include lawns, gardens, landscaped or developed areas that are in existence as of the date the Bylaw took effect.”

(a) Demonstrating that a Ponding Area is Not a Vernal Pool.

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

1. Evidence that the ponding area does not hold water for at least two continuous months in most years. As a rule of thumb the term “most years” shall mean three out of five consecutive years.
2. Evidence that vernal pool species do not breed or have not bred in the ponding area.
3. Evidence that the ponding area could not be a viable breeding site for vernal pool species due to naturally occurring incompatible physical, chemical, biological, or other persistent conditions at the site in most years.

(b) Demonstrating that a Ponding Area is a Vernal Pool.

Wetlands in Wenham can be identified by the Commission as vernal pools consistent with the approaches outlined by the Massachusetts Division of Fisheries and Wildlife in “Guidelines for the Certification of Vernal Pool Habitat” (revised March 2009). Once data have been provided to the Commission that indicates that an area is vernal, the Commission shall presume it is a vernal pool, regardless of whether the site has been certified by the Natural Heritage and Endangered Species Program.

(c) Timing of Evidence Collection.

Many of the indicators of vernal pool habitat are seasonal. For example, certain salamander egg clusters are only found between late March and late May. Wood frog

chirping only occurs between late March and May, and then only at night. Consequently, failure to find evidence of breeding must be tied explicitly to those periods during which the evidence is most likely to be available.

Accordingly, in the cases 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.

(5) Fees

(a) General Fee Provisions.

1. Permit fees are payable at the time of application and are non-refundable.
2. Permit fees shall be calculated by the Conservation Commission according to the schedule below.
3. Permit fees are in addition to those required by the Wetlands Protection Act, M.G.L. c. 131, § 40 and regulations, 310 CMR 10.00.
4. The Commission may waive the filing fee, consultant fee, and costs and expenses for a permit or other application or Request for Determination of Applicability filed by a government agency.
5. Whenever the Conservation Commission determines that the required fee has not been paid, the time period for the Commission to act shall be stayed until the balance of the fee is paid.

(b) Schedule of Permit Fees:

Activity	Fee
Request for Determination of Applicability	\$75
Abbreviated Notice of Resource Area Delineation	\$1/linear foot (LF) with a minimum of \$50
Notice of Intent/Permit	
Category 1	\$150 for each activity
a) work on single family lot; addition, pool, etc.;	
b) site work without house;	
c) control vegetation;	
d) resource improvement;	
e) work on septic system separated from house;	
f) monitoring well activities minus roadway;	
g) new agricultural or aquaculture projects.	
Category 2	\$300 for each activity
a) construction of single family house;	
b) parking lot;	
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;	
h) control vegetation development;	
i) water level variations;	
j) any other activity not in Category 1, 3, 4, 5, or 6	
k) water supply exploration.	
Category 3	\$500 for each activity
a) site preparation (for development) beyond Notice of Intent scope;	
b) each building (for development) including site;	
c) road construction not crossing or driveway;	
d) hazardous cleanup;	
e) water supply development.	
Category 4	\$700 for each activity
a) each crossing for development or commercial road;	
b) dam, sluiceway work;	
c) railroad line construction;	
d) bridge;	
e) hazardous waste alterations to resource areas;	
f) dredging;	
g) airport tree clearing;	
h) oil and/or hazardous material release response actions.	
Category 5	\$1/LF with a minimum of \$50 for each activity
a) on docks, piers, revetments, dikes, etc.	
Category 6	\$1/ LF with a minimum of \$50
a) boundary delineation for any wetland.	
Misc. Other Fees:	
Amend OOC	\$100
Request CoC	\$50
Extend OOC	\$100
After-fact-filing	Double the usual Fee

(c) Consultant Fees

In any matter under review by the Commission where it is determined that the assistance of outside consultants is warranted due to the size, scale, or complexity of a proposed project or because of a project's potential impacts, the Commission may require, with concurrence and approval, that the applicants pay a consultant review fee consisting of the reasonable costs incurred by the Commission for the employment of outside consultants engaged by the Commission in the review of an application.

The Commission may engage any appropriate professional, such as engineers, architects, and/or lawyers, who can assist the Commission as needed to perform its legal duties in analyzing a project to ensure compliance with all relevant laws, bylaws, and regulations and/or best practices within the consultant's field of expertise. Failure of an applicant to pay a review fee shall be grounds for denial of the application.

Funds received by the Commission pursuant to this Section shall be deposited with the town treasurer who shall, pursuant to MGL Ch 44 Section 53 G, establish a special account for this purpose. Expenditures from this account may be made at the direction of the Commission without further appropriation. Expenditures from this special account shall be made only in connection with the review of a specific project or projects for which a review fee has been or will be collected from the applicant. Any excess amount in the account attributable to a specific project, including any accrued interest, at the completion of said project shall be repaid to the applicant or to the applicant's successor in interest and a final report of said account shall be made available to the applicant or to the applicant's successor in interest.

Pursuant to MGL Ch 44 Section 53G, any applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen. 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. The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. The required time limits for action upon an application by a municipal permit granting board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Commission shall stand. Such an administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this section.

10.04 Definitions.

(1) Activity: means any form of draining, dumping, dredging, damming, discharging, excavating, blasting, filling or grading; the erection, reconstruction, or expansion of any buildings or structures; the driving of pilings; the construction or improvements of roads and other ways; the changing of run-off characteristics; the interception or diversion of ground or surface water; the installation of drainage, sewage, and water systems; the discharging of pollutants; the destruction, relocation or substantial modification of plant life; and/or any other changing of the physical characteristics of land.

- (2) Adjacent Upland Resource Area: means all lands within 100 feet of Areas Subject to Protection Under the Bylaw as enumerated in the Bylaw and 100 CCR 10.02(1)(a) – (f), except for lakes, continuous streams, rivers or ponds, for which the adjacent upland resource area extends for 200 feet from the top of bank.
- (3) Alter: means to change the condition of any area subject to jurisdiction under section 2 of the Bylaw, including, but not limited to the following activities:
- (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
 - (c) Drainage, or other disturbance of water level or water table
 - (d) Dumping, discharging, or filling with any material which may degrade or otherwise impact water quality
 - (e) Placing of fill, or removal of material, which would alter elevation
 - (f) Driving of piles, erection, expansion or repair of buildings, or structures of any kind
 - (g) Placing of obstructions or objects in water
 - (h) Destruction of plant life including cutting or trimming of trees and shrubs
 - (i) Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters
 - (j) Any activities, changes, or work that may cause or tend to contribute to pollution of any body of water or groundwater (including the application of pesticides and herbicides)
 - (k) Incremental activities that have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.
 - (l) Placing of materials which have a reasonable likelihood of contributing to pollution or of impacting water quality through surface run-off, groundwater infiltration or air borne transport including but not limited to yard and landscaping wastes and debris, slash, soils and sediments, woodchips, mulch, grit, gravel or other organic and inorganic materials.
- (4) Application for Permit under the Bylaw: means the written application filed by any person intending to remove, fill, dredge, discharge into, build upon, otherwise alter or carry out

activity not exempted from the Bylaw in an area subject to regulation under the Bylaw or activity that will significantly alter, pollute or degrade these areas. It shall be made on WPA Form 3 or 4.

(5) Areas subject to flooding: Depressions or closed basins that serve as ponding areas for runoff, snowmelt, heavy precipitation, or high ground water that has risen above the ground surface in most years, and areas that flood from a rise in a bordering waterway or water body.

(6) Building: means any structure, requiring a building permit under the State Building Code, 780 CMR 101.0 et seq., and/or Wenham Bylaws, that is enclosed within exterior walls or firewalls, built, erected and framed of a combination of any materials, whether portable or fixed having a roof, to form a structure for the shelter of persons, animals or property. For the purpose of this definition, “roof” shall include an awning or similar covering, whether or not permanent in nature. The word “building” shall be construed where the context requires as though followed by the words “or parts thereof.”

(7) Bylaw: means the Town of Wenham Water Resources Protection Bylaw, General Town Bylaws Chapter XVIII.

(8) Continuous Stream: means all flowing watercourses shall be considered to be a continuous stream unless a preponderance of evidence deemed acceptable to the Conservation Commission rebutting this presumption is presented. Information necessary to overcoming this presumption includes, but is not limited to, direct observation and documentation of the:

- (a) absence of a continuous sheet of surface water throughout the watercourse, or relevant segment, for a minimum of five consecutive days annually in most years (excluding periods when local drought or other conditions abnormally lowering the water table are known to exist, or due to water withdrawals) as witnessed by a member of the Conservation Commission or its staff; which shall be considered definitive evidence in overcoming the presumption of continuous status;
- (b) absence of gravel, mineral, and riffle substrate;
- (c) absence of a clearly defined flow channel;
- (d) absence of bank undercutting; or
- (e) presence of established non-aquatic plants in the flow path (i.e., plants that are unable to grow in continuously submerged conditions);

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

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

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

(9) Emergency Work: Work falling within the jurisdiction of this Bylaw but where delays in its initiation and or completion would jeopardize public health, safety and welfare.

(10) Hydric Soils: means soils which, in an undrained condition, display characteristics of a hydrologic regime of periodic annual saturation due to high groundwater, flooding or ponding that results in an anaerobic condition which favors the growth and regeneration of hydrophytic (wetland) vegetation. The following types of soils are hydric:

(a) all organic soils (Histosols) except Folists;

(b) mineral soils in Aquic subgroups, Albolls suborder, Salorthids great group, or Pell great Groups of Vertists which are:

1. somewhat poorly drained (as the soils type may be defined from time to time by the U.S. Soil Conservation Service) and have a water table less than 15 cm from the surface at some time during the growing season, or
2. poorly drained or very poorly drained (as those soil types may be defined from time to time by the U. S. Soils Conservation Service) and have either:
 - (i) a water table at less than 30 cm from the surface at some time during the growing season if permeability is equal to or greater than 15 cm/hour in all layers within 60 cm, or
 - (ii) a water table at less than 45 cm from the surface at some time during the growing season if permeability is less than 15 cm/hour in any layers within 60 cm;
3. mineral soils that are ponded during any part of the growing season; and
4. mineral soils that are frequently flooded for long duration (more than 7 days) or flooded for very long duration (more than one month) during the growing season.

(11) Intermittent pond: Areas subject to flooding that form temporary confined bodies of water during periods of high water table and high input from spring runoff or snowmelt or heavy precipitation, and support wetland vegetation and does not serve as breeding habitat for species of amphibians and is not a vernal pool.

(12) Intermittent stream: A body of running water, that does not flow throughout the year, including brooks and creeks, evidenced by a hydraulic connection between bodies of water, and which flows within, into or out of an Area Subject to Protection under the Bylaw.

(13) Project Review: means a review by a qualified professional engaged by the Commission that examines engineering design, calculations and other information provided by the applicant and other sources for completeness, accuracy, and effectiveness, including but not limited to the

following: run-off calculations, drainage and drainage structures, slopes, headwalls and retaining structures, siting of septic system relative to Resource Areas, soils information, subsurface hydrology, plans for sequencing construction, proposed erosion and sedimentation controls.

(14) Resource Area: means all Areas Subject to Regulation under the Bylaw as listed in the Bylaw and 100 CCR 10.02(1).

(15) Special Environmental Impact Review: means a review by a qualified professional that examines the information provided by the applicant and other sources of implications and impacts of a project on resources including but not limited to: hydrology, wildlife, wildlife habitat, water quality, and the other values protected by this Bylaw, and function and feasibility of proposed wetland replication areas.

(16) Structure: A combination of materials assembled or fabricated at a fixed location to give support, storage, or shelter, such as a building, framework, retaining wall, tent, reviewing stand, platform, bin, fences over six feet high, sign, flagpole, recreational tramway, mast for radio antenna, or the like. The word "structure" shall be construed, where the context requires, as though followed by the words, "or part or parts thereof."

(17) Work: means the performance of activities, including, but not limited to, the following activities: filling, excavation, grading, operation of motorized construction equipment, and storage or stockpiling of earth or construction materials.

10.05 Procedures

(1) Application for Permits Under the Bylaw. Written applications shall be filed with the Commission to officially determine the boundaries of resource areas and/or to perform activities altering, or possibly altering, resource areas protected by the Bylaw. The permit application, (Notice of Intent, Abbreviated Notice of Intent, Abbreviated Notice of Resource Area Delineation, Request for Certificate of Compliance, Request for an Amended Order of Conditions, or Request for Determination of Applicability) shall include such information and plans and completed DEP Field Data Forms, Stormwater Management Form, and Riverfront Area Form as are deemed necessary by the Commission to determine resource area boundaries, to describe proposed activities and their effects, or potential effects, on the resource areas and areas protected by the Bylaw, or to determine whether completed work was in compliance with the all applicable permits, laws and regulations.

(a) A permit application is not complete until all required application materials have been received by the Conservation Commission. **No hearing or meeting for the proposed project will be scheduled until all required application materials have been received.** Required application materials are specified in the applicable permit application instructions. In addition, the following requirements must be met for a permit application to be considered complete:

1. Copies. All permit applications shall contain nine (9) sets of the

complete filing. The applicant shall also submit to the Commission nine (9) sets of any revised, amended, or supplemented information introduced or referred to by the applicant during the course of the public hearings on the application. The Commission may, at any time during the review process, require the submission of extra copies, at cost to the applicant, of the application and/or plans.

2. Plan requirements. The following minimum requirements apply to plans submitted with a Notice of Intent, Request for an Amended Order of Conditions, Request for a Certificate of Compliance, or Abbreviated Notice of Resource Area Delineation. At its sole discretion the Commission may relax these requirements for small projects. The Commission may also, at its sole discretion, relax the Sheet Size and Scale requirements for projects involving land areas too large to be contained on a sheet meeting the size and scale requirements.

- (i) Sheet Size: Maximum 30 inches by 42 inches
- (ii) Scale: As needed to show all necessary details, but at a ratio no greater than 1:480 (e.g., 1" = 40')
- (iii) Title Block: Located at the right hand lower corner containing:
 - [a] Name of owner of record, applicant, PLS/PE (if involved)
 - [b] Lot number, street number, street, Tax Assessor's Map, Block and Parcel/Lot numbers
 - [c] Original date
 - [d] Revision area for dates and nature of revisions
 - [e] Scale
- (iv) North arrow
- (v) Locus map
- (vi) Nearest utility pole number, if applicable
- (vii) Reference benchmark (vertical datum used)
- (viii) Legend depicting all natural resources and significant site features
- (ix) All resource areas (i.e., Areas Subject to Protection Under the Bylaw)
- (x) Wetland boundaries indicated by numbered points corresponding to flags placed in the field with elevation of flags.
- (xi) Adjacent Upland Resource Area boundary lines
- (xii) Existing improvements, e.g. buildings, stone walls, trails
- (xiii) Existing topography and proposed contours at a contour interval no greater than two feet
- (xiv) Cross-sections
- (xv) All proposed or completed alterations
- (xvi) Location of well and septic system with reserve area
- (xvii) Erosion/sedimentation control measures
- (xviii) Replication areas
- (xix) Discharge points
- (xx) Property boundaries, rights-of-way, easements, restrictions

- (xxi) Applicable no disturb zone (see 10.54 (3) herein)
- (xxii) FEMA floodplain areas
- (xxiii) Surface Water Supply Protection Areas (Zones A, B, C)
- (xxiv) Local aquifer protection districts
- (xxv) Pre- and post-development overstory tree canopy line within Adjacent Upland Resource Areas
- (xxvi) Record the person(s) and firm that delineated the resource areas
- (xxvii) Placement of underground utilities
- (xxviii) Applicable zone where no structures requiring a building permit are allowed (see 10.54 (3) herein)
- (xxix) Stamp and signature of a Registered Professional Land Surveyor or a Registered Professional Engineer. In circumstances where the Commission determines that no survey is required, the stamp and signature of a Registered Sanitarian may be acceptable.

The applicant shall be responsible for confirming the appropriate licensure, according to state law, for any professional assisting in the completion of application materials and or attending public hearings.

(2) An applicant filing a permit application (excluding a request for a Certificate of Compliance) with the Commission shall at the same time give written notification thereof, by delivery in hand or certified mail, return receipt requested, to all abutters as defined in the Bylaw. Said notification shall be at the applicant's expense, and shall state where copies of the permit application may be examined and obtained and shall state a brief description of the proposed work, as well as the date, time and place of the public hearing. Proof of such notification, with a copy of the notice mailed or delivered, shall be filed with the Commission.

(3) Time periods. An applicant filing a permit application must submit all supporting documentation no later than ten business days prior to the public hearing or its continuation at which the applicant wishes the matter to be heard. This is the minimum time needed to allow the Commission and staff to properly review, analyze and check the information provided. Documentation submitted with fewer than the minimum ten business days for review may be excluded from consideration at the scheduled hearing and held for discussion at a subsequently scheduled hearing.

The Commission reserves the right to waive the requirement for submittal of information ten days prior to the hearing under special circumstances and to request a longer minimum period of information submission prior to the hearing for technically challenging or complex projects, both determinations to be made at the Commission's sole discretion.

(4) Public Hearings by the Conservation Commission. The Commission shall conduct public hearings in accordance with the provisions and procedures delineated in the Bylaw.

(5) Permits Regulating the Work. Any permit issued shall be issued in accordance with the provisions of the Bylaw.

10.06 Emergencies. Emergency projects shall be initiated and carried out in accordance with the provisions of the Bylaw, 110 CMR 10.06 and these regulations.

- (1) After completion of the emergency work, an as-built plan must be filed with the Commission within 30 days from date of certification.
- (2) After completion of the emergency work, the Commission may, after notice and public hearing, require restoration, project modification, and/or mitigation measures to protect the values stated in the Bylaw.

10.07 Security.

- (1) As part of a Permit issued under the Wenham Water Resources Protection 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 in a Permit issued there under be secured wholly or in part by one or more of the following methods:
 - (a) by a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit
 - (b) by accepting a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.
- (2) Bonds or Surety.
 - (a) The amount of a Bond or Surety, which may be required under section 10 of the Bylaw shall be that amount, to be held in escrow, to secure faithful and satisfactory performance of all or any part of the conditions required by the Permit.
 - (b) The amount of a Bond or Surety shall be determined by the Commission and/or any other person knowledgeable in such matters as designated by the Commission. A bond estimate may be requested from the Commission, and will remain effective for sixty (60) days. The cost of this estimate will be borne by the applicant. The amount of any bond or surety requested shall reflect the cost to the Town to carry out any remedial work necessary to bring the project into compliance with the requirements of the Permit should that be necessary due to failure of the applicant to complete the work in accordance with the conditions of the permit.
 - (c) Such bond or surety shall be approved as to form and manner of execution by the Town Counsel and as to sureties by the Town Treasurer, and shall be contingent upon the

completion of such work and observance of conditions within the time frame of the Permit or extension, if granted. This Bond or Surety shall be approved and filed with the Town prior to the close of the Public Hearing.

(d) A Bond or Surety shall be released by the Commission only on satisfactory completion of the conditions of a permit and Issuance of a Certificate of Compliance.

(3) Release of Performance Guarantee.

Upon completion of the project or that part of the project conditioned in the Permit, security for the performance of which was given by Bond, Surety, or Covenant, the applicant may request and agree on terms of release with the Commission.

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

If after receipt of the Request for Release of Performance Guarantee, the Commission determines that said project has not been completed in compliance with the conditions of the Permit, it shall, within forty-five (45) days, specify to the applicant in writing, the details wherein said work fails to comply with the Permit. The Applicant will be given a reasonable amount of time determined by the Commission sufficient to make the necessary remedial measures, but if at the end of the granted period of time the applicant fails to complete the remedial measures or to take such steps as required by the Commission to bring the project into compliance, and after public meeting on this matter, the Commission may take steps to hire consultants, engage whatever professionals are necessary to perform the work necessary to bring the project into compliance using such funds as necessary from the Bond or Surety, the remainder of which, if any, shall be released to the person who furnished the same.

10.08 Enforcement.

(1) When the Conservation Commission determines that an activity is in violation of the Bylaw or a Permit issued under the Bylaw, the Commission may:

- (a) issue an Enforcement Order under the Bylaw, and/or
- (b) hold an Administrative Hearing under the Bylaw to consider whether the landowner or party(ies) responsible for the violation should be fined for the violation.
- (c) issue a citation pursuant to Wenham General Laws Chapter XIX, Non Criminal Disposition of Certain Violations

(2) Violations include, but are not limited to:

- (a) failure to comply with a Permit, such as failure to observe a particular condition or time period specified in the Permit:

- (b) failure to complete work described in a Permit;
- (c) failure to obtain a valid Permit prior to conducting an activity subject to regulation under the Bylaw;
- (d) causing, suffering, or allowing of illegal work or activity;
- (e) failure or refusal to comply with an enforcement order;
- (f) failure or refusal to remove illegal fill, restore property, or obtain necessary approvals.
- (g) obtaining a permit under false pretenses.

(1) in the event of a reasonable question by the Commission, as to the validity of any part of a submission, the applicant shall have the burden of proving its validity.

(3) In the appropriate case, the Commission may issue an Enforcement Order under the Wetlands Protection Act, M.G.L. Chapter 131, section 40, in lieu of or in addition to an Enforcement Order under the Bylaw.

(4) An Enforcement Order under the Bylaw issued by the Conservation Commission shall be signed by a majority of the Commission. In a situation requiring immediate action, an Enforcement Order under the Bylaw may be signed by a single member or agent of the Commission, followed by ratification of said Order by a majority of the members at the next scheduled meeting of the Commission.

(5) Before a fine is imposed or adjusted, the Commission shall hold an Administrative Hearing to discuss the violation and to give the landowner, the landowner's representative or any other party (inclusively, hereafter, the "Violating Parties") an opportunity to respond to the evidence and circumstances. All Violating Parties identified to participate in the administrative hearing must be given at least 48 hours notice in writing of the date, time, and place of an Administrative Hearing, by certified mail or hand delivery. If a majority of the Commission present at the Hearing finds by the evidence that a violation has occurred, the Violating Parties shall be subject to a fine of not more than three-hundred dollars (\$300.00) per violation. The amount of the fine per violation will be determined by the Commission at the Administrative Hearing.

(6) The Commission shall take into account the nature of the violation as follows:

- (a) For purposes of determining fines, each day or portion thereof during which non-compliance with an Enforcement Order under the Bylaw or failure to resolve an outstanding violation addressed through issuance of a ticket pursuant to the Bylaw, continues shall constitute a separate offense, and each provision of the Bylaw or Permit violated shall constitute a separate offense.

(b) In the case of destruction of vegetation, the Commission may continue indefinitely any public hearing for any part of that site until the vegetation has reemerged, grown or otherwise established itself to the Commission's satisfaction. In the meantime, all work shall cease at the site.

(7) The notice of a fine or fines and explanation thereof, including the date or approximate date of the violation from which daily violations are counted, will be sent in writing to the responsible Violating Parties by certified mail or hand-delivery. The fine or fines are payable to the Town of Wenham within twenty-one days of the date of issuance of the notice.

(8) The Town Collector may record in the Registry of Deeds a conservation lien for non-payment of accumulated fines. The lien shall be against all property including and contiguous to the area of the violation and within the Town boundaries held by the landowner at the time of the violation. The Commission shall hold an Administrative Hearing, to which the landowner is given written notice as described above, in order to decide the amount of the lien which may not exceed the amount of accumulated fines to date.

(9) A Violating Party can apply in writing for a continuance of the Administrative Hearing stating in full the reason for the request. The Commission may grant a continuance for compelling and/or environmentally sound reasons.

(10) The Commission reserves the right to adjust the fine in response to new information or new circumstances at an Administrative Hearing under the Bylaw to which the Violating Parties will be given notice as above. A written notice of the adjustment of fine shall be sent to the Violating Parties by certified mail or hand-delivered.

(11) Unless otherwise stated in the Bylaw or in the rules and regulations promulgated under the Bylaw, the definitions, procedures, and performance standards of the Wetlands Protection Act, M.G.L. Chapter 131, section 40 and associated Regulations, 310 CMR 10.00 as amended from time to time shall apply to all permit applications.

(12) If a Violating Party ignores or fails to comply with an enforcement action brought by the Commission, the Commission shall at its discretion, seek to enforce those orders in the Massachusetts Courts by various means including but not limited to temporary restraining orders, preliminary injunctions, assessment of fines, real estate attachments, site restoration orders and other means to achieve compliance.

10.09 Severability.

If any section or provision of any part of these regulations or the application thereof, is held to be invalid, such invalidity shall not affect any other section or provision thereof nor shall it invalidate any permit or determination which previously had been issued.

10.10 through 10.50: Reserved

Town of Wenham Water Resources Protection Bylaw
Chapter XVIII
Part II Regulations

PART II: REGULATIONS FOR RESOURCE AREAS (Effective 11/11/1989 revised through 5/10/2010)

Section

10.51: General Provisions

10.52: Bank

10.53: Wetlands (Wet Meadows, Marshes, Swamps, and Bogs)

10.54: Water Bodies, Waterways (Lakes, Creeks, Rivers, Streams, Ponds) and Land under Water Bodies and Waterways

10.55: Adjacent Upland Resource Areas

(10.56 through 10.99: Reserved)

10.51 General Provisions.

(1) Limited Projects: Notwithstanding the provisions of the Bylaw Regulation sections 10.52 through 10.55, the Commission may issue a Permit and impose such conditions as will contribute to the interests identified in the Bylaw permitting certain limited projects as listed in 310 CMR 10.53(a)-(d), (j) and (l), as well as the following limited projects:

(a) Access road: the construction and maintenance of a new roadway or driveway of minimum legal and practical width where reasonable alternative means of access from a public way to an upland area is otherwise unavailable. In determining whether reasonable alternative means of access are available, the Commission may consider the reasonableness of any available alternatives, including realignment or reconfiguration of the project to minimize disruption of the wetlands and whether land sales by the present of former owner is the cause of the access restriction leading to the application to construct access in or near resource areas. The limited project exception does not contemplate maximum development of uplands at the expense of wetlands, which would result from locating access ways in wetland areas to the greatest extent possible.

Such roadway or driveway shall be constructed using the best available practices to minimize disturbance and maximize compliance with the applicable performance standards. In no case shall wetland filling for a roadway or driveway be greater than 2,500 square feet of an area specified in section 10.02(1)(a-g) nor impact more than 20 linear feet of Bank. In addition, such roadway or driveway shall be constructed in a manner that does not adversely restrict the flow of surface or subsurface water and so that equivalent flood storage is maintained.

A second access road to the same upland area shall not qualify as a limited project.

(b) Maintenance of existing public roadways, but limited to improving inadequate drainage systems.

- (c) The excavation of wildlife impoundments, farm ponds and ponds for fire protection, provided that no fill or other material is placed upon the wetland, or the values the wetland protects are not adversely affected by this activity.
- (d) The maintenance of beaches and boat launching ramps that existed on the effective date of Part II of Regulations for Wenham Water Resources Protection Bylaw.
- (e) The maintenance, repair and improvement (but not substantial enlargement of structures, including buildings, piers, towers, headwalls, bridges and culverts that existed on the effective date of Part II of Regulations for Wenham Water Resources Protection Bylaw.
- (f) The routine maintenance and repair of road drainage structures including culverts and catch basins, drainage easement, ditches, watercourses and artificial water conveyances to ensure flow capacities that existed on the effective date of Part II of Regulations for Wenham Water Resources Protection By-law.

10.52 Wetlands (Wet Meadows, Swamps, Bogs, Marshes)

(1) Preamble. Freshwater Wetlands are likely to be significant to public and private water supply, ground water supply, flood control, storm damage prevention, prevention of pollution and the protection of fisheries and to wildlife habitat.

The plant communities, soil, and associated low topography of Freshwater Wetlands remove or detain sediments, nutrients (such as nitrogen and phosphorus) and toxic substances (such as heavy metal compounds) that occur in runoff and flood water.

Some nutrients and toxic substances are detained for years in plant root systems or in the soils. Others are held by plants during the growing season and released as the plants decay in the fall and winter. This latter phenomenon delays the impacts of nutrients and toxins until the cold weather period, when such impacts are less likely.

Freshwater Wetlands are areas where ground water discharges to the surface and where, under some circumstances, surface water discharges to the ground water. The profusion of vegetation and the low topography of Freshwater Wetlands 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 reduces downstream flood crests and resulting damage to private and public property. During dry periods the water retained in 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 conducive for protection of fish life. Wetlands flooded by adjacent water bodies and waterways provide food, breeding habitat and cover for fish. Fish populations in the larval stage are particularly dependent upon

food provided by over-bank flooding which occurs during peak flow periods (extreme storms), because most river and stream channels do not provide sufficient quantities of the microscopic plant and animal life required for food.

Wetland vegetation supports a wide variety of insects, reptiles, amphibians, mammals and birds which 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.

Freshwater Wetlands are the Town's most important habitat for wildlife. The hydrologic regime, plant community composition and structure, soil composition and structure, topography and water chemistry of Freshwater Wetlands provide important food, shelter, migratory and overwintering areas, and breeding areas for many birds, mammals, amphibians and reptiles. A wide variety of vegetative wetlands plants, the nature of which are determined in large part by the depth and duration of water, as well as soil and water composition, are utilized by varied species as important areas for mating, nesting, brood rearing, shelter, and (directly and indirectly) food. The diversity and interspersed structure is also important in determining the nature of its wildlife habitat. Different habitat characteristics are used by different wildlife species during summer, winter, and migratory seasons.

(2) Definition, Critical Characteristics and Boundary.

Freshwater Wetlands are riverine wetlands, marshes, wet meadows, bogs, perched wetlands or swamps that meet *at least one* of the following requirements:

- (a) Fifty percent or more of the natural vegetative community must consist of obligate or facultative wetland plant species, as included or identified in generally accepted scientific or technical publications (such as, the Wetlands Plant List, Northeast Region for the National Wetlands Inventory, U.S. Fish and Wildlife Service).
- (b) The presence of a hydrologic regime that indicates a wet condition in which the soils are annually saturated, as evidenced by the observed or documented presence of groundwater generally within 24 inches of the surface at any time of the year or by soil gleying or soil mottling within 24 inches of the surface or identified as one of the hydric soils listed in 10.04.
- (c) The presence of hydric soils, mineral and/or organic types associated with wetlands as identified in 10.04.
- (d) Where the natural vegetative community has been destroyed, as for example by landscaping or agricultural use, or in violation of this by-law, the Commission may determine the area to be a Freshwater Wetland on the basis of annual soil saturation or soil analysis alone or may defer the determination until the natural vegetation has regrown.

(3) Presumption. Where a proposed activity involves the removing, filling, dredging, or altering of a Freshwater Wetland, the Commission shall presume that such area is significant to the interests specified in the Preamble section 10.52(1). This presumption is rebuttable and may be overcome upon a clear showing that the Freshwater Wetland does not play a role in the protection of said interests. In the event that the presumption is determined to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

(4) General Performance Standards.

(a) Where the presumption set forth above is not overcome, any proposed work in a Freshwater Wetland shall not destroy or otherwise impair any portion of said area.

(b) Notwithstanding section 4(a) above, the Commission may issue a Permit allowing work that results in the loss of up to 2,500 square feet of Freshwater Wetlands when said area is replaced in accordance with the following general conditions and any additional specific conditions the Commission deems necessary to ensure that the replacement area will function in a manner similar to the area that will be lost:

1. the surface area of the replacement area to be created (the "replacement area") shall be at least equal to that of the area that will be lost (the "lost area"), at the discretion of the Commission the "replacement area" requirement may be more than equal to the area lost;
2. the ground water and surface water elevation of the replacement area shall be approximately equal to that of the lost area;
3. the overall horizontal configuration and location of the replacement area with respect to the bank shall be similar and contiguous to that of the lost area;
4. the replacement area shall have an unrestricted hydraulic connection to the same water body or waterway associated with the lost area;
5. the replacement area shall be contiguous to the same area of the water body or reach of the waterway as the lost area;
6. at least 75 percent of the surface of the replacement area shall be reestablished with indigenous wetland plant species within two growing seasons, and prior to said vegetative establishment any exposed soil in the replacement area shall be temporarily stabilized to prevent erosion in accordance with standard Soil Conservation Service methods;
7. the replacement area shall be successfully established and functioning at the site in a manner similar to that of the area lost prior to the start of any construction at the site in the area of commission jurisdiction.
Alternately, at the discretion of the Commission, a surety bond or other instrument of security sufficient to cover the cost of remedial work, may be accepted from the applicant to assure the successful completion and function of this replacement area after completion of this project; and
8. the replacement area shall be provided in a manner which is consistent

with all other General Performance Standards for each resource area described in these regulations.

(c) Notwithstanding the provisions 4(a) and 4(b) above, the Commission may issue a Permit allowing work which results in the loss of a portion of Freshwater Wetland when:

1. said portion has a surface area of less than five hundred square feet;
2. said portion extends in a distinct linear configuration ("Finger-like") into adjacent uplands; and
3. 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.

(d) Notwithstanding the provisions of 4(a), (b), and (c) above, no project may be permitted which will have any adverse effect on water quality, flood control, or habitat sites of rare vertebrate or invertebrate species.

10.53 Water Bodies, Waterways (Lakes, Creek, Streams, Rivers, Flats, Ponds) and Land Under Water Bodies and Waterways.

(1) Presumption. Where a project involves removing, filling, dredging, discharging into, building upon, otherwise altering, polluting, or degrading water bodies, waterways and land under waterbodies and waterways, the Commission shall presume that such area is significant to the interests specified in the Bylaw, these regulations and 310 CMR 10.56(1). This presumption is rebuttable and may be overcome upon a clear showing that the Water Body, Waterway or Land Under Water Body or Water Way does not play a role in the protection of said interests. In the event that the presumption is determined to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

(2) General Performance Standards.

(a) Where the presumption set forth in 10.53(1) is not overcome, any proposed work within the Water Body, Waterway or Land Under Water Body or Waterway shall not impair the following

1. The water carrying capacity within the defined channel, which is provided by said land in conjunction with the banks;
2. Ground and surface water quality;
3. The capacity of said land to provide breeding habitat, escape cover and food for fisheries; and
4. The capacity of these areas to provide important wildlife habitat functions.

10.54 Adjacent Upland Resource Areas

(1) Preamble.

It has been the Commission's experience that projects undertaken in close proximity to the wetlands areas have high likelihood of resulting in some alteration of those areas, either immediately, as a consequence of construction, or over a longer period of time, as a consequence of daily operation or the existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, nutrient runoff, vegetation change, and loss of wildlife habitat.

The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover in part or all of the Adjacent Upland Resource Area and set other conditions thereupon.

A growing body of evidence suggests that even “no disturbance” areas reaching 100 feet from the Areas Subject to Protection Under the Bylaw are insufficient to protect many important wetland characteristics and values of the Bylaw. Thus, in general, the Commission discourages any work or activity within 100 feet of Areas Subject to Protection Under the Bylaw (200 feet in the case of waterways and waterbodies specified in 100 CCR: 10.02(1)(b)) and encourages applicants to pursue reasonable alternatives outside of the Adjacent Upland Resource Areas whenever possible. In the case of new subdivisions, reasonable alternatives include reconfiguring or reducing the number of lots so that no permanent structures will be built in any Adjacent Upland Resource Area or in any Area Subject to Protection Under the Bylaw.

Accordingly, these regulations require that any person intending to perform work within 100 feet of a resource area specified in 100 CCR: 10.02 (1)(a-f) (200 feet in the case of waterways and waterbodies specified in 100 CCR: 10.02(1)(b)) must submit to the Conservation Commission either a Request for Determination of Applicability or an Application for a Permit. This way, the Commission has an opportunity to review the proposed project to determine whether any 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 Adjacent Upland Resource Area will not alter the area specified in section 10.02 (1)(a-f), it may issue a Negative Determination of Applicability, with or without conditions.

(2) Critical Characteristics.

Where surface runoff or groundwater from the Adjacent Upland Resource Area drains toward these areas (10.02(1)(a-f)), vegetative cover and soils may filter runoff and provide uptake or renovation of pollutants from adjacent areas, thereby protecting water quality within the resource area. The vegetation and soils may slow surface runoff and permit infiltration of precipitation, maintaining the hydrologic regime to which the resource area is adapted.

Where surface water or groundwater from the Adjacent Upland Resource Area does not drain toward the areas specified in 10.02(1)(a-f), the topography and soils characteristics may help to

control the surface and groundwater regime in the area.

(3) Presumption: Based on experience to date with projects in the Adjacent Upland Resource Area, the Commission shall presume that Work, as that term is defined in 100 CCR: 10.04, in the categories below, closer than the tabulated distances from an area specified in 10.02(1)(a-f), will result in alteration of the area. This presumption is rebuttable and may be overcome by clear and convincing evidence that the nature of the proposed Work, special design measures, construction controls, or site conditions will prevent alterations of the resource area specified in 10.02(1)(a-f). Depending on site conditions and project characteristics, the Commission may also find that work at greater distances from the area specified in 10.02(1)(a-f) will alter the resource area.

Distances from areas specified in 10.02(1)(a-f):

<u>Type of project:</u>	<u>Limit of Work:</u>	<u>Limit of Building</u>
Single Residential Lot	30 ft. & 2 ft. vertically	50 ft.
Subdivision lot (2 or more units) with lot preparation done in conjunction with road construction	50 ft. & 2 ft. vertically	70 ft.
Commercial/industrial/ Institutional	50 ft. & 2 ft. vertically	75 ft.
Driveways and utilities	20 ft. (except for permitted crossings) and 2 ft. vertically	
Minor street, subdivision	25 ft. (except for permitted roads and other road crossings) and 2 ft. vertically	
Septic systems (all elements and components including grading for break-out requirements and clay barriers)	100 ft.	100 ft.
Underground storage tanks	200 ft.	

The following activities within the Adjacent Upland Resource Area are presumed not to alter areas specified in 10.02(1) (a-f). This presumption is rebuttable and may be overcome when the nature of the work or site conditions will result in alteration of an area specified in 10.02(1)(a-f) unless special preventive measures are taken.

- (a) Discharge of subsurface drainage from a single residential lot or residential building.
- (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) Mowing or cutting vegetation to within 20 feet of an area specified in 10.02(1)(a-f), provided that soil is not exposed to erosion and that sod cover or natural litter layer is maintained.
- (d) Landscape plantings, to within 20 feet of an area specified in 10.02(1)(a-f), provided that the Commission has not required the applicant to maintain a strip of continuous naturally vegetative cover and the areas disturbed are mulched immediately and there is no change in grade.
- (e) Construction or installation of fences or structures not requiring a building permit where no extensive filling or grading of the area is involved.
- (f) Soil borings carried out to gather information for submittal with an Application for a Permit.

(4) Strips of Continuous Naturally Vegetated Cover.

(a) If work within the Adjacent Upland Resource Area is approved by the Commission, the Commission may require that the applicant maintain a strip of continuous naturally vegetated cover within the Adjacent Upland Resource Area. This strip of naturally vegetated cover will be a minimum of 50 feet in width (100 feet in the case of waterways and waterbodies specified in 100 CCR: 10.02(1)(b)). Depending on the particular characteristics of the site, the Commission may require more than 50 feet (100 feet in the case of waterways and waterbodies specified in 100 CCR: 10.02(1)(b)) of naturally vegetative cover. These characteristics include, but are not limited to, the following:

- 1. slope;
- 2. soil characteristics;
- 3. type of vegetation;
- 4. surface hydrology;
- 5. the relative size of the Area Subject to Protection Under the Bylaw, Adjacent Upland Resource Area and surrounding watershed;
- 6. the position of the Area Subject to Protection Under the Bylaw within the watershed; and

7. whether the Area Subject to Protection Under the Bylaw is an Outstanding Resource Water pursuant to 314 CMR 4.06.

(b) The construction of buildings, sheds, garages or other accessory structures, swimming pools, tennis courts, septic systems, installation of lawn, removal of trees or shrubs, placement of wood chips or bark mulch, dumping of leaves or lawn refuse, grading, removal of naturally occurring leaf litter and debris, and other landscaping activities that interfere with the naturally occurring vegetation of the area are prohibited within the strip of continuous naturally vegetated cover. With respect to septic systems, a permit from the Board of Health will not necessarily preclude the Commission from denying a permit for a septic system in order to preserve a naturally vegetated buffer strip.

(c) Removal of exotic invasive species and/or planting of native species of vegetation in the strip of naturally vegetated cover may be permitted with the prior written approval of the Commission. This permission shall be requested in writing.

(d) Footpaths through the strip of naturally vegetated cover may be permitted so long as they (1) are no wider than 3 feet; (2) minimize disturbance to the natural vegetative cover; (3) are not covered with asphalt, gravel, wood chips or other material; and (4) do not encroach upon Areas Subject to Protection Under the Bylaw (excluding the Adjacent Upland Resource Areas).

(e) The Commission may permit temporary disturbance in a strip of naturally vegetated cover in cases where the applicant has proven to the Commission's satisfaction that no harm is likely to result to the Adjacent Upland Resource Area as a result of the temporary disturbance. Once the activity is completed, the area will be allowed to return to natural vegetation and function. The Commission will establish specific time frames and conditions for allowing temporary disturbances, and will set criteria for assessing the successful return of the strip of naturally vegetated cover to natural functions. Any subsequent disturbance or activity will require a new application.

(5) General Performance Standards.

(a) One of the following must apply in Adjacent Upland Resource Areas:

1. Any work within the Adjacent Upland Resource Area shall not result in alteration of any area specified in 10.02(1)(a-f), or
2. If work within the Adjacent Upland Resource Area which alters an area specified in 10.02(1)(a-f) is permitted by the Commission, the alteration of the area shall comply with the applicable performance requirements for the altered area and any other conditions the Commission may require to enforce those performance requirements.

(b) Point discharge of surface runoff within or through the Adjacent Upland Resource Area shall be controlled to minimize increases 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, and to cause no increase in flood elevations outside the project site.

For projects with over 40,000 square feet of added impervious surface, there shall be no increase in peak flow rates in the watercourse immediately downstream of the discharge point.

For projects with 4000 to 40,000 square feet of added impervious surface, the best practical measures shall be used to minimize increase in flow rates.

- (c) Protective vegetative cover is to be maintained on all embankments facing lakes, ponds, marshes, estuaries, rivers and streams.
 - (d) No clear cutting of standing trees and surface vegetation; thinning of trees to spacing not to exceed 20 feet; low brush within 20 feet of a wetland may be topped to a height of 3 feet or replaced with Commission approved preferred wetland species.
 - (e) Any area within the Adjacent Upland Resource Area proposed for removal of vegetation where soil will be exposed for more than 20 days shall be mulched or otherwise treated to prevent erosion.
- (6) Information. Depending on the scope of the project, the Commission may require that the applicant provide adequate information regarding the following so as to enable the Commission to evaluate whether any form of permanent or temporary disturbance is appropriate:
- (a) Values and functions of the Area Subject to Protection Under the Bylaw or Adjacent Upland Resource Areas.
 - (b) Pre-project characteristics of the site, i.e., slope, soil type, vegetation cover, etc.
 - (c) Wildlife habitat and rare species present on the site. Wildlife habitat serves a variety of functions in support of wildlife. Food, water, breeding space, and connections to other habitat areas are all important. All of these wildlife habitat functions are presumed to exist in all Areas Subject to Protection Under the Bylaw.
 - (d) The character of the activities proposed.
 - (e) Reasonably practicable alternatives to the proposed activities, including reducing the scale and scope of the project. Options that appear to be precluded only by self-imposed constraints shall be considered as reasonably practicable alternatives.

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

“Information,” for purposes of this regulation, includes site visits by the Commission and

its staff or representatives for the purpose of directly observing pre-project and post-project conditions on the property, at seasonally appropriate times.

(7) Previously altered Adjacent Upland Resource Areas. In the case of lots where the Adjacent Upland Resource Areas have previously been altered, the Commission may require mitigation in the form of plantings to enhance an existing continuous strip of naturally vegetated cover or to create additional vegetated cover before allowing any further alteration in any part of the Area Subject to Protection Under the Bylaw.