



TOWN OF CHELMSFORD

Wetlands Bylaw Regulations

Approved by the Chelmsford Conservation Commission
On November 19, 1996

Revised: April 20, 2010 and January 6, 2015 and September 15, 2015

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1. INTRODUCTION AND PURPOSE

1.1. Authority

These Wetlands Bylaw Regulations (the “Regulations”) are promulgated by the Chelmsford Conservation Commission (the “Commission”) pursuant to authority granted to it under Chapter 187 of the Code of the Town of Chelmsford (the “Chapter”). These Regulations complement the Chapter and have the force of law in implementing and enforcing the Chapter.

1.2. Purpose

The purpose of these Regulations is to set uniform standards and provisions for work conducted within Resource Areas (areas subject to protection under the Chapter) in order to protect Values Protected by the Chapter and for the filing and hearing of Applications, issuance of Permits, and the enforcement of the Chapter and these Regulations and Permits issued thereunder.

1.3. Relationship with Wetlands Protection Act

Except as specified herein, all of the standards, requirements, and procedures set forth in the Massachusetts Wetlands Protection Act (the “Act”) [M.G.L. c. 131, § 40] and the Massachusetts Wetlands Protection Act Regulations (the “State Regulations”) [310 CMR 10.00] are incorporated and made part of these Regulations as if restated herein. Where the Regulations differ from the State Regulations, these Regulations shall apply and those provisions shall supersede the State Regulations.

2. JURISDICTION

Except as permitted by the Commission or as provided in the Chapter, no Person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following Resource Areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, Vernal Pools, springs, Banks, reservoirs, lakes, Ponds of any size, beaches, lands under water bodies; Buffer Zones; perennial rivers, intermittent streams, brooks, and creeks; the Riverfront Area; lands subject to flooding or inundation by groundwater or surface water. Said Resource Areas shall be protected whether or not they border surface waters. Subject to the exceptions set forth in the Chapter and these Regulations, any proposed alteration which falls within any of the previously mentioned Resource Areas must be approved by the Commission. *See* Chapter 187-2.

3. GENERAL PROVISIONS

3.1. Waivers

As set forth in the Chapter 187-5F, the Commission may waive any provision of Chapter 187-5, Limitations on Construction and Disturbance, where the Commission specifically finds that literal enforcement of the provision would involve demonstrated substantial hardship to an applicant and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Chapter. The Commission may also waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in these Regulations, provided that: the Commission finds in writing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said Regulations; and that avoidance, minimization, and mitigation have been employed to the maximum extent practicable; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

3.2. Minor Activities

In addition to the exemptions and exceptions contained in Chapter [187-4], the following minor activities shall be permitted within the Buffer Zone or Riverfront Area, provided the activity is not within any other Resource Area:

- 3.2.1. Unpaved and pervious pedestrian walkways not to exceed 5 feet in width for private use;
- 3.2.2. Fencing, provided it will not constitute a barrier to wildlife movement; stonewalls; and stacks of cordwood;
- 3.2.3. Plantings of native noninvasive species of trees, shrubs, or groundcover, but not turf lawns;
- 3.2.4. Mowing and Maintenance of existing lawns;
- 3.2.5. The conversion of existing impervious areas to vegetated surfaces provided satisfactory erosion and sedimentation controls are implemented;
- 3.2.6. Activities that are temporary in nature, have negligible impacts, and are necessary for planning and design purposes, for example, installation of monitoring wells, exploratory borings, sediment sampling and surveying, provided satisfactory erosion and sedimentation controls are implemented and the site is restored to its original condition upon completion of the work;
- 3.2.7. Vista pruning provided the activity is located more than 50 feet from the mean annual high water line within a Riverfront Area or from a Resource Area excluding the Buffer Zone, whichever is farther, and pruning of existing landscaped areas;
- 3.2.8. The conversion of maintained lawn to uses accessory to existing single family houses such as **sheds or similar structures**, provided that they are built on footings requiring no more than four square feet cumulative ground Disturbance, have a footprint no larger than 144 square feet, and provided the activity is located more than 50 feet from the mean annual high-water line within the Riverfront Area or from a Resource Area excluding the Buffer Zone, whichever is farther, and erosion and sedimentation controls are implemented during construction;
- 3.2.9. The conversion of maintained lawn to uses accessory to existing single family houses such as **decks, patios, and pools**, provided the activity is located more than 50 feet from the mean annual high-water line within the Riverfront Area or from a Resource Area excluding the Buffer Zone, whichever is farther, and erosion and sedimentation controls are implemented during construction; and
- 3.2.10. The conversion of uses accessory to existing single family houses, such as sheds, decks, patios, or pools **into lawn**, provided the activity is located more than 50 feet from the mean annual high-water line within the Riverfront Area or from a Resource Area excluding the Buffer Zone,

whichever is farther, and erosion and sedimentation controls are implemented during construction.

- 3.2.11. The removal of invasive plant species (as listed and designated by the Commonwealth of Massachusetts) within the Riverfront Area or Buffer Zone with consultation with the Commission and/or its agent.

3.3. Advice from Town Staff

Any advice, opinion, or information given to an Applicant by a Commission member, its agent, or by an agency, officer, or employee of the Town of Chelmsford, shall be considered advisory only and shall not be binding on the Commission.

3.4. Resource Area Review Period

3.4.1. Resource Area Boundary Determination

Review of Resource Area boundary delineations, however requested, shall be reviewed only between April 1 and November 1 of each year. Delineations may be reviewed at the sole discretion of the Commission or its agent between November 2 and March 31, and shall be reviewed only when site conditions are such that the Commission or its agent believes they can adequately review the relevant resource area indicators (e.g., soils, vegetation, topography, hydrology).

3.4.2. Vernal Pool Determination

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

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

4. DEFINITIONS

In addition to the definitions contained in the Chapter [187-3] and those found at 310 CMR 10.04, the following terms shall have the meanings in these Regulations and the Chapter:

Aesthetics means retention or improvement of natural conditions as at the time is experienced by the general public from public ways, including waterways. These

natural conditions include natural lighting, sounds, odors, significant trees, and view.

Alternatives Analysis means an evaluation provided by an Applicant showing that the proposed project offers the best measures to assure compliance with the standards of the Chapter and these Regulations over all other reasonable possible configurations of the project, including configurations that would avoid, minimize, and mitigate disturbance and alteration.

Applicant means any person who files a Request for Determination of Applicability (RDA), Abbreviated Notice of Resource Area Delineation (ANRAD), Notice of Intent (NOI), Request for an Extension Permit (REP), or Request for a Certificate of Compliance (RCOC), and any person on whose behalf such notice is filed.

Application means a Request for Determination of Applicability (RDA), Abbreviated Notice of Resource Area Delineation (ANRAD), Notice of Intent (NOI), Request for an Extension Permit (REP), or Request for a Certificate of Compliance (RCOC).

Building means a structure enclosed within exterior walls or fire walls, 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 any similar covering, whether or not permanent in nature.

Evidence

Credible Evidence means factual information from a competent source and collected using acceptable scientific methodology or best available reliable practices or which is based on personal knowledge. A competent source includes the Department of Environmental Protection (DEP), Commission members or staff, or from a professionally qualified individual.

Preponderance of Credible Evidence means greater weight of the factual information; that is more credible and convincing to the mind.

Hardship means there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with the Regulations; and that avoidance, minimization, and mitigation have been employed to the maximum extent practicable; and that a waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation. In a subdivision of any size, the inability to develop all proposed/conceptual lots shall not be considered a hardship as it is presumed that the Applicant can configure the lots to avoid all impacts to the Resource Areas protected by the Chapter and

Regulations and the Applicant/property owner continues to have beneficial and economic use of the property.

Maintenance means the work or activity of keeping a structure in proper condition but not moving, enlarging, or substantially changing either by physical structures, additional structures, landscaping, or usage.

Minor Activities mean as defined in Section 3.2 of these Regulations and as permitted by Chapter 187-4 D.

Permit means a Determination of Applicability (DA), Order of Resource Area Delineation (ORAD), Order of Conditions (OOC), Extension Permit (EP), or Certificate of Compliance (COC).

Repair (*See definition of Maintenance*).

Significant or Cumulative Effect means an impact that would under reasonable assumptions result in a measurable decrease in the function of a resource area or values protected by the Chapter at the site or proximal to the site, taking into consideration past losses, current conditions, and the projected impacts of reasonably foreseeable future work resulting in similar, comparable, or other discernible impact and disturbance, as determined by the Commission. When an activity that may not be significant in and of itself or incremental activities that may not be significant in isolation, but cumulatively have an adverse impact, that activity may have a Significant or Cumulative Effect. Determination of Significant or Cumulative Effect shall be made on case specific Evidence, which shall include, but not be limited to, attritional loss and history of activities within Resource Areas.

Wildlife Habitat means the ability of any Resource Area to provide food, breeding habitat, shelter, migratory, or overwintering areas, or escape cover for animal species set forth in these regulations at (1) and (2) below:

(1) Any plant or animal species listed as endangered, threatened, or special concern or placed 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; and deemed locally threatened, in writing, by the Conservation Commission which decision shall be based on scientific data from a competent source.

(2) 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 Chapter would be a risk to humans.

5. APPLICATIONS

5.1. Request for Determination of Applicability (RDA)

Any Person who desires a determination as to whether the Chapter applies to an area, or work to be performed within such area may submit a written RDA Application to the Commission.

5.1.1. A RDA Application shall be submitted on the same form used for filing a RDA under the Act. An RDA Application shall be deemed filed pursuant to the Chapter if it includes the appropriate number of copies required by the RDA Application Form (See Appendix A: Forms) and includes:

- a. Completed Application WPA Form 1;
- b. Correct filing fees as established in Section 7;
- c. Plans as required by the Regulations. *See* Section 5.1.2; and said Application is either hand delivered or sent by certified mail to the Conservation Office.

5.1.2. At a minimum, the plan submitted as part of an RDA Application shall include:

- a. The boundaries of all Resource Areas on the site, including Riverfront Area and Buffer Zone, as well as the 50-foot No Building Area, 30-foot No Impervious Area, and 25-foot No Disturbance Area;
- b. Location of all existing roads, cart paths, buildings, septic systems, wells, contours, and other existing conditions features;
- c. Location of all proposed roads, pavement, vegetation removal, buildings, wells, grading, contours, and other proposed features;
- d. Proposed erosion and sediment controls (if applicable);
- e. A limit of disturbance; and
- f. Any additional items required by the RDA Application Form.

5.1.3. The Applicant shall be responsible for paying for the publication of the legal notice of the public meeting in a newspaper of general circulation in Chelmsford; and shall certify to the Commission that the owner of the area subject to the request, if the Applicant is not the owner, has been notified that a determination is being requested.

5.1.4. The Commission will issue its decision in a Determination of Applicability Permit using the same form used for issuing a Determination of Applicability under the Act.

5.2. Abbreviated Notice of Resource Area Delineation (ANRAD)

Any Person who desires a Permit to confirm the delineation of Bordering Vegetated Wetlands (BVW) and other Resource Areas, may submit a written ANRAD Application to the Commission.

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- 5.2.1. An ANRAD Application shall be submitted on the same form used for filing an ANRAD under the Act. An ANRAD Application shall be deemed filed pursuant to the Chapter if it includes the appropriate number of copies required by the ANRAD Application Form (See Appendix A: Forms) and includes:
- a. ANRAD Application:
 1. Signed WPA Form 4A;
 2. ANRAD Wetland Fee Transmittal Form;
 3. BVW Field Data forms (if applicable);
 4. USGS map of the area;
 5. Attachments (if any);
 - b. Plans as required by the Regulations. *See* Section 5.2.2;
 - c. Electronic submission of Application materials:
 1. One copy of the Application and the plan in digital format: PDF file.
 2. One copy of the plan in digital format: capable of conversion to a DXF file and referenced to the Massachusetts State Plane NAD83 format.
 - d. Copy of an Assessor's List of Abutters;
 - e. Copy of the Notice to Abutters compliant with Chapter 187-7A;
 - f. Affidavit of mailing to all Abutters within 300 feet of the subject property;
 - g. Application fee payable to the Town of Chelmsford as established in Section 7;
 - h. Photocopy of the checks or money orders submitted to the Town and the State; and
 - i. Any additional items required by the ANRAD Application Form.
- 5.2.2. At a minimum the plan submitted as part of an ANRAD Application shall include:
- a. Title and date;
 - b. Applicant's name and address;
 - c. Owner's name and address;
 - d. Assessor's map, block, lot number, street number and subdivision lot number, where applicable, of the subject property;
 - e. Owner's name, assessor's map, block, lot number, and street number of adjacent properties;
 - f. Existing Conditions:
 1. Buildings and structures;
 2. Pavement;
 3. Edge of lawn / landscaping; and
 4. Stormwater structures;
 - g. The boundaries of all Resource Areas on the site, including Riverfront Area and Buffer Zone, as well as the 50-foot No Building

- Area, 30-foot No Impervious Area, and 25-foot No Disturbance Area;
- h. Wetlands on and within 200 feet of the property;
 - i. The location of consecutively numbered flags delineating Resource Areas;
 - j. Name of the person who performed the delineation and date of the delineation;
 - k. Certification by a professional engineer or land surveyor; and
 - l. Any additional items required by the ANRAD Application Form.
- 5.2.3. The Applicant shall be responsible for paying for the publication of the legal notice of the public hearing in a newspaper of general circulation in Chelmsford; and shall certify to the Commission that the owner of the area subject to the request, if the Applicant is not the owner, has been notified that a Permit is being requested.
- 5.2.4. The Applicant is responsible for notifying Abutters within 300 feet of the subject property concurrent with the filing of the Application in accordance with the provisions of 310 CMR 10.05(4)(a) and the Chapter. The Applicant must present either the certified mail receipts or certificate of mailing receipts for all abutters at the beginning of the public hearing.
- 5.2.5. The Commission will issue its decision in an Order of Resource Area Delineation Permit using the same form used for issuing an Order of Resource Area Delineation under the Act.

5.3. Notice of Intent (NOI)

Any person who wishes to perform work that is not a Minor Activity within a Resource Area may submit a written NOI Application to the Commission.

- 5.3.1. An NOI Application shall be submitted on the same form used for filing an NOI under the Act. An NOI Application shall be deemed filed pursuant to the Chapter if it includes the appropriate number of copies required by the NOI Application Form (See Appendix A: Forms) and includes:
- a. NOI Application:
 1. Signed WPA Form 3;
 2. NOI Wetland Fee Transmittal Form;
 3. BVW Field Data forms (if applicable);
 4. USGS map of the area; and
 5. Attachments (if any).
 - b. Plans as required by the Regulations. *See* Section 5.3.2;
 - c. Electronic submission of Application materials:
 1. One copy of the Application and the plan in digital format: PDF file.

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2. One copy of the plan in digital format: capable of conversion to a DXF file and referenced to the Massachusetts State Plane NAD83 format.
 - d. Copy of an Assessor's List of Abutters;
 - e. Copy of the Notice to Abutters compliant with Chapter 187-7A;
 - f. Affidavit of mailing to all Abutters within 300 feet of the subject property;
 - g. Application fee payable to the Town of Chelmsford as established in Section 7;
 - h. Photocopy of the checks or money orders submitted to the Town and the State; and
 - i. Any additional items required by the NOI Application Form.
- 5.3.2. At a minimum the plan submitted as part of a NOI Application shall include:
- a. Title and date;
 - b. Applicant's name and address;
 - c. Owner's name and address;
 - d. Assessor's map, block, lot number, street number and subdivision lot number, where applicable, of the subject property;
 - e. Owner's name, assessor's map, block, lot number, and street number of adjacent properties;
 - f. Existing and proposed conditions:
 1. Buildings and structures;
 2. Pavement;
 3. Edge of lawn / landscaping;
 4. Stormwater structures;
 5. Snow storage;
 6. Two-foot contours or smaller;
 7. Limit of work;
 8. Erosion control devices; and
 9. Commercial trash receptacles.
 - g. Construction stockpiling and staging areas;
 - h. Details for proposed stormwater structures, erosion control, and stabilization;
 - i. The location of consecutively numbered flags delineating Wetland Resource Areas;
 - j. The boundaries of all Resource Areas on the site, including Riverfront Area and Buffer Zone, as well as the 50-foot No Building Area, 30-foot No Impervious Area, and 25-foot No Disturbance Area;
 - k. Wetlands on and within 200 feet of the property;
 - l. Name of the person who performed the delineation and date of the delineation;
 - m. Certification by a professional engineer or land surveyor; and
 - n. Any additional items required by the NOI Application Form.

- 5.3.3. The Applicant shall be responsible for paying for the publication of the legal notice of the public hearing in a newspaper of general circulation in Chelmsford and shall certify to the Commission that the owner(s) of the area(s) subject to the request, if the Applicant is not the owner, has(have) been notified that a Permit is being requested.
- 5.3.4. The Applicant is responsible for notifying abutters within 300 feet of the subject property concurrent with the filing of the Application in accordance with the provisions of 310 CMR 10.05(4)(a) and the Chapter. The Applicant must present either the certified mail receipts or certificate of mailing receipts for all abutters at the beginning of the public hearing.
- 5.3.5. The Commission will issue its decision in an Order of Conditions Permit using the same form used for issuing an Order of Conditions under the Act.
- 5.3.6. Recording
The Order of Conditions shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate, by the Applicant or their representative. Proof of recording at the Registry shall be submitted to the Commission.
- 5.3.7. The subdivision of land resulting in three (3) or more total lots must be filed separately. Roadway construction, the stormwater management system, common utilities, and any wetland replication areas, etc. (“common utilities”) may be filed under one NOI. Any other work on individual lots requires the filing of a separate NOI. When filing concurrently, Applicants do not need to send separate abutters’ notifications for each filing, but must include all the work to be performed on the mailing to abutters. When filing concurrently, Applicants may provide the same plan showing the whole project for each filing. Orders of Conditions for work on individual lots will be conditioned to require compliance with the “common utilities” Order of Conditions and will not be eligible for a Certificate of Compliance until the “common utilities” Order of Conditions has received at least a Partial Certificate of Compliance.

5.4. Request for Extension Permit (REP)

Subject to Chapter 187-10I, any Applicant who wishes to extend an Order of Conditions or Order of Resource Area Delineation, may submit a written Request for Extension Permit (REP) thirty (30) calendar days prior to the expiration of said Permit.

- 5.4.1. A REP Application shall be submitted on the same form used for filing an Extension Permit under the Act. A REP Application shall be deemed filed pursuant to the Chapter if it includes the appropriate number of copies

required by the REP Application Form (See Appendix A: Forms) and includes:

- a. The REP Application:
 1. Written request for extension; and
 2. Attachments (if any).
- b. Application fee payable to the Town of Chelmsford as established in Section 7; and
- c. Any additional items required by the Extension Permit Application Form.

5.4.2. The Commission will issue its decision in an Extension Permit using the same form used for issuing an Extension Permit under the Act.

5.4.3. The Commission may issue or deny an Extension Permit for the same reasons as specified in 310 CMR 10.05(8).

5.4.4. Recording

The Extension Permit shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate, by the Applicant or their representative. Proof of recording at the Registry shall be submitted to the Commission.

5.5. Request for Certificate of Compliance (RCOC)

Any Applicant who wishes to obtain a COC for work completed under an Order of Conditions may submit a written Request for Certificate of Compliance (RCOC) Application to the Commission.

5.5.1. A RCOC Application shall be submitted on the same form used for filing a RCOC under the Act. An RCOC Application shall be deemed filed pursuant to the Chapter if it includes the appropriate number of copies required by the RCOC Form (See Appendix A: Forms) and includes:

- a. The RCOC Application:
 1. WPA Form 8A
 2. Affidavit by a professional that all conditions have been satisfactorily completed
- b. As-built plan. *See* Section 5.5.2;
- c. Electronic submission of Application materials:
 1. One copy of the Application and the plan in digital format: PDF file.
 2. One copy of the plan in digital format: capable of conversion to a DXF file and referenced to the Massachusetts State Plane NAD83 format.
- d. Application fee payable to the Town of Chelmsford as established in Section 7; and
- e. Any additional items required by the RCOC Application Form.

- 5.5.2. At a minimum the as-built plan submitted as part of an RCOC Application shall include:
- a. "Screened" approved Order of Conditions plan;
 - b. "Red line" as-built contour elevations with spot shots;
 - c. "Red line" identification of any discrepancies from the Order of Conditions plan;
 - d. Certification by a professional engineer or land surveyor; and
 - e. Any additional items required by the RCOC Application Form.
- 5.5.3. The Commission shall issue a COC if the activity or portions thereof described in the Application and plans complies with the Permit. The Commission shall issue a COC only when all construction, excavation, filling, and earth moving activities within the Buffer Zone and any wetland replication area have been completed and when the site is sufficiently stable to guard against erosion.
- 5.5.4. Site Inspections
Prior to the issuance of a COC a site inspection shall be made by the Commission or its agent. If the Commission determines, after inspection, that the work has not been done in compliance with the Permit, it may refuse to issue a COC. Such refusal shall be in writing and shall specify the reasons for denial.
- 5.5.5. The Commission will issue its decision in a COC Permit using the same form used for issuing a COC under the Act.
- 5.5.6. Letter of Partial Compliance
If a project has been completed with all the grading done in accordance with the plans stamped by a registered professional engineer, landscape architect or land surveyor, the Commission may, at its discretion, issue a Letter of Partial Compliance while waiting for the ground to be stabilized by an adequate vegetative cover. Only then will a COC be issued.
- 5.5.7. Continuing Conditions
If the Permit contains conditions which continue past the completion of the work, such as maintenance or monitoring, the COC shall specify which, if any, of such conditions shall continue. The COC shall also specify to what portions of the work it applies, if it does not apply to all the work regulated by the Permit.
- 5.5.8. Recording
The COC shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate, by the Applicant or their representative. Proof of recording at the Registry shall be submitted to the Commission.

5.6. Receipt and Acceptance of an Application

Where the Commission receives an Application, confirmation of that receipt may be given by the Commission, its agent, or individual designated by the Commission to receive an Application. The Application must be complete.

- 5.6.1. The Application shall be inspected for completeness in accordance with the requirements of these Regulations, the Act, and the State Regulations.
- 5.6.2. Where the Application is deemed incomplete, the Application shall not be accepted and the Application shall be returned within seven (7) business days of receipt with a written reason for the non-acceptance.

6. PLANS

6.1. General

Plans shall describe the proposed activity and its effect on the environment. All plans, drawings, sketches, and calculations shall be legible, dated, and signed by the persons responsible for their preparation. Plans and drawings involving the practice of surveying or engineering shall be stamped and signed by a professional surveyor or engineer. Plans shall be consistent with those submitted to other Town boards and departments. Plan content requirements are specified within the applicable Application section of these Regulations. *See* Section 5.

6.2. Other Plan Information

The requirements stated above are not definitive or exclusive. Some may be omitted in a particular case and an Applicant may be required to submit additional information deemed necessary to determine compliance with the Chapter and the Regulations. Applicants and their consultants are encouraged to contact the Commission and/or its agent to ascertain information requirements for specific projects.

7. FEES

7.1. Application Fees

- 7.1.1. At the time of filing an Application under the Chapter, the Applicant shall pay a municipal filing fee as specified according to the fee schedule listed in the Fee Table below. This fee is in addition to any fees required by the Act [M.G.L. c. 131, § 40]. This fee is not refundable. Failure to pay the filing fee when due shall cause the Application to be deemed incomplete. The Commission may waive the filing fee for an Application filed by a Municipal, State, or Federal agency. Non-profit entities, such as private schools, religious or civic organizations, and water districts are subject to local filing fees. *See* Chapter 187-6 D.

Fee Table

APPLICATION TYPE:	MUNICIPAL FEE:
Request for Determination of Applicability Application	
Commercial, industrial, non-profit, and water district entity:	\$100.00
Residential Subdivision (2 or more lots):	\$100.00
General Residential or Single Family house:	\$50.00
Abbreviated Notice of Resource Area Delineation Application	
Single Family house	Half the total Act fee
All other Activities	Half the total Act fee
Notice of Intent Application*	
Activity Fee Category 1	\$55
Activity Fee Category 2	\$250
Activity Fee Category 3	\$525
Activity Fee Category 4	\$725
Activity Fee Category 5	\$75
*per each activity proposed within Wetland Resource Areas and Buffer Zone	
Application Filed After Enforcement Order:	Double the total municipal fee
Amended Order of Conditions Application:	75% of initial municipal fee
Request for Certificate of Compliance Application	
Commercial, industrial, non-profit, and water district entity:	\$150.00
Residential Subdivision/"Common Utilities"/Roadway/etc.	\$100.00
General Residential or Single Family house:	\$50.00
If Order of Conditions has Expired:	Add an additional \$50.00
Request for an Extension Permit Application:	\$75.00
Request for True Attest Copy	
Order of Conditions, Certificate of Compliance, Amended Order of Conditions, Extension Permits, or other documents:	\$25.00 each
Research	
Obtaining specific applications, plans, or permits from file or researching other information:	\$25.00 per hour of staff time

7.1.2. If the appropriate local filing fee is disputed, the Applicant may file a RDA under the Chapter, subject to the local filing fee, and request that the Commission issue a Determination of Applicability to determine the appropriate local filing fee.

7.2. Consulting Fees

- 7.2.1. As provided by M.G.L. c. 44 § 53G, the Commission may impose reasonable fees for the employment of outside consultants engaged by the Commission for specific expert services deemed necessary by the Commission to come to a final decision on an Application submitted to the Commission pursuant to the requirements of the Act, Conservation Commission Act [GL Ch. 40 § 8C], or any other applicable state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time. The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information or technical assistance acquirable only through outside consultants would be necessary for the making of an objective decision.
- 7.2.2. Funds received by the Commission pursuant to 7.2.1 shall be deposited with the Town of Chelmsford Treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Commission without further appropriation as provided in M.G.L. c. 44 § 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. Accrued interest may also be spent for the purposes hereunder.
- 7.2.3. Specific consultant services may include, but are not limited to, Resource Area survey and delineation, analysis of resource area values and impacts, hydrology and drainage analysis, impacts on municipal conservation lands, and issues of environmental or land use law. Consultants include, but are not limited to, engineers, planners, wetland scientists, surveyors, attorneys or other professionals with experience in the matters that are the subject of the Commission's proceedings. The consultant shall be chosen in accordance with Town hiring practice and report only to the Commission and/or its agent.
- 7.2.4. The Commission shall give written notice to the Applicant of the selection of an outside consultant, which notice shall state the identity of the 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 day notice is given.

- 7.2.5. 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 the consultant fee specified by the Commission within ten (10) business days of the date of the request for payment shall be cause for the Commission to determine that the Application is administratively incomplete (except in the case of an appeal). The Commission shall state such in a letter to the Applicant. No additional review or action shall be taken on the Permit request until the Applicant has paid the requested fee. Repeated failures to pay requested fees shall be grounds for denial of the underlying Application. The Applicant may appeal the selection of 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 (3) 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 Chelmsford Board of Selectmen and a copy received by the Commission, so as to be received within ten (10) days of the date consultant fees were requested by the Commission. The required time limits for action upon the Application 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 (1) month following the filing of the appeal, the selection made by the Commission shall stand.
- 7.2.6. At the completion of the Commission's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the Applicant or the Applicant's successor in interest. A final report of said account shall be made available to the Applicant or Applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an Applicant's successor in interest shall provide the Commission with documentation establishing such succession in interest.

8. HEARINGS

8.1. Hearing Procedures

The Commission shall hold a public hearing for ANRAD and NOI Applications or a public meeting for RDA, REP, and RCOC Applications and other business:

- 8.1.1. The Commission shall commence the public hearing or shall hold a public meeting on an Application within twenty-one (21) calendar days from receipt of a completed Application unless an extension or waiver is authorized, in writing, by the Applicant. With the Applicant's written consent, the Commission may open the public hearing beyond twenty-one (21) calendar days of submitting a complete Application.

- 8.1.2. The Commission shall schedule a public hearing upon receipt of a complete Application, with written notice given at the expense of the Applicant not less than five (5) business days prior to the hearing in a newspaper of general circulation in Chelmsford.
- 8.1.3. The Commission may combine, as appropriate, a public hearing or meeting under the Act with the hearing under the Chapter. If filed at the same time, separate hearings for projects involving the subdivision of land may also be combined.
- 8.1.4. Where the Chapter states that a particular action is to be taken by the Commission, that action is to be taken by more than half the members present at a meeting of at least a quorum. A quorum is defined as a majority of the members then in office.
- 8.1.5. The Commission determines the order of the presentations and public participation at the public hearing. Said hearing shall be orderly and the Commission may stop such hearing for cause. The Chair may delegate the responsibility for conducting any hearing to any other Commissioner.

8.2. Continuances

- 8.2.1. With or without the consent of the Applicant, the Commission may continue a public hearing when deemed necessary.
- 8.2.2. With the written consent of the Applicant, the Commission may continue the hearing to an agreed upon date, which shall be announced at the hearing, even if beyond twenty-one (21) days. In order to process Applications in a timely manner the Commission will make every effort to conclude a public hearing in two (2) or fewer sessions.
- 8.2.3. The Commission may refuse to continue a hearing if the Applicant, by his or her admission, is not prepared and cannot become prepared during the course of the hearing to provide the information requested by the Commission or if the Commission's maintenance of quorum is in question. If the Commission refuses to continue the hearing, it shall be closed immediately without any discussion taking place or new information being submitted.
- 8.2.4. Should the Commission determine that progress is not being made to procure the information it has requested, the Commission may close the public hearing, with or without the consent of the Applicant, and vote on the information currently in the record.

9. BURDEN OF PROOF

The Applicant shall have the burden of proving by a Preponderance of the Credible Evidence that the work proposed in the Application will not have an unacceptable

Significant or Cumulative Effect upon the wetland Values protected by the Chapter. Failure to provide such Evidence to the Commission shall be sufficient cause for the Commission to: 1) grant a Permit with conditions; 2) request permission to continue the hearing in order that the Applicant or others may present additional Evidence; or 3) deny a Permit. *See* Chapter 187-9.

10. BURDEN OF GOING FORWARD

The Applicant shall have the burden of going forward by providing credible Evidence from a competent source in support of all matters asserted by the Applicant in accordance with his or her burden of proof. *See* Chapter 187-9.

11. PERMITS

11.1. Issuance

The Commission shall issue its Permit in writing, within twenty-one (21) calendar days of the close of the public hearing unless an extension is authorized, in writing, by the Applicant.

11.2. Expiration and extensions

The issuance of a Permit, except for a Determination of Applicability, for a period longer than three (3) years, but no more than five (5) years shall be based on facts and circumstances presented in support of longer construction timeframes or project phasing, recurring or continuous Maintenance work, and provided that annual notification of the time and location of work is given to the Commission. Determinations of Applicability may not be issued for more than three (3) years and may not be renewed or extended. Orders of Resource Area Delineation and Orders of Conditions may be renewed once for up to an additional three (3) year period, provided that a request for a renewal in the form of a Request for Extension Permit is received in writing by the Commission thirty (30) calendar days prior to expiration. An Extension Permit may not be renewed or extended. *See* Chapter 187-10 I, and Section 5.4 above.

11.3. Standard Conditions

The Commission shall include Standard Conditions in all Orders of Conditions approving a proposed activity. These conditions may be modified at the Commission's discretion to suit the needs and demands of a particular site or project. *See* Appendix B: Standard Conditions.

11.4. Special Conditions

The Commission may impose additional special conditions modified at the Commission's discretion to suit the needs and demands of a particular site, project, or activity that shall be included in the Permit.

11.5. Other Special Conditions - Security

As part of a Permit the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the following methods:

11.5.1. Security Deposit

Prior to the commencement of work, the Commission may require a proper bond in the form of a passbook savings account in the name of the Applicant and the Town of Chelmsford or deposit of money in an amount to be determined by the Commission, to be released in whole or in part upon the issuance of a COC for work performed pursuant to the Permit. The passbook shall be held by the Finance Director for the duration of the project. At the time the passbook is established, the Applicant shall provide the Finance Director with four (4) signed withdrawal slips. *See Appendix B: Forms.*

11.5.2. Conservation Restrictions

With the consent of the property owner, the Commission may require a conservation restriction, easement, or other covenant enforceable in a court of law executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Chelmsford, whereby the conditions of the Permit shall be performed and observed before any lot may be conveyed other than by mortgage deed.

11.6. Revocation or Modification of a Permit

For good cause, the Commission may revoke or modify a Permit issued under the Chapter after notice to the holder, the public, Abutters, town boards, and after a duly conducted public hearing.

11.7. Denials

11.7.1. The Commission is empowered to deny a Permit for failure to meet the requirements of the Chapter; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements of the Regulations; for failure to avoid, minimize, or mitigate unacceptable Significant or Cumulative Effects upon the Values Protected by the Chapter; or for situations where no conditions may be imposed which are adequate to protect those Values.

- 11.7.2. Due consideration shall be given to possible effects of the proposal on all Values Protected by the Chapter, that cannot be preserved and protected under this Chapter and to any demonstrated Hardship on the Applicant by reason of a denial, as brought forth at the public hearing.

12. ENFORCEMENT AND FINES

12.1. Violation of the Chapter or a Permit

- 12.1.1. Wetland violations and enforcement take many forms. The most common problems are (1) action without a Permit, (2) action in violation of a Permit, and (3) failure to take action required by a Permit. Violations of a Permit 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, when such failure causes damage to the resource areas protected by the Chapter; or
- c. Failure to obtain a valid Permit prior to conducting an activity subject to regulation under the Chapter.

- 12.1.2. Property owners are responsible for violations that occur on their property. The ultimate goals of the Commission's enforcement actions are:

- a. Ensuring prompt and continued compliance with the Chapter or Regulations;
- b. Protecting the Resource Areas; and
- c. Educating the public about the various issues involved with protecting wetlands.

- 12.1.3. Actions taken to resolve violations under the Chapter may include, but are not limited to:

- a. The issuance of an Order to Cease and Desist, a Notice of Violation and/or an Enforcement Order that includes specific requirements for the restoration of the site to its original condition within a specified time period. An Enforcement Order may require a detailed restoration plan, prepared by a qualified professional, including specific dates for submissions, construction, and compliance milestones. Once an acceptable restoration plan is received, the plan will be incorporated as a dated attachment to the original Enforcement Order.
- b. A fine may be issued in accordance with Chapter 187-13.
- c. Failing to receive an adequate response, further action may be taken through criminal or civil action as described in DEP's Wetlands Enforcement Manual – A Guide to Effective Compliance with the Massachusetts Wetlands Protection Act Regulations, November, 2004.

12.2. Response to Possible Wetland Violations

The following section outlines the procedures for identifying, documenting, and resolving potential wetland violations. Steps generally include issuance of a: 1) Order to Cease and Desist; 2) Notice of Violation; and 3) Enforcement Order.

12.2.1. Order to Cease and Desist

If the Commission, its agent, or their designee becomes aware of an activity that is potentially in violation of the Chapter or a Permit issued under the Chapter, the Commission or its agent shall review records and available resources/tools (such as aerial photos) and conduct a site visit if warranted. While conducting a site visit, the Commission or its agent shall observe the possible violation from the site as permitted or from a public location (street or town property) and/or from an adjacent property as appropriate. The Commission or its agent shall take photographs and detailed notes, and determine whether or not there is a wetland violation and, if so, what actions are warranted. Based on the above, the Commission or its agent shall:

- a. If the Commission or its agent, based on review of the available resources/tools and any site visits, determines that no unauthorized activity is altering or has altered a Resource Area, then the Commission or its agent shall determine that no violation has occurred; or
- b. If the Commission or its agent determines that there is an activity occurring or that an activity has occurred, which is altering or has altered a Resource Area, then the Commission or its agent shall issue an immediate Order to Cease and Desist.

12.2.2. Issuance of a Notice of Violation and/or Enforcement Order

After issuance of an Order to Cease and Desist, the Commission, its agent, or their designee shall determine if a Notice of Violation and /or if an Enforcement Order shall be issued in accordance with the following:

- a. If the activity that is altering or has altered a Resource Area is determined by the Commission or its agent to not cause additional impact or degradation to the Resource Area values protected under the Act or the Values Protected by the Chapter, then the Commission, its agent, or their designee shall issue a Notice of Violation signed and issued by the Commission or its agent. The Notice of Violation shall be sent by certified mail, return receipt requested, or by hand delivery to the responsible party and property owner if different. If it is hand delivered, the individual who delivered the document shall sign the Notice of Violation and either obtain a receipt or draft an affidavit documenting service for the Commission's records; or
- b. If the activity that is altering or has altered a Resource Area is determined by the Commission or its agent to have the potential to

cause additional impact or degradation to the Resource Areas Values, then the Commission, its agent, or their designee shall issue a Notice of Violation and an Enforcement Order. An Enforcement Order issued by the Commission's agent shall be ratified by a majority of the Commission at their next scheduled meeting. *See* Section 12.2.9. The Notice of Violation and Enforcement Order shall be sent by certified mail, return receipt requested, or by hand delivery to the responsible party and a copy sent to the property owner, if different. If it is hand delivered, the individual who delivered the document shall sign the Notice of Violation and Enforcement Order and either obtain a receipt or draft an affidavit documenting service for the Commission's records.

- c. Should the Commission determine that the Applicant has failed to provide an adequate response to the Notice of Violation, the Commission shall issue an Enforcement Order and cite the specific deficiencies with the Applicant's response. If only one document is issued pursuant to both the Act and the Chapter, each law should be cited.

12.2.3. A Notice of Violation shall list the date of the site visit, the location of the violation, and the type of violation that has occurred. The property owner will be informed of the problem and may be given a list of corrective steps that he/she shall take immediately to prevent further damage. The letter will further detail specific corrective actions with time frames that are required to bring the property into compliance with the Chapter and these Regulations.

12.2.4. Review of Orders to Cease and Desist, Notices of Violation and Enforcement Orders.

- a. A public meeting will be scheduled by the Commission to discuss the violation and to detail specific restoration requirements. The Commission may also require the property owner to file a RDA or NOI Application, either retroactively for the work performed, or to condition additional work that is required for stabilization or restoration.
- b. The property owner or their representative may be required to attend the public meeting. The property owner will be notified at least forty-eight (48) hours in advance of the meeting. If required to attend, the failure to do so or to arrange an alternative acceptable time shall result in an Enforcement Order being issued, if one has not already.
- c. During any meeting to review an Enforcement Order, the Commission shall require the following:
 1. A NOI or RDA Application shall be filed with the Commission by a date certain for the specified activity; and

2. Any stabilization, restoration or correction deemed appropriate by the Commission shall be described in the NOI or RDA Application and depicted on accompanying plans.

Other possible requirements may include:

3. Resource Area alterations resulting from the activity shall be corrected and the Resource Areas returned to their original condition; and/or
4. A restoration plan shall be filed with the Commission by a date certain; and/or
5. The property owner shall take corrective actions to prevent further violations of the Act and Chapter as determined by the Commission by a date certain.

12.2.5. An Enforcement Order signed and issued by the Commission's agent or their designee is valid, as long as said Order is ratified by a majority of the Commission at its next available scheduled meeting.

12.2.6. Any time an Enforcement Order is amended, the Amended Order shall also be properly served on the responsible party.

12.2.7. When appropriate, the Commission, its agent, or their designee may issue an Enforcement Order under the Chapter in lieu of or in addition to an Enforcement Order issued under the Act.

12.2.8. In lieu of or in addition to any order issued under this section, the Commission may issue fines for violation of the Chapter and shall be issued in accordance with Chapter 187-13D and Section 12.2.9. Each day an illegal situation persists shall be counted as a separate offense; these fines may be issued at any time during proceedings.

12.2.9. Factors in Determining the Issuance of a Fine

The Commission shall consider the following factors in imposing fines:

- a. Whether the violation was willful or negligent;
- b. Any economic benefit gained by the property owner as a result of the violation;
- c. Actual and potential harm to the Values Protected by the Chapter, safety, or the environment resulting from the violation;
- d. Actual and potential cost to the Town resulting from the violation, including its enforcement costs and attorney's fees;
- e. Actual and potential damages suffered by the Town or any other person(s), resulting from the violation, including its enforcement costs and attorney's fees;
- f. Whether the violator took steps to prevent the violation(s);
- g. Whether the violator promptly took steps to come into compliance after the occurrence of the violation(s);

- h. Whether the violator took steps to remedy and mitigate whatever harm occurred as a result of the violation(s);
 - i. Any history of noncompliance by the violator; and
 - j. Deterrence of future violations.
- 12.2.10. A landowner can apply in writing for a continuance of the meeting stating in full the reason for the request. The Commission may grant a continuance for compelling and/or environmentally sound reasons.
- 12.2.11. An Enforcement Order issued under the Wetlands Protection Act [M.G.L. c. 131, § 40] and/or Chelmsford Wetlands Bylaw [Chapter 187] will constitute a warning that fines may result.
- 12.2.12. The Commission reserves the right to adjust the fine in response to new information or new circumstances after which the responsible party and/or property owner will be given notice. A written notice of the adjustment of fine shall be sent to the landowner by certified mail or hand delivered.
- 12.2.13. When deemed appropriate by the Commission, the Commission may accept a written plan with a timetable for full restoration of the violation and may then suspend sending the notice of fine(s) for a specified time period, provided that written notice of the Commission's intention to do so is provided to the responsible party and/or property owner. If satisfactory restoration is not made in a timely manner, the notice of fines is retroactive to the date that the Commission notified the responsible party and/or property owner of its intention to suspend the fine.
- 12.2.14. In addition to the remedies set forth above, the Commission may seek civil or criminal enforcement of the Chapter and these Regulations in the appropriate Court of law.

13. APPEALS

A decision of the Commission issued under the Chapter may be appealed to the Superior Court of Massachusetts.

14. SEVERABILITY

The invalidity of any section or provision of the Regulations shall not invalidate any other section or provision thereof, nor shall it invalidate any Permit or determination which previously has been issued.

15. EFFECTIVE DATE

After public notice, public hearing, and upon passage or approval of any changes thereto, the Regulations shall take effect when filed with the Town Clerk in accordance with the Chapter. *See* 187-11.

16. ADDITIONAL REGULATIONS FOR WETLANDS

16.1. Activities within Areas Subject To Protection under the Chapter

The following performance standards shall be adhered to for work within Resource Areas:

16.1.1. The general performance standards for Banks, Land Under Water Bodies and Waterways, Bordering Land Subject to Flooding, and Isolated Land Subject to Flooding shall be as stated in 310 CMR 10.00.

16.1.2. The general performance standards for BVW shall be as stated in 310 CMR 10.55 except where an alteration of BVW is proposed. Notwithstanding, the Commission may permit projects requiring the alteration of up to five thousand (5,000) square feet of BVW as permitted by 310 CMR 10.55(4)(b) only if the Applicant demonstrates all of the following:

- a. Alternatives that would avoid the impact do not exist and there are no practicable alternatives available;
- b. Project scope and design minimize the amount of BVW altered or destroyed;
- c. In the judgment of the Commission, such work shall not lead to the degradation of additional BVW or other Resource Areas; and
- d. Replication or wetland creation is provided at a ratio sufficient to reproduce all functions and values of the original wetland, as determined by the Commission and the performance standards for wetland replication are met. *See* Section 16.2.

16.2. Performance Standards for Wetland Replication

Wetland replication fails to reproduce the range of values, in both quantity and quality, of the wetlands they ostensibly replace. Some of the reasons highlighted for this failure include the difficulty in replicating proper hydrological conditions in a consistent and enduring manner, and the failure of replication plans to provide a detailed design for establishment and post-construction monitoring of the compensatory wetland areas.

The Act directs the Commission to require Applicants to address not just the size of the impacted wetland, but its specific ecological functions, and it confers broad authority to determine what measures are necessary to ensure that a replication area will replace the lost functions of an impacted wetland. These regulations emphasize the importance of the avoidance and minimization sequence in the protection of wetlands. The Commission adheres to this sequence and also recognizes the need to reduce reliance on the replacement of wetlands of uncertain success.

Accordingly, the Commission shall strongly discourage any replication proposal for wetland impacts where the proponent has not clearly demonstrated, to the greatest extent practicable, the proper sequence of avoidance and minimization. In those instances where replication is approved by the Commission and required for unavoidable wetland impact, the following performance standards shall be met and the following submissions required:

- 16.2.1. At a minimum, the replicated wetland must reproduce all functions and values of the original wetland, as determined by the Commission. The Commission may require the Applicant to incorporate additional area, functions, or values in the replication design depending upon direct and secondary impacts (impacts to areas which are not directly filled, but whose functions are impacted by the nearby fill activities e.g. fragmenting wildlife habitat, alteration of hydrology, removal of vegetation, etc.) and site-specific conditions (e.g. where replacement would require substantial time before completely replicating functions, such as habitat consisting of large mature trees).

- 16.2.2. The area of replication will, at a minimum, be twice as large as the resource area that is to be destroyed or impaired. However, the Commission retains the discretion to allow a smaller area of replication, where credible evidence to support a smaller replication area is presented, but cannot allow a ratio of less than of one to one (1:1). The final ratio of the replication area will be decided on a case-by-case basis in accordance with Section 16.2.1 above and the table below. The following recommended ratios are based upon the likelihood of mitigation success, complexity of wetland system impacted, the degree to which functions are replaced, distance between impact area and replication site, and temporal losses for certain functions. There will continue to be flexibility on a project-by-project basis in order to achieve the most appropriate replication for a specific regulated activity.

Recommended Wetland Replication Area Table

Wetland Type	Creation Ratio	Restoration¹ Ratio
Herbaceous Wetland	2:1	1:1
Shrub Wetland	2:1	2:1
Forested Wetland	2:1 to 3:1	2:1 to 3:1
Open Water	1:1	1:1

¹ Restoration or Re-establishment is the enhancement and improvement of wetland areas

- 16.2.3. The Applicant shall submit complete replication plans and a draft replication proposal with the Application for Permit. The plan and proposal shall include, at a minimum, topography, location, and size of BVW to be altered, a description of the BVW to be altered including and evaluation of its functions and values, the location and size of the

proposed replication area, hydrology and water flow in and out of the proposed replication area, compatibility of the replication area with landscape position and neighboring land uses, and a description and detailed methodology of the replication work. The plan shall reflect the following requirements:

- a. The ground water and surface water elevation of the replicated area shall be approximately equal to that of the lost area;
- b. The overall horizontal configuration and location of the replicated area with respect to the Bank shall be similar to that of the lost area;
- c. If the Resource Area is bordering a waterbody or waterway, the replicated area shall have an unrestricted hydraulic connection to the same water body or waterway associated with the lost area;
- d. The replication area shall be located within the same general area of the water body or reach of the waterway as the lost area;
- e. At least seventy-five (75) percent of the surface of the replacement/replicated area shall be reestablished with indigenous, native 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 U.S. N.R.C.S. methods;
- f. Construction sequencing should provide for creation of the replication area first, using translocation of the top 12” of soil (with intact soil structure - especially lamination and density profile), and woody debris, from the impacted wetland. If additional soils are needed then amendments from off-site may be used in accordance with the specifications identified in the March 1, 2002 “Massachusetts Inland Wetland Replication Guidelines.” A detailed schedule for the collection, stockpiling, placement, and amendment of the soils should also be included. Translocation should be used unless invasive plant species are present at the site, including, but not limited to, any of the following:
 - Purple Loosestrife (*Lythrum salicaria*)
 - Phragmites (*Phragmites australis*)
 - Buckthorn (*Rhamnus Frangula alnus*)
 - Honeysuckles (*Lonicera* spp.)
 - Garlic Mustard (*Alliaria petiolata*)
 - Japanese Knotweed (*Polygonum cuspidatum* or *Fallopia Japonica*)
 - Japanese Stilt Grass (*Microstegium vimineum*)
 - Reed Canary Grass (*Phalaris arundinacea*)
 - Bittersweet nightshade (*Celastrus orbiculatus*)
 - Black Swallow-wort (*Cynanchum nigrum*)
 - Pale Swallow-wort (*Cynanchum rossicum*)
 - Mile a Minute Vine (*Persicaria perfoliata*)

- 16.2.4. The replicated wetland must be constructed in full and conditionally approved prior to the erection of any structures at the site.
- 16.2.5. Any replication or restoration work that creates a resource area on abutting properties shall require an easement from the abutting property owner covering the full extension of the resource area on that property prior to commencement of work.
- 16.2.6. A bond shall be posted in accordance with Section 11.5.1. that will enable the Commission to complete the replication should the Applicant fail to fulfill obligations set forth in the Permit. The amount of the bond will be determined on a case by case basis and shall be based on the construction sequence and monitoring requirements submitted by the Applicant.
- 16.2.7. The Applicant must provide a seasonal schedule and construction sequence which includes progress reports on the construction, planting, and growth of vegetation within the replication area.
- 16.2.8. Standards for the replication shall be specified and verified in terms of functions, values, and actual performance. Technical and engineering specifications used for design and construction shall be considered approximate. Criteria for acceptance and approval shall be based solely on function and performance as specified in the Order of Conditions Permit.
- 16.2.9. The Commission requires that a qualified wetland scientist, employed by the Applicant, be present during the construction and planting of the wetland replication to accept responsibility for identification of plant stock and to ensure that: the stock will not consist of species on the list of invasive or noxious plants; the individual plants installed do not include nursery-bred cultivars of plants; the necessary hydrologic regimes are achieved for the various plant types; and that the planting plan will maximize the benefits, functions, and values of the proposed replication. A qualified wetland professional must have training in wetland science with a minimum 5 years of experience in the construction of wetland replication areas and general construction practices and the credentials of the professional shall be submitted to the Commission prior to commencement of work.
- 16.2.10. The application should include a plan and schedule for monitoring of the replication area and a schedule for reporting to the Commission immediately following initial construction and at the end of each of the first two growing seasons. Monitoring shall occur for a minimum of two years or until compliance standards have been met. Submitted reports shall include recommendations for additional plantings to ensure that the replication area will meet the 75% hydrophytic species reestablishment

standard. During the monitoring period, invasive species management shall include control, as needed, to prevent invasive plants from becoming established and widespread.

- 16.2.11. The final monitoring report should be accompanied by an as-built plan and it shall indicate the conditions at the replication site (including stabilization of embankments) and describe in detail how the functions of the impacted wetland have been replaced by the development of the replication site. Failure to achieve the standard of 75% wetlands vegetation within two growing seasons will require inclusion of additional contingency measures and a COC will not be issued until regulatory compliance is achieved.
- 16.2.12. To meet compliance standards, the replication area shall be free of invasive non-native plant species.
- 16.2.13. All surrounding areas within the Buffer Zone shall be stabilized prior to issuance of a COC. Inspections of erosion control devices shall be conducted during work and those devices shall be removed once the site is stabilized. A COC will not be issued until all temporary erosion controls are removed and any soils disturbed by their removal stabilized.
- 16.2.14. If the replication area fails to meet performance standards by the end of the monitoring period, the Commission may extend an Order of Conditions to allow additional time for plantings or remedial work to reach compliance. Alternately, it may require submission of a new Notice of Intent if the Order has expired or issue an Enforcement Order if compliance cannot be voluntarily obtained.
- 16.2.15. No COC shall be issued for the Order of Conditions Permit certifying the replication work until all performance standards have been met. Using its discretion, the Commission may issue a COC prior to the completion of two (2) full growing seasons upon (1) receipt of a passbook savings account or other money security in an amount not to exceed both the cost of the replication and monitoring and upon (2) such terms as are acceptable to the Commission. *See Section 11.5*

16.3. Activities within the Buffer Zone

16.3.1. Preamble

Projects undertaken within the Buffer Zone have a high likelihood of altering the adjacent Resource Area(s), either during construction or from routine operation of the completed project. Projects in that part of the Buffer Zone closest to the adjacent Resource Area(s), particularly clearing of natural vegetation and soil disturbance is likely to alter the physical characteristics of Resource Areas by changing their soil composition,

topography, hydrology, temperature, and the amount of light received. The intent of this section is to explain activities that are and are not acceptable within the Buffer Zone.

16.3.2. Presumption

Within a Buffer Zone, all activities that involve removal of vegetation (except Minor Activities), grading, filling, excavation, erection of permanent structures, application of inorganic fertilizers (excluding lime and other soil treatments approved by the Commission), or application of pesticides whose labels indicate they are toxic to aquatic organisms, is presumed to impermissibly alter the adjacent Resource Areas, excluding the Riverfront Area and Buffer Zone. This presumption may be overcome by meeting the general performance standards set forth below.

16.3.3. General Performance Standards

- a. No building on any lot having an area of 40,000 square feet or more shall be placed within fifty (50) feet of any Resource Area, excluding the Riverfront Area and Buffer Zone. The reconstruction, alteration, extension or structural change of a Building existing on or before October 15, 1990, shall be exempt from this provision, 16.3.3.
- b. The construction of any impervious shall be prohibited within thirty (30) feet of any Resource Area, excluding the Riverfront Area and Buffer Zone.
- c. No disturbance such as grading, filling, excavation, removal of vegetation or other construction activity shall be allowed within twenty-five (25) feet of any Resource Area, excluding Riverfront Area and Buffer Zone.

16.3.4. Notwithstanding Section 16.3.3. a. through c., the Commission may allow work closer to Resource Areas in the following instances where the standards in Section 16.3.5. are met:

- a. To provide access to an area where an alteration of BVW has been permitted; or
- b. If the work qualifies as a limited project under 310 CMR 10.53.3.

16.3.5. Work within the 25-foot No Disturbance Area

The Commission may allow work within the 25-foot No Disturbance Area if the Applicant demonstrates:

- a. Alternatives have been considered and in the judgment of the Commission no practical alternative is available;
- b. Site conditions (including but not limited to slope, soil type and hydrology) or erosion control measures will prevent wetland damage from such work;
- c. Work will enhance the Values Protected by the Chapter (e.g. invasive plant species removal, wetland creation, removal of

hazardous material, removal of fill, and/or restoration of those portions of the Buffer Zone that in the judgment of the Commission, are deemed to be degraded); and

- d. Such work will not lead to encroachment within the 25-foot No Disturbance Area after completion of the project and permanent protective measures are implemented to protect the 25-foot No Disturbance Area that shall include one or more of the following:
 1. Construction of a stonewall that conforms with 310 CMR 10.02(2)(b)1.b.;
 2. Installation of a permanent fence that conforms with 310 CMR 10.02(2)(b)1.b.;
 3. Installation of permanent markers/posts or bounds; or
 4. Permanent protection as described in Section 11.5.2.

16.3.6. Conditions

For projects involving steep slopes, highly erodible soils, extensive disturbed areas, or hydrologic conditions likely to promote significant erosion, the Commission may require a wider undisturbed buffer to ensure protection of Resource Areas. Furthermore, the presumption of Resource Area alteration from fertilizers and pesticides may be overcome by providing qualified technical data to the Commission indicating that the chemical products will not alter, degrade or pollute Resource Areas.

16.4. Limited Project Wetland Crossings

- 16.4.1. Section 310 CMR 10.53(3) indicates that the Commission has discretionary authority to issue Permits for limited projects. In addition, DEP Policy 88-2, which is an interpretation of 310 CMR 10.53 (3) (e) on limited project wetland crossings for access roadways and driveways indicates that the Commission “may require the Applicant to evaluate the reasonableness of any previously or currently available alternatives including the realignment or reconfiguration of the project.” In order to assist in the evaluation of alternatives, the Applicant shall submit an alternative concept plan for each wetland crossing proposed in a limited project. The alternative concept plan must show a potential use of the property under a configuration which eliminates each potential crossing. For example, if an Applicant proposes a limited project with two wetland crossings, three plans should be submitted, one showing the proposed project with two crossings, an alternative plan showing the project with one crossing, and an alternative plan showing no crossings. A concept plan requires only existing topography, wetlands, roadways, lot lines, and wetland impact areas. The requirements of Section 5.3.2 shall not apply to concept plans; however, the Commission, in its discretion, may require the Applicant to submit additional information regarding an alternative concept plan where the circumstances of the project so warrant.

- 16.4.2. In evaluating whether the Applicant meets the alternatives as set forth in this section, any self-imposed hardship shall not be considered. The Commission views any adjacent properties located nearby, which are or were at one time under common ownership as part of a cumulative Resource Area impact. The Applicant or property owner is advised to prevent situations where they have created their own hardship by not carefully considering all likely impacts to areas subject to the Chapter and these Regulations. It is incumbent upon the Applicant to plan appropriately and not fragment or phase any portion of the development without careful consideration of avoidance of impacting any Resource Areas.
- 16.4.3. The Commission will only consider a wetland crossing when all options for accessing upland areas are unfeasible and the crossing is the only means of access after vigorous Alternatives Analysis have been investigated and performed by the Applicant/property owner and presented to the Commission for a final determination. The Commission will consider whether adjacent property, which would have provided dry access to the uplands, has been sold off or built upon. In a subdivision of any size, the inability to develop all proposed/conceptual lots shall not be considered a hardship as it is presumed that the Applicant can configure the lots to avoid all impacts to the Resource Areas protected by the Chapter and these Regulations and the Applicant/property owner continues to have beneficial and economic use of the property.

17. CONSTRUCTION STANDARDS

17.1. Erosion and Sediment Control

17.1.1. Preamble

Sedimentation, runoff, and erosion as a result of land disturbance have long been acknowledged as identifiable sources of pollution and degradation to wetlands. The intent of this section is to describe appropriate standards and measures applicable to all projects involving land disturbance.

17.1.2. Presumption

Where a proposed activity involves the removal of vegetative cover, or significant disturbance of the surface, sedimentation, runoff, and erosion are presumed to occur. This presumption may be overcome by providing evidence to the Commission that site conditions (e.g. soil and slope) will prevent sediment from leaving the disturbed area. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect.

17.1.3. General Performance Standards

Where the presumption of Section 17.1.2. is not overcome, the project shall meet the following performance standards:

- a. Any proposed alteration shall not expose or cause soil to be exposed so that uncontrolled erosion occurs. Evidence of this condition may include the formation of gullies, the cutting back of existing banks by stormwater flow, or the presence of visible sediment in the runoff.
- b. Erosion shall be mitigated by a combination of the following means as appropriate to the specified site:
 1. Limit erosion by minimizing the amount of exposed ground and the length of time it is exposed;
 2. Reduce the steepness and length of slopes on the site;
 3. Divert flows away from disturbed areas during construction in an approved manner;
 4. Protect exposed surfaces through vegetative or other stabilizing cover;
 5. Decrease the velocity of runoff through acceptable construction practices, e.g. check dams, slope breaks, berms and improved (i.e., vegetation, rip-rap) drainage surfaces;
 6. Trap sediment in basins and behind barriers (e.g., staked straw wattles and/or silt fencing). Silt fencing is to be embedded into the ground to prevent sediment from passing under; and
 7. Maintain and adjust erosion and sediment control measures continuously during construction.
- c. Disturbed surfaces and sediments shall be stabilized, either through temporary stabilization during work or permanent stabilization at the conclusion of work.
- d. Stabilization methods, depending on the size of the activity and location, may include: loaming and seeding, stabilization blankets, riprap, fiber core logs, mulching, installation of trees and shrubs, or other techniques specified by the Commission.

17.2. Water Conservation

17.2.1. Preamble

The protection of public and private water supplies is a Value protected by the Chapter and these Regulations. Landscaping activities may have significant impacts on public and private water supplies because they utilize more water than other activities and tend to occur during dry seasons. The intent of this section is to describe appropriate standards and measures applicable to all projects proposing landscaping and to encourage the use of landscaping that has lower intensity use of water to protect public and private water supply.

17.2.2. Presumption

Where a proposed activity involves the planting of vegetative cover or installation of trees and shrubs, significant water use is presumed to occur and therefore it is presumed that such activity will have a significant impact on the public and private water supply. This presumption may be overcome by providing Evidence to the Commission that site conditions (e.g. soil and slope) or proposed conditions (e.g. native and drought resistant trees, shrubs or herbaceous plants) will prevent excessive water consumption. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect.

17.2.3. General Performance Standards

Where the presumption of Section 17.2.2. is not overcome, the project shall meet the following performance standards:

- a. Utilize water conservation techniques to the extent practicable for exterior water usage.
- b. Use drought resistant native species of trees, shrubs, and other plant materials including grasses.
- c. Limit large expanses of turf grass. Alternatives may include:
 1. Use of wildflower or native grass mixes;
 2. Installing native trees and shrubs; and
 3. Planting native groundcovers.
- d. Adjacent to wooded areas, wood chips and shade tolerant native groundcovers shall be considered.
- e. All planted areas shall be mulched.
- f. In areas of sandy soils, a 2-3" layer of till or other less permeable material shall be utilized beneath the topsoil or loam.
- g. Large planted areas are encouraged where the plant materials provide shade to each other.

APPENDIX A: FORMS

APPENDIX B: STANDARD CONDITIONS