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- Request for Determination of Applicability
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NORTH ANDOVER WETLAND PROTECTION REGULATIONS

1.0 General Provisions

1.1 Authority

These Regulations are promulgated under the authority of the Home Rule Amendment Article LXXXIX (89), of the amendments of the Constitution of Massachusetts, 1966 as amended from time to time, and in accordance with the North Andover Wetlands Bylaw and shall be effective upon fulfillment of all legal requirements.

1.2 Purpose

The purpose of the North Andover Wetlands Protection Bylaw (hereafter referred to as the "Bylaw") is clearly stated in Section 178.1 of the Bylaw. These Regulations are promulgated to ensure fairness, to create a uniformity of process and to clarify and define the provisions of the Bylaw, administered by the North Andover Conservation Commission, hereafter called the "Commission" or "NACC".

Wetlands contribute to a number of public interests and are therefore protected by the Bylaw. The Bylaw identifies three additional public interests not recognized by the Massachusetts Wetlands Protection Act ("the Act" or "WPA"). These are: "the prevention and control of erosion and sedimentation, the protection of wildlife, and the protection of recreation". Any permit issued under the Bylaw and Regulations must therefore not adversely affect these additional public interests.

1.3 Jurisdiction

The areas subject to protection under the Bylaw differ from those protected solely by the Act in that additional wetland resource areas are protected by the Bylaw, as well as the additional interests previously described. The additional areas subject to protection under the Bylaw include the Buffer Zone, Ephemeral Pools, Ephemeral Pool Habitat and Isolated Vegetated Wetlands that do not meet the definition of Bordering Vegetated Wetland under the Act.

The Town's wetland resource areas consist of:

- ◆ any Isolated Vegetated Wetland;
- ◆ any Ephemeral Pool and Ephemeral Pool Habitat;
- ◆ any vegetated wetlands bordering on any creek, river, stream, pond or lake;
- ◆ any bank, beach, marsh, wet meadow, bog, or swamp;
- ◆ any land under any creek, river, stream, pond or lake;
- ◆ any 100-foot Buffer Zone of wetland areas 1-5 listed above;

- ◆ any land subject to storm flowage, or flooding by groundwater or surface water;
- ◆ and the 200-foot Riverfront Area.

The following waterbodies and contiguous 200-foot zones on either side of the mean high water elevations of these waterbodies have been identified by the Commission as having Riverfront Areas: Mosquito Brook, Rocky Brook, Boston Brook, Cochichewick Brook, Fish Brook, Cedar Brook, Merrimack River and Shawsheen River as shown on Appendix B - North Andover Riverfront Area Map.

Rivers or streams not referenced above or not otherwise depicted on Appendix B or other USGS map may still have a 200-foot Riverfront Area associated with them per 310 CMR 10.58 (as amended December 20, 2002), which the Commission has adopted by reference into these Regulations (as amended September 10, 2003). Applicants shall evaluate said rivers or streams in accordance with 310 CMR 10.58(2) and this Bylaw and include such data in the submitted permit application.

1.4 *Fee Schedule*

The following fee schedule has been determined by the Commission to be commensurate with the expense of providing review services to applicants (exclusive of design review fees by expert engineers and consultants) and shall be paid at the time an application or other request for Commission approval is filed. These fees are in addition to and commensurate with those required by the Wetlands Protection Act (WPA) (except where otherwise noted). This fee schedule may be amended as necessary by majority vote of the Commission at any public hearing.

NOTE: Similar to 310 CMR 10.03(7)(c), when the work involves activities within the Riverfront Area as well as another resource area or the Buffer Zone, the fee shall be determined by adding an additional 50% of the fee calculated for activities in another resource area(s) or the buffer zone to another resource area for each of the proposed activities within the Riverfront Area. When the work involves activities within the Riverfront Area but no other resource area, the fee shall be determined by adding the fees for each of the proposed activities within the Riverfront Area.

Table 1-1: Bylaw Filing Fee Schedule - Revised Fees Effective April 1, 2011

WPA Filing Fee Category (per activity)	Equivalent Bylaw Fee (per activity)
Notice of Intent/RDA - WPA Cat 1 Activity	\$110* (add 50% if in Riverfront Area in addition to another resource area)
Notice of Intent/RDA - WPA Cat 2 Activity	\$500* (add 50% if in Riverfront Area in addition to another resource area)
Notice of Intent/RDA - WPA Cat 3 Activity	\$800* (add 50% if in Riverfront Area in addition to another resource area)
Notice of Intent/RDA - WPA Cat 4 Activity	\$1,000* (add 50% if in Riverfront Area in addition to another resource area)
Notice of Intent/RDA - WPA Cat 5 Activity	\$4 per ft./min. \$100/no max.* (add 50% if in Riverfront Area in addition to another resource area)
Notice of Intent/RDA - WPA Cat 6 Activity	\$1 per ft./min \$100/no max.* (add 50% if in Riverfront Area in addition to another resource area)
Wetland Delineation Review Fee	First 100 ft. included in Category 1-5 fee/\$1 per ft. thereafter (not Cat 6)
Late Filing Penalty – applies to all filings above as marked *	3 x the normal fee per the above schedule
Small Project	\$25
Modification/ Amendment Request**	\$200
Partial Certificate of Compliance Request	\$200
Certificate of Compliance	\$200
Extension Permit Request	\$200
Removal of an Enforcement Order (if NOI is not required and fines have not been issued)	\$100
Additional Inspectional Services***	\$100 each additional

*In the event of a finding by the Commission in which a filing is required after-the-fact, the local Wetlands By-Law fee for that late filing will be three times the normal fee(s) for the activities applicable per the above schedule.

** Fees for after-the-fact Modification/ Amendment Request shall be doubled.

***Additional Inspectional Services include, but may not be limited to, sewer/water tie-in inspections, re-inspections of any activity described herein, and any additional inspection required as a condition of an Order of Conditions (e.g. if additional pre-construction meetings occur).

1.5 *Officers and Members*

Officers

There shall be a Chair and Vice-Chair, who shall be elected by a majority vote of the eligible Commission members. The term of office shall be one year, commencing and ending with the first meeting in July. In the event of a vacancy, the Vice-Chair shall succeed to the position of Chair, and a new Vice-Chair shall be elected by the eligible Commission members.

Members

New Commission members shall be appointed by the Board of Selectmen. The Commission shall offer its views to the Selectmen on the qualifications and suitability of potential candidates.

A quorum consists of a majority of the commission members who are serving in office at the time a vote is taken by the Commission. A majority vote of a quorum of the Commission shall constitute the decision of the Commission.

The members have such powers as are vested in them by any law or regulation, custom and practice.

Committees

There shall be such committees as the Commission may decide are necessary for the efficient execution of its duties.

Consultants

The Commission may, by vote at any public meeting, appoint consultants to the Commission as allowed in Section 178.9 of the Bylaw and in MGL Ch.40 S.8C. Such consultants shall not have the right to vote, nor to represent themselves as official members of the Commission, but shall have the right to participate in meetings and activities of the Commission, as the Chair (or Vice-Chair) may designate upon the advice and consent of the Commission.

Associate Members

Associate members may be appointed by the Selectmen, in concert with the Conservation Commission and shall be designated as consultants in accordance with Section 178.9 of the Bylaw and MGL Ch.40 S C. Notwithstanding the provisions of any general or special law to the contrary, the Board of Selectmen of the Town of North Andover may appoint up to two alternate members of the Conservation Commission

for a term of one year. When the Conservation Commission lacks a quorum for reasons of absence, inability to act or a conflict of interest, the Chairperson of the Conservation Commission may designate an alternate to sit on the Commission (enacted via Special Act by the state Senate and House of Representatives in 2001, House #4017). The Commission shall offer its views to the Selectmen on the qualifications and suitability of potential candidates.

2.0 Definitions

Massachusetts General Laws, Chapter 40 Section C and Chapter 131, Section 40 (hereafter referred to as the "Act"), as well as 310 CMR 10.00 Wetlands Regulations are hereby incorporated by reference and made a part hereof, except as otherwise modified by the North Andover Wetlands Bylaw and the Regulations promulgated herein and any subsequent amendments. The definitions provided in the WPA regulations 310 CMR 10.04 shall apply to the Bylaw and Regulations and as modified below:

1. Adjoining Land Area(s) means the Buffer Zone measured 100 feet horizontally from the boundary of any wetland resource area as defined by the Act or the Bylaw.
2. Alter shall include without limitation, the following actions when undertaken in areas subject to the Bylaw:
 - ◆ changing of pre-existing drainage characteristics, sedimentation patterns, flow patterns or flood retention characteristics;
 - ◆ placement of fill, excavation or re-grading;
 - ◆ destruction of plant life, including mowing, and the cutting and removal of trees or shrubs;
 - ◆ changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water;
 - ◆ any activities, changes or work which pollute or cause displacement of any body of water or groundwater;
 - ◆ any activities, changes or work which cause alteration of wildlife habitat.
3. Amendment means a change in the project that the Commission deems of sufficient magnitude that will require the imposition of additional conditions to ensure adequate protection of resource areas and interests covered under this Bylaw and Regulations (see Section 11.0).

4. Buffer Zone is that resource area which extends one-hundred feet (100') from the edge of those wetland resource areas identified in Section 1.0. However, it is possible that these resource areas will overlap in some instances (e.g. Riverfront Area and Land Subject to Flooding).
- ◆ 25' No-Disturbance Zone is that portion of the Buffer Zone which extends twenty-five feet (25') from the edge of those wetland resource areas identified in Section 1.3, however, it is possible that these resource areas will overlap in some instances (e.g. Riverfront Area and Land Subject to Flooding). Disturbance of any kind is prohibited within this Zone including but not limited to grading, landscaping, vegetation removal, dumping of landscaping debris, pruning, filling, excavating, stormwater discharge, roadway construction and/or driveway construction.
 - ◆ 50' No-Build Zone is that portion of the Buffer Zone which extends fifty-feet (50') from the edge of those wetland resource areas identified in Section 1.3, however, it is possible that these resource areas will overlap in some instances (e.g. Riverfront Area and Land Subject to Flooding). Construction of any kind is prohibited within this Zone including but not limited to foundations associated with single family homes, multi-family dwellings, commercial and/or industrial buildings, porches, decks (i.e., footing, piling, sonotube), patios, house additions, building additions, pools and pool equipment and fences, septic systems, and sheds. Driveways, roadways, retaining walls and landscape boulder walls may be allowed in the 50-foot No-Build Zone when no other feasible location or alternative means of access exists. Stormwater structures may be allowed in the 50-foot No-Build Zone when no other feasible location exists, or when it is necessary to maintain the hydrology of the resource. An alternatives analysis showing the net benefit of locating the structure in the No-Build Zone is required.
 - ◆ 50' Ephemeral Pool No-Disturbance Zone is that portion of the Buffer Zone which extends fifty feet (50') from the edge of an Ephemeral Pool which is situated in an upland location or, in situations where a wetland resource area encompasses the Pool, that area which extends 50' from the edge of Ephemeral Pool Habitat (see definition of Ephemeral Pool Habitat and Section 3.1). Disturbance of any kind is prohibited within this Zone including but not limited to grading, landscaping, vegetation removal, pruning, filling, excavating, stormwater discharge, roadway construction and/or driveway construction.
 - ◆ 75' Ephemeral Pool No-Build Zone is that portion of the Buffer Zone which extends seventy five feet (75') from the edge of an Ephemeral Pool which is situated in an upland location or, in situations where a wetland resource area encompasses the Pool that area which extends 75' from the edge of Ephemeral Pool Habitat (see definition of Ephemeral Pool Habitat and Section 3.1 of the

Regulations). Construction of any kind is prohibited within this Zone including but not limited to foundations associated with single family homes, multi-family dwellings, commercial and/or industrial buildings, porches, decks (i.e., footing, piling, sonotube), patios, house additions, building additions, pools and pool equipment/fences, septic systems, and sheds. Driveways, roadways retaining walls and landscape boulder walls may be allowed in the 75-foot Ephemeral Pool No-Build Zone when no other feasible location or alternative means of access exists. Any permitted work shall not obstruct the migratory pathways of Ephemeral Pool breeders such as *Ambystomid* salamanders and wood frogs. Stormwater structures and/or discharge may be allowed in the 75-foot Ephemeral Pool No-Build Zone when no other feasible location exists, or when it is necessary to maintain the hydrology of the resource. An alternatives analysis showing the net benefit of locating the structure in the Ephemeral Pool No-Build Zone is required.

5. Burden of Proof means the applicant shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application shall not have an unacceptable significant and/or cumulative effect upon the wetland values protected by this Bylaw. Failure to provide adequate evidence that the work proposed in the application shall not have an unacceptable significant and/or cumulative effect upon the wetland values protected by this Bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.
6. Critical Area(s) In addition to those area(s) identified under the Massachusetts Stormwater Management Standards as provided in the Massachusetts Stormwater Policy, Section 401 of the US Clean Water Act and MA Surface Water Quality Standards (310 CMR 4.00 and 9.00), the Town of North Andover has also determined that the Lake Cochichewick Watershed Area (as depicted on the North Andover Zoning Map) and the 100-foot Buffer Zone associated with an Ephemeral Pool or Ephemeral Pool Habitat are “Critical Areas”.
7. Emergency Project means an activity undertaken to provide immediate protection to public health, safety and welfare.
8. Ephemeral Pool means a confined basin depression which, in most years, holds water for a minimum of two (2) consecutive months and is free of adult fish populations and has no permanently flowing outlet. These areas are essential breeding habitat, and provide other extremely important wildlife habitat functions during non-breeding season as well, for a variety of amphibian species such as wood frog and the spotted salamander, and are important habitat for other wildlife species. See Section 3.1 of these regulations.

9. Ephemeral Pool Habitat means that portion of a wetland resource area (excluding the Buffer Zone, which is also regulated as a wetland resource area under this Bylaw) within 100-feet of the mean annual boundaries of an Ephemeral Pool.
10. Extended Drought (or Drought) Coincides with an “Advisory” or more severe drought as declared by the MA Drought Management Task Force in accordance with a statewide drought management plan.
11. Growing Season means the entire period from March 15^t to October 15th.
12. Isolated Vegetated Wetland is defined in Section 3.2 of these regulations.
13. Modification means a minor or insignificant project change (as determined by the Commission or the Conservation Administrator) that will not result in an adverse impact on the wetland resource areas and/or interests protected under the Act and this Bylaw.
14. Normal Maintenance of Land in Agricultural Use is defined under these regulations the same as it is in 310 CMR 10.04 (Agriculture) (b).
15. Permits shall collectively refer to Orders of Conditions, Order of Resource Area Delineation, Notice(s) of Non-Significance, Enforcement Order(s) and/or Determinations of Applicability.
16. Pond means any open body of fresh water with a surface area observed or recorded within the last ten years of at least 10,000 s.f. Ponds may be either naturally occurring or man made by impoundment, excavation or otherwise. Ponds shall contain standing water except for periods of extended drought. Periods of extended drought for purposes of this regulation shall be those periods, in those specifically identified geographic locations, determined to be at the “Advisory” or more severe drought level by the Massachusetts Drought Management Task Force, as established by the Executive Office of Environmental Affairs and the Massachusetts Emergency Management Agency in 2001, in accordance with the Massachusetts Drought Management Plan (MDMP). Notwithstanding the above, the following, man-made bodies of open water shall not be considered ponds in North Andover: a) basins or lagoons which are part of wastewater treatment plants; b) swimming pools or other impervious man-made basins, 3) man made retention and detention basins that are part of a stormwater management system, and; individual gravel pits or quarries excavated from upland areas unless inactive for five or more consecutive years.
17. Public Hearing means a formal meeting, subject to statutory requirements, at which certain and specific determinations are made. A public hearing is required for a Notice of Intent and Abbreviated Notice of Resource Area Delineation under the Act and Bylaw but not for a Request for a Determination of Applicability (unless

work or other activities are proposed, otherwise the Commission will hold a public meeting) and/or when in the opinion of the Commission a legally abutting individual's rights may be affected.

18. Public Meeting(s) are held when a formal public hearing is not required (e.g. Request for a Determination of Applicability where work is not proposed and the applicant is merely seeking a Determination from the Commission) and the Commission is not legally required to accept input from the public.
19. Recreation means passive recreation activities that do not conflict with or diminish other wetland values and functions. Examples include, without limitation, bird watching, nature studies, walking, hiking, canoeing, fishing, and hunting.
20. Revocation means to revoke an Order of Conditions issued under the Act and Bylaw.
21. River means any natural flowing body of water that empties into any ocean, lake, pond or other river. Rivers include streams that are perennial because surface water flows within them throughout the year. Rivers thus have a 200-foot Riverfront Area associated with them. With the exception of the following water bodies, which have been determined to be rivers under this Bylaw, intermittent streams are not rivers as defined herein or per 310 CMR 10.58 (as amended December 20, 2002) because surface water does not flow within them throughout the year: Mosquito Brook, Boston Brook, Cochichewick Brook, Merrimack River, Shawsheen River, Rocky Brook, Cedar Brook and Fish Brook. The approximate extent of these water bodies are depicted accordingly on Appendix B.
22. Riverfront Area is the area of land between a river's mean annual high water line measured horizontally outward from the river and a parallel line located 200 feet away. The Riverfront Area may include or overlap other resource areas or their Buffer Zones. The Riverfront Area does not have a Buffer Zone.
23. Stream means a body of flowing water, including brooks and creeks, which moves in a channel in the ground due to a hydraulic gradient, and which flows within, into or out of an area subject to Protection Under the Act or Bylaw. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (i.e., which is intermittent) is also considered a stream unless it is up-gradient of all bogs, swamps, wet meadows, and marshes or otherwise determined to be a river in accordance with Section 178.2 of the North Andover Wetland Protection Bylaw and these Regulations.
24. Wetland Resource Area means those areas subject to protection under the Massachusetts Wetland Protection Act (MGL c.131 s.40) and the North Andover Wetland Protection Bylaw (Section 178.2) and Regulations (Section 1.3).

3.0 Additional Wetland Resource Areas Protected Under the Bylaw and Regulations

3.1 *Ephemeral Pools and Ephemeral Pool Habitat*

Preamble

Ephemeral Pools and their associated habitat are likely to be significant to the protection of wildlife and wildlife habitat. Ephemeral Pools constitute a unique and increasingly rare type of wetland that are inhabited by many species of wildlife, some of which are totally dependent on Ephemeral Pool Habitat for their survival. The wood frog (*Rana sylvatica*) and all species of mole salamanders (genus *Ambystoma*) that occur in Massachusetts breed exclusively in Ephemeral Pools. Areas in the immediate vicinity of the pool also provide these species with important non-breeding habitat functions, such as feeding, shelter, and over-wintering sites. Many other species of amphibians utilize Ephemeral Pool Habitat for breeding and non-breeding functions, although they are not restricted to this type of wetland. The protection of Ephemeral Pools is essential for the continued survival of wildlife species that are dependent upon this unique and threatened resource area.

Definition, Critical Characteristics and Boundary

An Ephemeral Pool means a confined basin depression which, in most years, holds water for a minimum of two (2) consecutive months and is free of adult fish populations and has no permanently flowing outlet. A confined basin depression is protected under the Bylaw as an Ephemeral Pool if it meets the biological and physical criteria identified in Appendix C and/or this Section of the regulations which provides guidelines for the identification of Ephemeral Pools in the Town of North Andover.

Ephemeral Pool Habitat means that portion of a wetland resource area (excluding the Buffer Zone, which is also regulated as a wetland under this Bylaw) within 100-feet of the mean annual boundaries of an Ephemeral Pool.

NOTE: It is not necessary for an Ephemeral Pool to be located within another type of wetland resource area, or certified as a vernal pool by the MA Division of Fisheries and Wildlife, to be eligible for protection under this Bylaw.

Presumptions of Significance

Where a proposed activity involves the removing, filling, dredging or altering of an Ephemeral Pool or Ephemeral Pool Habitat, including alterations to the hydrology thereof, the Commission shall presume that the Ephemeral Pool or Ephemeral Pool Habitat is significant to the interests specified in the WPA and Section 1.2 of these regulations. This presumption is rebuttable and may be overcome upon a clear showing that the Ephemeral Pool or Ephemeral Pool Habitat does not play a role in the protection of said interests. In the event that the presumption is deemed to have been

overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

Performance Standards

- ◆ **50-foot No-Disturbance Zone:** No activity shall be permitted within 50 feet of the delineated edge of an Ephemeral Pool or Ephemeral Pool Habitat (whichever is greater and/or more restrictive). Prohibited activities include, but are not limited to, grading, landscaping, vegetation removal, pruning, filling, excavating, roadway construction, and/or driveway construction.
- ◆ **75-foot No-Build Zone:** No structures shall be permitted within 75-feet of the delineated edge of an Ephemeral Pool or Ephemeral Pool Habitat (whichever is greater). Structures include, but are not limited to foundations and footings associated with single family dwellings, multi-family dwellings, commercial and/or industrial buildings, footings, pilings, impervious pads or sonotubes associated with porches, patios, decks, house additions, building additions, pools and pool equipment/fences, septic systems and sheds. Driveways, roadways, retaining walls and landscape boulder walls may be allowed in the 75-foot No-Build Zone when no other feasible location or alternative means of access exists. Any permitted work shall not obstruct the migratory pathways of Ephemeral Pool breeders such as *Ambystomid* salamanders and wood frogs. Stormwater structures and/or discharge may be allowed in the 75 when no other feasible location exists, or when it is necessary to maintain the hydrology of the resource. An alternatives analysis showing the net benefit of locating the structure in the Ephemeral Pool No-Build Zone is required.
- ◆ **100-foot Septic System Setback:** No septic system leaching field shall be permitted within 100-feet of the delineated edge of an Ephemeral Pool or Ephemeral Pool Habitat (whichever is greater) when the proposed septic system is located up gradient of the Ephemeral Pool. Any permitted work shall not obstruct the migratory pathways of Ephemeral Pool breeders such as *Ambystomid* salamanders and wood frogs. In addition, any permitted work will maintain the existing hydrology of the pool.

3.2 *Isolated Vegetated Wetland*

Preamble

Isolated Vegetated Wetlands are likely to be significant to all of the interests identified in Section 178.1 of the Bylaw and are likely to support all of the functions and values identified for Bordering Vegetated Wetlands in 310 CMR 10.55(1). These interests include public or private water supply; groundwater; the prevention and control of

flooding, erosion, sedimentation, storm damage, and/or pollution; and the protection of fisheries, wildlife, wildlife habitat, and recreation.

Definition, Critical Characteristics and Boundary

Isolated Vegetated Wetlands protected under this Bylaw are freshwater wetlands, of at least 1,000 sq. ft. in surface area, that do not border on creeks, rivers, streams, ponds or lakes. The types of Isolated Vegetated Wetlands may include wet meadows, marshes, swamps and bogs. In addition to the minimum size requirement, Isolated Vegetated Wetlands must be comprised of the following three (3) delineation parameters:

- ◆ The vegetation community of an Isolated Vegetated Wetland consists of 50% or more wetland indicator plants. Wetland indicator plants are classified in the following categories: Facultative, Facultative+, Facultative Wetland-, Facultative Wetland, Facultative Wetland+, or Obligate Wetland (*source: U.S. Fish & Wildlife Service*) and,
- ◆ Other indicators of hydrology including site inundation or saturation, water marks, drift lines, sediment deposits, oxidized rhizospheres, water-stained leaves, shallow root systems, buttressed tree trunks, and recorded hydrologic data (stream or lake gauge, aerial photo, other) and,
- ◆ Hydric Soils (*source "Field Indicators for Identifying Hydric Soils in New England", most recent version*).

Presumptions of Significance

Where a proposed activity involves the removing, filling, dredging or altering of an Isolated Vegetated Wetland, the Commission shall presume that the Isolated Vegetated Wetland is significant to the interests specified in Section 1.2 of these regulations. This presumption is rebuttable and may be overcome upon a clear showing that the Isolated Vegetated Wetland does not play a role in the protection of said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

Performance Standards

When the presumption set forth in Section 1.0 of these regulations is not overcome, any proposed work in Isolated Vegetated Wetlands shall not destroy or otherwise impair any portion of said area. The following additional standards also apply to isolated vegetated wetlands.

- ◆ **25-foot No Disturbance Zone:** No activity is permitted within 25 feet of the edge of the delineated Isolated Vegetated Wetland boundary. Activities include, but are not limited to, grading, landscaping, vegetation clearing, filling, excavating, stormwater discharge and road construction. This standard

has been adopted by the Commission because the alteration of land immediately adjacent to a wetland is likely to result in the alteration of the wetland itself. Alterations typically result from siltation, overgrading, depositing of construction debris, unregulated filling, vegetation clearing, extension of lawns or the depositing of yard waste.

- ◆ **50-foot No-Build Zone:** No structures shall be permitted within 50-feet of the delineated edge of an Isolated Vegetated Wetland. Structures include, but are not limited to foundations and footings associated with single family dwellings, multi-family dwellings, commercial and/or industrial buildings, and footings, pilings, impervious pads or sonotubes associated with patios, porches, decks, house additions, building additions, pools, septic systems and sheds. Driveways, roadways, retaining walls and landscape boulder walls may be allowed in the 50-foot no-build zone when no other feasible location or alternative means of access exists. Stormwater structures and/or discharge may be allowed in the 50-foot No-Build Zone when no other feasible location exists, or when it is necessary to maintain the hydrology of the resource. An alternatives analysis showing the net benefit of locating the structure in the No-Build Zone is required.

3.3 *Riverfront Area*

Preamble

Riverfront Areas are likely to be significant to all of the interests identified in Section 178.1 of the Bylaw. These interests include public or private water supply; groundwater; the prevention and control of flooding, erosion, sedimentation, storm damage, and/or pollution; and the protection of fisheries, wildlife, wildlife habitat, and recreation.

Definition, Critical Characteristics and Boundary

A Riverfront Area is the area of land between a river's mean annual high water line measured horizontally outward from the river and a parallel line located 200 feet away. The Riverfront Area may include or overlap other resource areas or their buffer zones. The Riverfront Area does not have a buffer zone.

The entire length and width of the following water bodies in the Town of North Andover have been identified by the Commission as rivers and thus having a 200-foot Riverfront Area associated with them regardless of an intermittent or perennial flow condition: Mosquito Brook, Rocky Brook, Boston Brook, Fish Brook, Cedar Brook, Cochichewick Brook, Merrimack River and Shawsheen River. The approximate extent of these rivers is depicted on Appendix B of these regulations. Field observations by the Commission have shown that water may not flow throughout the year in all or portions of these rivers. When water is not flowing, it may remain in isolated pools or

surface water may be all together absent. The Commission has determined that the Riverfront Areas of these rivers are significant to the interests identified in Section 3.3 above, even under such conditions or a “no-flow period”.

NOTE: Rivers or streams not referenced above or not otherwise depicted on Appendix B or other USGS map may still have a 200-foot Riverfront Area associated with them per 310 CMR 10.58 (and subsequent amendments), which the Commission has adopted by reference into these Regulations (as amended September 10, 2003). Applicants shall evaluate said rivers or streams in accordance with 310 CMR 10.58(2) and this Bylaw and include such data in the submitted permit application.

Presumptions of Significance

Where a proposed activity involves the removing, filling, dredging or altering of Riverfront Area, the Commission shall presume that the Riverfront Area is significant to the interests specified in Section 3.3 of these regulations. This presumption is rebuttable and may be overcome upon a clear showing that the Riverfront Area does not play a role in the protection of said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

Performance Standards

Activities in Riverfront Areas in North Andover are regulated by the same performance standards as those listed in the Massachusetts Wetland Protection Act Regulations (see 310 CMR 10.58 and subsequent amendments).

3.4 *Buffer Zone*

Preamble

Buffer Zones are likely to be significant to the interests identified for the specific buffer zone resource area, as identified in Section 178.1 of the Bylaw. Buffer Zones can be a vital link in protecting the interests of the Bylaw in the following ways:

- ◆ **Temperature:** Shade and cover provided by riparian vegetation can moderate water temperature in small streams.
- ◆ **Sediments and Other Contaminants:** Buffer strips filter sediments and other contaminants (e.g. pesticides, heavy metals) from surface flow. Buffer strips also prevent erosion in riparian areas and preclude development that could lead to increased contaminant loading.
- ◆ **Nutrients (Nitrogen and Phosphorous):** Buffer strips reduce inputs into streams by: 1) filtering sediment bound nutrients from surface flow, 2) removing nutrients from groundwater via uptake in vegetation and by de-

nitrification, and 3) precluding development which could increase nutrient loading (i.e. septic systems).

- ◆ **Maintenance of stream flow:** Buffer strips can store water and help maintain stream base flow (and water quality) during low flow periods.

Definition, Critical Characteristics and Boundary

A Buffer Zone is the area of land extending 100 feet horizontally outward from the boundary of the following resource areas:¹

- ◆ Isolated Vegetated Wetlands;
- ◆ Ephemeral Pools;
- ◆ Bordering Vegetated Wetlands;
- ◆ Bank, beach, marsh, wet meadow, bog, or swamp;
- ◆ Land under any creek, river, stream, pond or lake.

Presumptions of Significance

Where a proposed activity involves the removing, filling, dredging or altering of Buffer Zone, the Commission shall presume that protection of the Buffer Zone of a resource area identified in Section 1.3 is significant to the interests specified in Section 178.1 of the Bylaw. This presumption is rebuttable and may be overcome upon a clear showing that the Buffer Zone does not play a role in the protection of said interests. In the event that the Commission deems that the presumption has been overcome, the Commission shall make a written determination to this effect, setting forth its grounds

Performance Standards

The 100-foot Buffer Zones of Isolated Vegetated Wetlands, Bordering Vegetated Wetlands, Bank, and Land Under Water all contain, at a minimum, a 25-foot No-Disturbance Zone and a 50-foot No-Build Zone, which are described as follows:²

- ◆ **25-foot No-Disturbance Zone:** No activity is permitted within 25 -feet of the edge of the wetland resource areas identified in Section 1.3. Activities include, but are not limited to, grading, landscaping, vegetation clearing, filling, excavating, stormwater discharge and road construction. This standard has been adopted by the Commission because the alteration of land immediately

¹ The following wetland resource areas do not have a 100-foot Buffer Zone: Riverfront Area and Land Subject to Flooding (Bordering and Isolated Areas).

² Ephemeral Pools have their own specific No-Disturbance and No-Build Zones which are described separately in these Regulations.

adjacent to a wetland is likely to result in the alteration of the wetland itself. Alterations typically result from siltation, over grading, deposition of construction debris, unregulated filling, vegetation clearing, extension of lawns or the depositing of yard waste.

- ◆ **50-foot No-Build Zone:** Construction of any kind is prohibited within 50-feet of the edge of the wetland resource areas identified in Section 1.3. Structures include but are not limited to foundations and footings associated with single family dwellings, multi-family dwellings, commercial and/or industrial buildings, porches, patios, decks, house additions, building additions, pools, septic systems and sheds. Driveways, roadways, retaining walls and landscape boulder walls may be allowed in the 50-foot No-Build Zone when no other feasible location or alternative means of access exists. Stormwater structures and/or discharge may be allowed in the 50-foot No-Build Zone when no other feasible location exists or when it is necessary to maintain the hydrology of the resource. An alternatives analysis showing the net benefit of locating the structure in the No-Build Zone is required.

4.0 Permit Applications

4.1 *Request for Determination of Applicability*

4.1.1 Overview

Any person or persons who desire a Determination as to whether this Bylaw applies to an area, or work to be performed in an area, shall submit a written request to the Commission in accordance with Section 178.4 of the Bylaw. **NOTE:** The Commission will not accept a Request for Determination of Applicability seeking confirmation of delineated state and/or local wetland resource areas where no work is proposed. Under such a scenario, applicants must submit an Abbreviated Notice of Resource Area Delineation and comply with the filing requirements referenced therein (see Section 4.2).

4.1.2 Filing Procedures and Submittal Requirements

General Requirements

Two (2) copies of a Request for Determination of Applicability, accompanying plans, and an electronic copy, along with a check for the appropriate filing fee, shall be received at least nine (9) days prior to the anticipated hearing date by certified mail, or hand delivery to the Conservation Department at 1600 Osgood Street, Suite 2-36, North Andover, MA 01845. This submittal shall be in accordance with Section 178.4 of the Bylaw. The Request for Determination of Applicability submitted to the Commission must also include a complete "Application Checklist(s)" found in Appendix A of these regulations.

Upon receipt of an application, the Commission or Town Conservation Administrator will determine, within two (2) business days, if the application meets the minimum submittal requirements identified on the “Application Checklist” (Appendix A). Those applications that do not meet the minimum submittal requirements of the application checklist will be rejected until the necessary information is provided.

Abutter Notification Requirements

The applicant shall provide proof of mailing of notification to abutters, having been made at least seven calendar days in advance of the anticipated meeting date. The applicant shall submit with their Request for Determination of Applicability a list of abutters within 300 feet of the property line where work is proposed (certified by the Assessor within the prior 30 days from the date of filing) to whom public notice of this request has been sent. The notice to abutters shall include all information pertinent to the time and location of the public meeting or indicate where such information can be obtained.

Filing Fee Requirements

To determine the applicable fees, please refer to Section 1.4 of these Regulations for the Bylaw fee schedule.

Plan Requirements

The Commission and/or their designated agent may, at their discretion, accept less detailed plans for a Request for Determination of Applicability than are generally required for a Notice of Intent application. At a minimum, all plans submitted shall clearly and accurately show the present conditions and proposed work and depict the location of water bodies and wetlands. All plans must be signed/dated by the person who prepared them.

4.1.3 Public Meetings

The Commission shall hold a public meeting on the Request for Determination of Applicability and shall issue a written Determination within twenty-one days upon receipt of such a Request. Should work or activities be proposed under a Request for Determination of Applicability, the Commission shall hold a public hearing and issue a written determination within twenty-one days upon receipt of such a Request. Prior to making a determination, the commission may require the submission of additional data deemed pertinent to the determination.

The Commission may continue or adjourn a public meeting or public hearing in the following instances:

- ◆ With the consent of the applicant, to an agreed-upon date which shall be announced at the meeting/hearing; or
- ◆ Without the consent of the applicant, to a specific date for the reasons stated at the meeting/hearing, including but not limited to receipt of additional information from the applicant or others.

4.2 *Abbreviated Notice of Resource Area Delineation*

4.2.1 Overview

The Abbreviated Notice of Resource Area Delineation (ANRAD) (WPA Form 4A) provides a procedure for an applicant to confirm the precise boundaries of Bordering Vegetated Wetlands or Isolated Vegetated Wetlands protected under the Bylaw and/or Act. Applicants may also use Form 4A to seek confirmation of the boundaries of other resource areas which have been delineated, if the other resource area boundaries are identified on the plans which accompany the vegetated wetland delineation.

4.2.2 Filing Procedures and Submittal Requirements

General Requirements

Two (2) copies of an ANRAD and accompanying plans, and an electronic copy, along with a check for the appropriate filing fee, shall be received at least nine (9) days prior to the anticipated hearing date by certified mail, or hand delivery to the Conservation Department at 1600 Osgood Street, Suite 2-36, North Andover, MA 01845. This submittal shall be in accordance with Section 178.4 of the Bylaw. The ANRAD submitted to the Commission must also include a complete "Application Checklist(s)" found in Appendix A of these regulations.

Upon receipt of an application, the Commission or Town Conservation Administrator will determine, within two (2) business days, if the application meets the minimum submittal requirements identified on the "Application Checklist" (Appendix A). Those applications that do not meet the minimum submittal requirements of the application checklist will be rejected until the necessary information is provided.

Abutter Notification Requirements

The applicant shall provide proof of mailing of notification to abutters, having been made at least seven calendar days in advance of the anticipated meeting date. The applicant shall submit with their ANRAD, a list of abutters within 300 feet of the property line where the delineation is proposed (certified by the Assessor within the prior 30 days from the date of filing) to whom public notice of this request has been sent. The notice to abutters shall include all information pertinent to the time

and location of the public meeting or indicate where such information can be obtained.

Filing Fee Requirements

The fees charged for filing under the Bylaw shall be in addition to those required under the Massachusetts Wetlands Protection Act. (MG.L. c.131, sec. 40). To determine the applicable fees, please refer to Section 1.4 of these regulations for the Bylaw fee schedule and 310 CMR 10.03(7) for the state fee schedule.

Plan Requirements

At a minimum and/or unless otherwise directed by the Commission or their designated Agent, all plans submitted shall clearly and accurately show the present conditions including topography (minimum 2-foot contour intervals), property lines, the location of water bodies and wetland resource areas. All existing conditions plans must be stamped and signed accordingly by a Registered Professional Land Surveyor of the Commonwealth of Massachusetts.

4.2.3 Public Hearings

The Commission shall hold a public hearing on the ANRAD and shall issue a written decision within twenty-one days after the close of the public hearing. Prior to the close of a public hearing all data deemed pertinent to the decision must be submitted and reviewed by the Commission. The Commission may continue or adjourn a public hearing in the following situations:

- ◆ With the consent of the applicant, to an agreed-upon date which shall be announced at the hearing; or
- ◆ Without the consent of the applicant, to a specific date for the reasons stated at the hearing, including but not limited to receipt of additional information from the applicant or others.

4.3 Notice of Intent

4.3.1 Overview

Any person who desires review of a Notice of Intent shall file with the Commission plans and specifications as required under MGL Chapter 131 Section 40 and as further defined below. In order to demonstrate full compliance with this North Andover Wetlands Protection Bylaw and these Regulations, the applicant has the burden of proof to completely describe the site, the work, and its effect on resource areas and the interests they provide. The applicant is obligated to demonstrate that the work subject to regulation under this Bylaw and Regulations can be performed

in a manner that meets all applicable performance standards and results in no impact on the wetland resource areas in question.

Applicants are urged to retain the services of qualified, experienced, professional consultants when filing a Notice of Intent. Submission of incomplete or inadequate information or a failure to meet the burden of proof may result in extensive delays and continuations in the review and approval procedure. Failure to supply adequate and credible documentation describing the impact of the project on resource areas may result in the issuance of a decision prohibiting the work.

4.3.2 Filing Procedures and Submittal Requirements

General Requirements

Two (2) copies of the Notice of Intent application, accompanying plans, appurtenant data and an electronic copy, and the appropriate filing fee, payable to the "Town of North Andover", shall be sent by certified mail or hand delivery, to the North Andover Conservation Commission, 1600 Osgood Street, Suite 2-36, North Andover, MA 01845, at least nine (9) days prior to the anticipated date of a scheduled hearing.

Upon receipt of an application the Commission or Town Conservation Administrator will determine, within two (2) business days, if the application meets the minimum submittal requirements identified on the "Application Checklist(s)" (Appendix A). Those applications that do not meet the minimum submittal requirements of the application checklist will be rejected until the necessary information is provided.

Abutter Notification Requirements

The applicant shall provide proof of mailing of notification to abutters, having been made at least seven calendar days in advance of the anticipated hearing date. The applicant shall submit with their Notice of Intent a list of abutters within 300 feet of the property line where work is proposed (certified by the Assessor within the prior 30 days from the date of filing) to whom public notice of this request has been sent. The notice to abutters shall include all information pertinent to the time and location of the public hearing or indicate where such information can be obtained.

Filing Fee Requirements

The fees charged for filing under the Bylaw shall be in addition to those required under the Massachusetts Wetlands Protection Act. (MG.L. c.131, sec. 40). To determine the applicable fees, please refer to Section 1.4 of these regulations for the Bylaw fee schedule and 310 CMR 10.03(7) for the state fee schedule.

Plan Requirements

All applications shall include two (2) full size copies of detailed plans and an electronic copy. Technical data should be submitted to support the plans and shall be in narrative form with calculations submitted as necessary to substantiate the designs proposed. The applicant, upon submission of a Notice of Intent, shall comply with the requirements of Sections 178.4 and 178.5 of the Bylaw and incorporate the following:

- ◆ All drawings shall be drawn with the title designating the name of the project, location and the names of the persons(s) preparing the drawings, and the date prepared, including the latest revision date. Drawings shall be stamped and signed by a duly qualified Registered Professional Civil Engineer and/or Registered Professional Land Surveyor of the Commonwealth of Massachusetts (whichever expertise is applicable). For certain projects, including but not limited to additions to existing structures, the Commission may accept plans not drawn by a surveyor or civil engineer when these plans utilize a stamped plan as a “base map”. In this case, the “base map” shall also be submitted or referenced.
- ◆ Plans depicting proposed drainage systems and/or a subsurface sewage disposal system must be stamped by a Registered Professional Civil Engineer of the Commonwealth.
- ◆ An 8½” X 11” photocopy of the USGS topographic quadrangle indicating the location of the proposed activity and the outline of the area in which the activity is located.
- ◆ Technical reports on both the engineering aspects of the project as well as the wetland resources of the project site shall accompany the Notice of Intent application.
- ◆ Source material for any plan submitted must be referenced on the new plan.

Existing Conditions Site Plans

The following standards and design specifications are intended to provide the Commission with the minimum amount of data necessary to determine the impact of a proposed project on wetland resource areas and/or the ability of said resource area to provide documented functions and values. The Commission may from time to time adopt and publish additional guidelines and minimum technical standards for plans, calculations, and environmental impact reports submitted with an application for a permit. The Commission may find it necessary to request additional site-specific information to adequately determine the effect of the work on resource areas.

Existing conditions site plans shall incorporate the following information, as applicable:

- ◆ Surveyed property lines showing distances and monument locations, all existing easements, rights-of-way, utilities and other encumbrances.
- ◆ Lines of existing abutting streets showing drainage and driveway locations and curb cuts.
- ◆ Names of all abutters as they appear on the most recent tax list(s) including those in adjacent communities.
- ◆ Watershed Protection District boundaries from the most recent North Andover Zoning Map.
- ◆ Existing contours at two-foot intervals and the source for any datum used to establish these contours. Additional contours fifty feet (50') beyond the perimeter of the parcel or within 100 feet of wetland resource areas may require further delineation.
- ◆ All existing natural and man-made features including tree lines, rock outcrops, stone walls, fence lines, cart roads, foot paths, overhead and underground utilities, and drainage structures.
- ◆ The location of all surface water supplies, wells, and septic systems on the property, and on abutting properties, within 100' of proposed work.
- ◆ Elevations of all natural and man-made drainage structures, waterways, and wetlands (as defined by the Act and Bylaw).
- ◆ All wetland resource areas including but not limited to the 100-foot Buffer Zone, 25-foot No-Disturbance Zone and the 50-foot No-Build Zone within 100 feet of proposed work.
- ◆ Flag numbers of all field delineated wetland resource areas.
- ◆ The location of the 100-year flood boundary on or within 100 feet (100') of the project site, based upon the most recent Flood Insurance Rate Map (FIRM).
- ◆ Hydrologic calculations showing the full-flow capacity and velocity of all water courses, open and only sometimes closed channels, and storm drains flowing into, on and out of the property.
- ◆ Description of existing soils on the site (type, hydrologic soil group, erodibility).

- ◆ The general outline of existing vegetation, wooded areas, significant trees, unique species and tree clusters.
- ◆ Site plans shall be submitted at an appropriate scale (typically 1" = 40' for subdivisions and 1" = 20' for single family lot developments) to accurately depict proposed work. Additional plans with greater or lesser detail may also be required if such plans would provide valuable information to the Commission in its review. The Commission may request a plan at a different scale for large properties or unique circumstances.

Developed Conditions Site Plans

Developed conditions site plans shall include the following information, as applicable:

- ◆ All proposed man-made features including buildings or other structures, impervious surfaces, drainage facilities and overhead and underground utilities.
- ◆ Subsurface sewage disposal systems, foundation and perimeter drains, and wells on or within 100 feet of the proposed activity.
- ◆ Proposed grading and changes in elevations depicted with two foot contours and spot grades. One foot contours may be required in/near wetland resource areas.
- ◆ All surface and subsurface drainage structures including the location, cross-section, slope, and surface treatment of all drainage channels and the inverts, slope, pipe materials, catch basins, manholes, and end treatment of all storm drains discharging within 100 feet of any wetlands.
- ◆ The location and detail of all temporary erosion control devices, diversions, terraces, silt fences, hay bale barriers, sediment stockpile locations and sedimentation basins.
- ◆ The location and nature of all proposed alterations to wetland resource areas.
- ◆ The location and planting plans for any proposed mitigation areas.
- ◆ Flag numbers for all field delineated wetland resource areas.
- ◆ The general outline of existing vegetation, wooded areas, significant trees, unique species and tree clusters and the extent of all vegetation, wooded areas, significant mature trees, unique species and/or tree clusters to be removed.

- ◆ Plans shall be submitted at an appropriate scale (typically 1" = 40' for subdivisions and 1" = 20' for single family lot developments) and in cross-section as may be necessary. Additional plans with greater or lesser detail may also be required if such plans would provide valuable information to the Commission. The Commission may request a plan at a different scale for large properties.
- ◆ When applicable, NOI submission should also include a Stormwater Report in accordance with the Massachusetts Stormwater Management Standards and Section 7.0. Projects not subject to the Massachusetts Stormwater Management Standards at the discretion of the Commission or its Agent may be required to submit:
 - ◆ A drainage area map showing pre and post construction watersheds, subwatersheds and stormwater flow paths, including municipal drainage system flows;
 - ◆ A description of existing soils on the site (type, hydrologic soil group, erodibility), and the volume and nature of any imported soil materials;
 - ◆ Estimated seasonal high groundwater elevation in areas to be used for stormwater retention, detention, or infiltration, and the basis for determination;
 - ◆ Erosion and Sediment Control Plan;
 - ◆ An Operation and Maintenance Plan for any proposed stormwater structure used for retention, detention or infiltration.

4.3.3 Public Hearings

The Commission shall hold a public hearing on the Notice of Intent and shall issue a written decision within twenty-one days after the close of the public hearing. Prior to the close of a public hearing all data deemed pertinent to the decision must be submitted and reviewed by the Commission. The Commission may continue or adjourn a public hearing in the following situations:

- ◆ With the consent of the applicant, to an agreed-upon date which shall be announced at the hearing; or
- ◆ Without the consent of the applicant, to a specific date for the reasons stated at the hearing, including but not limited to receipt of additional information from the applicant or others.

5.0 Waiver Provisions and Alternatives Analysis Requirements

The performance standards for wetland resource areas have been created to ensure that the interests of the Act and Bylaw are adequately protected. The Commission recognizes that, in certain situations, a waiver of a specific wetland resource area performance standard may be appropriate for a particular project when the waiver is consistent with the intent and purpose of the Bylaw and these Regulations. As an example, the Commission may grant a waiver from these regulations for the construction and maintenance of a new roadway or driveway of minimum legal and practical width consistent with Planning Board Dimensional standards, where no alternative means of access from an existing public or private way to an upland area of the same owner is available. Such an approach is consistent with the limited project provision of the Act (see 310 CMR 10.53(a-s)), however, the applicant is still bound by this Bylaw to a maximum alteration limit of 5,000 square feet (see Section 5.3). Replication of altered wetland resource areas may be required by the Commission to minimize adverse impacts and to protect the interests identified in the Bylaw.

Wetland alterations intended to make lands buildable, as by fulfilling septic system setback requirements, flood elevation requirements, or other minimum construction setback requirements, or to achieve minimum lot area requirements, are prohibited. Wetland alterations required to access upland parcels will not be allowed if that landowner landlocked the parcel by selling upland access. The Commission may require the filing of a request for a waiver of certain Planning Board or Zoning Board of Appeals requirements in order to minimize wetland impacts.

The applicant shall have the burden of proof of demonstrating that the granting of the waiver is consistent with the intent and purpose of the Bylaw and these Regulations. The Commission shall act on the request for a waiver and shall provide to the applicant, either by certified mail or hand delivery, its written decision. (See Appendix D for a Waiver Request Form).

5.1 *No-Disturbance Zones*

The Commission may grant a waiver from these regulations for alteration of a buffer zone resource area in situations where there are no feasible alternatives that provide fewer impacts to the resource area values. The applicant is responsible for conducting this alternatives analysis to show that there are no feasible alternatives. The Commission may grant a waiver of the 25-Foot No-Disturbance Zone and/or 50-foot Ephemeral Pool No-Disturbance Zone performance standards and impose such additional or substituted mitigative requirements as it deems necessary, upon a clear and convincing showing by the applicant that:

- ◆ There are no practicable conditions or alternatives that would allow the project to proceed in compliance with the regulations; and

- ◆ The project, or its natural and consequential effects, will not have any adverse effects upon any of the interests protected by the Bylaw. It shall be the responsibility of the applicant to provide the Commission with any information that the Commission may request to enable the Commission to ascertain such adverse effects. The failure of the applicant to furnish any information that has been so requested shall result in the denial of a request for a waiver pursuant to this subsection; and
- ◆ The project will improve the natural capacity of a resource area to protect the interests identified in the Bylaw, provided any adverse effects on any such interests are minimized by carefully considered conditions. However, no such project may be permitted which would have an adverse impact on rare wildlife species.

In the case where a waiver is granted in the No-Disturbance Zone the Commission shall require mitigation measures to be implemented to offset presumed impacts to the wetland resource areas (see Section 6.0).

5.2 *No-Build Zones*

The Commission may grant a waiver from these regulations for an alteration of a buffer zone resource area in situations where there are no feasible alternatives that provide for less impacts to the resource area values. The applicant is responsible for conducting an alternatives analysis to show that there are no feasible alternatives. The Commission may grant a waiver of the 50-foot No-Build Zone and 75-foot Ephemeral Pool No-Build Zone performance standards and impose such additional or substituted mitigative requirements as it deems necessary, upon a clear and convincing showing by the applicant that:

- ◆ There are no practicable conditions or alternatives that would allow the project to proceed in compliance with the regulations; and
- ◆ The project, or its natural and consequential effects, will not have any adverse effects upon any of the interests protected by the Bylaw. It shall be the responsibility of the applicant to provide the Commission with any information that the Commission may request to enable the Commission to ascertain such adverse effects. The failure of the applicant to furnish any information that has been so requested shall result in the denial of a request for a waiver pursuant to this subsection; and
- ◆ The project will improve the natural capacity of a resource area to protect the interests identified in the Bylaw, provided any adverse effects on any such interests are minimized by carefully considered conditions. However, no such project may be permitted which would have an adverse impact on rare wildlife species.

In the case where a waiver is granted in the No-Build Zone, the Commission shall require mitigation measures to be implemented to offset potential impacts to the wetland resource areas (see Section 6.0).

5.3 *Vegetated Wetland Alteration*

The Commission may grant a waiver from these regulations for alteration of a Vegetated Wetland in situations where there are no feasible alternatives that provide less impacts to the wetland resource values. The applicant is responsible for conducting an alternatives analysis to show that there are no feasible alternatives. The Commission may, pending the results of the alternatives analysis, allow the loss, alteration, or temporary surface disturbance of up to a cumulative total no greater than five thousand (5,000) square feet of Bordering Vegetated Wetland and Isolated Vegetated Wetland combined when said areas are replaced or restored in accordance with the State regulations 310 CMR 10.55(4)(b) and Section 6.0 of these Regulations.

6.0 Replication Standards and Habitat Evaluations

6.1 *Wetland Replication*

A study conducted by the University of Massachusetts found that the majority of wetland replication projects undertaken in the Commonwealth do not meet the minimum performance standards in the regulations. In many projects, proposed mitigation failed to meet performance standards because of inadequate hydrology, poor vegetation replanting plans, or replication areas built smaller than required in the plans. Based on this compelling evidence, the Commission will not place substantial reliance on replication to achieve the goals of the Wetlands Protection Act and Bylaw. These goals can best be achieved by avoiding and minimizing impacts to wetlands, thereby reducing the need for replication projects of uncertain success.

The importance of avoiding and minimizing wetland impacts is expressly recognized in the state regulations and this Bylaw. The Act and Bylaw mandate that the Commission consider the availability or reasonable alternatives to the proposed activity, the extent to which adverse impacts are minimized, and the extent to which mitigation measures, including replication or restoration, are provided and contribute to the protection of the interests identified in the Act and this Bylaw.

The above notwithstanding, projects that impact vegetated wetland resource areas will require replication under this Bylaw. The general conditions governing replication area design under this Bylaw shall include but not be limited to the following:

- ◆ Notice of Intent applications must include as an attachment, the most recent version of the DEP “Replication Guideline Checklist”.
- ◆ A narrative description of the existing and proposed wetland.

- ◆ At a minimum, wetlands replacement must be at a 2:1 ratio, (replicated wetland to altered wetland). Replaced wetlands shall be made contiguous with existing wetlands unless the applicant is able to demonstrate that another location (adjacent to other resource areas) would have a greater ability to protect the interests of the Bylaw and/or the Act.
- ◆ Applicants should consider avoiding valuable upland wildlife habitats within the buffer zone (such as mature forests) so that inadvertent impacts to upland animal or plant species do not result. Replication is required, however, even if the only feasible site within the buffer zone is forested. If this is the case, applicants may choose to consider potential areas off-site prior to using forested uplands. Upland rare species habitat and vernal pools should be avoided.
- ◆ A 1" = 10' to 1" = 40' site plan (with cross sections) including easily identifiable landmarks (e.g., surveyed flag locations, benchmarks, or structures), contour lines at 1-foot intervals, and locations of soil test pits and vegetation plots. A Registered Professional Land Surveyor of the Commonwealth and/or a Registered Professional Civil Engineer of the Commonwealth shall stamp the plans.
- ◆ Surface area calculations demonstrating a minimum 2:1 replacement to impact ratio. Side slopes shall not be counted as part of the replication area.
- ◆ The replication area must have similar ground water and surface water elevation as the lost area and similar hydrology with respect to drainage area and frequency of inundation.
- ◆ Replacement areas must be constructed at the same time or prior to the wetland alteration. The applicant shall have the burden of proving where this may not be appropriate in certain, unique instances.
- ◆ Project surveyors shall re-establish all wetland flags and stake out the limits of the proposed wetland replication area. These stakes shall remain in place until wetland vegetation has become fully established.
- ◆ The Conservation Commission should be given adequate notice prior to commencement of excavation for the replication area so that inspections may be completed during the excavation procedure.
- ◆ A combination of natural re-seeding, transplanting, re-grading and new plantings shall be used to re-establish a similar vegetation community and structural diversity. All plantings should occur at the beginning or end of the growing season. Fall plantings should be done before the first frost. Prior to planting and seeding, project surveyors should again verify that grades have been achieved as shown on the record drawings.

- ◆ The exposed substrate shall be protected against erosion until re-establishment of wetland vegetation occurs. All exposed soil should be stabilized using seed-free hay mulch or other appropriate erosion control measures in the event that seasonal conditions result in a delay in planting. If the site is excavated to the sub grade in the fall and a delay is inevitable, consideration should be given to stabilizing the site for winter, and conducting final grading in the spring.
- ◆ Wetland soils from the altered wetland shall be excavated and supplemented for the replacement wetland when these soils are suitable for such purposes.
- ◆ At least 75% of the surface area of the replacement area must be established with native wetland plant species within two growing seasons (as defined by this Bylaw). No portion of the replacement area may have less than 50% wetland plant species that are indigenous to southern New England.
- ◆ Invasive species colonization must be documented and controlled. Evidence of the spread of invasive species within replacement wetlands will require the development and implementation of an invasive species management/control plan.
- ◆ Replaced wetlands shall be monitored on an ongoing basis by a qualified wetland scientist and written reports shall be submitted to the Conservation Commission at least twice each year (May and October unless otherwise required by the Commission). If the conditions above (i.e., 75% surface cover) are not met within two (2) growing seasons the applicant must propose and implement corrective steps to be approved by the Commission or their designated Agent. These steps may include re-grading, planting additional vegetation, seeding or other steps deemed necessary.
- ◆ No wetland replacement area will be certified to be in compliance unless it has survived a minimum of two (2) growing seasons, and does not support a predominance of exotic, invasive species.
- ◆ “Interim As-Built Plans” complete with one foot contours, spot elevations, surface area and cross-sections of the replication area shall be prepared by a Registered Professional Land Surveyor of the Commonwealth and submitted to the Commission within 30 days upon completion of final grading.

6.2 *Wildlife Habitat Evaluations*

Where alterations exceed the maximum allowable thresholds described in the State regulations 310 CMR 10.00 for Bank, Land Under a Water Body, Bordering Land Subject to Flooding, or Riverfront Area, or where the alteration of a habitat of rare species is involved, or where an Ephemeral Pool or Ephemeral Pool Habitat would be altered, a wildlife habitat evaluation shall be performed in accordance with 310 CMR

10.60. The Commission may also require at their discretion, a wildlife habitat evaluation when the applicant proposes alterations to a wetland resource area that the Commission deems of exceptional value to the wildlife and wildlife habitat interests of the Bylaw. Projects resulting in the loss of critical habitat, or causing negative impacts on critical habitat, of rare, threatened, endangered species or species of special concern shall not be permitted. Valuable upland habitat shall, to the fullest extent possible, not be used to locate wetland replacement areas.

7.0 Stormwater Management and Flood Control

Overview

Projects subject to the Bylaw shall fully comply with the applicability, criteria, specifications, submittal requirements and performance standards of the most recent version of the Massachusetts Stormwater Standards, 310 CMR 10.05(6)(k) as well as those described herein. The Lake Cochichewick Watershed Area shall be considered a Critical Area in terms of applicability of the standards. The state standards have been amended and expanded upon by the Commission in order to adequately protect the interests of the Act and Bylaw.

Projects subject to the Bylaw shall also comply with the requirements and criteria outlined in Sections 7.0 through 10.0 of the North Andover Stormwater Management and Erosion Control Regulations promulgated under Chapter 160 of the Town Bylaws (Stormwater Management and Erosion Control Bylaw). All references in those regulations to the Planning Board shall instead apply to the Conservation Commission.

Submittals shall include a Stormwater Management Plan prepared in accordance with the most recent version of the Massachusetts Stormwater Handbook and Section 7.0 of the North Andover Stormwater Management and Erosion Control Regulations and . In addition to the Design and Performance Criteria outlined in Section 7.2 of those regulations the following shall apply:

- ◆ Calculations to fully support the design of compensating flood storage areas for alterations that affect bordering land subject to flooding and isolated land subject to flooding. The calculations shall detail the existing incremental flood storage volumes and the proposed incremental flood storage volumes up to the 100-year flood elevation. There shall be no net loss of flood storage volume at any elevation.
- ◆ For stream crossings, or other such flow restrictions, an analysis of incremental flood storage elevations up to the 100-year storm event using HEC/RAS or other appropriate modeling software will be required. The analysis shall extended to the nearest downstream/upstream control point.
- ◆ The Commission reserves the right to impose sampling or monitoring requirements when alternative stormwater management techniques are proposed or in unusual circumstances as deemed necessary to protect the interests of the Act and Bylaw.

7.1 *Erosion and Sediment Control Plan*

An Erosion and Sediment Control Plan is required at the time of application for all projects, unless the requirement has been waived. Plan approval by the Conservation Commission or its Agent is required prior to any site altering activity. The plan shall be designed to ensure compliance with the DEP Stormwater Standards, these Regulations, and if applicable, an NPDES MS4 General Permit for Storm Water Discharges from Construction Activities. In addition, the plan shall ensure that the Massachusetts Surface Water Quality Standards (314 CMR 4.00) are met in all seasons.

If a project requires a Stormwater Pollution Prevention Plan (SWPPP) per the NPDES General Permit for Storm Water Discharges from Construction Activities, then the Applicant is required to submit a complete copy of the SWPPP for review and comment before filing with EPA. If the SWPPP meets the requirements of the NPDES General Permit, it will be considered equivalent to the Erosion and Sediment Control Plan described in this Section.

- ◆ The Erosion and Sediment Control Plan shall be prepared in accordance with the requirements of Section 8.0 of the North Andover Stormwater Management and Erosion Control Regulations promulgated under Chapter 160 of the Town Bylaws (Stormwater Management and Erosion Control Bylaw).

7.2 *Operation and Maintenance Plan*

An Operation and Maintenance Plan (O&M Plan) for the permanent storm water management system is required at the time of application for all projects. The O&M Plan shall be designed to ensure compliance with these Regulations, the Massachusetts Stormwater Management Standards, and the Massachusetts Surface Water Quality Standards contained in 314 CMR 4.00 in all seasons and throughout the life of the system.

Once approved by the Conservation Commission, the Operation and Maintenance Plan shall remain on file with the Conservation Commission and implementation shall be an ongoing requirement. Depending on the complexity of the systems installed, the Conservation Commission may require that the O&M Plan be recorded at the Essex North Registry of Deeds by the Conservation Commission or its agent at the expense of the current owner(s).

- ◆ The O&M Plan shall be prepared in accordance with the requirements of Section 9.0 of the North Andover Stormwater Management and Erosion Control Regulations promulgated under Chapter 160 of the Town Bylaws (Stormwater Management and Erosion Control Bylaw).

- ◆ The applicant shall be responsible for securing by way of a covenant, easement, deed restriction, or other legal instrument a perpetual mechanism of fund for the maintenance or repair of the stormwater management system.

8.0 Permits and Decisions

8.1 *Public Hearings and Public Meetings*

Public hearings and public meetings on applications filed pursuant to the Bylaw and Regulations may be conducted simultaneously with public hearings and public meetings held pursuant to the Massachusetts Wetland Protection Act (MGL Chapter 131, Section 40) as amended. Permit applications filed with the Commission shall include both the Act and Bylaw under one cover. The decisions rendered by the Commission shall also include both the Act and Bylaw under one cover.

8.2 *Decisions*

As part of a permit issued pursuant to this Bylaw, the Commission shall impose such conditions as are necessary to protect the values of wetland resource areas under their jurisdiction. If the Commission deems that the interests stated in the Bylaw are not adequately protected under the terms of the applicant's proposal, the Commission may refuse to issue a permit. When the commission votes to deny a permit, it shall issue a written decision supported by facts and findings explaining why the project may not be properly conditioned to meet the interests of the Act and this Bylaw.

Permits approved pursuant to this Bylaw may be:

- ◆ Combined and released within an Order of Conditions which may be issued pursuant to the Massachusetts Wetland Protection Act (MGL Chapter 131, Section 40 as amended); or
- ◆ Issued separately.

8.3 *Extension Permits*

The Commission may issue an Extension Permit for a period of one year provided that a written request for an extension is filed at least thirty (30) days prior to the expiration date of the Order of Conditions. The Commission may grant only two (2) Extension Permits for an individual Order of Conditions. Extension Permit requests must also meet all of the following conditions at the time of the written request:

- ◆ No request for an Extension Permit will be granted unless the wetland is either re-flagged by a qualified wetland biologist or the original approved flagging is re-established in the field by survey. The wetland delineation shall be verified by the Commission and/or their designated agent. The Commission may require a new

filing, or the reopening of the public hearing, if the wetland delineation has changed from the original submittal.

- ◆ No request for an Extension Permit will be reviewed until the necessary filing fee is received by the Commission
- ◆ No request for an Extension Permit will be granted for an expired Order of Conditions.
- ◆ At the time of the request for an Extension Permit the project must be in compliance with the Order of Conditions and other permit requirements.

8.4 *Modifications, Amendments and Revocations*

Modifications

The Commission may modify, upon its own initiative or petition from the applicant, an Order of Conditions issued under the Bylaw and Regulations. The Commission considers a Modification to be a “minor or insignificant project change” when said change will not result in an adverse impact to wetland resource area(s) and/or the interests protected under the Act and this Bylaw. No public hearing is required for a Modification to an Order of Conditions but the applicant must file a written request with the Commission describing the Modification and include the applicable filing fee. In the event that the Commission initiates a Modification at their own doing, written notification shall be provided to the applicant by certified mail.

A request for a Modification **will not be reviewed or considered** under the following instances:

- ◆ If the appropriate filing fee is not submitted with the request to the Commission.
- ◆ If the Order of Conditions has expired.
- ◆ If the wetland resource area has not been re-flagged and/or the originally approved flagging is not re-established in the field. NOTE: The Commission may require a new filing or the reopening of the public hearing if the wetland delineation has changed from the original submittal.

Amendments

The Commission may amend an Order of Conditions (on its own motion or upon the petition of the applicant, or any person interested) when a change in a permitted project has occurred that the Commission deems of sufficient magnitude that will require the imposition of additional conditions to ensure adequate protection of wetland resource areas and/or the interests covered under this Bylaw and Regulations. The Commission shall have the discretion to decide if a public hearing is warranted.

The decision to hold a public hearing shall be based on the potential impact of the proposed work and its effect on the ability of the identified wetland resource areas to provide those interests as defined under the Act and Bylaw. In the event that the Commission initiates an amendment, written notification shall be provided to the applicant by certified mail. No request for an amendment will be reviewed until the necessary filing fee is submitted to the Commission.

A request for an Amendment **will not be reviewed** or considered under the following instances:

- ◆ If the appropriate filing fee is not submitted with the request to the Commission.
- ◆ If the Order of Conditions has expired.
- ◆ If the wetland resource area has not been re-flagged and/or the originally approved flagging is not re-established in the field. NOTE: The Commission may require a new filing or the reopening of the public hearing if the wetland delineation has changed from the original submittal.

If the scope or purpose of the proposed project changed substantially, or the wetland interests identified in the Act and Bylaw are not protected, the Commission shall require the applicant to file a new Notice of Intent.

Revocations

The Commission may revoke an Order of Conditions issued under the Bylaw and Regulations if any of the following circumstances occur:

- ◆ The applicant and/or his/her successor's fail to comply with the terms of the permit; or
- ◆ New information relating to the project is obtained which indicates that previous information presented to Commission was inaccurate; or
- ◆ The project changes substantially after the completion of the Commission's review.

In considering a revocation of an Order of Conditions the Commission shall officially notify the interested parties through certified mail and hold a public hearing within 21 days of the notification date.

8.5 *Certificate's of Compliance*

Upon completion of the project, the applicant may request in writing from the Commission a Certificate of Compliance. As-Built plans may also be required as noted in the Order of Conditions issued on the project. All As-Built plans must be at the same scale as the plans submitted with the Notice of Intent. As-built plans shall be

signed and stamped by a Registered Professional Civil Engineer (and/or Registered Professional Land Surveyor) of the Commonwealth. All deviations from the approved plan shall be noted and explanation for the deviation provided.

The applicant or his representative shall attend the scheduled meeting to answer any questions the Commission may have. If the Commission determines that the requirements of the Order have not been met the request for a Certificate of Compliance will be denied. The reasons for the denial shall be forwarded to the applicant within 21 days of the receipt of the request.

The Commission may specify on the Certificate of Compliance that certain conditions of the Order of Conditions, such as maintenance of waterways and catch basins, and erosion control measures, are imposed perpetually and do not expire with the issuance of the Certificate of Compliance. The person to whom the Certificate is issued shall forthwith record it in the Northern Essex Registry of Deeds or Land Court in the chain of title of the affected property and shall notify the Commission, in writing, that said recording has occurred, by sending a copy of the stamped recorded instrument to the Commission.

The following additional requirements must be satisfied in order to receive a Certificate of Compliance:

1. No request for a Certificate of Compliance will be reviewed until all necessary filing fees are submitted to the Commission.
2. A Certificate of Compliance can be granted for an expired Order of Conditions.
3. When granted, a Certificate of Compliance will be issued to either the original applicant or the current landowner.
4. The following information must be submitted to the Commission in writing, in addition to the requirements of the Order of Conditions, when requesting a Certificate of Compliance:
 - The name and address of the current landowner.
 - The name and address of the individual/trust or corporation to whom the Compliance is to be granted.
 - The street address and lot number for the project.
 - The DEP file number.
 - A statement certifying compliance with the Order of Conditions and the approved plan.
5. The person certifying Compliance with the Order of Conditions must have inspected the site, read the Order of Conditions and all referenced documents, and reviewed the contents of the Commission's files on the project. Upon completion of these tasks the person certifying Compliance

must submit the "Order of Conditions Compliance Certification Form" located in Appendix E.

6. The Commission may withhold the issuance of a Certificate of Compliance if the project in question is part of (or related to) another project which is not currently in compliance.

9.0 Monitoring Permitted Work

In order to ensure that permitted work is performed in accordance with the approved plans and Order of Conditions, the Commission may require Applicants, at their own expense, to retain a consultant to monitor the process of the work and submit periodic reports to the Commission. The consultant shall be a qualified environmental profession acceptable to the Commission. The consultant shall prepare and submit certified reports with photographs to the Commission on a schedule established by it. The consultant shall be responsible for monitoring erosion and sedimentation controls, compliance with the approved Order of Conditions and shall, if unexpected site conditions require modification to the approved plans, immediately notify the Commission and request the Commission to review and approve the necessary changes. No work shall be performed without the prior approval of the Commission.

10.0 Performance Guarantee

10.1 Security

The Commission may require the applicant to furnish a performance guarantee in the form of a deposit of money in an amount determined by the commission to be sufficient to cover the cost of all or any part of the site alterations specified in the Permit and/or shown on the plans approved by the Commission. This security shall be deposited in the name of the Town of North Andover. The standard agreement is included on the "Performance Guarantee Form" which can be obtained from the Conservation Office. Security amounts will be set so that funds will be adequate to comply with the Order of Conditions, repair damage to wetlands and to permanently stabilize the work site and all soils. Security shall be determined on a site-by-site basis.

10.2 Covenant

The Commission may require the applicant to secure the performance and observance of conditions imposed on the project, by a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town whereby the permit

conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

10.3 *Reduction of Security*

The penal sum of any required performance guarantee, or the amount of any deposit held hereunder may, from time to time, be reduced by the Commission and the obligations of their parties thereto released by the Commission in whole or in part. The release schedule(s) for the security may be proposed by the applicant, and if acceptable, approved by the Commission.

10.4 *Release of Performance Guarantee*

Upon completion of site alterations required in the permit, security for the performance of which was given by security, deposit or covenant, or upon the complete performance of the covenants with respect to the site, the applicant may request and agree on the terms of release with the Commission.

If the Commission determines that said alterations have been completed in compliance with the conditions of the permits, it shall release the interest of the Town in such security and return the deposit to the person who furnished same, or release the covenant, if appropriate. If the Commission determines that said alterations have not been completed in compliance with the permit, it shall, within 45 days, specify to the applicant, in writing, the details wherein said alterations fail to comply with the permit.

If the Applicant fails to complete the work secured by this agreement by the above stated or extended deadline, the deposit of money may be applied in whole, or in part, by and upon a vote of the Conservation Commission for the benefit of the Town of North Andover to the extent of the reasonable cost to the Town of completing such construction or installation as specified in this agreement. Any unused money and the interest accrued on the deposit of money, unless said interest is used to complete such construction or installation, shall be returned to the Applicant upon completion of such construction or installation by the Town upon a vote of the Conservation Commission.

11.0 Availability of Regulations

Copies of these Regulations and the Bylaw shall be made available for purchase from the North Andover Conservation Commission, 1600 Osgood Street, North Andover, MA 01845, for the price of \$15.00 in the form of a check payable to the Town of North Andover.

12.0 Amendments

These Regulations may be amended from time to time by a majority vote of the Conservation Commission. Prior to taking a vote on an amendment, the Conservation commission shall have held a public hearing on the proposed change(s).

13.0 NACC Policy Statements

These Regulations may be supported by policy statements issued by the Commission. These Policies will be made available to any individual upon request. Persons seeking permits under the Bylaw and Regulations should review the Policy Statements available in the Conservation Office.

14.0 Effective Dates

An advertised public hearing was held on these Regulations on February 5, 1992 and continued to February 19 and 26, 1992; July 30, 2003 and continued to August 27, 2003; and on March 9, 2011. The Commission voted to adopt these regulations on February 26, 1992, September 10, 2003 and (as amended) on March 9, 2011, effective immediately. All other amendments shall be effective upon their adoption by the Commission following a public hearing and filing with the Town Clerk.

Revisions:

3/16/94:	Section VIII (B) and (C) and Appendix 6
5/18/94:	Section I (C) and Section II
5/15/95:	Section I (D) (b)
5/15/95:	Section IV (B)
11/10/98	All Sections
9/10/03	All Sections
3/09/11	Section 1.4 Fee Schedule and Addition of new Section 9.0 Monitoring Permitted Work (all subsequent sections reordered consecutively.)
3/25/15	Section 1.4 Fee Schedule and submittal requirements
2/23/16	Section 7.0 Stormwater Management and Flood Control and various sections

15.0 Severability

If any provision of these Regulations or the application thereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or the application of

any part of these Regulations not specifically held invalid, nor shall it invalidate any order, permit, or Determination which previously had been issued, and to this end the provisions of these Regulations are declared to be severable.

16.0 Enforcement

The Commission may enforce these Regulations, or an Order, permit, or Determination issued thereunder, in any manner consistent with Section 178.10 of the Bylaw and all other laws. Enforcement Orders (Stop Work Orders) may be issued under the guise of the Bylaw and the Act (310 CMR 10.08) for the following:

- ◆ Working within a wetland resource area without a valid Order of Conditions or Determination of Applicability; or
- ◆ Violation of the terms of any Order of Conditions; or
- ◆ Failure to complete a project if it has resulted in an adverse impact to a wetland resource area.