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Final Report: Appendix A. Proposed Norton Wetland Protection Bylaw and Regulations

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APPENDIX A. PROPOSED NORTON WETLAND PROTECTION BYLAW AND REGULATIONS

NORTON - ARTICLE 33

To see if the Town will amend its Bylaws for the purpose of adopting, ratifying, and incorporating therein the following new Bylaw, "Wetlands Protection Bylaw," or take any other action relative thereto:

WETLANDS PROTECTION BYLAW

- I. Purpose.** The purpose of this Bylaw is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Norton by controlling activities deemed by the Conservation Commission (hereinafter referred to as the "Commission") likely to have a significant or cumulative effect on resource area values, including but not limited to the following: public or private water supply, groundwater supply, flood control, storm damage prevention, prevention and control of pollution, protection of fisheries, protection of wildlife habitat, water quality, pollutant removal capacity, protection of riparian ecosystems, protection of wildlife populations and species diversity, passive recreation and the function and character of resource area landscapes.
- II. Relationship to the Wetlands Protection Act.** This Bylaw is enacted pursuant to the Town's Home Rule authority to protect the resource areas under the Wetlands Protection Act (G.L. c.131, §40, hereinafter referred to as the "Act") to a greater degree, to protect additional resource areas beyond the Act recognized by the Town as significant, to protect all resource areas for their additional values beyond those recognized in the Act, and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and the implementing regulations thereunder (310 CMR 10.00, as amended), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth and other relevant bylaws of the Town of Norton.
- III. Rules and Regulations.** The Commission shall be authorized to promulgate Rules and Regulations ("Regulations") to effectuate the purposes of this Bylaw at a meeting for which one week's notice has been provided in a newspaper of general circulation in the Town. Such Regulations shall take effect upon filing with the Town Clerk. Failure by the Commission to promulgate such Regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw. Such Regulations may include, but need not be limited to the following: requirements for permit procedures; definitions of additional terms and presumptions not inconsistent with the Bylaw; performance standard requirements; authorization for the use of a consultant fee fund; and imposition of filing and consultant fees.
- IV. Jurisdiction.** Except as permitted by the Commission or specifically exempted in Section IV of this Bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas listed below in Sections IV.A-D. These resources shall be known collectively as the Wetland Resource Areas (and may otherwise be referred to as, the "Areas Subject

to Protection under this Bylaw”). Said Resource Areas shall be protected whether or not they border surface waters.

- A. Any bordering or isolated freshwater wetland, including vegetated wetlands (marshes, wet meadows, bogs, swamps, seeps and springs); bordering or isolated lands subject to flooding or inundation by groundwater or surface water; banks (naturally occurring and beaches); reservoirs, lakes, and ponds of any size; lands under water bodies; intermittent streams, brooks and creeks; and lands under waterways;
- B. Lands adjoining freshwater wetlands, out to a distance of 100 feet (defined herein as the Wetland Protection Zone);
- C. Perennial rivers, streams, brooks and creeks, and lands adjoining these resource areas out to a distance of 200 feet (defined as the Riverfront Area in the Act and its implementing regulations); and
- D. Vernal Pool Habitat out to a distance of 100 feet, as defined in this Bylaw, regardless of whether the pool has been certified by the Massachusetts Natural Heritage and Endangered Species Program (NHESP), or whether the pool is located within a state protected resource area.

V. Exemptions and Exceptions. The following uses and/or activities are exempt from procedures and/or standards of this Bylaw as described below:

- A. Work performed for normal maintenance or improvement of land in agricultural use, as defined in 310 CMR 10.04, “Agriculture”; maintaining, repairing or replacing existing public utilities specifically exempted in the Act, subject to 310 CMR 10.02(2)(a)(2);
- B. Emergency situations in compliance with 310 CMR 10.06;
- C. Existing structures. The applications and permits required by this Bylaw shall not be required for existing structures or work in existence prior to the date of adoption of the Bylaw provided that:
 - 1. the existing structures and activities have been lawfully located in compliance with the Act;
 - 2. a valid permit has been issued under the Act; or
 - 3. an application for work under the Act has been submitted.

VI. Applications. Written application shall be filed with the Conservation Commission to perform activities affecting resource areas protected by this Bylaw. No activities shall commence without receiving and complying with a Permit issued pursuant to this Bylaw. Written Permit applications may include the Request for Determination of Applicability (RDA); Abbreviated Notice of Resource Area Delineation (ANRAD); and/or the Notice of Intent (NOI). Permits to be issued include the Determination of Applicability, Order of Resource Area Delineation (ORAD), Order of Conditions (OOC), and Extension Permits. The Commission, in an appropriate case, may at its discretion accept as the application and plans under this Bylaw any application and plans filed under the Act and its implementing Regulations.

- VII. Fees.** At the time of an application, the applicant shall pay a filing fee as specified by the Commission. The fee shall be in addition to that required by the Act and its implementing regulations. The Commission may impose reasonable fees for the purpose of employing outside consultants with scientific or legal expertise in order to aid in the review of proposed projects. The Commission may adopt rules to provide for depositing such fees in a special account, as authorized by G.L. c. 44, § 53G.
- VIII. Notice and Hearings.** Any person filing a Permit application, or other request with the Commission shall provide public notice as required by the Commission. The Commission shall conduct a public hearing on any Permit application, with written notice given at the expense of the applicant, at least five (5) business days prior to the hearing, in a newspaper of general circulation in the Town. The Commission shall commence the public hearing within 21 days from receipt of a completed Permit application. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion, based on comments and recommendations of other boards and officials. The Commission in an appropriate case may combine its hearing under this Bylaw with the hearing conducted under the Act and the implementing Regulations, as amended.
- IX. Coordination with Other Boards.** The Commission shall post meetings to consider matters under the Bylaw in accordance with the Open Meeting Law. The applicant shall provide a copy of the permit application and plans to any Town multiple-member board or officer if so requested, at the applicant's expense. Any Town multiple-member board or officer may submit written comments to the Commission in advance of the public hearing, and such comments shall be provided to the applicant.
- X. Assessment of Impacts.** In reviewing Permit applications within the jurisdiction of this Bylaw, the Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such impact and any additional standards of review provided within the Regulations.
- A. Overall Impacts to Resource Values. The Commission shall take into account any loss, degradation, isolation, fragmentation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities. In reviewing activities for those resource areas listed in Section IV.A of this Bylaw, the Commission shall presume that the associated Wetland Protection Zones are important to the protection of these resource areas because the best scientific evidence available demonstrates that activities undertaken in close proximity have a high likelihood of adverse impact, either immediately or cumulatively. These adverse impacts can include, without limitation, erosion, siltation, sedimentation, loss of groundwater recharge, poor water quality, increases in flooding, alteration of stream

morphology, significant changes in water temperature, alteration of pollutant removal capacity (including nitrates, nitrites, phosphorus, metals, salt, sediments and carbon); and loss of in-stream or riparian and upland wildlife habitat. The Commission shall presume that all vernal pools, and the associated vernal pool habitat and lands adjoining vernal pools, perform essential habitat functions. This presumption may be overcome only by a preponderance of credible evidence which, in the judgment of the Commission, demonstrates that the vernal pool habitat as defined by this Bylaw does not provide essential habitat functions. A formal evaluation shall be performed by an individual who, at a minimum, meets the qualifications of 310 CMR 10.60 and has conducted the evaluation at the appropriate time of year.

- B. Impacts in Areas of Critical Environmental Concern (ACEC). In reviewing activities within an ACEC, the Commission shall presume the ACEC is important to all the resource area values listed in this Bylaw and shall work to ensure the protection of these values and the functions they provide, particularly by taking measures toward the protection and enhancement of existing native vegetative cover for the improvement and maintenance of existing water quality and quantity; protection of riparian ecosystems and riverfront areas which support the continued viability of fisheries habitat and movement, including seasonal coldwater fisheries, mammals, freshwater mussels and other invertebrates; protection of wildlife habitat and existing native vegetative and aquatic cover in order to maintain existing populations and species diversity; and preservation and maintenance of the natural vegetation and geologic features such as stone walls and agricultural relics, which preserve both the function and character of resource area landscapes.

XI. Permits. No Permit issued hereunder shall allow for any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this Bylaw, has proved by a preponderance of the evidence that: (1) there is no practicable alternative to the proposed project with less adverse effects; and (2) such activities, including proposed mitigation measures will have no significant adverse impact on the areas or values protected by this Bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technologies, costs of the alternatives, and overall project costs. The applicant for a Permit shall have the burden of proving by a preponderance of the evidence that the work proposed in the Permit application will not have unacceptable significant or cumulative adverse effects upon the resource area values protected by this Bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a Permit or grant a Permit with conditions as further described in this Section.

- A. Issuance of Permits. The Commission shall issue its Permit, in writing within 21 days of the close of the public hearing thereon. The Commission in an appropriate case may combine the decision issued under this Bylaw with the

Permit, or Certificate of Compliance (COC) issued under the Act and its implementing Regulations.

- B. Conditional Permits. If a Permit is issued, the Commission shall impose conditions deemed necessary or desirable to protect said resource area values, and all activities shall be conducted in accordance with those conditions.
1. To prevent resource area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. Projects shall not be segmented or phased to evade or defer review requirements under this Bylaw or to give the appearance of no or minimal alteration or impact to the resource areas protected by this Bylaw. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, due to the inherent complexity of replication.
 2. Due to the importance of the Areas Subject to Protection under Section IV, the Commission may require compliance with design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of such Areas Subject to Protection, including without limitation strips of continuous, undisturbed vegetative cover, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the Bylaw.
 3. The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or actual, or historic presence of rare plant or animal species in the area. The work shall be performed by an individual who, at a minimum, meets the qualifications set out in the wildlife habitat section under 310 CMR 10.60.
- C. Denial of Permit. The Commission may deny a Permit based on the findings or conditions listed below; provided, however, that the Commission may consider any hardship on the applicant created by reason of denial, as demonstrated at the public hearing, such as those matters set forth below in Section XI.D:
1. Where no conditions are adequate to protect said resource area values; or
 2. For failure to submit necessary information and plans requested by the Commission; or
 3. For failure to comply with the procedures, design specifications, performance standards, and other requirements in the Regulations associated with this Bylaw; or
 4. For failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values protected by this Bylaw.

- D. **Waivers to Regulations.** The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its Regulations, provided that:
1. The Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said Regulations; and
 2. That avoidance, minimization and mitigation have been employed to the maximum extent feasible; and
 3. That the Waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.
- E. **Permit Validity.** A Permit shall expire three (3) years from the date of issuance; or five (5) years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Permits may be extended for one (1) or more periods up to three (3) years each, provided that a request for an extension is received in writing by the Commission at least thirty (30) days prior to the expiration date. Notwithstanding the above, a Permit may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all present and future owners of the land. For good cause the Commission may revoke any Permit or other decision issued under this Bylaw after notice to the holder, the public, and town boards, pursuant to §VIII, and after a public hearing.
- F. **Permit Amendments.** Amendments to Permits shall be handled in the manner set out in the Act and implementing Regulations, and, to the extent that the Commission promulgates Regulations in accordance with Section III of this Bylaw, the Commission's Regulations.
- G. **Recording of Decision.** Permits shall be recorded in the Registry of Deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the document has been recorded and all appeal periods have lapsed, prior to commencement of approved work. If the applicant fails to perform such recording, the Commission may record the documents itself and require the Applicant to furnish the recording fee.

XII. Definitions. The following definitions shall apply in the interpretation and implementation of this Bylaw.

The "Act" means the Wetland Protection Act (G.L. c. 131, § 40), and may also be referred to as "WPA".

The term "agriculture" shall be defined as set forth in 310 CMR 10.04, "Agriculture".

The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this Bylaw:

- A. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
- B. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- C. Drainage, or other disturbance of water level or water table;
- D. Dumping, discharging, or filling with any material which may degrade water quality;
- E. Placing of fill, or removal of material, which would alter elevation;
- F. Driving of piles, erection, expansion of buildings, or structures of any kind;
- G. Placing of obstructions or objects in water;
- H. Destruction of plant life including cutting or trimming of trees and shrubs or clearing herbaceous plants;
- I. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
- J. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater; and
- K. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this Bylaw.

The term “Area of Critical Environmental Concern” shall mean an area designated by the Secretary of Energy and Environmental Affairs pursuant to M.G.L. c. 21A, § 2 (7) and 301 CMR 12.00.

“Existing structures and activities” shall mean those lawfully approved, performed or for which a permit application has been submitted under the Act, prior to the date of adoption of the Bylaw.

“Freshwater wetland” shall mean any wet meadow, marsh, swamp, bog, area where groundwater, flowing or standing surface water, or ice provide a significant part of the supporting substrate for a plant community adapted to characteristics of saturated soil or the presence of a hydric soil. Delineations may be made by a predominance of wetland vegetation and/or presence of hydric soils and/or the largest observed volume of confined water. The Commission recognizes that soils can be slow to respond to hydrologic conditions and may allow a wetland delineation to be made without the presence of hydric soils, such as those conditions found in abandoned gravel pits. Freshwater wetlands include wetlands both bordering and isolated.

“Isolated land subject to flooding” shall mean an isolated depression or closed basin consisting of a minimum of 400 s.f., not occurring in existing lawns, gardens, landscaped areas, storm water management structures or driveways. Isolated land subject to flooding may be underlain by pervious material, which in turn may be covered by a mat of organic peat or muck. The boundary of isolated land subject to flooding is the perimeter of the largest observed or recorded volume of water confined in said area.

The term “isolated vegetated wetland” shall mean any wet meadow, marsh, swamp, bog, area where groundwater, flowing or standing surface water, or ice provide a significant part of the supporting substrate for a hydrophitic plant community or hydric soil. Isolated

vegetated wetlands may contain emergent and/or submergent plant communities and may also be referred to as “isolated wetlands”, “federal non-state wetland” or combination of terms thereof.

The term “land adjoining the vernal pool” means the terrestrial area surrounding the vernal pool that may also be referred to as the critical terrestrial habitat in the best scientific evidence available and the appropriate literature.

The term “no disturbance zone” shall mean a continuous strip of undisturbed natural vegetative cover within the Wetland Protection Zone directly adjacent to a resource area. The no disturbance zone (NDZ) means that there shall not be any alteration of natural vegetation including but not limited to, cutting or clearing vegetation, construction, stockpiling materials or dumping whether organic or inorganic.

The term “passive recreation” shall include walking; hiking; swimming; birdwatching; camping; photography; non-motorized biking and boating; and other similar activities.

The term “person” shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

A “potential vernal pool” is a vernal pool that appears on the potential vernal pool data layer of MassGIS or the Massachusetts Aerial Photo Survey of Potential Vernal Pools (NHESP, Spring 2001), as amended.

“Pollutant removal capacity” means that ability of a resource area to remove, but not limited to, the following: nutrients, sediments, organic materials, pathogens, hydrocarbons, metals, pesticides, chlorides, trash and debris, nitrates, nitrites, phosphorus, metals, salt, sediments and carbon.

“Protection of fisheries” means protection of the capacity of an Area Subject to Protection under this Bylaw to:

- A. prevent or reduce contamination or damage to fish; and
- B. serve as their habitat and nutrient source. Fish includes all freshwater species.

“Protection of riparian ecosystems” means protection of the capacity of an Area Subject to Protection under this Bylaw to:

- A. maintain the baseflows of brooks, streams and rivers, both intermittent and perennial;
- B. maintain the native plant cover necessary for maintaining temperature and relative humidity in and around the stream, for wildlife habitat and for organic input to the stream system; and
- C. support the continued viability of fisheries habitat and movement, including seasonal coldwater fisheries, mammals, freshwater mussels and other invertebrates.

“Protection of wildlife habitat” means areas that due to their plant community composition and structure, hydrologic regime or other characteristics, provide important food, cover, shelter, nesting, aestivation, migratory or overwintering areas, or breeding areas for wildlife.

“Protection of wildlife populations and species diversity” means protection of the capacity of an Area Subject to Protection under this Bylaw to:

- A. maintain essential life functions of wildlife; and
- B. maintain wildlife corridors essential for wildlife dispersal, recruitment and genetic diversity

The term “rare species” shall include, without limitation, all vertebrate and invertebrate animals and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless whether the site in which they occur has been previously identified by the Division.

“Request for Determination of Applicability” means a written request made by any person to a conservation commission or the Department of Environmental Protection for a determination as to whether a site or work thereon is subject to this Bylaw. The request shall be submitted on DEP Form 1. Requests for resource area boundary verification shall be done using the Abbreviated Notice of Resource Area Delineation (ANRAD).

A “spring” shall mean a small stream or pool of water flowing naturally from the earth.

The term “segmentation” shall mean dividing, separating or sectioning a project or property(ies) to 1) evade or defer the review requirements of this Bylaw; 2) give the appearance of no or minimal impact to the Areas Subject to Protection under this Bylaw or 3) to avoid the appearance of exceeding resource area thresholds. Examples of segmentation include, but are not limited to, separating a larger project into smaller individually permitted phases; dividing a larger parcel into smaller lots; and submitting permit applications individually for separate assessor’s parcels that are cumulatively part of a larger project.

The term “vernal pool depression” means the area of the confined basin depression. The boundary of the vernal pool shall be the mean annual high-water mark.

“Vernal pool habitat” shall include, in addition to scientific definitions found in the regulations under the Act, a confined basin or depression not occurring in existing lawns, gardens, landscaped areas, storm water management structures or driveways which, at least in most years, holds water for a minimum of two (2) continuous months during the spring and/or summer; is free of adult fish populations; provides essential breeding habitat, and other extremely important wildlife habitat functions during non-breeding season, for a variety of amphibian species including but not limited to, wood frog (*Lithobates sylvaticus*) and Ambystomatid salamanders, and freshwater invertebrates (like fairy shrimp, caddisflies, amphibious snails, dragonflies and damselflies and fingernail clams); and provides important habitat for other wildlife species, regardless of whether it has been certified by the Massachusetts Natural Heritage and

Endangered Species Program (NHESP), or whether the pool is located within a state protected resource area. Vernal pool habitat extends out to a distance of 100 feet from the vernal pool depression.

The term “visual barrier” shall mean a permanent immovable barricade used to demarcate the no disturbance zone and notify owners of environmentally sensitive areas. Visual barriers shall consist of a post-and-rail fence or a split-rail fence or other approved barrier.

“WPA” means the Wetland Protection Act (G.L.c. 131, § 40), and may also be referred to as “the Act”.

“Wetland Protection Zone” (WPZ) means the area of land extending 100 feet horizontally outward from the boundary of any area specified in Section IV.A.

The term “wildlife” means all vertebrates and invertebrates listed to inhabit Massachusetts by the Division of Fisheries and Wildlife.

“Wildlife habitat” shall mean those areas subject to protection which, due to their plant community composition and structure, hydrologic regime or other characteristics, provide important food and water; cover; shelter; migratory, recruiting and dispersal; aestivation, overwintering, nesting, or breeding areas for wildlife.

Except as otherwise provided in this Bylaw or in associated Regulations of the Commission, the definitions of terms and the procedures in this Bylaw shall be as set forth in the Act and its implementing Regulations.

XIII. Security. As part of a Permit issued under this Bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or all of the methods described in the Regulations promulgated under this Bylaw.

XIV. Enforcement. No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this Bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a Permit or an enforcement order issued pursuant to this Bylaw.

A. Entrance to Property. The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this Bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

B. Means of Enforcement. This Bylaw and any Regulations promulgated hereunder may be enforced by any available means in law or equity, including

but not limited to enforcement by criminal indictment in accordance with G.L. c.40, §21 and by noncriminal disposition in accordance with G.L. c. 40, §21D and the Town Bylaws, "Non-Criminal Disposition."

- C. Penalties/Restoration. Any person who violates any provision of this Bylaw, Rule or Regulation of the Commission, or of a permit issued hereunder may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both. Any person who violates any provision of this Bylaw or any rules or regulations promulgated hereunder, or permits or administrative orders issued thereunder shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each violation of a provision of the Bylaw or rules or regulations promulgated hereunder, or permits or administrative orders issued thereunder, shall constitute a separate offense.
- D. Non-Criminal Disposition. The Conservation Commission, its agent, and any police officer of the Town may enforce this Bylaw and any rules or regulations promulgated hereunder by non-criminal disposition in accordance with G.L. c.40, §21D and the Norton Town Bylaws, "Non-criminal Disposition." The fine for violation of this by-law shall be three hundred dollars (\$300) for each offense. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each violation of a provision of the Bylaw or any rules or regulations promulgated hereunder shall constitute a separate offense.

- XV. Severability.** The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any Permit, approval or determination which previously has been issued.

(CONSERVATION COMMISSION)

PROPOSED Norton Wetland Rules and Regulations

**Town of Norton, MA
Wetland Protection Rules and Regulations**

DRAFT June 7, 2010

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Section 1: General Provisions

I. Authority

These Rules and Regulations are promulgated by the Town of Norton Conservation Commission pursuant to Chapter XXX Norton Wetlands Protection Bylaw of the Bylaws of the Town of Norton adopted on DATE, as amended (hereinafter “the bylaw”).

J. Revisions to the Rules and Regulations

These Rules and Regulations may be revised from time to time by a majority vote of a quorum of the Conservation Commission provided that after public notice, a public hearing has been held in accordance with (public hearing section) of this bylaw.

K. Effective Date

These Rules and Regulations shall be effective upon the date of adoption by the Norton Conservation Commission.

L. Severability

The invalidity of any section or provision of these Rules and Regulations shall not invalidate any other section or portion thereof, nor shall it invalidate any permit or determination that previously has been issued.

M. Purpose

The purposes of these Rules and Regulations include:

1. To provide administrative and permit review processes that facilitate the enforcement of all standards and procedures required under the Norton Wetland Protection Bylaw; and
2. To establish the performance standards, definitions and procedures, as empowered by the Norton Wetland Protection Bylaw, that shall be used by the Conservation Commission in order to protect the wetlands, water resources, flood prone areas, and adjoining buffer areas under their jurisdiction.

N. Interests and Values

Interests and values of a wetland resource area are the reasons why wetlands are important and necessitate protection. Clean and properly functioning sustainable resource areas in an environment are key elements of quality of life and security of property values in a community. A substantial component of these environmental values is embodied in wetlands adjacent our living spaces in the Town of Norton. Protection of these wetland resource areas from damage and degradation provides value that extends to all properties in a community. Illustrations of some specific interests and values under the Norton Wetland Protection Bylaw include, but are not limited to, the following (collectively, the “resource area values protected by this bylaw”):

1. Interests and values identified in the Wetland Protection Act (MGL chapter 131, section 40; hereinafter the “Act”) and its implementing regulations (310CMR10.00) include:
 - a. protection of public or private water supply;
 - b. protection of ground water supply;
 - c. flood control;

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- d. storm damage prevention;
 - e. prevention of pollution;
 - f. land containing shellfish;
 - g. protection of fisheries; and
 - h. protection of wildlife habitat.
2. In addition to the interests listed above, the following interests and values of a wetland resource area are necessary for water quality, aquifer recharge, wildlife habitat, and local biodiversity. Additional interests and values identified in this bylaw include:
- a. protection and enhancement of existing vegetative cover for the improvement and maintenance of existing water quality;
 - b. protection of pollutant removal capacity (including nitrates, nitrites, phosphorus, metals, salt, sediments and carbon);
 - c. protection of riparian ecosystems which support the continued viability of fisheries habitat and movement, including seasonal coldwater fisheries, mammals and freshwater invertebrates;
 - d. protection of wildlife habitat and existing vegetative and aquatic cover in order to maintain existing populations and species diversity ;
 - e. protection of hydrology, native vegetation, and the natural chemical, physical and biological functions of vernal pool habitat and lands adjoining vernal pools, regardless of whether they have been certified by the Massachusetts Natural Heritage and Endangered Species Program (NHESP), or whether the pool is located within a state protected resource area;
 - f. prevention of loss or degradation of rare species habitat including rare plant and animal species listed in the Massachusetts Endangered Species List;
 - g. protection of soils and natural resources supporting agriculture and aquaculture;
 - h. maintenance of open space areas that provide recreation values of passive recreation, education, nature study and relaxation;
 - i. preservation and maintenance of the natural vegetation and geologic features, stone walls, and agricultural relics that creates Norton's rural/suburban community character;
 - j. preservation of wetland resource area integrity through management of storm water discharges; and
 - k. minimization of negative impacts from development and prevention of project segmentation.

O. Wetland Resource Areas

Said resource areas (collectively the "resource areas protected by this bylaw") shall be protected whether or not they border surface waters.

1. The following jurisdictional areas, identified in the Wetland Protection Act (MGL chapter 131, section 40) and its implementing regulations (310CMR10.00), are subject to protection under this bylaw:
 - a. banks;
 - b. bordering vegetated wetland;

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- c. lands under water bodies and waterways;
 - d. lands subject to flooding;
 - e. riverfront area;
 - f. rare species habitat; and
 - g. wildlife habitat.
2. Jurisdiction of additional resources listed in this bylaw is necessary for the protection of water quality, aquifer recharge, wildlife habitat and the interests and values identified in this bylaw. Additional jurisdictional areas identified and defined in this bylaw include:
- a. freshwater wetlands;
 - b. reservoirs, lakes, and ponds of any size and lands under these waterbodies;
 - c. isolated land subject to flooding as defined in the Wetland Protection Bylaw;
 - d. intermittent streams, brooks and creeks and lands under these waterways
 - e. lands within 100 feet of resource areas listed above in 1.G.1 a-b and 1.G.2.a-d as identified in this bylaw and referred to as the “Wetland Protection Zone”;
 - f. perennial rivers, streams, brooks and creeks and lands adjoining these waterways out to a distance of 200 feet, defined as the riverfront area in the Wetland Protection Act [(MGL chapter 131, section 40 and its implementing regulations (310CMR10.00)]; and
 - g. vernal pool habitat, regardless of whether they have been certified by the Massachusetts Natural Heritage and Endangered Species Program (NHESP), or whether the pool is located within a state protected resource area.
3. A public review of activities proposed or undertaken within an area subject to protection under the bylaw, which will remove, fill, dredge or alter that area, is subject to these regulations and requires the filing of a permit for the local decision-making process.

P. Exemptions

Except as provided below, the Norton Wetland Protection Bylaw is applicable to applicants who seek to develop property or otherwise conduct an activity requiring the approval of the Conservation Commission. The requirements under this Bylaw shall not apply to:

1. lawfully located structures and activities in existence prior to DATE;
2. work and activities approved under the WPA (Massachusetts General Law Chapter 131, Section 40), as amended, provided the following:
 - a. a valid permit has been issued under the Act prior to the DATE adoption of these Rules and Regulations; or
 - b. an application for work under WPA has been submitted prior to the DATE adoption of these Rules and Regulations;
3. certain activities exempt from WPA, including:
 - a. normal maintenance or improvement of land in agricultural and aquacultural under 310 CMR 10.04; and

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- b. maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services under 310CMR10.02(2)(a)(2), provided that:
 1. written notice has been given to the Conservation Commission prior to commencement of work; and
 2. the work conforms to any performance standards and design specifications in regulations adopted by the Commission;
 - c. other activities specifically exempt in the Act.
4. emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that:
 - a. advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement;
 - b. the Commission or its agent certifies the work as an emergency project;
 - c. the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and
 - d. within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this bylaw.
 - e. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.
 5. certain minor activities in the buffer zone that are outside another resource area including:
 - a. plantings of native species, excluding turf lawns;
 - b. conversion of lawn to accessory uses such as decks, sheds, and patios, but not additions, garages, or swimming pools, provided the activity is located more than 50 feet from a bank; freshwater wetland; reservoir, pond or lake; and erosion control is properly installed and maintained throughout the project until the site is stabilized;
 - c. conversion of impervious surfaces to vegetated surfaces, provided erosion control is properly installed and maintained throughout the project;
 - d. temporary projects such as monitoring wells, percolation tests conducted pursuant to Title V, sediment sampling and surveying; and
 - e. mowing of existing, lawfully created lawns.
 6. Certain projects to remove an exotic invasive plant listed by the Invasive Plant Atlas of New England (IPANE), provided that a Notice of Intent is filed as required under the Wetland Protection Act.

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Section 2: Definitions

The definitions of terms shall be as set forth in the Act and its implementing regulations, except that the following definitions shall apply in the interpretation and implementation of this Bylaw.

The “Act” means the Wetland Protection Act (Massachusetts General Law Chapter 131, Section 40), and may also be referred to as “WPA”.

“ADT” is the Average Daily Trip rate or the vehicle trip generation rate during a 24-hour period for a weekday.

“Alter” shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

1. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
2. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
3. Drainage, or other disturbance of water level or water table;
4. Dumping, discharging, or filling with any material which may degrade water quality;
5. Placing of fill, or removal of material, which would alter the elevation;
6. Driving of piles, erection, expansion of buildings, or structures of any kind;
7. Placing of obstructions or objects in water;
8. Destruction of plant life including cutting or trimming of trees and shrubs or clearing herbaceous plants;
9. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
10. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater; and
11. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

“Area of Critical Environmental Concern” shall mean an area designated by the Secretary of Energy and Environmental Affairs pursuant to M.G.L. c. 21A, § 2 (7) and 301 CMR 12.00.

“Existing” shall mean structures and activities lawfully approved or performed prior to DATE of adoption of regulations.

“Freshwater wetland” shall mean any wet meadow, marsh, swamp, bog, spring, area where groundwater, flowing or standing surface water, or ice provide a significant part of the supporting substrate for a plant community adapted to characteristics of saturated soil or the presence of a hydric soil. Delineations may be made by a predominance of wetland vegetation and/or presence of hydric soils and/or the largest observed volume of confined water. The Commission recognizes that soils can be slow to respond to hydrologic conditions

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and may allow a wetland delineation to be made without the presence of hydric soils, such as those conditions found in abandoned gravel pits. Freshwater wetlands include wetlands both bordering and isolated.

“IPANE” shall mean the Invasive Plant Atlas of New England (IPANE).

“Isolated land subject to flooding” shall mean an isolated depression or closed basin consisting of a minimum of 400 s.f., not occurring in existing lawns, gardens, landscaped areas, storm water management structures or driveways. Isolated land subject to flooding may be underlain by pervious material, which in turn may be covered by a mat of organic peat or muck. The boundary of isolated land subject to flooding is the perimeter of the largest observed or recorded volume of water confined in said area.

“Isolated vegetated wetland” shall mean any wet meadow, marsh, swamp, bog, area where groundwater, flowing or standing surface water, or ice provide a significant part of the supporting substrate for a hydrophitic plant community or hydric soil. Isolated vegetated wetlands may contain emergent and/or submergent plant communities and may also be referred to as “isolated wetlands”, “federal non-state wetland” or combination of terms thereof.

“Land adjoining the vernal pool” means the terrestrial area surrounding the vernal pool that may also be referred to as the critical terrestrial habitat in the best scientific evidence available and the appropriate literature.

“No disturbance zone” shall mean a continuous strip of undisturbed natural vegetative cover directly adjacent to a resource area. The no disturbance zone (NDZ) means that there shall not be any alteration of natural vegetation including, but not limited to, cutting or clearing vegetation, construction, stockpiling materials or dumping organic or inorganic.

“Person” shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

A “potential vernal pool” is a vernal pool that appears on the potential vernal pool data layer of MassGIS or the Massachusetts Aerial Photo Survey of Potential Vernal Pools (NHESP, Spring 2001), as amended;

“Pollutant removal capacity” means that ability of a resource area to remove, but not limited to, the following: nutrients, sediments, organic materials, pathogens, hydrocarbons, metals,

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pesticides, chlorides, trash and debris, nitrates, nitrites, phosphorus, metals, salt, sediments and carbon.

“Protection of fisheries” means protection of the capacity of an Area Subject to Protection under this bylaw to:

1. prevent or reduce contamination or damage to fish; and
2. serve as their habitat and nutrient source. Fish includes all indigenous freshwater species.

“Protection of riparian ecosystems” means protection of the capacity of an Area Subject to Protection under this bylaw to:

1. maintain the baseflows of brooks, streams and rivers, both intermittent and perennial;
2. maintain the native plant cover necessary for maintaining temperature and relative humidity in and around the stream, for wildlife habitat and for organic input to the stream system; and
3. support the continued viability of fisheries habitat and movement, including seasonal coldwater fisheries, mammals, freshwater mussels and other invertebrates.

“Protection of wildlife habitat” means areas that due to their plant community composition and structure, hydrologic regime or other characteristics, provide important food, cover, shelter, nesting, aestivation, migratory or overwintering areas, or breeding areas for wildlife.

“Protection of wildlife populations and species diversity” means protection of the capacity of an Area Subject to Protection under this bylaw to:

1. maintain essential life functions of wildlife; and
2. maintain wildlife corridors essential for wildlife dispersal, recruitment and genetic diversity

“Rare species” shall include, without limitation, all vertebrate and invertebrate animals and all plant species listed as endangered, threatened, of special concern or watch list by the Massachusetts Division of Fisheries and Wildlife, regardless whether the site in which they occur has been previously identified by the Division.

“Request for Determination of Applicability” means a written request made by any person to a conservation commission or the Department of Environmental Protection for a determination as to whether a site or work thereon is subject to this bylaw. The request shall be submitted on DEP Form 1. Requests for resource area boundary verification shall be done using the Abbreviated Notice of Resource Area Delineation (ANRAD).

A “spring” shall mean a small stream or pool of water flowing naturally from the earth.

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“Segmentation” shall mean dividing, separating or sectioning a project or property(ies) to 1) evade or defer the review requirements of the Norton Wetland Protection Bylaw; 2) give the appearance of no or minimal impact to the Areas Subject to Protection under the Norton Wetland Protection Bylaw or 3) to avoid the appearance of exceeding resource area thresholds. Examples of segmentation include, but are not limited to, separating a larger project into smaller individually permitted phases; dividing a larger parcel into smaller lots; and submitting permit applications individually for separate assessor’s parcels that are cumulatively part of a larger project.

“Vernal pool depression” means the area of the confined basin depression. The boundary of the vernal pool depression shall be the spring high-water mark.

“Vernal pool habitat” shall include, in addition to scientific definitions found in the regulations under the Act, a confined basin or depression not occurring in existing lawns, gardens, landscaped areas, storm water management structures or driveways which, at least in most years, holds water for a minimum of two (2) continuous months during the spring and/or summer; is free of adult fish populations; provides essential breeding habitat, and other extremely important wildlife habitat functions during non-breeding season, for a variety of amphibian species including but not limited to, wood frog (*Lithobates sylvaticus*) and Ambystomatid salamanders, and freshwater invertebrates (like fairy shrimp, caddisflies, amphibious snails, dragonflies and damselflies and fingernail clams); and provides important habitat for other wildlife species, regardless of whether it has been certified by the Massachusetts Natural Heritage and Endangered Species Program (NHESP), or whether the pool is located within a state protected resource area. Vernal pool habitat extends out to a distance of 100 feet from the vernal pool depression.

“Visual barrier” shall mean a permanent immovable barricade used to demarcate the no disturbance zone and notify owners of environmentally sensitive areas. Visual barriers shall consist of a post-and-rail fence or a split-rail fence or other barrier approved at the discretion of the Commission.

“WPA” means the Wetland Protection Act (Massachusetts General Law Chapter 131, Section 40), and may also be referred to as “the Act”.

“Wetland Protection Zone” (WPZ) means the area of land extending 100 feet horizontally outward from the boundary of any area specified in Section 1.G.2.f.

“Wildlife” means all vertebrates and invertebrates listed to inhabit Massachusetts by the Division of Fisheries and Wildlife.

“Wildlife habitat” shall mean those areas subject to protection which, due to their plant community composition and structure, hydrologic regime or other characteristics, provide

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important food and water; cover; shelter; migratory, recruiting and dispersal; aestivation, overwintering, nesting, or breeding areas for wildlife.

Section 3: Application Procedures

A. Application Forms

Applicants proposing to conduct work in an area subject to protection under the bylaw shall use the MADEP wetland permit application forms and may concurrently file under the Act. In addition, applicants shall submit the Town of Norton wetland permit application form in order to quantify impacts to the resource areas protected by the bylaw. All applications shall be filled out completely and accurately. Applications shall be submitted in general accord with the instructions provided by MADEP. The types of activities and appropriate permit applications are described below:

1. An Abbreviated Notice of Resource Area Delineation (ANRAD) shall be required to verify the accurate delineation of resource areas on the subject property. All resource areas shall be included in the application and illustrated on the submitted plan. WPA fees for an ANRAD shall be based upon the linear feet of delineation of each resource area with a maximum of \$2,000.00 per resource area.
2. A Request for Determination of Applicability (RDA) may be used for activities proposed within the Wetland Protection Zone if the project:
 - a. is a request to see if activities are subject to protection under the bylaw; or
 - b. meets the following criteria:
 1. a minimum 50-foot undisturbed vegetative buffer is maintained between the limit of work and the wetland resource area;
 2. storm water management is provided;
 3. is not within vernal pool habitat;
 4. is not within Priority Habitat area; and
 5. erosion control is installed and maintained until all areas achieve final stabilization (if loam and seed are used, the area shall be mown a minimum of twice).
3. A Notice of Intent (NOI) shall be required for all projects proposing work:
 - a. within a wetland resource area;
 - b. within a Priority Habitat area; or
 - c. not meeting the conditions of RDA above.
4. Request for a Certificate of Compliance (COC) shall be required to:
 - a. administratively close out an Order of Conditions or
 - b. demonstrate compliance with an Enforcement Order.
5. The Town of Norton Wetland Permit Application Form shall be required for all projects to quantify impacts to wetland resource areas subject to protection under the bylaw.
6. Extensions and Emergency Certificates are consistent with the Act.

The applicant's information shall contain the first and last name, current address and phone number of the applicant and the owner (if different), and shall be required for any realty trust,

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trust, or LLC etc. All applications shall contain an original signature of the applicant and owner (if different). Applicants may contact the Conservation Office with questions regarding the permit application or for copies of the required application forms at 508-285-0275 or the Conservation Commission web page at www.nortonma.org. All applications shall be submitted to the Conservation Office at 70 East Main St, Norton MA, 02766.

B. Required Plans and Information

All plans shall contain applicable information listed in **Appendix A: Plan Submittal Requirements**. The Conservation Commission requires that plans be stamped by a duly licensed Registered Professional Engineer or Registered Land Surveyor. This requirement may be waived by the Conservation Commission at its discretion for small projects where professional design may not be warranted. All plans and information shall be submitted which completely and accurately describe the proposed activity and proximity to wetland resource areas protected by the bylaw. Plans shall also include other Federal, State or local laws applicable to the project. For example, if a new septic system or a septic system repair is proposed in an area subject to Conservation Commission jurisdiction, plans must show compliance with the design setbacks of Title 5 of the Massachusetts Sanitary Code.

C. Timing Requirements

All permit requests shall adhere to the table below:

Application Submittal, Amendments	Minimum of two (2) weeks prior to the scheduled meeting
Application Acceptance pending Completeness Review	Date when all required forms, fees, plans, and supporting information have been received and deemed complete by the Conservation Commission or its Agent
Supplemental information	Minimum of five (5) <u>business</u> days prior to the scheduled Public Hearing. Failure to submit within this time frame may be grounds for the Commission to continue a public hearing.
Request for Certificate of Compliance	Minimum of five (5) <u>business</u> days prior to the scheduled public meeting
Public Hearing, permit issuance, expiration and extension requests	Consistent with the Act

D. Submittal of Complete Applications

A complete application means only that the required types of information have been submitted for the Commission's review. It does not mean that the application contains all information necessary for the Commission to determine whether the project meets performance standards of the Act or under this Bylaw or that the information is accurate or adequate. The Commission reserves the right to request additional information if public hearing discussion warrants it. An application shall not be deemed complete by the Commission Office if the submittal requirements for applications and plans are not met. Incomplete application packages may be rejected, without prejudice, by the Conservation Office. The applicant will be contacted by the Conservation Office to retrieve the incomplete application. The applicant may re-file the application package to include any previously missing information. Timeframes under the bylaw will not begin until the application package has been deemed "complete" by the Conservation Office.

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One complete application package shall, at a minimum, include the following:

1. Town of Norton Wetland Application Form;
2. One (1) MADEP application form with original signatures and one (1) copy of the application;
3. Seven (7) copies of the proposed plan, signed and stamped by a Registered Professional Engineer or Registered Land Surveyor, in compliance with Appendix A: Plan Submittal Requirements;
4. A locus plan consisting of an 8.5"x11" portion of the most recent United States Geological Survey (USGS) topographic quadrangle map clearly identifying the location of proposed work;
5. A copy of the most recent Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (F.I.R.M.) clearly identifying the location of proposed work;
6. A copy of the most recent Priority Habitat map
7. Completed Affidavit of Service form
8. Certified abutters list from Assessor's Office
9. A copy of the Abutter Notification form
10. Copies of white certified mail slips or the Certificate of Mailing
11. Completed MADEP Fee Transmittal Form (for ANRAD and NOI) with a check for the town's portion of the fee and copy of check for State's portion of the fee
12. In some cases, additional plans and information specific to the site and work proposed may require the following, including but not limited to:
 - a. Detailed construction sequence
 - b. Storm Water Management Report including the drainage calculations, TSS calculation worksheet, Operation and Maintenance Plan prepared, signed and stamped by a Registered Professional Engineer
 - c. Wetlands report with replication schedule, planting plan, narrative and monitoring plan prepared by wetland scientist or botanist
 - d. Wildlife habitat evaluation
 - e. Storm water pollution prevention plan (SWPPP) including the erosion and sedimentation details, narrative, EPA NPDES Notice of Intent
 - f. Economic alternatives analysis
 - g. Color infrared, aerial photos or site photographs (if requested)
 - h. A cut/fill plan (if requested)

At minimum of two (2) weeks prior to the regularly scheduled public hearing date, one (1) complete application package shall be submitted to the Norton Conservation Office, 70 East Main Street, Norton MA 02766.

Applications may be submitted through eDEP, when available; however, applications submitted to the Conservation Commission shall be made in hard copy, rather than electronic format.

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E. Notice to Abutters

Notification of abutters within 100 feet of the property line for all projects shall be required. All permit applications shall include a Certified List of Abutters from the Norton Assessor's Office. Written notification of the filing under the bylaw shall be delivered by the applicant by certified mail, return receipt requested; or certificate of mailing. The abutter notice shall be made using the Conservation Commission's Notification to Abutters form (available from the Commission Office or the Town of Norton web site). Evidence of proper abutter notification (i.e. submittal of the green certified mail cards) shall be provided to the Conservation Commission prior to its opening of the public hearing.

F. Field Work and Site Inspections

Wetland resource area delineation shall not be done with green or yellow flags. The wetland scientist, engineer or land surveyor, upon observing a location where fill has been placed within the wetland resource area, shall document the location on the site plan and provide a written description in the wetland report.

Site inspections are conducted, at a minimum, to verify the wetland resource area delineation, to determine existing site conditions, to evaluate potential project impacts to a wetland resource area, to monitor project progress and compliance with the issued permit and to determine project completeness. Site inspections shall be conducted by the Conservation Agent or Commission's representative and may include the Commission members. The Commission may require a continuance of the public hearing in order to complete a lengthy wetland boundary verification. The Commission may also continue the public hearing for an ANRAD application if it is filed during hunting season and evidence at the site suggests active hunting. If site conditions (i.e., 4-inches or more of snow, frozen ground, etc.) prevent a visual inspection, the Commission may at its discretion, require a continuation of the public hearing. Any public hearing continued for the aforementioned reasons shall be stated at the public hearing and a date shall be scheduled for continued discussion.

G. Issuance of Permits

The Commission may issue a permit for projects provided that the project has been designed to meet the performance standards; has avoided and minimized alterations to wetland resource areas; has mitigated alterations with a 1:1 ratio as required and the work can be conditioned to protect the interests and values of the bylaw. If the project is approved, the Commission shall issue a permit, Certificate of Compliance (COC) or Partial Certificate of Compliance (PCOC) within 21 days of the close of the public hearing. The Commission may deny a project, with or without prejudice, if wetland resource areas are not accurately delineated; performance standards have not been met; the applicant has not avoided, minimize or mitigated alterations or the project cannot be conditioned to protect the interests and values of the bylaw. Reasons for denial and/or lack of information shall be listed in the Denial Order of Conditions.

H. Return of Conservation Commission Correspondence

An applicant shall be required to reimburse the Town of Norton for mail returned by the Post Office if the applicant has supplied incorrect address information on the application, or if the mail is refused, not accepted or returned. Reimbursement amount shall be the amount of

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postage on the returned letter and shall be received prior to the reissuance of the letter or continuation of discussion.

I. Recording In Registry of Deeds or Land Court

The following permits and orders issued by the Commission shall be required to be recorded by the applicant or owner in the Bristol County Registry of Deeds or the Land Court, whichever is appropriate: Orders of Conditions, Amended Orders of Conditions, Extension Permits, Certificate of Compliance, Deed Restrictions or Conservation Easements, and Enforcement Orders. Proof of recording shall be submitted to the Conservation Office by the applicant or property owner.

J. Pre-Construction Meetings

The applicant, owner, and applicable contractors shall meet for a pre-construction meeting. The purpose of the pre-construction meeting is to review the Order of Conditions of the permit approval and discuss questions, potential problems, timing, and site stabilization, etc.

K. Amendments to Permits

Applicants may propose to amend an existing permit or final approved plan if the proposal is within the scope of the original project. To avoid untimely delays, it is advisable to meet with the Conservation Agent to determine the appropriateness of filing an amendment. If the Commission determines the proposal is not within the scope of the original project a new permit shall be required for the proposed work. Proposals for an amendment to a valid permit or the approved plans shall be submitted to the Conservation Office in writing at least two (2) weeks prior to the regularly scheduled public hearing. The proposed amendment shall be described in a legal notice posted at the applicant's expense in compliance with Section 4.B. Legal Advertisement. The applicant shall notify the abutters to the property of the amendment request in compliance with Section 3.E. Notice to Abutters. Work approved though the amendment shall not begin until the Amended permit has been recorded at the Registry of Deeds and the proof of recording has been submitted to the Conservation Commission.

L. Certificates of Compliance (COC)

The Conservation Commission may issue a Certificate of Compliance (COC) for completion of the project. All information shall be submitted to the Conservation Office at least five (5) business days prior to the regularly scheduled public hearing. The Commission shall make a decision provided the following:

2. The Request for a Certificate of Compliance (DEP Form 8A) has been submitted;
3. Two (2) As-Built Plans, signed and stamped by a Registered Professional Engineer or Registered Land Surveyor, that includes but is not limited to, all final work completed in compliance with the proposed and approved work listed in the Notice of Intent, all regrading, and Resource Areas, has been submitted;
4. A letter from the applicant, engineer, or project manager has been submitted describing compliance with the Order of Conditions (or if a Partial Certificate of Compliance (PCOC) is requested, a letter describing the remaining work to be performed and a cost estimate to perform the remaining tasks); and

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5. The site inspection has been done and the Commission verifies that the work is in compliance and there are no violations of the permit requirements, Act or bylaw;
6. If the COC is requested for a subdivision, the engineer shall recalculate the impervious surface created and compare that with amount of originally proposed impervious surface listed in the Storm Water Management Report. If the final amount of impervious surface is greater than that proposed in the Storm Water calculations, the applicant shall be required to mitigate the difference.

M. Partial Certificate of Compliance (PCOC)

The Conservation Commission may issue a Partial Certificate of Compliance (PCOC) for substantial completion of the project. All information shall be submitted to the Conservation Office at least five (5) business days prior to the regularly scheduled public hearing. The Commission shall make a decision provided the following:

1. All items required in Section 3.L: Certificate of Compliance have been submitted;
2. A completed and signed, original W9 is submitted; and
3. The applicant posts a performance bond for the remaining work on the project in accordance with the Standard Operating Procedures of the Town Treasurer. The bond amount shall be determined by the Commission at a public hearing and directly related to market costs of completing the remaining tasks (i.e., to stabilize the site, complete the As-Built Plans and record all documents).

Upon full completion of the project, the applicant shall submit a letter stating that the project is fully completed and request a site inspection and the full Certificate of Compliance. At that time, the Conservation Commission will perform the final site inspection and confirm all work has been completed according to the Order of Conditions. Provided all work is performed according to the Order of Conditions and there are no violations, the Commission may issue the full Certificate of Compliance and submit a letter to the Town Treasurer to release the bond with appropriate interest.

N. Standard Operating Procedure for Posting Bonds

Upon issuance of a PCOC, the Commission shall send a letter and the submitted W-9 to the Town Treasurer citing the applicant's name, company, DEP file number, project location, amount of the bond to be posted, and the reasons for the bond requirement. The Treasurer will accept the bond in cash to be placed in a separate account. Upon completion of the project and issuance of a full COC, the Commission shall send a letter to the Treasurer requesting that the bond be released. The Treasurer will then release the bond with interest to the person who posted the bond.

O. Use of Bond Funds

In the event that an applicant who has posted a bond has been unresponsive to requirements to complete said work in a reasonable timeframe, the Commission may chose to pull the bond. The Commission shall notify the applicant by certified mail specifying the timeframe for completion of remaining work. If the certified mail is returned, not accepted, refused or if the Commission does not receive a response within 21 days, the Commission may pull the bond and contract with an appropriate contractor to perform the work on the Commission's behalf.

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P. Occupancy Permits

An occupancy permit may be signed once the Certificate of Compliance has been issued or once the performance bond has been posted with the Town Treasurer, for projects that require a wetland permit under the Act or the Wetland Protection Bylaw.

Section 4: Fees

A. Filing Fee Schedule

At the time of filing a permit under the bylaw the applicant shall pay a filing fee in accordance with the following schedule. This fee is in addition to that fees required under the Act and do not include any additional costs or expenses which may be necessary under Section 3: Application Procedures or Section 4.B-D: Fees.

1. Request for a Determination of Applicability \$25.00
2. Duplicate Permit for Registry Recording \$25.00

B. Legal Advertisement

The applicant shall pay the cost of a legal advertisement. The Conservation Commission/Agent shall write and submit the legal notice for publication in the Sun Chronicle newspaper. A copy of the bill, determined by the Sun Chronicle newspaper, shall be submitted to the applicant, or the representative if listed in the permit application. The applicant shall submit a check for the Sun Chronicle to the Conservation Commission at the public hearing. The Conservation Commission shall not close the public hearing or issue a permit if the legal advertisement fee has not been paid.

C. Consultants

As provided by MGL Chapter 44, Section 53G previously adopted by the Conservation Commission and posted with the Town Clerk on October 21, 2003, and Section 5.D of the Norton Wetland Protection Bylaw, the Conservation Commission may impose reasonable fees for employment of outside consultants, engaged by the Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Commission pursuant to the requirement of the bylaw, the Act, or the Conservation Commission Act (Chapter 40 Section 8C), or any other state or municipal statutes, bylaw or regulation, as they may be amended or enacted from time to time. Funds received by the Conservation Commission pursuant to these rules shall be deposited with the Town Treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Commission without further appropriation as provided in MGL Chapter 44, Section 54G. Expenditures from this account shall be made only in connection with the review of specific project or projects for which a consultant fee has been collected from the applicant. Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands and environmental or land use law.

The consultant shall be chosen by, and report only to, the Commission and/or its Agent. The Commission shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice

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shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five (5) days of the date notice is given. The consultant fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to determine that the application is administratively incomplete (except in the case of an appeal) relative to the Act. The Commission shall state such in a letter to the applicant, copied to the Massachusetts Department of Environmental Protection (MADEP). No additional review or action shall be taken on the permit request until the applicant has paid the requested fee. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to deny the permit application under the bylaw.

D. Re-inspections

At the discretion of the Conservation Commission, a re-inspection fee may be assessed to an applicant if the wetland resource area flags are not placed in the field as shown on the submitted plan. This re-inspection fee shall not apply if only a few flags are out of place or missing. The re-inspection fee shall apply if, due to the absence of flags, the wetland resource area boundaries cannot be accurately verified or if the site has not been flagged in the field but the flags are shown on the plan. Failure to identify the bank of a stream in the field or on the plan shall also trigger the re-inspection fee. The applicant shall be required to re-hang the wetland resource area flags in the field and submit a letter requesting a re-inspection with the appropriate fee.

If a site fails to be approved for a Certificate of Compliance, a fee may be assessed for subsequent site visits needed to issue the Certificate of Compliance as follows:

Re-inspection Fee	\$250.00
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Section 5: Project Review, Design Criteria and Construction Methods

A. Calculating Impacts to Resource Areas

When calculating the extent of proposed disturbances to Wetland Resource Areas, the applicant shall make adequate provision for the physical construction of all proposed structures, embankments, grading, utilities and all other proposed activities. The impacted area must be clearly shown on the proposed site development plans with plan notes regarding the square feet (or cubic feet) of impact for each resource area; sedimentation and erosion controls; dewatering methods; concrete washout areas; stabilization methods, etc. Provisions for construction equipment access and work zones shall be considered as part of the altered area when calculating the amount of resource area impacted, regardless of whether it is a temporary or permanent impact. The area required for workspace will vary on a site-by-site basis.

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B. Rare Species

Notwithstanding the provisions of Section 6, no project may be permitted which will have any adverse effect on habitat sites of a rare species, including without limitation, all vertebrate and invertebrate animals and all plant species listed as Endangered, Threatened, or Special Concern by the Massachusetts Division of Fisheries and Wildlife (DFW), regardless whether the site in which they occur has been previously identified by DFW.

C. Wetland Replication Areas

All Vegetated Wetlands shall be designed and constructed to meet the general conditions found in 310 CMR 10.55(4)(b) as well as the replication plan procedures found in the most current version of MADEP's Massachusetts Inland Wetland Replication Guidelines. All replication plans shall include a detailed construction sequence; detailed engineered plan (see Appendix A); a three-year to a five-year monitoring program depending on the size of the project, including inspection reporting requirements; and methods for removing exotic, invasive plants. Certificates of Compliance may not be issued until the full monitoring program has been completed and the Commission has approved the replication area. A partial Certificate of Compliance with a performance bond, in accordance with procedures listed in Section 3. J Partial Certificate of Compliance, may be issued for the purpose of occupancy permits or financial reasons.

The Commission in appropriate circumstances may not authorize any building construction until such time that wetland replication areas required for access and utility construction have been substantially completed, inspected, and approved by the Commission. The Commission shall retain the exclusive authority to determine substantial completion of a wetland replication area and such determination resides solely within the sound discretion of the Commission.

D. Areas of Critical Environmental Concern (ACEC)

Alteration of Wetland Resource Areas within an ACEC shall be presumed significant to the interests listed in Sections I.A. and VIII.A. of the Bylaw. The Commission shall not allow projects that materially impair the resources upon which the ACEC designation was made, unless the applicant demonstrates by a preponderance of the evidence that the interests of the Bylaw and special designation characteristics of the ACEC will not be materially impaired; and that a long-term net benefit to the ACEC is provided. Norton's ACEC areas include the Hockomock Swamp, the Canoe River Aquifer and the Three-Mile River Watershed. In reviewing activities within an ACEC, the Commission shall ensure the protection of these values and the functions they provide, particularly by taking measures toward the:

1. protection and enhancement of existing native vegetative cover for the improvement and maintenance of existing water quality and quantity;
2. protection of pollutant removal capacity (including nitrates, nitrites, phosphorus, metals, salt, sediments and carbon);
3. protection of riparian ecosystems and riverfront areas which support the continued viability of fisheries habitat and movement, including seasonal coldwater fisheries, mammals, freshwater mussels and other invertebrates;
4. protection of wildlife habitat and existing native vegetative and aquatic cover in order to maintain existing populations and species diversity; and

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5. preservation and maintenance of the natural vegetation and geologic features such as stone walls and agricultural relics, which preserve both the function and character of resource area landscapes.

E. Presumption of Impervious Cover

Aquatic habitat degradation and reduced infiltration of water into the ground have been directly linked to the amount of imperviousness in a watershed⁵. The best scientific evidence available shows that greater than 10% impervious cover in a watershed will begin to degrade water quality, reduce water quantity available for groundwater, reduce stream channel stability, reduce stream biodiversity and increase potential for pollutant impacts⁶. Impervious cover shall be presumed to impair wetland resource areas and the interests of the bylaw. The impervious cover of the six major watersheds in Norton was evaluated in 2008. Impervious cover was found to already be greater than or approaching 10% for each of Norton's watersheds [Rumford River (20%), Wading River (13%), Three-mile River (13%), Canoe River (13%), Mulberry Meadow Brook (8%) and Mill River (9%)⁷]. In addition, the Massachusetts Wellhead Protection Regulations 310CMR22.21(2)(b)(7) requires municipalities to adopt impervious surface controls in approved Zone II recharge areas of public wells, further highlighting the importance of reducing impervious cover and encouraging infiltration of storm water. In order for Norton to maintain stream channel integrity, recharge capacity for all watersheds, and the quality and quantity of biodiversity; all projects with proposed impervious cover shall be required to provide a groundwater recharge component. Groundwater recharge mitigation for impervious cover on single family lots shall be required to the extent practicable.

F. Presumption of Drainage and Storm Water Management Standards

Changes in drainage and alteration of land shall be presumed to contribute to the degradation of water quality and wetland resource areas, reduction in aquifer recharge and reduction in pollutant removal capacity. All of Norton's major waterbodies (Winnecunnet Pond, Norton Reservoir, Chartley Pond, Barrowsville Pond; and Meadowbrook Pond) and three of four major waterways (Rumford River, Wading River; and the Three-Mile River) are listed as impaired waters, meaning that they do not meet Massachusetts Surface Water Quality Standards⁸. Therefore, stricter standards for water quality are hereby adopted. All proposed drainage; and depending on the scope of the project, all new impervious surfaces are eligible to meet Storm Water Management Standards, as amended.

All standards described in the Storm Water Management Handbook, MADEP, February 2008 (hereinafter the "Handbook"), as amended, shall be required as written except for the following higher performance standards:

Standard 1: No change from the Handbook;

⁵ Impacts of Impervious Cover on Aquatic Systems. Tom Shlueler. Center for Watershed Protection, March 2003.

⁶ *ibid*

⁷ Town of Easton GIS Department. 2008.

⁸ 2008 Clean Water Act Section 303(d) List.

<http://www.mass.gov/dep/water/resources/08list2.pdf>

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Standard 2: Storm water management systems shall be designed so that post-development peak discharge rates do not exceed pre-development peak discharge rates for the 2-, 10-, 25-, 50- and 100-year storms. This standard shall apply to volume as well⁹. Pre-construction and post-construction volume shall be evaluated and mitigated for each storm event. A table shall be submitted with the application illustrating the pre-construction and post-construction rate and volume for each of the 2-, 10-, 25-, 50- and 100-year storms;

Standard 3: All projects with infiltration practices shall provide a minimum 2-foot separation between seasonal high groundwater and the bottom elevation of storm water BMPs;

Standard 4: Storm water management systems shall be designed to remove a minimum of 88% of the average annual post-construction load of Total Suspended Solids (TSS)¹⁰. TSS removal rates shall be:

1. For residential, commercial, industrial, subdivision, roadway, common driveway and comprehensive permit projects: a minimum of 88%; and
2. For projects within an ACEC: a minimum of 93%.

Projects located within ACECs shall provide 44% TSS removal in pretreatment devices in addition to the one-inch rule for calculating water quality volume for projects in critical areas; and

Credit shall not be given for street sweeping in any TSS treatment train.

Standard 5: Land Uses with Higher Potential Pollutant Loads (LUHPPLs) include projects with greater than 300 vehicle trips per day. The vehicular trip generation shall be based on the "Average Daily Trip" (ADT) rate¹¹.

If the project is a LUHPPL, snow storage areas shall be located a minimum of 100 feet from a wetland or stream, shown on all plans; and seeded with salt-tolerant ground cover¹²;

⁹ Authority is granted under the Act through 310CMR10.05(6) for the Commission to impose conditions on the "quality and quantity of discharges" provided the point source is within a resource area or buffer zone.

¹⁰ Conservation Commission analysis of the currently received storm water management proposals shows a minimum of 88% TSS removal is already being achieved for all projects; 93% for projects in an ACEC; and 90% for commercial, industrial and subdivision projects.

¹¹ Trip generation is based upon the Institute of Traffic Engineering (ITE) Trip Generation, 1987 edition, of 10 cars per day per house/6 cars per day per apartment/condominium and is based upon the presumption that traffic generated from projects with equal to or greater than 30 houses and/or 50 apartments have the potential to produce higher potential pollutant loads.

¹² Oberts, 1994.

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Standard 6: Critical areas shall include the following additional Outstanding Resource Waters (ORWs):

1. Potential vernal pools
2. Wetland Resource Areas in an ACEC; and
3. Seasonal coldwater fisheries identified by Division of Fisheries and Wildlife.

Seasonal coldwater fisheries are those waterbodies and waterways containing the appropriate water temperature to sustain coldwater fisheries). Coldwater species of fish include Atlantic salmon; brook, brown and rainbow trout populations as well as lesser known fish such as longnose sucker and slimy sculpin. The presence of these fish in brooks, streams and some rivers indicate excellent water quality conditions. Examples of local seasonal coldwater fisheries are the Canoe River and the Wading River.

Standard 7: No change from the Handbook

Standard 8: The Storm Water Pollution Prevention Plan (SWPPP) shall be submitted for review prior to close of the public hearing.

Standard 9: The owner and the applicant shall sign the Operation and Maintenance Plan with a statement declaring knowledge of the responsibility for ongoing maintenance. Proof of final inspection and cleaning shall be submitted with a Request for a Certificate of Compliance.

Standard 10: The signed Illicit Discharge Statement shall be submitted with the storm water drainage report.

Plans and Drainage Report:

1. Plans must show the storm events with elevations on the basin cross sections.
2. The drainage report shall contain a table illustrating the pre-development and post-development rates and volumes for all storm events.
3. Snowpack has higher concentrations of pollutants because it is an accumulation of pollutants (sediment, organic, nutrient, lead loads¹³, cyanide, sodium chloride, magnesium chloride, and polycyclic aromatic hydrocarbons (PAHs)¹⁴) over a season. Street sweeping shall be required at a minimum of twice per year and shall occur in early Spring (March) and Fall (October). This requirement shall be included in the Operation and Maintenance Plan.

¹³ Influence of Snowmelt Dynamics on Stormwater Runoff Quality. Gary L. Oberts, Metropolitan Council, St. Paul, MN. Watershed Protection Techniques. Vol. 1, No. 2, Summer 1994.

¹⁴ Chapter 1: Factors in BMP Selection. Minnesota Urban Small Sites BMP Manual. Metropolitan Council/Barr Engineering Co.

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4. Accurate precipitation amounts for this region shall be used for storm water management calculations¹⁵. Rainfall amounts shall be taken from the Atlas of Precipitation Extremes for the Northeastern United States and Southeastern Canada¹⁶ known as the “Cornell data”. The following values shall be used:
 - a. 2-yr storm=3.3 inches
 - b. 5-yr storm=4.2 inches
 - c. 10-yr storm=5.0 inches
 - d. 25-yr storm=6.2 inches
 - e. 50-yr storm=7.4 inches
 - f. 100-yr storm=8.75

G. Presumption on Wetland and Stream Crossings

The activity of filling or permanently altering a wetland or stream shall be presumed to have an impact on wetland resource areas and the Interests and Values of this bylaw. Projects that propose a wetland or stream crossing shall not impair the continuity of the stream or wetland to provide or maintain regular flow of water and passage of fish, aquatic organisms (such as but not limited to, amphibians, reptiles, invertebrates (crayfish, freshwater mussels, etc.) or mammals associated with water (weasel, mink, muskrat, fisher, otter, etc.). All wetland and stream crossing projects shall be considered eligible to meet the Stream Crossing Guidelines as provided by the Army Corps of Engineers (ACOE) January 2005). The value of the resource area and the magnitude of the project shall determine whether General Standards or Optimum Standards shall be applied. A summary of stream crossing standards is provided in Appendix B as a guide only.

H. Alternatives Analysis

For projects within wetland resource areas, the Commission shall require an alternatives analysis, separate from an alternatives analysis required under Riverfront Area provisions of 310CMR10.58. The purpose of an alternatives analysis is to locate activities so that impacts to wetland resources are avoided to the extent practicable. The applicant shall have the burden of proof to demonstrate that every effort has been made to avoid, minimize and mitigate a wetland resource area alteration. Efforts to avoid or minimize alterations may include, but not be limited to, reducing size or scale of a project. Alternatives analyses shall extend to the subject property, any property currently or previously under the same ownership, or abutting property that may reasonably provide a less environmentally damaging option. The alternatives analysis should include alternate layouts or scope of the project; and a discussion describing the impacts of these alternatives would have on the resource areas.

I. Segmentation and Cumulative Impacts

Applicants shall not segment projects to avoid compliance with the Act or with this bylaw. The applicant shall have the burden of proof to demonstrate that the project has not been

¹⁵ An Analysis of Extreme Rainfall Differences: Old TP-40 Verses the New Cornell Atlas of Precipitation. Patrick Garner. AMWS Newsletter, March 1998. No. 15.

¹⁶ Atlas of Precipitation Extremes for the Northeastern United States and Southeastern Canada. Daniel S. Wilks and Richard P. Cember. Cornell University, Publication No. RR 93-5. September 1993 and the beta website.

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segmented and that the cumulative impacts of a project do not unnecessarily alter areas subject to protection or run contrary to the interests of the bylaw. Any filing submitted for the Commission's review shall show the full project build-out. Any project submitted piece-meal shall be considered an incomplete application. All proximate, adjoining, contiguous or abutting lots must be included if they are under the control of the same owner, entity or related entities. The Commission may request additional information in order to evaluate the cumulative impacts of a project on resource areas, including but not limited to, total riverfront area alterations on adjacent lots, operation and maintenance plans for storm water management systems, or floodplain alteration.

J. Self-Imposed Hardship

The applicant or owner is advised to prevent situations where they have created their own hardship through design that did not carefully consider all likely impacts to Wetland Resource Areas Subject to Protection under the Act or Bylaw. Proposed driveways or roads shall be designed to provide access to areas of the proposed site without relying on the possibility of future wetland crossings. This shall include those lots where the upland access has been subdivided and developed, preventing upland access to the property's interior. The Commission shall consider these types of crossings to be self-imposed and may not grant further crossings or Wetland Resource Area alterations in subsequent permit applications for those lots¹⁷. Special consideration for waivers in projects that contain self-imposed hardships shall not be granted. Projects containing Riverfront Area impacts are cumulative, regardless of the number of lots subdivided from a larger parcel and shall be designed such that self-imposed hardships are not created.

K. Limited Projects

Limited projects were so named under the Act since the option of altering resource areas in such projects would only be proposed a "limited" number of times or in "limited" circumstances. A limited project status can only be achieved if the impacts to a resource area exceed the permissible threshold or if the project cannot meet all performance standards for an impacted resource area. A limited project status does not afford the opportunity to access every portion of the site. A wetland resource area impact may be denied if it is determined that the impacts to the wetland resources outweigh the benefit of additional site development. For limited project proposals, the Conservation Commission shall require the applicant to 1) file an ANRAD for verification of wetland resource area boundaries and 2) attend a pre-application work session with the Conservation Commission and/or its Agent prior to submission of any project with the Planning Board which would result in a claim of a limited project under 310CMR10.53(3)e. The Commission may not grant approval for a project with wetland resource impacts under limited project status if the applicant has not demonstrated that every attempt has been made to avoid and minimize impacts to wetland resource areas.

L. Erosion and Sedimentation Control

Applicants shall implement best management practices that prevent erosion, control sediment movement, and stabilize exposed soils to prevent pollutants from being transported offsite or

¹⁷ The final decision regarding Rabecki (Docket #97-020) upheld the Greenfield Conservation Commission's decision that Rabecki created a self-imposed hardship by purchasing land where he knew the previous owner had subdivided off all upland access to the property interior.

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entering Wetland Resource Areas during land disturbance and construction activities. Erosion and sedimentation controls shall be designed, installed and maintained in accord with specifications included in the latest version of the Massachusetts Erosion and Sedimentation Control Guidelines for Urban and Suburban Areas: A Guide for Planners, Designers, and Municipal Officials published by the Massachusetts Executive Office of Environmental Affairs (EOEA), as amended and the Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) National Menu of Storm Water Best Management Practices for Construction Site Storm Water Runoff Control - <http://cfpub.epa.gov/npdes/stormwater/menuofbmps>.

All project plans shall include erosion and sedimentation control measures show in plan view and a detail provided for each measure. For any project that disturbs one (1) or more acres, at a minimum, shall provide the following best management practices: a stabilized construction entrance, perimeter protection such as silt fence or fiber roll, catch basin inlet protection, dewatering methods, concrete washout, and the limit of work (orange poly fence). BMPs for smaller projects shall provide similar measures as applicable. Haybales shall be prohibited as an erosion control device due to the transport of invasive species seeds within the hay or straw. Nylon netting shall not be permitted as a backing for silt fence or for erosion control blankets because they are a barrier to wildlife, particularly amphibians and reptiles. The Commission may approve other documented methods of erosion control as appropriate for the individual site under review.

In addition to the erosion and sedimentation control methods, temporary storm water management practices including temporary diversion ditches, swales, traps and basins with temporary outlet structures, must be shown and details provided.

In accordance with the EPA National Pollutant Discharge Elimination System Construction General Permit (CGP), all projects which result in greater than one (1) acre of disturbance and results in a discharge to a wetland or water of the US require the preparation of a SWPPP and a Notice of Intent filing with the EPA. A copy of the project SWPPP including the EPA NOI shall be provided to the Commission prior to the close of the public hearing. In addition, copies of all inspection reports required under the CGP shall be forwarded to the Conservation Commission on a monthly basis.

M. Site Stabilization

All disturbed areas shall be immediately temporarily stabilized if they are to remain undisturbed for 14 days or longer per the EPA CGP. Temporary slope stabilization methods shall include erosion control blankets for slopes 2:1 or steeper; stabilization of areas flatter than 2:1 may include temporary loam and seed and/or straw mulch. Stabilization of exposed areas shall be provided throughout construction such that slopes are protected from slumping, and erosion of exposed surfaces is minimized to prevent sediment transport.

If temporary or final stabilization is not achieved on disturbed areas by October 1, temporary stabilization consisting of clean grain straw mulch at a rate of 2 tons per acre shall be applied to exposed areas (Or 3-inch thickness, with no bare spots or ground showing). Mulch anchoring shall consist of tackifier or netting.

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N. Vegetation and Landscaping

All soils shall be amended with a compost to improve infiltration and permeability¹⁸ and be at least 4 inches deep (for water conservation) for lawns and for sideslope stabilization. Landscaping should consist of native, drought resistant planting materials to benefit local wildlife, promote groundwater recharge and minimize the necessity for irrigation or watering. Landscaping specifications shall be provided in the permit application and shall not consist of any exotic invasive plant including species of Euonymus, Japanese Barberry or any other plant listed in the Invasive Plant Atlas of New England (IPANE). A list of invasive plants can be found at the following address. www.eeb.uconn.edu/invasives/ipane.

O. Lighting

Proposed lighting shall be fully shielded with light that does not go higher than 70-75 degrees above horizontal and not greater than 1500 lumens in order to direct the light to the desired area¹⁹, and avoid light pollution of the night sky that may impact the wetland resource area's ability to provide wildlife habitat. Lighting specifications shall be provided with the permit application. Please refer to <http://www.darksky.org/mc/page.do> for more information.

P. Docks and Boardwalks

Docks and boardwalks shall be raised to minimize alteration of other resource areas (such as wetland approaches or floodplain). The decking surface shall have a minimum of 25% open area to minimize shading impacts. Floating docks shall be fixed by piers utilizing a hoop roller or other approved fastening system. Maintenance of vegetation on either side of a dock or boardwalk shall not exceed one-foot in width on either side. Docks shall be of a length that does not interfere with the recreation interests of the bylaw and with the rights of the Conservation Commission as agent for the Town as owner of the Norton Reservoir, Winnecunnet Pond, Chartley Pond or Barrowsville Pond. All docks shall contain a non-corrosive metal etched plaque containing the owner's contact information in the event of being dislodged during a storm.

Q. Water Withdrawals

1. Groundwater Withdrawals

The Town of Norton operates four groundwater wells in order to supply potable drinking water to over 95% of the population. In addition to the primary purpose of supplying drinking water, the Town is faced with the cultural demand for supplying treated water for lawn irrigation purposes. The highest demand for water (both drinking and irrigation) is at the time of year with potentially the least supply (in the summer months). Similarly, lawn care accounts for thirty-two percent (32%) of outdoor water use nation-wide²⁰. The Town's system of wells, distribution lines, storage tanks and treatment facilities are not

¹⁸ Chapter 8: Impact Avoidance. Fundamentals of Urban Runoff Management: Technical and Institutional Issues, Second Edition, Earl Shaver, Richard Horner, Joseph Skupien, Chris May and Graeme Ridley. NALMS, July 2007.

¹⁹ Helpful Advice to Builders and Contractors. New England Light Pollution Advisory Group (NELPAG). www.cfa.harvard.edu/nelpag/friends.html or www.nelpag.org

²⁰ Water Well-Being: The Manual. The Massachusetts Department of Food and Agriculture, Pesticide Bureau. www.mass.gov/waterwellbeing.

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designed nor intended to provide the added capability of unrestricted irrigation of lawns. Water withdrawals, particularly during the growing season and during the summer, can deplete groundwater levels within the aquifer recharge zones (Water Resource Protection Zones I, II and III) , which can put strains on the drinking water supply, and can directly impact the hydrology of adjacent wetlands and waterbodies^{21, 22} throughout Town.

The Commission finds that water conservation measures are needed to prevent negative impacts to the water supply and Wetland Resource Areas Subject to Protection under the Bylaw. Therefore, with any irrigation well request, the Commission reserves the right to limit lawn size, require suitable vegetated buffers and/or require soil amendments as appropriate. Applications for water withdrawal shall contain a written description of the pump type, size, capacity and intake pipe diameter.

2. Surface Water Withdrawals

- a. Surface water withdrawal projects shall not limit the quantity of water available in a stream, brook, creek, reservoir, lake or pond to less than one (1) foot of depth. Intake pipes shall be permanently fixed utilizing a hoop roller or other approved fixture to prevent intake of water if the water level is less than one foot.
- b. Projects that remove water from a stream, brook, creek, reservoir, lake or pond, shall contain a wildlife screen to prevent impingement of fish using the Freshwater Intake End-of-Pipe Fish Screen Guideline, Department of Fisheries and Oceans, Canada, March 1995 (http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/water-eau/pipe/index_e.asp).
- c. In accordance with Article 12 of the October 20, 2004 Annual Town Meeting, the extraction or withdrawal of water for commercial purposes from any pond, stream, river, watercourse, surface or subsurface water into any tank vehicle or into any tank contained in or on a vehicle is strictly prohibited.

R. Subdivision Design

In order to balance the future housing or commercial needs of the Town of Norton with resource area protection, projects that subdivide a larger parcel into individual lots are strongly encouraged to incorporate a cluster development design. Subdivision projects are encouraged to minimize impervious cover, maximize retention of forest cover and maximize re-infiltration rates for the storm water management system²³. Open space areas should contain the wetland protection zone, at a minimum, when adjacent to a headwater area or vernal pool habitat; and the 200-foot riverfront area when adjacent to a perennial stream. Upland portions of a cluster subdivision open space area should not contain greater than 50% of the storm water management BMPs.

²¹ The Role of Groundwater in Generating Streamflow in Headwater Areas and in Maintaining Base Flow. Thomas C. Winter. Journal of American Water Resources Association, vol. 43, no. 1, Feb 2007

²² Effects of Water Withdrawals on Streamflow in the Ipswich River Basin, Massachusetts. Phillip J. Zarriello. US Geological Survey Fact Sheet 00-160, 2p. 2001

²³ Forest cover, impervious-surface area, and the mitigation of storm water impacts. Derek B. Booth, David Hartley and Rhett Jackson. Journal of American Water Resources Association, Vol 38, No. 3. June 2002.

Section 6: Wetland Resource Areas and Performance Standards

When a proposed activity involves altering a wetland resource area, the issuing authority shall presume that such area is significant to the interests of this Bylaw. This presumption is rebuttable and may be overcome upon a clear showing that the wetland resource 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 issuing authority shall make a written determination to this effect, setting forth its grounds (DEP Form 6). **Section 6 is the last section to be discussed. These are the only parts that were discussed at public meetings or reviewed by the Commission.**

B. Bank (naturally occurring and beaches). Reviewed on 5-10-10

1. Definition and Boundary. Consistent with WPA. The bank is the lateral confine of a river, stream, creek, reservoir, lake or pond, during all but flood stage. All rivers, streams and creeks have a left bank and a right bank. Due to fluctuating water flow, banks may have terrestrial vegetation. The WPZ extends 100 feet from the boundary of bank.
2. Interests under the bylaw. In addition to the interests of the WPA, bank is presumed significant to the interests identified in Section 1.F.2.a, c, d, f, h and j.
3. General Performance Standards. In addition to the performance standards under the WPA, where the presumption set forth is not overcome, proposed work in, on, over or within the bank; and proposed work within 100 feet of a bank shall not:
 - a. change the volume or rate of flow of water;
 - b. change normal flow characteristics, including but not limited to, confined or channelized flow, riffle/pool complexes, normal cut bank/sandbar formation, meandering capacity, etc.; and
 - c. impede or obstruct wildlife migration.
4. Special Performance Standards. If it is determined that avoidance is not reasonably feasible, the Commission may, but is not required to, issue a waiver provided the following:
 - a. bank to provide natural stream flow;
 - b. Projects shall be designed such that the woody debris input, temperature control and shading of water are not significantly impaired by providing adequate vegetative buffers;
 - c. Projects shall be designed such that the wildlife habitat functions, including but not limited to, mammal migration on dry banks, burrows and nests, odonate exuvia sites, and freshwater mussel beds are not impaired;
 - d. Projects shall be designed such that a proposal for a crossing or placement of fill is sited in the narrowest reasonable location and meets the general or optimum Stream Crossing Standards, as determined by the Commission and described in Appendix B;
 - e. Projects shall provide replication of bank characteristics; and

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- f. A detailed wildlife habitat evaluation may be required for all projects that propose alteration in, on, over or within a bank.(more detail in the wildlife section to be drafted).

C. Freshwater Wetlands Reviewed on 5-10-10

1. Definition and Boundary. Consistent with WPA and 310CMR10.55(2). Freshwater wetlands may be bordering or isolated. The Wetland Protection Zone extends 100 feet from the boundary of freshwater wetlands.
2. Interests under the bylaw. In addition to the interests of the WPA, freshwater wetlands are presumed significant to the interests identified in Section 1.F.2.a-k.
3. General Performance Standards. In addition to the performance standards under the WPA, where the presumption set forth is not overcome, proposed work in, on or within freshwater wetlands; and proposed work within 100 feet of freshwater wetlands shall not materially impair the:
 - a. Pre-development area runoff characteristics to the wetland;
 - b. adjacent vegetative buffer that is necessary for temperature and relative humidity regulation of the wetland;
 - c. shall not result in a net loss of freshwater wetlands;
4. Special Performance Standards. If it is determined that avoidance is not reasonably feasible, the Commission may, but is not required to, issue a waiver provided the following:
 - a. Appendix B of the Massachusetts Wildlife Habitat Guidance for Inland Wetlands (DEP, 2006) or more detailed wildlife habitat evaluation may be required for all projects that propose alteration in, on, or within a freshwater wetland .(more detail in the wildlife section to be drafted).;
 - b. Proposed wetland replication complies with the Massachusetts Inland Wetland Replication Guidance (DEP, 2003);
 - c. An environmental professional shall monitor the installation of a replication area and submit regular inspection reports to the Commission. Replication areas shall be monitored for not less than five years and shall include an exotic, invasive plant removal provisions. Replication areas shall contain at least 20% inorganic wildlife habitat components (i.e., boulders, standing snags, fallen logs, pools, etc.); and
 - d. The Commission may develop standards for wetland crossings (to be done).

D. Lands subject to flooding or inundation by groundwater or surface water, (Bordering and Isolated).

1. Definition and Boundary.
 - a. Bordering land subject to flooding (BLSF; 100-yr floodplain) definition is consistent with WPA;

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- b. The extent of Bordering land subject to flooding around Norton Reservoir is the 105.1-foot contour elevation²⁴;
 - c. Isolated Land Subject to Flooding (ISLF) shall mean an isolated depression or closed basin consisting of a minimum of 400 s.f., not occurring in existing lawns, gardens, landscaped areas, storm water management structures or driveways. ILSF may be underlain by pervious material, which in turn may be covered by a mat of organic peat or muck. The boundary of ISLF is the perimeter of the largest observed or recorded volume of water confined in said area. The Wetland Protection Zone extends 100 feet from the boundary of ISLF.
2. Interests under the bylaw. In addition to the interests of the WPA, Lands subject to flooding is presumed significant to those interests identified under the Act and to the following interests identified in Section 1.F.2. c-f, h and i.
 3. General Performance Standards. In addition to the performance standards under the WPA, projects in, or within land subject to flooding; and projects within 100 feet of isolated land subject to flooding shall not impair:
 - a. Quantity of storage for flood waters on the property;
 - b. Ability of water to flow unimpeded within the floodplain;
 - c. Depressional storage of water or cause flood damage due to lateral displacement of water;
 - d. Vernal pool habitat; and
 - e. Wildlife habitat.
 4. Special Performance Standards. If it is determined that avoidance is not reasonably feasible, the Commission may, but is not required to, issue a waiver provided the following:
 - a. For BLSF:
 - i. Foundation, slab and buildings in the BLSF shall utilize flood construction methods as described in the Massachusetts State Building Code;
 - ii. The lowest floor joist elevation shall be at least one (1) foot above the base flood elevation;
 - iii. Elevation certificates shall be required at completion of all foundation, slab and retaining wall work within a floodplain;
 - b. For ILSF:
 - i. ILSF that provides vernal pool habitat shall not be altered.

²⁴ March 26, 2007 letter from Pare Corporation to Office of Dam Safety (Pare project no. 05142.00) and NOI application (DEP file no. 250-831) page 4: description.

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- ii. Alterations to ILSF that provides significant flood storage may require 1:1 compensation on the project site to prevent flooding on abutting properties.

E. Reservoirs, lakes, and ponds.

1. Definition and Boundary. The boundary of reservoirs, lakes and ponds shall be the boundary as shown on the most recent United States Geological Survey (USGS) and the water contained therein. Ponds constructed for storm water management or lined-ponds constructed for landscape purposes are not subject to protection as a pond under the bylaw. The Wetland Protection Zone extends 100 feet from the boundary of a reservoir, lake and pond.
2. Interests under the bylaw. Reservoirs, lakes and ponds are presumed significant to the interests identified in Section 1.F.2.c, d, f, h and i.
3. General Performance Standards. Where the presumption set forth in (above) is not overcome, proposed work in, on, or within a reservoir, lake or pond or within 100 feet of a reservoir, lake or pond shall not impair:
 - a. the quantity and quality of the water;
 - b. the capacity to provide base flow to the outlet stream;
 - c. public access rights under MGL Chapter 91; and
 - d. to provide important wildlife habitat functions.
4. Special Performance Standards. If it is determined that avoidance is not reasonably feasible, the Commission may, but is not required to, issue a waiver provided the following:
 - a. A project shall take measures to minimize any impacts of temperature rise of the water;
 - b. Projects shall provide substantial vegetated buffers adjacent to the reservoir, lake or pond to naturally uptake pollutants and reduce erosion and soil compaction²⁵;
 - c. Fertilizer, if used, shall be limited to non-phosphorus fertilizers^{26, 27} in order to reduce potential for eutrophication (an excess of nutrients that contributes to aquatic plant growth, particularly of invasive species, and algal blooms²⁸);

²⁵ Shoreland Development Density and Impervious Surfaces. State of Wisconsin, Department of Natural Resources.

²⁶ Lake Access. An impact metro project: the lawn fertilizer experiment (www.lakeaccess.org/lakedata/lawnfertilizer/recentresults.htm); Effects of Lawn Fertilizer on Nutrient Concentration in Runoff from Lakeshore Lawns, Lauderdale lakes, Wisconsin. Herbert S. Garn. USGS Water-Resource Investigations Report 02-4130. July 2002 and Shaver, 2007

²⁷ Effects of Lawn Fertilizer on Nutrient Concentration in Runoff from Lakeshore Lawns, Lauderdale Lakes, Wisconsin. USGS Water-Resources Report 02-4130, July 2002.

²⁸ Chapter 4: Bio-Physical Impacts of Urbanization on Aquatic Ecosystems.

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- d. For projects located within 100 feet of Reservoirs, Lakes and Ponds, a wildlife habitat evaluation may be required (Refer to wildlife section-to be written) and
- e. For projects that impact water quality, the Commission may require an evaluation of the waterbody's status on the EPA Section 303(d) list and the TMDL list and existing water quality data for projects that propose discharges in, to, into or within 100 feet of a reservoir, lake or pond. The Commission may require monitoring, mitigation through storm water management pre-treatment or both.

E. Lands under water bodies and waterways (LUWW).

1. Definition and Boundary. Consistent with WPA. LUWW be referred to as the stream bed, stream bottom, lake bed or lake bottom. Due to fluctuating water flow, LUWW typically does not have terrestrial vegetation but may have aquatic vegetation.
2. Interests under the bylaw. In addition to the interests of the WPA, land under waterbodies and waterways are presumed significant to the interests identified in Section 1.F.2.b-d, f, and h.
3. General Performance Standards. In addition to the performance standards under the WPA, where the presumption set forth in (above) is not overcome, proposed work in land under waterbodies and waterways shall not impair:
 - a. water storage;
 - b. circulation and natural flow of water including subsurface flowpaths²⁹;
 - c. water availability in the hypoxic zone (or the region beneath and lateral to a stream bed or lake bed where shallow ground water and surface water mix);
 - d. distribution of sediment grain size; and
 - e. the availability of interstitial spaces for freshwater mussels, fish and aquatic macroinvertebrates.
4. Special Performance Standards. If it is determined that avoidance is not reasonably feasible, the Commission may, but is not required to, issue a waiver provided the following:
 - a. Projects that remove material shall be done in a low-flow period (July-August) and shall manage erosion and siltation potential with silt curtains or other approved method; and
 - b. Projects utilizing dewatering methods performed within a stream channel or waterbody shall restore the dewatering pit with similar material and interstitial spacing.

²⁹ Subsurface Flowpaths in a Forested Headwater Stream harbor a Diverse Macroinvertebrate Community. Bridget M. Collins, William V. Sobczak and Elizabeth A. Colburn. Wetlands, Vol. 27, No. 2. June 2007.

Section 7: Waivers

The Commission adopted performance standards for Wetland Resource Areas to ensure that the interests and values as listed in the Bylaw are adequately protected. However, the Commission recognizes that in certain situations, a waiver of a specific performance standard may be appropriate. The Commission may (but shall not be required to) waive strict compliance with the Rules and Regulations if the Commission finds that the proposed work will not have a significant adverse impact on interests protected by the Bylaw. Waivers are intended to be granted only in rare and unusual cases and only when, in the opinion of the Commission, strict adherence to the Rules and Regulations would create an unintended hardship to the owner. If a Waiver is granted, it shall be so noted in the Order of Conditions or applicable Wetland Permit. Waivers of Bylaw Regulations shall not result in less stringent requirements than those under the Act.

1. Projects may be eligible for a Waiver provided the following:
 - a. The project can be conditioned to meet the interests of the bylaw when alteration of the Wetland Resource Area is minimized and mitigated to the maximum extent feasible; special performance standards have been met; and a long-term net benefit to the Wetland Resource Area is provided;
 - b. The hardship was not created by the applicant or the applicant's representatives; or
 - c. The Wetland Resource Areas will be better protected if the project is allowed, or if the project has an overriding public benefit.
2. The applicant shall have the burden of proof of demonstrating that granting a Waiver is consistent with the intent and purpose of the Bylaw and its Rules and Regulations; and that there are no practicable alternatives. Requests for a Waiver shall be made in writing at the time of the Permit application submittal. At a minimum the request shall include a:
 - a. Description of eligibility as listed in item 1; and
 - b. Description of alternatives explored and an explanation of why each is unreasonable or unrealistic; and
 - c. Description of mitigating measures and long-term net benefit to the Wetland Resource Area; or
 - d. Evidence of an overriding public interest.
3. The Commission shall consider the request for a Waiver as part of its review of the Permit application. The Commission may impose conditions, safeguards, and limitations on time and/or activity special. The Commission shall grant, grant in part, deny in part, or deny the waiver request based upon eligibility; value of the Wetland Resource Area, impacts to the Wetland Resource Area, mitigation, and long-term net benefit proposed for the project; overriding public benefit; and all evidence and discussions provided as part of the public hearing process pursuant to the Open Meeting Law. The Commission shall issue a written finding regarding the grant of or the denial of a waiver request in the permit.
4. Failure to provide required or additional requested information by the applicant regarding the appropriateness of a waiver shall result in a denial of the waiver request.

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5. In all cases, waivers are determined on a case-by-case basis, specific to the project location and proposal.

Section 8: Enforcement

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this Bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a Permit or an enforcement order issued pursuant to the Bylaw. Each day a violation exists constitutes a separate violation.

- A. Violations include, but are not limited to:
 1. Failure to obtain a Permit for work performed in an area subject to protection;
 2. Failure to comply with the conditions of a Permit;
 3. Failure to complete work described in a Permit, when such failure causes damage to the interests identified in the Bylaw;
 4. Failure to record a Permit as described in Section 3. I.
- B. When it is determined that an activity is in violation of the Bylaw, these Regulations, or a Permit, the Conservation Agent may issue a cease and desist (stop work) order. The Commission or its Agent shall also issue written notice of the violation in an enforcement letter or an Enforcement Order to be ratified at the next regularly scheduled meeting. Failure of the Commission to issue a stop work order, for any reason, shall not prevent the Town of Norton from pursuing any other legal remedy at law, or in equity, to restrain violations in this Bylaw and to secure compliance with a Permit.
- C. Consistent with due process, the landowner shall have the opportunity to address the Commission at a scheduled public hearing.
- D. The Commission may use the enforcement measures, as listed in the Bylaw, that include, but are not limited to replication, restoration, fines of up to three-hundred dollars (\$300.00) per day and/or the installation of a visual barrier.
- E. The Town of Norton shall not be held liable to pay for legal services required to enforce the Act, the Bylaw or the Rules and Regulations. If legal counsel is required by the Commission, the presiding court office shall be requested to require any settlement to include the payment of the Town's legal counsel.

Appendices:

Appendix A: Plan Submittal Requirements

Appendix B: Stream Crossing Standards

Appendix C: Fieldwork Code of Practice of the Declining Amphibian Population Task Force

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Appendix A:

Site Plan Description and Identification Data:

1. The property address; map and parcel numbers; and book and page numbers
2. For subdivisions, the builder's lot number and the new Assessor's parcel number
3. Entire parcel boundary must be shown on an index sheet
4. The date (month, day, year), title block, legend, locus, scale of not less than 1"=40', and north arrow
5. Location, type and elevation of benchmark used
6. The Plan Title should incorporate the project address, i.e. "septic system repair for 70 Main Street" instead of "septic system repair, lot 1, Main St."
7. All abutting parcels with most current owner names determined by the Assessor's Office
8. The signed professional seal, name, address and phone number of the registered professional engineer or registered land surveyor; and the name of the landscape architect and DEP Certified Soil Evaluator as appropriate
9. The name of the wetland professional and date of wetland resource area delineation
10. The property owners' name(s) and address(es)
11. Existing and proposed easements and public utility distribution systems

Plan Revision Dates

Site plans for any project other than a single family house or work on a single family house, shall include an index sheet. The date of the most recently revised sheet shall be listed on the index sheet of the final approved plan and referenced in the wetland permit.

Natural and Existing Features

1. The location of consecutively numbered flags for all wetland resource areas (including Wetland Protection Zone and Riverfront Area) located by an on-the-ground field survey
2. All streams including bank and mean annual high water mark, even if the wetland extends further upland onto the property than the bank
3. FEMA FIRM floodplain zone, base flood elevation, panel number and date of plan
4. Existing and proposed contour elevations at not greater than 2-foot intervals (If an individual lot has been altered since the time of the original subdivision plan review, an accurate and current on-the-ground field survey of the lot shall be required)
5. Existing and proposed edge of forest cover or vegetation clearing
6. Certified and potential vernal pools
7. Estimated and Priority habitat areas
8. ACEC boundaries
9. Ledge, rock outcroppings, boulders, glacial erratics, stone walls, carpaths, trails, clearings
10. Items listed as a special habitat types and features in the wildlife habitat in Section 6

Site Data

1. All existing and proposed lot lines, structures, roads, parking areas, driveways, fences, impervious surfaces, and all proposed work
2. Location of erosion controls and limits of work
3. Offset distances from wetland resource areas to limits of work and proposed structures
4. The minimum 25-foot no disturbance area with visual barrier location (split rail fence unless approved by the commission)
5. Elevations of bottom of foundation, top of concrete, and concrete slab
6. Lowest finished floor elevation if in floodplain

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7. Location of existing and proposed service facilities above and below ground, including:
 - a. Sanitary sewers and pumping stations
 - b. Electric, gas, and water mains, hydrants, pump houses, standpipes and building services and sizes
 - c. Chemical and fuel storage tanks and containers, storage, loading and disposal areas of chemicals, hazardous substances, salt and fuels
8. All fill/replication and restoration/compensation areas with the square footage and bottom elevations labeled (with separate detail sheet per the replication section)
9. Exterior lighting locations, type of light and illumination patterns in accordance with dark sky provisions <http://www.darksky.org/mc/page.do>
10. The location and description of all proposed landscaping (plant type, size, and number) demonstrating there are not any invasive plants listed by the Invasive Plant Atlas of New England (IPANE) at www.eeb.uconn.edu/invasives/ipane
11. Vehicle trip generation based on "Average Daily Trip" (ADT) rate, if required in Section 5.E.

Storm Water Management

1. Snow storage areas
2. Pre-development and post-development watershed plans with time of concentration arrows
3. Storm water best management practices (BMPS), drainage pipes, headwalls, etc.
4. Location of soil borings and soil test pits for septic systems and storm water management systems
5. Soil logs for each test pit
6. Details, profile and cross-section for all BMPs (cross section of the basin with the elevation of 2, 10, 25, 50 and 100-yr storm events)
7. Construction-term storm water management (i.e. dewatering methods/detail, temporary basins)
8. If required, culverts within 0.25 miles downstream or upstream of a proposed stream crossing or wetland fill for a road or driveway shall be evaluated by the applicant

Details must be shown for:

1. All erosion control measures (hay bales and nylon netting backing are prohibited except as approved by the Commission)
2. Retaining walls
3. Dewatering methods

Plan Notes must include:

1. "The No Disturbance Zone (NDZ) is a continuous strip of undisturbed natural vegetative cover directly adjacent to a resource area. There shall not be any alteration of natural vegetation including, but not limited to, cutting or clearing vegetation, construction, stockpiling materials or dumping organic or inorganic materials. A permanent visual barrier marks the NDZ and consists of a post-and-rail fence, unless otherwise approved by the Commission. The fence shall not be removed."
2. "All disturbed areas shall be immediately temporarily stabilized if they are to remain undisturbed for 14 days or longer per the Construction General Permit (CGP) under the Environmental Protection Agency's (EPA) National Pollutant Discharge Elimination System (NPDES)."

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3. “If temporary or final stabilization is not achieved on disturbed areas by October 1, temporary stabilization consisting of clean grain straw mulch at a rate of 2 tons per acre shall be applied to exposed areas (Or 3-inch thickness, with no bare spots or ground showing)._Mulch anchoring shall consist of tackifier or netting.”
4. Amount and percentage of the lot of total impervious surface (existing and proposed)
5. Amount of resource area alteration by resource area type and amount of restoration/replication
6. Total and cumulative riverfront area calculations
7. Dewatering methods
8. Construction sequencing

Plan Color Codes

All seven (7) copies of the submitted plans shall be marked with a highlighter or Colorplot with the color code listed below:

1. Property line-black
2. Freshwater wetlands boundary and Wetland Protection Zone-green
3. Mean annual high water mark, bank, riverfront area (inner riparian and outer riparian boundaries), and edge of a reservoir, lake or pond-blue
4. Floodplain-purple
5. Impervious cover-shaded in light gray
6. Utilities-pink
7. Drainage-orange
8. Limit of work-erosion control symbol
9. Visual Barrier-fence symbol

Wetland Replication Areas

1. Plans of replication areas shall not have greater than 1-foot(one) contours
2. Seasonal high water elevation in at least two locations in the replication area
3. Cross sections and profiles of any wetland resource area alteration (except activity solely in the wetland protection zone or riverfront area)
4. All fill/replication and restoration/compensation areas with the square footage and bottom elevations labeled (with separate detail sheet per the replication section)
5. Detail of pit-and-mound topography
6. Vegetation planting plan including the common and scientific plant names, sizes, and quantities; and inorganic wildlife features (such as boulders, snags, logs) comprising a minimum of 20% of the surface area
7. Detail of soil profile for new hydric soil placement
8. Plan notes for erosion control installation and removal
9. Monitoring plan schedule

As-Built Plans

Two (2) signed and stamped As-Built plans shall be submitted with any Request for a Certificate of Compliance (COC) or Partial Certificate of Compliance (PCOC) at least five (5) business days prior to the scheduled public meeting and shall show:

1. All resource areas
2. All final grading
3. All work performed under the Order
4. The visual barrier and No Disturbance Zone

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5. Floodplain with community panel number and base flood elevation; elevation certificate, if applicable
6. Elevations for rim, invert, top of concrete or slab, top of retaining wall,
7. Certification note from a soil evaluator that the soil placed for lawn contains the correct mixture of compost amendments

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Appendix B:

STREAM CROSSING STANDARDS

Stream crossing standards are based on six important variables (see page 8 for common measurements). While the specifics of the regulations listed below may change over time, the crossing guidelines presented throughout this handbook remain effective for fish and wildlife.

1. TYPE OF CROSSING

- **General:** Open arches or bridges are preferred over culverts
- **Optimum:** Open arches or bridges required unless there is a compelling reason why culverts would provide greater environmental benefits

2. CULVERTS

- Culverts should be embedded (sunk into stream) at least one foot for box culverts and pipe arches, or at least 25% of the pipe diameter for pipe culverts.
- If pipe culverts cannot be embedded this deep, then they should not be used.

3. WIDTH

- **General:** The crossing should be at least 1.2 times the bankfull width of the stream
- **Optimum:** The crossing should be at least 1.2 times the bankfull width of the stream and should span the banks to allow for dry wildlife passage during at least ten months of the year

4. OPENNESS

- **General:** Openness ratio (cross-sectional area/crossing length) of at least 0.25 meters (m). The crossing should be wide and high relative to its length.
- **Optimum:** Openness ratio of at least 0.5m and minimum height of 4 feet. If local conditions significantly reduce wildlife passage near the crossing (e.g., steep embankments and physical barriers) then the openness ratio should be 0.75m and the minimum height should be 6 feet.

5. SUBSTRATE

- Natural bottom substrate should be used within the crossing and it should match the upstream and downstream substrates. The substrate and design should resist displacement during floods and maintain an appropriate bottom during normal flows.

6. DEPTH AND VELOCITY

- At low flows, water depths and water velocities should be the same as they are in natural areas upstream and downstream of the crossing.



Scott Jackson photo

A Well Designed Crossing

- Large size suitable for handling flood flows
- Open-arch design considered optimum under most conditions
- Openness ratio greater than 0.5m, suitable for most settings
- Greater than 1.2x stream width maintains dry banks for wildlife passage
- Water depth and velocity match conditions upstream and downstream
- Natural substrates create good conditions for stream-dwelling animals

Appendix C:

**Fieldwork Code of Practice
Declining Amphibian Population Task Force**

Follow the DAPTF Fieldwork Code of Practice!

A Code of Practice, prepared by the Declining Amphibian Populations Task Force (DAPTF) to provide guidelines for use by anyone conducting fieldwork at amphibian breeding sites or in other aquatic habitats. Observations of diseased and parasite-infected amphibians are now being frequently reported from sites all over the world. This has given rise to concerns that releasing amphibians following a period of captivity, during which time they can pick up in apparent infections of novel disease agents, may cause an increased risk of mortality in wild populations. Amphibian pathogens and parasites can also be carried in a variety of ways between habitats on the hands, footwear or equipment of fieldworkers, which can spread them to novel localities containing species which have had little or no prior contact with such pathogens or parasites. Such occurrences may be implicated in some instances where amphibian populations have declined. Therefore, it is vitally important for those involved in amphibian research (and other types of wetland/pond studies including those on fish, invertebrates and plants) to take steps to minimise the spread of disease agents and parasites between study sites.

The DAPTF Fieldwork Code of Practice

1. Remove mud, snails, algae and other debris from nets, traps, boots, vehicle tyres and all other surfaces. Rinse cleaned items with sterilized (eg. boiled or treated) water before leaving each study site.
2. Boots, nets, traps etc. should then be scrubbed with 70% ethanol solution and rinsed clean with sterilized water between study sites. Avoid cleaning equipment in the immediate vicinity of a pond or wetland.
3. In remote locations, clean all equipment as described above (or with a bleach solution) upon return to the lab or "base camp". Elsewhere, when washing-machine facilities are available, remove nets from poles and wash with bleach on a "delicates" cycle, contained in a protective mesh laundry bag.
4. When working at sites with known or suspected disease problems, or when sampling populations of rare or isolated species, wear disposable gloves and change them between handling each animal. Dedicate sets of nets, boots, traps and other equipment to each site being visited. Clean and store them separately at the end of each field day.
5. When amphibians are collected, ensure the separation of animals from different sites and take great care to avoid indirect contact between them (e.g. via handling, reuse of containers) or with other captive animals. Isolation from unsterilized plants or soils which have been taken from other sites is also essential. Always use disinfected/disposable husbandry equipment.
6. Examine collected amphibians for the presence of diseases and parasites soon after capture. Prior to their release or the release of any progeny, amphibians should be quarantined for a period and thoroughly screened for the presence of any potential disease agents.
7. Used cleaning materials (liquids etc.) should be disposed of safely and if necessary taken back to the lab for proper disposal. Used disposable gloves should be retained for safe disposal in sealed bags.

The DAPTF Fieldwork Code of Practice has been produced by the DAPTF with valuable assistance from Begona Arano, Andrew Cunningham, Tom Langton, Jamie Reaser and Stan Sessions. For further information on this Code, or on the [DAPTF](#), contact John Wilkinson, Biology Department, The Open University, Walton Hall, Milton Keynes, MK7 6AA, UK. E-mail: DAPTF@open.ac.uk. Fax: +44 (0) 1908-654167