

**RULES AND REGULATIONS FOR THE ADMINISTRATION
OF THE
WATERTOWN WETLANDS ORDINANCE
OF 2008**

Revised December 2012

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SECTION I - GENERAL

A. INTRODUCTION

These Regulations are promulgated by the Watertown Conservation Commission (the "Commission") pursuant to the authority granted to the Commission under Section 9 of the Watertown Wetlands Ordinance. These rules and regulations complement the Ordinance and shall have the force of law upon their effective date.

B. PURPOSE

The Watertown Wetlands Ordinance sets forth a public review and decision-making process by which activities affecting Areas Subject to Protection Under the Ordinance are to be regulated in order to contribute to the following interests (collectively, the "interests protected by this Ordinance"):

- Protection of public and private water supply;
- Protection of groundwater supply and quality;
- Flood control;
- Erosion and sedimentation control;
- Storm damage prevention;
- Water quality and pollution control;
- Protection of wildlife habitat and fisheries;
- Protection of recreational value;
- Protection of aesthetic value;
- Protection of agricultural value;
- Protection of historic, archaeological and educational values.

These Regulations serve to implement the Watertown Wetlands Ordinance by establishing standard definitions, uniform procedures, design specifications, and performance standards by which the Conservation Commission may carry out its responsibilities under the Ordinance.

C. STATEMENT OF JURISDICTION

(1) Areas Subject to Protection Under the Ordinance

The following areas ("Resource Areas") are subject to protection under the Ordinance:

- (a) Any river (including perennial streams), lake or pond;
- (b) Any wetland, marsh, wet meadow, bog, swamp or vernal pool;
- (c) Any bank;
- (d) Any lands bordering on any lake, pond, intermittent stream, spring, brook or creek;
- (e) Any land under any river, stream, brook, creek, lake, pond or ditch (known as "Land Under Waters").
- (f) Any land subject to flooding or inundation by groundwater or surface water that substantially promotes the purposes of this Ordinance;
- (g) Any land in the 100 year floodplain as delineated pursuant to the Regulations of the Commission;
- (h) Any land within 200 feet of any river (including perennial streams) (known as the "Riverfront Area"); or
- (i) Any land within 150 feet of any wetland, marsh, wet meadow, bog, swamp, vernal pool, bank, lake, pond or non-perennial stream (known as the "Buffer Zone"), regardless of whether the

land borders surface waters.

(2) Activities Subject to Regulation Under the Ordinance.

Any activity proposed or undertaken that will remove, fill, dredge, build upon, alter, degrade or discharge into any area specified in Section I.C(1) is subject to regulation under the Ordinance and requires the filing of an Application for Permit.

(3) No-Build Zone

- (a) Without limiting the foregoing, and as an additional local requirement, no person shall build or enlarge any structure, parking lot or impervious surface upon or within an area that extends fifty (50) feet from the outer limit of a wetland resource area, e.g. any marsh, meadow, bog, swamp or vernal pool; any bank; or any river, stream, creek or brook, lake, pond or spring.
- (b) The Commission may in its sole discretion make exceptions to this fifty foot no-build zone, as provided by Section IV.A(9).

(4) Activities Located Outside Areas Subject to Protection

Notwithstanding the foregoing, if the Commission determines that an activity outside an Area Subject to Protection Under the Ordinance has in fact altered an Area Subject to Protection Under the Ordinance, it may require an Application including plans, supporting calculations, and other documentation necessary to assess the effects of the activity on the interests and Resource Areas protected by the Ordinance, and may require other actions or impose conditions on the activity as required to protect those interests.

(5) Request for Determination of Applicability

Any person who wishes to know whether or not a proposed activity or an area is subject to the Ordinance may in writing request a determination from the Conservation Commission. Such a request for Determination of Applicability shall be submitted pursuant to Section III.C of these Regulations.

D. EXCEPTIONS AND VARIANCES

(1) Exceptions

- (a) The Permit and Application required by the Ordinance shall not be required for maintaining, repairing or replacing 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, provided that (a) the structure or facility is not substantially changed, enlarged or altered, (b) written notice has been given to the Conservation Commission prior to commencement of work, and (c) the work conforms to performance standards and design specifications acceptable to the Commission. Such work must utilize the best practical measures to avoid or minimize impacts on protected Resource Areas outside the footprint of said structure or facility. A project proponent claiming that work to remove, fill, dredge, build upon, alter, degrade or discharge into an area specified in Section I.C(1) does not require a Application for a Permit has the burden of establishing that the work is not subject to Regulation under the Ordinance.
- (b) The Permit Application required by this Ordinance shall not be required prior to emergency

projects necessary for the protection of the health or safety of the public, provided that the requirements of Section III.T of these Regulations are met.

- (c) The Application and Permit required by this Ordinance shall not be required for work performed for normal maintenance or improvement of land in agricultural use as defined by the Massachusetts Wetlands Protection Act Regulations at 310 CMR 10.04.
- (d) Operation of a stormwater management system that meets the criteria of 310 CMR10.02 (2)(c) and 10.02(4) does not by itself create any additional Buffer Zone or wetland Resource Area, and the Commission's review of such a stormwater management system under these Regulations will be limited to the stormwater functions of the system, compliance with the Massachusetts Stormwater Management Standards and any Watertown stormwater standards, and those performance standards of these Regulations that would apply in the absence of the stormwater management system.

(2) Variances

- (a) The Commission shall have the authority, after receipt of an Application for Permit and the conduct of a public hearing in accordance with Section III.J of these Regulations, to grant a variance from specified requirements of the Ordinance and these Regulations where the Commission determines in writing, in its sole discretion, that:
 - There are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; and
 - Avoidance, minimization and mitigation have been employed to the maximum extent feasible; and
 - The variance 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.
- (b) It is the responsibility of the Applicant to provide any and all information that the Commission may request to enable the Commission to determine whether each of the criteria for granting a variance is met. Failure of the Applicant to furnish any of the requested information will result in denial of a request for a variance.
- (c) The Commission may impose conditions, safeguards and limitations in a variance to protect or further the interests protected by the Ordinance.
- (d) The Commission may specify a date on which the variance will expire, after which the variance may be reestablished only after notice and a new public hearing pursuant to this section.
- (e) No variance from requirements of the MA Wetlands Protection Act will be granted without prior approval of such variance by the Commissioner of MassDEP, as provided by 310 CMR 10.05(10) as amended.

E. BURDEN OF PROOF AND BURDEN OF GOING FORWARD

(1) Burden of Proof

The Applicant shall have the burden of proving by a preponderance of the credible evidence that the activities proposed in the Application meet the standards set forth in the Ordinance and these

Regulations. Failure to meet the burden of proof shall be cause for the Commission to deny the Application for Permit along with any work or activity proposed therein.

(2) Burden of Going Forward

The Applicant shall have the burden of going forward by providing credible evidence from a competent source in support of all matters asserted by the Applicant in accordance with his or her burden of proof pursuant to I.E.1 above.

F. SEVERABILITY

- (1) A holding that any provision of these Regulations is invalid shall not invalidate any other section or provision of the Regulations, nor shall such holding invalidate any Permit, condition, order, or determination which previously has been issued.
- (2) If any Court of the Commonwealth shall invalidate any provision of the Ordinance or of these Regulations, the Commission shall promulgate additional regulations, or present amendments to the Ordinance to the next Town Council Meeting after such invalidation, which are designed to comply with any Court decision invalidating such provision or regulation, as the case may be.

G. AMENDMENTS

- (1) These rules and regulations may be amended from time to time by a majority vote of the Conservation Commission.
- (2) Prior to taking a vote on an amendment, the Conservation Commission shall hold a public hearing on the proposed changes.

H. EFFECTIVE DATE

These Regulations shall become effective immediately upon passage by the Commission, and the provisions of these Regulations shall apply to all work performed after that date.

SECTION II - DEFINITIONS AND ABBREVIATIONS

A. DEFINITIONS

The following definitions shall apply in the interpretation and implementation of these Regulations. Except as otherwise provided in the Ordinance or these Regulations, the definitions of terms in these Regulations shall be as set forth in the Massachusetts Wetlands Protection Act (M.G.L. Chapter 131, Section 40) and regulations (310 CMR 10.00), as amended.

Activity means any form of draining, dumping, dredging, damming, discharging, excavating, filling or grading; the erection, reconstruction or expansion of any buildings or structures; the driving of pilings or erection of walls; the construction or improvement of roads and other ways; the changing of runoff characteristics; the intercepting or diverting of ground or surface water; the installation of drainage, sewage and water systems; the discharging of pollutants; the destruction of plant life; and any other

changing of the physical characteristics of land, or of the physical, biological or chemical characteristics of water.

Aesthetics means the natural scenery and appearance of any Resource Area as visually accessible to the public.

Agriculture means the same as defined in Massachusetts Wetlands Protection Act Regulations at 310 CMR 10.04.

Alter means, without limitation, the following actions when undertaken to, upon, within or affecting any of the Areas Subject to Protection Under the Ordinance and listed in Section I.C(1) of these Regulations:

- Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- Changing of existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- Drainage or other disturbance or lowering of water level or water table;
- Dumping, discharging or filling with any material that may degrade water quality;
- Placing of fill, or removal of material, that would alter elevation;
- Driving of piles, or erection, expansion or repair of buildings or structures of any kind;
- Placing of obstructions or objects in water;
- Destruction of or significant injury to vegetation, including cutting or trimming of trees and shrubs;
- Changing of water temperature, biochemical oxygen demand (BOD), or other physical, biological, or chemical characteristics of any receiving waters;
- Any activities, changes or work that may cause or contribute to pollution of any body of water or groundwater;
- Application of pesticides or herbicides;
- Destruction or alteration of wildlife habitat; and
- Incremental activities which have or may have a cumulative adverse impact on the interests protected by the Ordinance.

Applicant means a person giving notice of intention by filing an Application for Permit to remove, fill, dredge, build upon, alter, degrade or discharge into a Resource Area, or a person on whose behalf such a notice is filed.

Application for Permit means an application submitted to the Commission under the provisions of Section III.D of these regulations.

Archaeological Value means the potential that a site contains material remains or has environmental characteristics that would provide valuable information on the human or environmental history of the region, including artifacts, architecture, landscape, or biological remains.

Areas Subject to Protection Under the Ordinance means any area specified in Section I.C(1) and is used synonymously with Resource Area.

Bank means the land area which normally abuts and confines a water body, as defined in Section IV.C(2)

of these Regulations.

Beach means an unvegetated inland bank.

Best Available Measures means the most up-to-date technology or the best designs, methods or practices that have been developed and that are commercially available.

Bog means the same as defined in Section IV.D(2) of these Regulations.

Bordering means touching.

Boundary means the boundary of an Area Subject to Protection Under the Ordinance, as defined for specific Resource Areas in Sections IV.B through H of these Regulations.

Brook means the same as stream.

Buffer Zone means the same as defined in Section IV.H(2) of these Regulations.

Certificate of Compliance means a written determination by the Conservation Commission that the proposed work or a portion thereof has been completed in accordance with a Permit; issued on WPA Form 8B.

Commission means the Watertown Conservation Commission.

Conditions means those requirements set forth in a written Permit issued by the Conservation Commission for the purpose of permitting, regulating, or prohibiting any activity that removes, fills, dredges, builds upon, or alters an Area Subject to Protection Under the Ordinance.

Conservation Commission means that body composed of members lawfully appointed pursuant to M.G.L. Chapter 40, Section 8C.

Creek means the same as stream.

Date of Issuance means the date a Permit, determination, order or a certificate of compliance is mailed, as evidenced by a postmark, or the date it is hand delivered.

Date of Receipt means the date of delivery to the Commission office or to the office, home, or usual place of business of another recipient by mail or hand delivery.

Department means Massachusetts Department of Environmental Protection (DEP).

Determination of Applicability means a written finding by the Commission as to whether an area or an activity is subject to the jurisdiction of this Ordinance; issued on WPA Form 2.

Ditch is any artificially channeled stream that supports a preponderance of wetland plant species and connects with other Resource Areas.

Dredge means to deepen, widen, or excavate, either temporarily or permanently.

Educational Value means the ability of a site and its characteristics to serve as a resource in educating the public about natural environmental processes, ecology, biodiversity, geology, history, or archaeology.

Erosion Control means the prevention or reduction of the detachment or movement of soil or rock fragments by water, wind, ice or gravity.

Extended Drought means those periods, in specifically identified geographic locations, determined to be at the "Advisory" level or more severe drought level by the Massachusetts Drought Management Task Force, in accordance with the *Massachusetts Drought Management Plan*.

Extension Permit means a written extension of time within which the activity authorized by a Permit shall be completed; issued on WPA Form 7.

Fill means to deposit any material so as to raise an elevation, either temporarily or permanently.

Flood Control means the prevention or reduction of flooding and flood damage.

Groundwater means water below the earth's surface in the zone of saturation.

Historical Value means the potential that the topology, landscape, built structures, or other characteristics of a property contribute to understanding the history of Watertown or the larger region.

Hydric Soils means soils that are saturated or flooded during a sufficient portion of the growing season to develop anaerobic conditions in the upper soil layers.

Interests means the wetland values (collectively, the "Interests Protected by The Ordinance") specified in Section I.B of these Regulations.

Intermittent Streams are bodies of running water, including brooks and creeks, that move in a definite channel in the ground due to a hydraulic gradient and that are not perennial. Intermittent streams occupy discernible drainage channels, natural or artificial in origin, with or without wetland vegetation. In the unbuilt landscape, intermittent streams in headwater situations may be identified from their mapped contours, the presence of seasonal springs and wetland vegetation, and soil with hydric indicators.

Isolated Land Subject to Flooding means the same as defined in Section IV.F(2) of these Regulations.

Lake means the same as defined in Section IV.B(2) of these Regulations.

Land Subject to Flooding or Inundation by groundwater or surface water means the same as defined in Section IV.F(2) of these Regulations.

Land Under Waters means the bottom of, or land under, the surface of any river, stream, lake, or pond, as defined in Section IV.E(2) of these Regulations.

Majority means more than half of the members of the Conservation Commission then in office.

Marsh means the same as defined in Section IV.D(2) of these Regulations.

Mean Annual Flood Level of a river, pond, lake or stream means the maximum elevation of flood water that occurs on average once a year. The Mean Annual Flood Level may be determined in the field by the presence of drift line, scour marks, debris deposits, vegetation changes, abrupt topographic changes or other important indicators of flooding, at least two of which must be present, or alternatively as the estimated maximum lateral extent of flood water which will theoretically result from the statistical one year frequency storm.

Mean Annual High Water Line means the line that is apparent from visible markings or changes in the character of soils or vegetation due to the prolonged presence of water and that distinguishes between predominantly aquatic and predominantly terrestrial conditions. The Mean Annual High Water Line is often coterminous with the upper boundary of the bank; however, the characteristic land features indicative of fluvial processes shall be assessed prior to making that conclusion.

Mean Annual Low Water Level means the lowest elevation at which surface water stands or flows consistently most years, or in the case of intermittent water bodies, the elevation of surface water at a point half-way between drybed elevation and the elevation that represents the mid-point between drybed elevation and the Mean Annual High Water Line.

Notice of Intent means the written notice filed by any person intending to remove, fill, dredge or alter an Area Subject to Protection under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40, as amended.

Notice of Non-Significance means a written finding by the Commission that the area in which the proposed work is to be done or the proposed activity is not significant to any interest protected by the Ordinance; issued on Form WPA 6.

Obstructions or Objects in water means but is not limited to dams, weirs, sluiceways, jetties, groins, breakwaters, piers, docks, bulkheads, pilings, slips, and floats.

Order means an Enforcement Order issued pursuant to this Ordinance.

Order of Conditions means the document issued by the Conservation Commission containing conditions which regulate or prohibit an activity under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40, as amended. The Order may be the same as the Permit issued under the Watertown Wetlands Ordinance.

Ordinance means the 2008 Watertown Wetlands Ordinance, as it may be amended.

Parties of Interest means all abutters as determined from the most recent records of the Assessor, all owners of land directly across a body of water (including those persons in another municipality), and all abutters to abutters or other persons within 300 feet of the property line of the site of the proposed

activity.

Perennial Stream is a stream in which surface water flows throughout the year, as defined in the Massachusetts Wetlands Protection Act regulations at 310 CMR 10.58 (2).

Permit means the document issued by the Commission containing conditions which regulate or prohibit an activity under the Watertown Wetlands Ordinance; issued on WPA Form 5.

Person means 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 ordinances, administrative agency, public or quasi-public corporation or body, the Town of Watertown, and any other legal entity, and the legal representatives, agents, or assigns of any of them.

Plans means such data, maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the Commission to describe the area and/or the activity to determine the applicability of the Ordinance; or to determine the impact of the proposal upon the interests identified in the Ordinance.

Pollution Control means the prevention or reduction of contamination of surface or groundwater.

Pond means the same as defined as "Pond (inland)" in 310 CMR 10.04, except that the size threshold of 10,000 square feet shall not apply.

Presumption means an assumption made under the Ordinance and these regulations that establishes the presumed fact without the need for proof of the fact.

Private Water Supply means any source or volume of surface or groundwater demonstrated to be in any private use or demonstrated to have a potential for private use.

Protection of Fisheries means the protection of the capacity of an Area Subject to Protection Under the Ordinance to prevent or reduce contamination or damage to fish; and to serve as their habitat and nutrient source. Fish includes all species of fresh finfish.

Public Water Supply means any source or volume of surface or ground water demonstrated to be in public use or approved for water supply pursuant to M.G.L. Chapter 111 Section 160 by the Division of Water Supply of the Department of Environmental Protection or shown to have a potential for public use.

Quorum means the majority of the duly appointed members of the Commission that when duly assembled is legally empowered to transact business

Remove means to take away any type of material, thereby altering a Resource Area, either temporarily or permanently.

Request for Determination of Applicability means a written request on WPA Form 1 made by any person to the Commission for a determination as to whether an area or activity is subject to the Ordinance.

Resource Area is synonymous with Area Subject to Protection Under the Ordinance, each of which is enumerated in Section I.C(1) of this Ordinance.

River means a natural flowing body of water that empties to any ocean, lake, or river and which flows throughout the year, as defined in Section IV.B(2) of these Regulations. The term River includes perennial streams.

Riverfront Area means the same as defined in Section IV.G(2) of these Regulations.

Sedimentation Control means prevention or reduction of the collection or concentration of sediment (sand, soil or rock fragments) by the action of water, wind, ice, or gravity.

Significant means play a role. A Resource Area is significant to an interest identified in the Ordinance when it plays a role in the provision or protection, as appropriate, of that interest.

Spring means water that originates at least partly from a subsurface source and flows on the surface for a duration of at least seven consecutive days in most years, or has the potential to do so in the absence of artificial drainage measures.

Storm Damage Protection means the prevention of damage caused by water from storms, including, but not limited to: erosion and sedimentation; damage to vegetation, property or buildings; or damage caused by flooding, waterborne debris, or waterborne ice.

Stream means the same as defined in Section IV.B(2) of these Regulations, and may be perennial or intermittent.

Swamp means the same as defined in Section IV.D(2) of these Regulations.

Vernal Pool means the same as defined in Section IV.D(2) of these Regulations.

Water Bodies means lakes and ponds, as defined in Section IV.B(2) of these Regulations.

Waters means Water Bodies and Waterways.

Waterways means rivers, streams (perennial and intermittent), creeks and brooks, as defined in Section IV.B(2) of these Regulations.

Wet Meadow means the same as defined in Section IV.D(2) of these Regulations.

Wetlands means the same as defined in Section IV.D(2) of these Regulations.

Wildlife means any non-domesticated native mammal, bird, reptile, amphibian, fish, mollusk, plant, arthropod, or other invertebrate, other than a species that has been determined by the Commission to constitute a pest whose protection under the Ordinance would be a risk to humans.

Wildlife Habitat means areas having plant community composition and structure, hydrologic regime, or

other characteristics sufficient to provide food, shelter, growing conditions, migratory or overwintering sites, or nesting or breeding sites conducive to the propagation and preservation of wildlife.

Work means the same as activity.

B. ABBREVIATIONS

The following abbreviations are used in this Regulation:

CMR	Code of Massachusetts Regulations (e.g. in 310 CMR 10.00)
MassDEP	Massachusetts Department of Environmental Protection
WPA	Massachusetts Wetlands Protection Act
M.G.L.	Massachusetts General Laws

SECTION III - PROCEDURES

A. TIME PERIODS

All time periods of ten days or less specified in the Ordinance and these Regulations shall be computed using business days only. In the case of a Determination or Permit, such period shall commence on the first day after the date of issuance. All other time periods specified in the Ordinance and these Regulations shall be computed on the basis of calendar days, unless the last day falls on a Saturday, Sunday or legal holiday, in which case the last day shall be the next business day following.

B. ACTIONS BY CONSERVATION COMMISSION

Where the Ordinance states that a particular action (except receipt of a Request for Determination or Application for Permit) is to be taken by the Commission, that action is to be taken by more than half the members present at a meeting of at least a quorum. Where the Ordinance states that a Permit or notification shall be issued by the Conservation Commission, that action is to be taken by a majority of the members then in office, who need not convene as a body in order to sign said Permit or notification, provided each signer met pursuant to the Open Meeting Law, M.G.L. Chapter 39, Sections 23A-23C, when voting on the matter, or has complied with the requirements of M.G.L. Chapter 39, Section 23D.

C. DETERMINATION OF APPLICABILITY

(1) Requests for Determination of Applicability

- (a) Any person desiring to know whether or not proposed work or an area is subject to this Ordinance may submit to the Commission by certified mail or hand delivery a Request for Determination of Applicability ("Request for Determination") on WPA Form 1. The Request for Determination shall include such data and plans as are deemed necessary by the Commission, and may be combined with a Request for Determination of Applicability or Notice of Resource Area Delineation under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40, as amended, and implementing regulations
- (b) Any person filing a Request for Determination with the Commission shall at the same time give written notice thereof, by certificate of mailing, by certified mail, return receipt requested,

or by hand delivery to all parties in interest, as required by Section III.E, and shall provide the notices required in Section III.K of these Regulations.

- (c) Upon receipt of the materials referred to in Section III.C(1)(a) above, the Conservation Commission shall issue a file number. The designation of a file number shall not imply that the plans and supporting documents have been judged adequate for review of a Request for Determination or Notice of Resource Area Delineation but only that the minimum submittal requirements have been filed.

(2) Determination of Applicability

- (a) Within 21 days after the date of receipt of a completed Request for Determination of Applicability, the Commission shall hold a public hearing on the Request, subject to the provisions of Section III.J of these Regulations.
- (b) At the public hearing the Commission will determine:
 - Positively: that the area or activity is subject to the jurisdiction of the Ordinance; or
 - Negatively: that the area or activity is not subject to the jurisdiction of the Ordinance.
- (c) In issuing a Determination, the Commission may impose conditions on its determination, and the determination shall be contingent on compliance with those conditions.
- (d) The Determination, on WPA Form 2, shall be signed by a majority of the Commission and shall be sent by the Commission to the person making the request within 21 days of the close of the public hearing.
- (e) Any Resource Area delineation set forth in a Determination shall expire three (3) years after the date that the Commission takes action on such Request for Determination.
- (f) In the event of a positive Determination, an Application for Permit shall be filed for any activity subject to jurisdiction of the Ordinance, and all of the procedures set forth in Section III relative to such Applications shall apply.
- (g) For good cause, the Commission may revoke or modify a Determination issued under this Ordinance after notice to the holder, the public, abutters, and town boards, pursuant to Sections III.E and III.K of these Regulations.

D. APPLICATION FOR PERMIT

- (1) Any person who proposes to do work that will remove, fill, dredge, build upon, alter, degrade or discharge into any Area Subject to Protection Under the Ordinance shall submit an Application for Permit, WPA Form 3, and other application materials in accordance with the submittal requirements set forth in Sections III.H and IV of these Regulations, except where the Commission issues a Notice of Non-Significance on WPA Form 6.
- (2) For certain projects, Applicants may at their option submit an Abbreviated Application for Permit using WPA Form 4. This form may only be used when all four (4) of the following circumstances exist:
 - The proposed work is more than fifty linear feet from any wetland, marsh, meadow, bog or swamp; any bank; any lake, river, pond, stream, spring, brook or creek; or any land under said waters.

- The proposed work will disturb less than five hundred (500) square feet of surface area;
 - The proposed work will not require U.S Army Corps of Engineers Section 10 or Section 404 permits, or a license from the Massachusetts Department of Environmental Protection Waterways Regulation Program pursuant to M.G.L. Chapter 91; and
 - The proposed work is not part of a larger proposed development.
- (3) If the Commission determines that an Application is incomplete or improper, it shall notify the Applicant within 21 days of the date of receipt. The Commission may:
- Return the Application, in which case all required time periods for Application processing will be terminated.
 - Require that additional information or materials be submitted within a specified period of time which shall be no later than the date of the scheduled public hearing.
 - Continue the public hearing, at the Applicant's expense, for a period to be determined by the Commission.
- (4) The Commission may at its discretion accept as the Application and plans under this Ordinance the Notice of Intent and plans filed under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40, as amended.
- (5) Any person filing an Application with the Commission shall at the same time give written notice thereof to all parties in interest, as required by Section III.E, and the notices required in Section III.K of these Regulations.
- (6) Upon receipt of the application materials referred to in Section III.D(1) above, the Conservation Commission shall issue a file number. The designation of a file number shall not imply that the plans and supporting documents have been judged adequate for the issuance of a Permit but only that the minimum submittal requirements have been filed.
- (7) The Commission may request information from an Applicant after the initial Application is filed, including, but not limited to, Resource Area delineations and flood-plain delineations based on current, site specific data.
- (8) In the event that only a portion of a proposed activity lies within an Area Subject to Protection Under the Ordinance, all aspects of the activity shall be described in the detail called for by WPA Form 3, including without limitation a description and calculation of peak flow and estimated water quality characteristics of any drainage discharge from a point source (whether closed or open channel) outside an Area Subject to Protection Under the Ordinance.
- (9) An Application shall be presumed to have expired two (2) years after the date of filing unless the Applicant submits information showing that (a) good cause exists for the delay of proceedings under the Application; and (b) the Applicant has continued to pursue the project diligently in other forums in the intervening period; provided, however, that unfavorable financial circumstances shall not constitute good cause for delay.
- (10) No work shall commence until a Permit has been issued by the Commission or the Commission has issued a finding pursuant to the Ordinance that such a Permit is not required.

- (11) Any person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of the provisions of the Ordinance or in violation of any permit issued pursuant to this Ordinance shall forthwith comply with any order to restore said land to its condition prior to said violation, provided that no action, civil or criminal, shall be brought against any person unless such action is commenced within five years following the recording of the deed or date of death by which such real estate was acquired by such person.

E. NOTICES

- (1) Any person filing an Application or Request for Determination with the Commission shall at the same time give written notice thereof, by certificate of mailing, by certified mail, return receipt requested, or by hand delivery, to all parties in interest. For purposes of this section, "parties in interest" shall include all abutters as determined from the most recent records of the Town Assessors, all owners of land directly across a body of water, including those persons in another municipality, and all abutters to abutters or other persons within 300 feet of the property line.
- (2) The notice shall state that copies of the Application or Request for Determination and accompanying plans may be examined and obtained by abutters at the Watertown Conservation Commission, Town Hall, 3rd Floor, 149 Main Street, Watertown, during regular business hours. The notice shall be given using the Notification to Abutters Notice form provided in the Appendix to these Regulations, or an equivalent form.
- (3) An affidavit of the person providing such notice with a copy of the notice, mailed or delivered, shall be filed with the Commission, prior to or at the first public hearing held by the Commission.
- (4) When a person filing an Application or Request for Determination is other than the owner, that person shall ensure that the Application or Request for Determination, the notice of the hearing and the Permit or determination itself shall be sent to the owner.

F. FORMS

The forms in the Appendix, together with any requirements for the submission of Applications for Permits or Requests for Determination of Applicability which the Conservation Commission may promulgate in writing, are incorporated by reference, and are expressly made a part of these rules and Regulations.

G. FEES

- (1) Filing Fee
 - (a) Any person filing an Application for Permit or Request for Determination shall, at the same time, pay a filing fee in accordance with the following Filing Fee Schedule, except that any municipal project will be exempt from this requirement. These fees are payable at the time of Application or Request and are non-refundable. Fees are payable to the Town of Watertown.
 - (b) "Project size" for purposes of this schedule means the total land area of the project development.

<u>Project Size:</u>	<u>Fee:</u>
Less than 1,000 sq. ft.	\$ 50.00
1,000 sq. ft. to less than 2,000 sq. ft.	100.00
2,000 sq. ft. to less than 3,000 sq. ft.	150.00
3,000 sq. ft. to less than 4,000 sq. ft.	200.00
4,000 sq. ft. to less than 5,000 sq. ft.	250.00
5,000 sq. ft. to less than 6,000 sq. ft.	300.00
6,000 sq. ft. to less than 10,000 sq. ft.	400.00
10,000 sq. ft. to less than 15,000 sq. ft.	500.00
15,000 sq. ft. to less than 20,000 sq. ft.	650.00
20,000 sq. ft. to less than 30,000 sq. ft.	750.00
30,000 sq. ft. to less than 50,000 sq. ft.	850.00
50,000 sq. ft. or greater	1,000.00

(c) The Commission may waive the filing fee for an Application or Request for Determination filed by a government agency, for a Request for Determination filed by a person having no financial connection with the subject property, for any projects whose sole effect is to substantially enhance a Resource Area, or for other reasonable grounds as determined by the Commission at its discretion.

(2) Consultant Fees

- (a) Pursuant to M.G.L. Chapter 44, Section 53G, the Commission may, upon receipt of an Application or Request for Determination, or at any point during the hearing process, impose reasonable fees upon Applicants for the purpose of securing outside consultants, including engineers, wetland scientists, wildlife biologists or other experts, in order to aid in the Commission's review of proposed projects. Such funds shall be deposited with the Watertown Treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be imposed where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.
- (b) The consultant fees collected for the Commission's review of a specific Application or Request for Determination may be used only for consulting work done in connection with that Application or Request for Determination, and expenditures may be made at the sole discretion of the Commission, without further appropriation as provided in GL Ch. 44 §53G. Expenditures of accrued interest may also be made for these purposes.
- (c) Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission.
- (d) The Commission shall provide Applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the Applicant, and a request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or hand-delivered. The Applicant may withdraw the Application or Request for Determination within five (5) days of the date notice is given without incurring any costs or expenses.
- (e) The entire fee must be received before the initiation of consulting services. Failure by the Applicant to pay the requested consultant fee within ten (10) business days of the request for payment shall be cause for the Commission to declare the Application or Request for Determination administratively incomplete and to deny the Permit, except in the case of an appeal. The Commission shall inform the Applicant and the Massachusetts Department of Environmental Protection of such a decision in writing.

- (f) The Applicant may appeal the selection of an outside consultant to the Town Council, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a closely-related field. The Applicant shall make such an appeal in writing, which must be received within ten (10) days of the date that request for consultant fees was made by the Commission. Such appeal shall extend the applicable time limits for action upon the Application or Request for Determination.
- (g) When the Commission's review of a project is completed and a Permit issued, any balance in the special account attributable to that project shall be returned to the Applicant within 30 days. The excess amount, including interest, shall be paid to the Applicant or the Applicant's successor in interest. A final report of said account shall be made available to the Applicant or Applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an Applicant's successor in interest shall provide the Commission with appropriate documentation.

H. CONTENT OF APPLICATION AND PLAN REQUIREMENTS

(1) Content of Application

- (a) Plans submitted in support of an Application for Permit shall describe the proposed activity and its effect on the environment. Due regard shall be shown for all natural features such as large trees, water courses and water bodies, historic features, wildlife habitat, recreational areas, aesthetics and similar community assets.
- (b) The requirements specified here are set out as a minimum standard. The Applicant may submit, or be required to submit, any further information which will assist in the Commission's review and which is deemed necessary by the Commission to determine the effect of the proposed project on the interests protected by the Ordinance. The Commission may, at its sole discretion, relax specific requirements for small projects.
- (c) The Applicant must submit the original material to the Commission plus nine (9) copies of the following:
 - 1. Application for Permit and WPA Form 3.
 - 2. An 8.5 x 11 inch reproduction of the U.S.G.S. quadrangle sheet showing the project locus, and in the case where the project requires two (2) or more plans to show the locus, an 8.5 x 11 inch sheet clearly identifying the proposed site and work in addition to the labeled boundaries of the Resource Areas.
 - 3. The names and addresses of the record owner(s), the Applicant(s) and of all abutters, as determined by the most recent local tax list unless the Applicant shall have more recent knowledge of such abutters.
 - 4. Description of any alteration to flood storage capacity on the site; including calculations and watershed maps. If a change of flood storage capacity is proposed, demonstrate compensation storage at every elevation in the floodplain.
 - 5. Maximum and minimum groundwater elevations. The calendar dates of measurements, samplings, and percolation tests shall be included, regardless of planned sewer connections.

6. Soil characteristics in representative portions of the site.
7. A runoff plan and calculations using the Modified Rational Method (for small drainage areas of up to 5 acres) or the Soil Conservation Service (SCS) Method (for drainage areas 5 acres and greater) and based on the 10 year, 50 year, and 100 year flood frequency event periods. Calculations shall show existing and proposed runoff conditions for comparative purposes. Other methods of calculations will be considered by the Commission at its discretion based on site-specific requirements. The minimum volume of stormwater to recharge shall be in accordance with Standard 3 of the Massachusetts Stormwater Handbook.
8. Methods to be used to stabilize and maintain any embankments facing any wetland, or show slope on plans of less than or equal to 3:1.
9. A siltation and erosion control plan to be implemented during and after the work.
10. A discussion of the effect of the proposed project on aesthetics, historic values, archaeological and educational values, agriculture, and recreation, and where relevant, a description of how the best available measures for avoiding adverse impacts on these values have been incorporated in the plans for the proposed work.
11. Methods for avoiding the use of pesticides, herbicides, fertilizers and de-icing chemicals to the extent feasible.
12. Where required by the Commission, a fisheries and/or wildlife habitat study of the project area. The Commission may require such a study, to be paid for by the Applicant, whenever it deems appropriate, regardless of the type of Resource Area or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the fishery or 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 possible presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60). The best available measures shall be employed to avoid adverse impacts to fisheries and to wildlife habitat value.

(2) Plan Requirements

- (a) All drawings shall be drawn (1" = 40' max.) with the title designating the name of the project location, the name(s) of the person(s) preparing the drawings, and the date prepared, including all revision dates. Drawings must be stamped and signed by a registered Professional Engineer or a registered Land Surveyor of the Commonwealth of Massachusetts. Pencil notations will not be accepted.
- (b) Drawings must include delineations of all Resource Areas, both permanent and seasonal, natural and man-made, and should be clearly delineated as indicated below, regardless of whether or not the Applicant believes the work is subject to the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40, as amended, or the Watertown Wetlands Ordinance:
 - Open or flowing water: Light blue.
 - Marsh or swamp: Light blue with swamp symbols superimposed.
 - All land subject to flooding: Outlined with a dashed blue line.
 - All areas within 150 feet of all areas subject to protection or within 200 feet of rivers: Dashed green.

- The 50-foot no-build zone required by Section I.C(3) of these regulations.
 - Wetland boundaries indicated by numbered points corresponding to flags placed in the field.
- (c) Drawings must include delineations of all alterations proposed in or adjacent to protected Resource Areas as indicated below:
- Areas to be dredged: Outlined with red.
 - Areas to be filled: Outlined with green.
 - Areas to be altered in any way, other than dredging or filling: Outlined in black. All alterations should be clearly explained in text or footnotes.
- (d) Plans must show the following information:
- Calendar dates of measurements, samplings, contours and plan elements.
 - Existing and final contours and contour interval used, including pond bottom and stream invert contours. Datum shall be stated in NGVD base. The contour interval shall be no greater than two feet.
 - Soil characteristics in representative parts of property, including depth of peat and muck in wetlands. Include test borings or test pits.
 - Locations, sizes and slopes of existing and proposed culverts, pipes, and underground utilities.
 - A cross-section of all wetlands, showing slopes, bank and bottom treatment.
 - Existing and proposed water storage capacity of the property, including calculations and data on which the capacity is based. If filling is proposed, determine the effect of loss of storage on downstream channels and culverts.
 - Location and elevation of the benchmark used for survey.
 - Existing trees, stone walls, fences, buildings, historic sites, rock ridges and outcroppings.
 - Rim and invert elevations on catch basins.
 - Proposed on-site pollution control devices, such as hooded catch basins, oil absorption pillows, detention/retention basins, flow dissipators, bioretention basins or vegetative buffers.
 - Locations and description of erosion control devices.
 - Assessor's Map and Lot number(s).

I. REQUIREMENTS TO BE FULFILLED PRIOR TO SITE INSPECTIONS

- (1) Before site inspections can be made by the Conservation Commission or the Commission's agent, the following conditions must be met:
- (a) Stakes indicating the corners of proposed houses or other proposed structures nearest the Resource Areas.
 - (b) Stakes indicating the limit of proposed work.
 - (c) Lot number or house number shall be posted at location.
 - (d) Edges of all Resource Areas shall be delineated.
 - (e) Directions shall be made available to the Commission to locate the property.
- (2) The Application shall not be considered complete, and therefore the 21 day period to open the public hearing as provided in Section III.J of these Regulations does not begin, until the lot is staked.

- (3) Upon completion of staking, the Applicant shall notify the Commission and arrange a site inspection prior to the scheduled public hearing.

J. PUBLIC HEARINGS

- (1) A public hearing on a Request for Determination or an Application for Permit shall be held by the Commission within 21 days of receipt of the minimum submittal requirements set forth in Sections III(H) and IV of these Regulations. Notice of the time and place of the public hearing shall be given by the Commission at the expense of the person making the Request or the Applicant not less than five days prior to such hearing, by publication in a newspaper of general circulation in the Town and by mailing a Notice to the person making the Request or the Applicant, to the owner, and to all parties in interest, and by posting it in the office of the Town Clerk for not less than five (5) working days prior to the hearing.
- (2) The Commission at its discretion may combine its hearing under the Ordinance with the hearing conducted under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40, as amended.
- (3) Public hearings may be continued as follows:
 - Without the consent of the Applicant to a certain date, for reasons stated at the hearing, which may include receipt of additional information offered by the Applicant or others, request for information or plans deemed necessary by the Commission in its discretion, or comments and recommendations of other local or state boards and officials;
 - With the consent of the Applicant, to an agreed-upon date, which shall be announced at the hearing; or
 - With the consent of the Applicant for a period not to exceed 21 days after the submission of a specified piece of information or the occurrence of a specified action.
- (4) The date, time and place of said continued hearing shall be publicized in accordance with Section III.E, and notice shall be sent to any person at the hearing who so requests in writing.
- (5) In the event that the Applicant objects to a continuance, the Commission may, in its discretion, close the hearing, and take action on such information as is available.
- (6) No Application shall be considered complete until all information requested by the Commission has been submitted.

K. COORDINATION WITH OTHER BOARDS AND OFFICES

- (1) Anyone filing an Application for Permit or Request for Determination of Applicability with the Commission shall provide a Notice to Town Departments form at the same time, by certified mail or hand delivery, to the offices of the Town Council, Town Planning Board and Board of Appeals, Town Board of Health, Town Building Inspector, Town Manager, and Town Department of Public Works; and to the Conservation Commissions of any adjoining municipalities in the case of projects proposed along the borders or within 300 feet of those municipalities.

- (2) The Commission shall not take final action until such boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. Any such written comments and recommendations that are not privileged will be provided to the Applicant and owner when they are filed with the Commission. The Applicant and owner shall have the right to respond to such written comments and recommendations at a hearing of the Commission prior to final action.

L. PERMITS REGULATING THE WORK

- (1) Within 21 days of the close of the public hearing the Commission shall issue or deny the Permit on WPA Form 5 or issue a Notice of Non-Significance, WPA Form 6, if the Commission determines that the area on which the proposed work is to be done is not significant to any interest identified in the Ordinance.
- (2) If the Permit is issued, it shall impose such conditions as are necessary for the protection of all of the interests identified in the Ordinance. The Commission shall take into account the cumulative, adverse effects of loss, degradation, isolation and replication of protected Resource Areas throughout the community and watershed, resulting from past activities, permitted and exempt, and foreseeable future activities. The conditions may include, but are not limited to, a condition that portions of the land shall not be altered or built upon.
- (3) 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 mitigation. The Applicant must demonstrate to the Commission's satisfaction that the proposed mitigation fully compensates for any alteration. 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, because of the high likelihood of failure of replication.
- (4) The Permit shall prohibit any activity or portion thereof that cannot be conditioned to protect the interests identified in the Ordinance.
- (5) The Commission may waive procedures, design specifications, performance standards, or other requirements set forth in its Regulations subject to the provisions of Section I.D(2) of these Regulations.
- (6) At a minimum, the Commission shall impose the following conditions:
 - (a) No activity may proceed until the Applicant has received all other permits required by law, including but not limited to any permit required by the Watertown Board of Health, the Watertown Planning Board, The Watertown Zoning Board of Appeals, the Department of Environmental Protection or the Army Corps of Engineers.
 - (b) This Permit is granted under Section 7 of the Watertown Wetlands Ordinance subject to the conditions imposed herein. Requests for an extension of this Permit must be submitted, in

writing, no less than 30 days prior to the expiration date of this Permit.

- (c) Any substantial change made or intended to be made in the plans shall require the Applicant to file a new Application for Permit or to inquire of the Commission, in writing or by certified mail, whether the change is so substantial as to require the filing of a new Application for Permit.
 - (d) The Conservation Commission shall receive 48 business hours' advance notice, in writing, before the commencement of any activity within the Resource Areas, including site preparation and construction.
 - (e) All structures, facilities and equipment as parts of this project shall be continually operated and maintained so as to comply with this Permit. This provision applies specifically to all heavy equipment used on this project. Any leakage of oil, hydraulic fluid, gasoline or any other pollutant must be cleaned up immediately and the defective equipment responsible for said leaking shall be immediately repaired or taken off-site.
 - (f) A copy of this Permit for Work shall be kept on-site at all times during construction. All contractors and subcontractors engaged during construction shall be provided with a copy of this Permit for Work, and should be prepared to produce said Permit for Work upon the request of the Conservation Commission or its agent.
 - (g) Violation of any of these conditions shall be subject to a daily fine, pursuant to Section 12 of the Watertown Wetlands Ordinance until said violations have been corrected, to the satisfaction of the Watertown Conservation Commission.
 - (h) Work shall proceed in strict accordance to referenced plan(s) in this Permit.
 - (i) A siltation and erosion control plan shall be provided and approved by the agent for the Conservation Commission. Such controls shall remain in place and be maintained until all disturbed areas have been stabilized to the satisfaction of the Conservation Commission.
 - (j) All work shall be completed in such a manner as to prevent eutrophication or sedimentation in wetlands, water bodies or public and private water supplies.
 - (k) A Certificate of Compliance shall be requested from the Watertown Conservation Commission upon completion of the proposed work. Said request shall be accompanied by a written statement from the professional who prepared the plan certifying compliance with plans.
- (7) If the Permit is denied, it shall be for one or more of the following reasons:
- (a) For failure to meet the requirements of the Ordinance;
 - (b) For failure to submit all necessary information or plans requested by the Commission;
 - (c) For submission of substantially inaccurate or false information;
 - (d) For failure to meet design specifications, performance standards or other requirements in these Regulations;
 - (e) For failure to avoid or prevent significant cumulative impacts upon the interests protected by the Ordinance; or
 - (f) Where no conditions can be imposed that would adequately protect the interests protected by the Ordinance.
- (8) A denial of an Application "with prejudice" shall be the Commission's final decision. If the Commission denies an Application with prejudice, the Applicant may not submit a new Application for the same property for one (1) year.

- (9) A Permit shall be valid for a time specified by the Commission, and for not more than three years from the date of issuance.
- (10) 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.
- (11) Any Resource Area delineation set forth in an Application and incorporated in a Permit shall expire three (3) years after the date the Permit is issued unless a request for an extension is submitted in writing.
- (12) The Permit shall be signed by a majority of the Commission and shall be mailed or hand delivered to the Applicant, his agent or the owner of record.
- (13) A copy of the plans describing the work and the Permit shall be kept on file by the Commission and shall be available to the public at reasonable hours.
- (14) For good cause, the Commission may revoke or modify a Permit issued under this Ordinance after notice to the holder, the public, abutters, and town boards, pursuant to Sections III.E and III.K of these Regulations.
- (15) The Commission at its discretion may combine the Permit or other action on an Application issued under the Ordinance with the Order of Conditions issued under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40, as amended.

M. RECORDING

- (1) Prior to the commencement of any work permitted or required by a Permit, the Permit shall be recorded by the Applicant in the Registry of Deeds or the Land Court for the district in which the land is located within the chain of title of the affected property. In the case of recorded land, the Permit shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the Permit shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. Certification of recording shall be sent to the Conservation Commission on the form at the end of WPA Form 5. If work is undertaken without the Applicant first recording the Permit, the Conservation Commission may issue an Enforcement Order (WPA Form 9) or may itself record the Permit.
- (2) Extension Permits, amendments, and Certificates of Compliance issued by the Commission must be recorded by the Applicant in the Registry of Deeds or, if the land affected is registered land, in the registry section of the Land Court for the relevant district, before any activity covered by the Order of Conditions continues.

N. SECURITY

As part of a Permit under this Ordinance, 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 more of the methods described below:

- By a proper bond or deposit of money or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the Permit.
- By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town whereby the Permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the Applicant.

O. EXTENSIONS OF PERMITS

- (1) The Commission may at its discretion extend a Permit for one or more periods of up to three years each, using WPA Form 7. A request for an extension shall be made to the Commission in writing at least thirty (30) days prior to the expiration of the Permit.
- (2) The Conservation Commission will deny the request for an extension and require the filing of a new Application for Permit for the remaining work in the following circumstances:
 - (a) Where no work has begun on the project, except where such failure is due to an unavoidable delay, such as appeals, in the obtaining of other necessary permits;
 - (b) Where new information, not available at the time the Permit was issued, has become available and indicates that the Permit is not adequate to protect the interests identified in the Ordinance;
 - (c) Where incomplete work is causing damage to the interests identified in the Ordinance;
 - (d) Where work has been done in violation of the Permit or these Regulations; or
 - (e) Where a Resource Area delineation is no longer accurate.
- (3) If issued by the Conservation Commission, the Extension Permit shall be signed by a quorum of the Commission.
- (4) The Extension Permit, WPA Form 7, shall be recorded in the Land Court or the Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the Conservation Commission on the form at the end of WPA Form 7. If work is undertaken without the Applicant so recording the Extension Permit, the Commission may issue an Enforcement Order (WPA Form 9) or may itself record the Extension Permit.

P. AMENDMENTS TO PERMITS

- (1) The Commission may amend the conditions contained in the Permit issued under the provisions of the Ordinance. Amendments that may be approved by the Commission shall be limited to the following:

- Perfecting amendments, including, but not limited to, the correction of typographical errors and errors of reference,
 - Other amendments approved following notice and public hearing.
- (2) The Commission shall not approve any amendments to Permit conditions for work that has been completed in accordance with the provisions contained in the original Permit.
 - (3) The Commission may revoke or modify a Permit issued under the Ordinance if the Applicant and/or his/her successor(s) fail(s) to comply with the terms of the Permit.
 - (4) No revocation or substantial modification shall be voted until after the Commission has conducted a public hearing on the matter with notice to the Permit holder and any other entity entitled to notice under the original Permit Application.

Q. ENFORCEMENT

- (1) The Commission and its agents, officers, and employees shall have authority to enter upon privately owned land at reasonable times for the purpose of performing their duties under this Ordinance and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary.
- (2) The Commission shall have authority to enforce this Ordinance, its Regulations, and Permits and variances issued thereunder by violation notices, enforcement orders (WPA Form 9), and civil and criminal court actions.
- (3) Upon request of the Commission, the Town Manager and the Town Attorney shall take legal action for the enforcement under the civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.
- (4) In the alternative to criminal prosecution the Commission may elect to use the non-criminal disposition procedure set forth in M.G.L. Chapter 40 Section 21D.
- (5) Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- (6) Any person who violates any provision of this Ordinance, these Regulations, or any Permit or variance issued thereunder shall be punished by a fine of not more than \$300.00. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the Ordinance, Regulations, Permit or variance violated shall constitute a separate offense.
- (7) The Commission may, in its discretion, require any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the Watertown Wetlands Ordinance, or any Permit or order issued pursuant to the Ordinance, to either comply with said Permit or order; or restore said land to its condition prior to said violation; or take such other action as may be appropriate to correct the violation.

R. CERTIFICATES OF COMPLIANCE

- (1) Upon written request by the Applicant on WPA Form 8A, the Conservation Commission will issue or refuse to issue a Certificate of Compliance within 21 days of receipt of the request.
- (2) Prior to the issuance of a Certificate of Compliance, a site inspection shall be made by the Commission, in the presence of the Applicant or the Applicant's agent.
- (3) If a Certificate is issued, the Commission shall certify on WPA Form 8B that the activity or portions thereof described in the Application for Permit and plans has been completed in compliance with the Permit. The Certificate of Compliance shall be signed by a quorum of the Commission.
- (4) If the Commission determines, after review and inspection, that the work has not been done in compliance with the Permit, it may refuse to issue a Certificate of Compliance. Such refusal shall be issued within 21 days of receipt of a request for a Certificate of Compliance, shall be in writing, and shall specify the reasons for denial.
- (5) If a project has been completed in accordance with plans stamped by a registered professional engineer, architect, landscape architect or land surveyor, a written statement by such a professional person certifying substantial compliance with the plans and setting forth what deviation, if any, exists from the plans approved in the Permit shall accompany the request for a Certificate of Compliance.
- (6) If the Commission has not received all fees incurred in the Application process according to the fee schedule, it may refuse to issue a Certificate of Compliance until such fees are paid.
- (7) If the Permit contains conditions that continue past the completion of work, such as maintenance or monitoring, the Certificate of Compliance shall specify which, if any, of such conditions shall continue. The certificate shall also specify to what portions of the work it applies, if it does not apply to all the work regulated by the Permit.
- (8) The Certificate of Compliance shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate. A certificate of recording shall be sent to the Conservation Commission on the form at the end of WPA Form 8B. Upon failure of the Applicant to so record, the Conservation Commission may do so.

S. APPEALS

Any person aggrieved by the decision of the Conservation Commission may appeal the decision according to the provisions of M.G.L. Chapter 249 Section 4. This appeal shall be made within sixty (60) days of the date of issuance of the Commission's decision. Notice of said appeal and a copy of the complaint shall be sent, by certified mail or hand delivery, to the Conservation Commission, its authorized representatives or assigns, and the Town Counsel so as to be received within said 60 days.

T. EMERGENCIES

The Permit and Application required by this Ordinance shall not be required prior to projects necessary for the protection of the health or safety of the public, provided that (a) the work is to be performed by or has been ordered by an agency of the Commonwealth of Massachusetts or a political subdivision thereof, (b) advance notice, oral or written, has been given to the Watertown Conservation Commission prior to commencement of work or within 24 hours after commencement, (c) the Conservation Commission's duly authorized designee certifies the work as an emergency project, and (d) the work is performed only for the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency. Within 21 days of commencement of an emergency project, an Application for Permit shall be filed with the Commission for review as provided in this Ordinance. Upon failure to meet these and other requirements of the Conservation Commission, or upon the Commission's decision not to certify the work as an emergency project, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures, as appropriate.

SECTION IV - PERFORMANCE STANDARDS

A. GENERAL PROVISIONS

- (1) Sections IV.A through H define the performance standards that must be applied to protect the interests identified in Section I.B. Lands in the 100 year floodplain are subject to the performance standards for Bordering Land Subject to Flooding in Section IV.F. Lands bordering on a lake, pond, intermittent stream, brook, or creek, or spring are subject to the performance standards for Buffer Zones in Section IV.H. The functions of intermittent streams and springs relevant to the interests identified in Section I.B are protected by the performance standards in Section IV.E Land Under Waters and Section IV.H Buffer Zones.
- (2) Applicants must design and complete projects in conformance with the performance standards in this section, except where the Applicant has demonstrated by a preponderance of the credible evidence that the affected Resource Areas are not significant to the interests protected by the Ordinance, as identified in the presumptions of significance or as determined by the Commission.
- (3) The presumptions of significance stated in Sections IV.B through H are rebuttable and may be overcome upon a clear showing that the affected Resource Area does not play a role in the protection of a specified interest. In the event that the Commission deems the presumption to have been overcome, the Commission will make a written determination to this effect.
- (4) If the Commission determines that a Resource Area is significant to an interest identified in Section I.B for which no presumption is stated in Sections IV.B through H, the Commission shall impose such conditions as are necessary to contribute to the protection of such interests.
- (5) The significance of a given Resource Area to an interest not listed in the presumptions of Sections IV.B through H shall be determined on a case-by-case basis, subject to the guidance of the relevant Town agencies, e.g., the Planning Department, Historical Commission, Historic District

Commission, Recreation Department, and School Department, as enunciated in the current Master Plan, Open Space Plan, and other instruments of Town authority. When the Commission deems a Resource Area to be significant to interests beyond the presumptions of Sections IV.B through H, the Commission will make a written determination to this effect.

- (6) Any of the Resource Areas identified in Section I.C(1) may be significant to the following interests:
- (a) Recreation: Recreational values, including swimming, boating, fishing, wildlife viewing, and enjoyment of natural areas, are promoted by the flow characteristics and water quality of rivers and streams, the water levels and water quality of lakes and ponds, the health of fisheries and wildlife habitat, the condition of banks, and aesthetic values.
 - (b) Aesthetics: The aesthetic value of Watertown's wetland resources depends on maintenance of the natural scenery and appearance, including natural vegetation, of any Resource Area subject to the jurisdiction of the Ordinance that is visible to the public.
 - (c) Historical Values: The historical significance of a Resource Area may depend on preserving specific aspects of its topology, landscape, built structures, or other characteristics.
 - (d) Archaeological Values: The archaeological value of a site may depend on preserving material remains or preserving specific environmental characteristics that provide valuable information on the human or environmental history of the region, including artifacts, architecture, landscape, or biological remains.
 - (e) Educational Value: The educational values of Watertown's wetland resources may depend on preservation of the natural condition of the resources and the health of the associated fisheries and wildlife habitat.

Applicants must design and complete any projects subject to the jurisdiction of the Ordinance in such a manner as to minimize impact on these interests and values.

- (7) The Commission will impose conditions on a proposed project so as to ensure that the project is designed and completed in a manner consistent with the performance standards set forth in this section. The Commission will consider variances from specific required procedures, design specifications, performance standards, or other requirements set forth in these Regulations only as provided in Section I.D(2) or the specific exceptions listed in Sections IV.A through H of these Regulations.
- (8) In view of the Town's urbanized condition, any proposal for site development or redevelopment should be concerned not only with protecting the current condition of a Resource Area but also with the opportunity for enhancement or restoration of the Resource Areas at immediate risk or with potential for future improvement.
- (9) No person shall build or enlarge any structure, parking lot or impervious surface upon or within fifty (50) feet of any wetland, marsh, meadow, bog, swamp or vernal pool; any bank; or any river, stream (perennial or intermittent), lake, pond, or spring. The 50 foot no-build zone is in place to protect the habitat of riverine or wetland biota that are identified as protected interests under the Ordinance. This 50 foot no-build prohibition applies to the redevelopment of an existing development, unless the redevelopment significantly improves the natural capacity of the affected Resource Areas to promote the interests protected by this Ordinance. The Commission may in its sole discretion make

exceptions to this 50 foot no-build zone for the following types of projects if the Applicant demonstrates to the Commission's satisfaction that there is no reasonable alternative and that the project will have no significant adverse impacts on the interests protected by this Ordinance:

- (a) Construction, reconstruction, operation and maintenance of underground and overhead public utilities, such as electrical distribution or transmission lines, communication, sewer, water and natural gas lines, or stormwater management structures.
- (b) Construction, rehabilitation and maintenance of footpaths, bike paths and other pedestrian or nonmotorized vehicle access to or along waterways or water bodies.
- (c) Water dependent structures, including boat launching ramps and docks.
- (d) Routine maintenance and repair of existing public roadways, but not including widening a roadway.
- (e) Redevelopment of historic mill buildings.

Best available measures shall be used to minimize adverse effects of such projects during construction, and surface vegetation and contours of the affected area shall be substantially restored. The Commission has the discretion to permit with conditions or deny such activities to ensure that the interests of the Ordinance are protected.

B. RIVERS, PERENNIAL STREAMS, LAKES AND PONDS

(1) Preamble

(a) Rivers and perennial streams

Rivers and perennial streams (including brooks and creeks) are significant for groundwater protection, flood control, storm damage prevention, wildlife habitat, fisheries, and recreation. Rivers and perennial streams could also serve as private or public water supplies, now or in the future.

(b) Lakes and ponds

Lakes and ponds are significant for groundwater protection, flood control, storm damage prevention, wildlife habitat, fisheries, and recreation.

(2) Definitions, Critical Characteristics, and Boundaries

(a) Rivers and Perennial Streams

A River or Perennial Stream (including brooks or creeks) is any natural or man-made flowing body of water that empties into any ocean, lake, pond, wetland, or other perennial stream and which flows throughout the year. A River or Perennial Stream is characterized by horizontal zonation, as opposed to the vertical stratification typically associated with lakes and ponds.

The Commission shall use the criteria in the Massachusetts Wetlands Protection Regulations at 310 CMR 10.58 (2)(a)(1)(a-f) to determine whether a river or stream is perennial.

Where a River or Stream flows through a culvert it does not lose its classification as a River or Stream, regardless of the length of the culvert.

(b) Lakes

A Lake is any open body of fresh water with surface area of 10 acres or more, and shall include Great Ponds.

(c) Ponds

A Pond is any open body of fresh water with a surface area of less than 10 acres, as defined in Section II of these regulations, and may be either naturally occurring or man-made by impoundment, excavation or otherwise. Ponds shall contain standing water except for periods of extended drought.

(3) Presumption

The quantity and quality of water in Rivers, Perennial Streams, Lakes and Ponds, including the timing and variability of flow in Rivers and Perennial Streams, is critical to preservation of the interests protected by the Ordinance.

(4) Performance Standards

(a) Any work permitted by the Commission in or on a River, Perennial Stream, Lake or Pond shall not impair the following:

- The water carrying capacity within the defined channel;
- Ground and surface water quality;
- The capacity of the waterway or water body to provide breeding habitat, escape cover, ability to migrate upstream to spawn, and food for fisheries; and
- The capacity of the waterway or water body to provide wildlife habitat functions.

(b) The following activities are deemed likely to adversely affect the capacity of the waterway or water body to provide the functions listed above:

- Destruction of natural vegetation;
- Discharge of any new stormwater runoff to the waters, with the exception of that which has been treated, prior to discharge, according to the best management practices;
- Use of pesticides or herbicides in the waterbody or waterway.

(c) The Commission shall also apply the performance standards for Banks, Lands Under Water, Riverfront Areas, and Buffer Zones when assessing a project that would alter a River, Perennial Stream, Lake or Pond.

C. BANKS

(1) Preamble

Banks are likely to be significant to wildlife habitat, to groundwater supply, to erosion and sedimentation control, to flood control, to storm damage prevention, to water quality and pollution control, to the protection of wildlife habitat and fisheries, and to recreation. Where banks are composed of concrete, asphalt or other artificial impervious material, said banks are likely to be significant to flood control and storm damage protection.

Banks are areas where groundwater discharges to the surface and where, under some circumstances, surface water recharges the groundwater.

Where banks are partially or totally vegetated, the vegetation serves to maintain the bank's stability, which in turn protects water quality by reducing erosion and siltation.

Banks may also provide shade that moderates water temperatures, as well as providing breeding habitat and escape cover and food, all of which are significant to the protection of fisheries. Banks which drop off quickly or overhang the water's edge often contain numerous undercuts which are favorite hiding spots for important game species.

The topography, plant community composition and structure, and soil structure of banks together provide important food, shelter, migratory and overwintering areas, and breeding areas for wildlife. Topography plays a role in determining the suitability of banks to serve as burrowing or feeding habitat. Soil structure also plays a role in determining the suitability of banks to serve as burrowing, hibernation or other cover. Bank topography and soil structure affect the bank's vegetative structure, as well. Bushes and other undergrowth, trees, vegetation extending from the bank into the water, and vegetation growing along the water's edge are also important to a wide variety of wildlife. A number of tubers and berry bushes also grow in banks and serve as important food for wildlife. Finally, banks may provide important shelter for wildlife that needs to move between wetland areas.

Banks act to confine floodwaters during the most frequent storms, preventing the spread of water to adjacent land. Because banks confine water during such storms to an established channel, they maintain water temperatures and depths necessary for the protection of fisheries. The maintenance of cool water temperatures during warm weather is critical to the survival of many species. An alteration of a bank that allows water to frequently and consistently spread over a large and more shallow area increases the amount of property which is routinely flooded, as well as elevating water temperatures and reducing fish habitat within the main channel, particularly during warm weather.

Land within 150 feet of a bank is likely to be significant to the protection and maintenance of the bank, and therefore to the protection of the interests which banks serve to protect.

(2) Definitions, Critical Characteristics, and Boundaries

A Bank is the portion of land surface that normally abuts and confines a water body. It occurs between a water body and a bordering vegetated wetland and adjacent flood plain, or, in the absence of these, it occurs between a water body and an upland.

A Bank may be partially or totally vegetated, or it may be composed of exposed soil, gravel, stone or sand.

The upper boundary of a Bank is the first observable break in the slope or the Mean Annual Flood Level, whichever is higher. Where natural fluvial processes have been abnormally confined by fill, the first observable break in slope may be considered the top of the fill slope, as defined by the Conservation Commission. The lower boundary of a Bank is the Mean Annual Low Water Level.

(3) Presumption

The physical characteristics of a Bank, as well as its location, as described in the Sections IV.C(1) and (2), are critical to the interests protected by the Ordinance.

(4) General Performance Standards

- (a) No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of a Bank, or of land within 50 feet of any Bank, shall be permitted by the Conservation Commission, except for activity permitted under the provisions of Sections I.D(2) or IV.A(9) of these Regulations.
- (b) Any work permitted by the Commission on a Bank, or within 150 feet of the upper boundary of a bank, shall not impair the following:
- The physical stability of the Bank;
 - The water carrying capacity of the existing channel within the Bank;
 - Groundwater and surface water quality;
 - The capacity of the Bank to provide breeding habitat, escape cover and food for fisheries;
or
 - The capacity of the Bank to provide important wildlife habitat functions.

D. VEGETATED WETLANDS (WET MEADOWS, MARSHES, SWAMPS, BOGS AND VERNAL POOLS)

(1) Preamble

Vegetated wetlands are likely to be significant to public or private water supply, to ground water quality and supply, to flood control, to erosion and sedimentation prevention, to storm damage prevention, to water quality and pollution control, to wildlife habitat, and to the protection of fisheries.

The plant communities, soils and associated low, flat topography of vegetated wetlands remove or detain sediments, nutrients (such as nitrogen and phosphorus) and toxic substances (such as heavy metal compounds) that occur in run-off and flood waters. Vegetation in these wetlands helps stabilize soils and prevent erosion.

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

Vegetated wetlands bordering surface water bodies are areas where groundwater discharges to the surface and where, under some circumstances, surface water discharges to the groundwater. Contaminants introduced into said area, such as herbicides, pesticides, fertilizers and road salts, find easy access into the groundwater.

The profusion of vegetation and the low, flat topography of vegetated wetlands slow down and reduce the passage of flood waters during periods of peak flows by providing temporary flood water storage, and by facilitating water removal through evaporation and transpiration. This reduces downstream flood crests and resulting damage to private and public property. During dry periods, the water retained in vegetated wetlands is essential to the maintenance of base flow levels in rivers and streams, which in turn is important to the protection of water quality and water supply, and fisheries and wildlife habitat.

Wetland vegetation provides shade that moderates water temperatures important to fish life. Wetlands

flooded by adjacent water bodies and waterways provide food, breeding habitat and cover for fish. Fish populations in the larval stage are particularly dependent upon food provided by overbank flooding which occurs during peak flow periods (extreme storms), because most river and stream channels do not provide quantities of the microscopic plant and animal life required.

Wetland vegetation supports a wide variety of insects, reptiles, amphibians, mammals and birds which are a source of food for important fish species. Bluegill (*Lepomis macrochirus*), Pumpkinseed (*Lepomis gibbosus*), Yellow Perch (*Perca flavescens*), and Rock Bass (*Ambloplites rupestris*) feed upon nonaquatic insects. Largemouth Bass (*Micropterus salmoides*), Chain Pickerel (*Esox niger*) and Northern Pike (*Esox lucius*) feed upon small mammals, snakes, nonaquatic insects, birds and amphibians. Females of the catadromous American Eel (*Anguilla rostrata*) spend most of their lives in freshwater streams, returning to the sea to spawn. Blueback Herring (*Alosa aestivalis*), Alewife (*Alosa pseudoharengus*), and American Shad (*Alosa sapidissima*) are anadromous fishes that visit freshwater rivers from the sea to spawn. These wetlands are also important to the protection of rare and endangered wildlife species.

Vegetated wetlands, together with land within 150 feet of a vegetated wetland, serve to moderate and alleviate thermal shock and pollution resulting from runoff from impervious surfaces which may be detrimental to wildlife and fisheries.

Vernal pool habitat, including the depression itself and a 150 ft. border around the depression, is critical to wildlife habitat. The pools are essential breeding sites for certain amphibians and invertebrates, which require isolated areas that are generally flooded for at least two continuous months in the spring and/or summer and are free from fish predators. Most amphibians remain near the breeding pool during the remainder of their life cycle. Many reptiles, birds and mammals also feed there.

Land within 150 feet of a vegetated wetland is likely to be significant to the protection and maintenance of vegetated wetlands, and therefore to the protection of the interests which these Resource Areas serve to protect.

(2) Definitions, Critical Characteristics, and Boundaries

Vegetated Wetlands are freshwater wetlands. The types of freshwater wetlands are wet meadows, marshes, swamps, bogs and vernal pools. They are typically areas where the topography is low and flat, and where the soils are annually saturated. The ground and surface water regime and the plant community which occur in each type of freshwater wetland are specified in below.

The boundary of Vegetated Wetlands is as set forth in the Massachusetts Wetlands Protection Act Regulations at 310 CMR 10.55 (2) (c), except that definition for purposes of this regulation includes wetlands whether or not they border on a creek, river, stream, pond or lake and includes vernal pools. Wetland indicator plants shall include but not necessarily be limited to, in addition to those identified in 310 CMR 10.55 (2) (c), the plants listed below.

The term "bogs" as used in this section shall mean areas where standing or slowly running water is near or at the surface during a normal growing season and where a plant community has a significant portion of the ground or water surface covered with sphagnum moss (*Sphagnum spp.*) and where the plant community is made up of a significant portion of one or more of, but not limited to nor necessarily

including all of, the following plants or groups of plants: Bog Aster (*Aster nemoralis*), azaleas (*Rhododendron canadense* and *R. viscosum*), Black Spruce (*Picea mariana*), Bog Cotton (*Eriophorum spp.*), Large Cranberry (*Vaccinium macrocarpon*), Highbush Blueberry (*Vaccinium corymbosum*), American Larch (*Larix laricina*), laurels (*Kalmia angustifolia* and *K. polifolia*), Leatherleaf (*Chamaedaphne calyculata*), orchids (*Arethusa*, *Calopogon*, *Pogonia*), Pitcherplant (*Sarracenia purpurea*), sedges (*Cyperaceae*), sundews (*Droseraceae*), Sweet Gale (*Myrica gale*), Atlantic White Cedar (*Chamaecyparis thyoides*).

The term “swamps” as used in this section shall mean areas where groundwater is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface, and where a significant part of the plant community is made up of, but not limited to nor necessarily including all of, the following plants or groups of plants: alders (*Alnus*), ashes (*Fraxinus*), azaleas (*Rhododendron canadense* and *R. viscosum*), Winterberry Holly (*Ilex verticillata*), Black Spruce (*Picea mariana*), Button Bush (*Cephalanthus occidentalis*), American Elm (*Ulmus americana*), White Hellebore (*Veratrum viride*), Eastern Hemlock (*Tsuga canadensis*), Highbush Blueberry (*Vaccinium corymbosum*), American Larch (*Larix laricina*), Marsh Marigold (*Caltha palustris*), Poison Sumac (*Toxicodendron vernix*), Red Maple (*Acer rubrum*), Skunk Cabbage (*Symplocarpus foetidus*), sphagnum mosses (*Sphagnum spp.*), Spicebush (*Lindera benzoin*), Black Gum Tupelo (*Nyssa sylvatica*), Sweet Pepperbush (*Clethra alnifolia*), Atlantic White Cedar (*Chamaecyparis thyoides*), willows (*Salicaceae*), Common Reed (*Phragmites australis*).

The term “wet meadow” as used in this section shall mean areas where groundwater is at the surface for a significant part of the growing season and near the surface throughout the year and where a significant part of the plant community is composed of various grasses, sedges and rushes; made up of, but not limited to nor necessarily including all, of the following plants or groups of plants: Blue Flag (*Iris versicolor*), vervains (*Verbena*), Thoroughwort (*Eupatorium perfoliatum*), docks (*Rumex*), Purple Loosestrife (*Lythrum salicaria*), Marsh Fern (*Dryopteris thelypteris*), rushes (*Juncaceae*), sedges (*Cyperaceae*), Sensitive Fern (*Onoclea sensibilis*), smartweeds (*Polygonum*), Spotted Touch-me-not (*Impatiens capensis*).

The term “marshes” as used in this section shall mean areas where a plant community exists in standing or running water during the growing season and where a significant part of the plant community is composed of, but not limited to nor necessarily including all of the following plants or groups of plants: arums (*Araceae*), bladderworts (*Utricularia*), bur-reeds (*Sparganiaceae*), Button Bush (*Cephalanthus occidentalis*), cattails (*Typha*), duck weeds (*Lemnaceae*), Tapegrass family (*Hydrocharitaceae*), horsetails (*Equisetaceae*), hydrophilic grasses (*Gramineae*), Leatherleaf (*Chamaedaphne calyculata*), pickerel weeds (*Pontederiaceae*), pipeworts (*Eriocaulon*), pond weeds (*Potamogeton*), rushes (*Juncaceae*), sedges (*Cyperaceae*), smartweeds (*Polygonum*), Sweet Gale (*Myrica gale*), water milfoil (*Haloragaceae*), water lilies (*Nymphaeaceae*), water starworts (*Callitrichaceae*), Water Willow (*Decodon verticillatus*).

The term “vernal pool” as used in this section shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways that:

- At least in most years holds water for a minimum of two continuous months during the spring and/or summer;
- Contains at least 200 cubic feet of water at some time during most years;

- Is free of adult predatory fish populations; and
- Provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, as determined by the certification criteria described in Section II of the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program's *Guidelines for the Certification of Vernal Pool Habitat* (March, 2009).

A confined basin or depression meeting these criteria is a protected vernal pool under this Ordinance regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the Resource Area for vernal pools shall be the Mean Annual High Water Line defining the depression.

(3) Presumption

The physical characteristics of Vegetated Wetlands, as described in the foregoing Sections IV.D(1) and (2), are critical to the protection of the interests protected by the Ordinance.

The Commission will presume that all areas meeting the definition of "vernal pools" under Section IV.D(2), including the adjacent area, perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not play a role in the protection of wildlife habitat. Any formal evaluation should be performed by an individual meeting the qualifications set out in the wildlife habitat section of the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.60). In the event that the presumption is deemed to have been overcome, the Conservation Commission shall make a written determination to this effect, setting forth its grounds.

(4) General Performance Standards

- (a) No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of a Vegetated Wetland, or of land within 50 feet of a Vegetated Wetland, shall be permitted by the Conservation Commission, except as allowed under Sections I.D(2) or IV.A(9) of these Regulations.
- (b) Any proposed work, permitted by the Commission, in a Vegetated Wetland or within 150 feet of a Vegetated Wetland shall not destroy any portions of said Vegetated Wetland, nor shall the proposed work impair in any way the Vegetated Wetland's ability to perform any of the functions described in Section IV.D(1).

E. LAND UNDER WATERS

(1) Preamble

Land under water bodies and waterways (collectively referred to as "land under waters") is likely to be significant to groundwater supply, to flood control, to storm damage prevention, to water quality and pollution control, and to the protection of fisheries and wildlife habitat. Where such land is composed of concrete, asphalt or other artificial impervious material, said land is likely to be significant to flood control and storm damage prevention.

Where land under waters is composed of pervious material, such land represents a point of exchange

between surface and groundwater.

The physical nature of land under waters is highly variable, ranging from deep organic and fine sedimentary deposits to rocks and bedrock. The organic soils and sediments play an important role in the process of detaining and removing dissolved and particulate nutrients (such as nitrogen and phosphorus) from the surface water above. They also serve as traps for toxic substances (such as heavy metal compounds).

Land under waters, in conjunction with banks, serves to confine floodwater within a definite channel during the most frequent storms. Filling within this channel blocks flows, which in turn causes backwater and overbank flooding during such storms. An alteration of land under waters that causes water to frequently spread out over a larger area at a lower depth increases the amount of property which is routinely flooded. Additionally, such an alteration may result in an elevation of water temperature and a decrease in habitat in the main channel, both of which are detrimental to fisheries, particularly during periods of warm weather and low flows.

Land under rivers, streams, creeks and brooks that is composed of gravel allows the circulation of cold, well oxygenated water necessary for the survival of game fish species. River, stream and creek bottoms with a diverse structure composed of gravel, large and small boulders and rock outcrops provide escape cover and resting areas for game fish species. Such a bottom type also provides areas for the production of aquatic insects essential to fisheries.

The wildlife habitat value of intermittent streams and ditches is described in Section IV.H(1).

The plant community composition and structure, hydrologic regime, topography, soil composition, and water quality of land under water bodies provide important food, shelter, migratory and overwintering areas, and breeding areas for wildlife. Certain submerged, rooted vegetation is eaten by water fowl and some mammals. Some amphibians (as well as some invertebrate species eaten by vertebrate wildlife) attach their eggs to such vegetation. Some aquatic vegetation protruding out of the water is also used for nesting, and many species use dead vegetation resting on land under water but protruding above the surface for feeding and basking. Soil composition is also important for hibernation and for animal tunnels partly under water. Hydrologic regime, topography, and water quality not only affect vegetation, but also determine which species feed in the area.

(2) Definitions, Critical Characteristics, and Boundaries

Land Under Waters is the land beneath any River, Perennial or Intermittent Stream (including creek or brook), Lake, Pond or Ditch. Said land may be composed of organic muck or peat, fine sediments, gravel, rock, or bedrock.

Intermittent Stream and Ditch are defined in Section II of these regulations.

The boundary of Land Under Waters is the Mean Annual Low Water Level.

(3) Presumption

The physical characteristics and location of Land Under Waters specified in the foregoing Section IV.E(1) are critical to the protection of the interests specified in Section I.B.

(4) General Performance Standards

No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, dredging, altering or degrading Land Under Water shall be permitted by the Commission except as allowed under Section I.D(2) or Section IV.A(9) of these Regulations, or except for

- Streamflow and streambed modifications that enhance the habitat value of the resource, such as weir or fish ladder reconstruction or benthic regrading to support fish migration; or
- A water-dependent structure for which the Applicant demonstrates to the Commission's satisfaction that there is no reasonable alternative and that the project will have no significant impacts on the interests protected by this Ordinance.

Any work, permitted by the Commission, within Land Under Waters shall not impair:

- The water-carrying capacity within the defined channel;
- Ground and surface water quality;
- The capacity of said land to provide breeding habitat, escape cover and food for fisheries; and
- The capacity of said land to provide important wildlife functions.

F. LAND SUBJECT TO FLOODING (BOTH BORDERING AND ISOLATED AREAS)

(1) Preamble

(a) Bordering Land Subject to Flooding:

Bordering land subject to flooding is an area which floods from a rise in a bordering waterway or water body. Such areas are likely to be significant to flood control and storm damage prevention. In addition, where such areas are underlain by pervious materials, they may be significant to public or private water supply and to groundwater supply.

Bordering land subject to flooding provides a temporary storage area for flood water which has overtopped the bank of the main channel of a creek, river or stream or the basin of a pond or lake. During periods of peak run-off, flood waters are both retained (i.e., slowly released through evaporation and percolation) and detained (i.e., slowly released through surface discharge) by bordering land subject to flooding. Over time, incremental filling of these areas causes increases in the extent and level of flooding and in damage to public and private properties.

Certain portions of bordering land subject to flooding are also likely to be significant to the protection of wildlife habitat. These include all areas in the ten year floodplain or within 150 feet of a Bank or Vegetated Wetland.

The hydrologic regime, plant community composition and structure, topography, soil composition and proximity to water bodies and bordering vegetated wetlands of these bordering ordering lands subject to flooding provide important food, shelter, migratory and overwintering areas, and breeding areas for wildlife. Nutrients from flood waters, as well as the inundation of floodplain soil, create important wildlife habitat characteristics, such as richness and diversity of soil and vegetation. A great many species require or prefer habitat which is as close as possible to water and/or has moist conditions, characteristics generally present on lower floodplains. Similarly, lower floodplains, because of their proximity to water and vegetated wetlands, can provide important shelter for wildlife which needs to migrate between such areas, or between such areas and uplands. The “edge” where floodplain habitat borders vegetated wetlands or water bodies is frequently very high in wildlife richness and diversity. Similar “edges” may be found elsewhere in the lower floodplain, where differences in topography and frequency of flooding have created varied soil and plant community composition and structure.

(b) Isolated Land Subject to Flooding

Isolated land subject to flooding is an isolated depression or a closed basin that serves as a ponding area for run-off or high groundwater which has risen above the ground surface. Such areas are likely to be locally significant to flood control and storm damage prevention. In addition, where such areas are underlain by pervious materials, they may be significant to public or private water supply and to groundwater supply. Where such areas are underlain by pervious material covered by a mat of organic peat and muck, they are also likely to be significant to water quality and pollution control. Finally, where such areas are vernal pool habitat, they are significant to the protection of wildlife habitat.

Isolated land subject to flooding provides a temporary storage area where run-off and high groundwater pond and slowly evaporate or percolate into the substrate. Filling causes lateral displacement of the ponded water onto contiguous properties, which may in turn result in damage to said properties.

Isolated land subject to flooding, where it is underlain by pervious material, provides a point of exchange between ground and surface waters. Contaminants introduced into said area, such as herbicides, pesticides, fertilizers and road salts, find easy access into the groundwater and neighboring wells. Where these conditions occur and a mat of organic peat or muck covers the substrate of the area, said mat serves to detain and remove contaminants that might otherwise enter the groundwater and neighboring wells.

Isolated land subject to flooding may also be important habitat for some rare plants.

(2) Definitions, Critical Characteristics, and Boundaries

(a) Bordering Land Subject to Flooding:

Bordering Land Subject to Flooding is an area with low, flat topography adjacent to and inundated by flood waters rising from Rivers, Streams (including creeks and brooks), Lakes or Ponds. It extends from the banks of these waterways and water bodies; where a Bordering Vegetated Wetland occurs, the Bordering Land Subject to Flooding extends from said wetland.

The boundary of Bordering Land Subject to Flooding is the estimated maximum lateral extent of flood

water which will theoretically result from the statistical 100-year frequency storm.

The boundary of the ten (10) year floodplain is the estimated maximum lateral extent of flood water which will theoretically result from the statistical 10-year frequency storm.

(b) Isolated Land Subject to Flooding:

Isolated Land Subject to Flooding is any isolated depression or closed basin without an inlet or an outlet. It is an area that at least once a year confines standing water, to a volume of at least ¼ acre-foot and to an average depth of at least six inches.

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. In the event of a conflict of opinion regarding the extent of water confined in an Isolated Land Subject to Flooding, the Applicant may submit an opinion based on the requirements and procedures specified in the Massachusetts Wetlands Protection regulations 310 CMR 10.57 (2)(b)(3).

(3) Presumption

All land meeting the definition of Bordering or Isolated Land Subject to Flooding is presumed to substantially promote the purposes of the Ordinance.

The topography, location and condition of any Bordering Land Subject to Flooding is critical to flood control, storm damage prevention, erosion and sedimentation control, water quality and pollution prevention. Bordering Land Subject to Flooding within the 10 year floodplain or within 150 ft. of a bank or bordering vegetated wetland is presumed to be significant to wildlife protection.

Isolated Land Subject to Flooding is significant to flood control and storm damage prevention. Where underlain by a pervious layer, Isolated Land Subject to Flooding is significant to groundwater protection. Where underlain by a pervious layer covered by a mat of organic peat or muck, Isolated Land Subject to Flooding is likely to be significant to pollution prevention.

(4) General Performance Standards

(a) Bordering Land Subject to Flooding:

1. Compensatory storage shall be provided for all flood storage volume that will be lost as a result of a proposed project within Bordering Land Subject to Flooding, unless the Applicant can demonstrate with a preponderance of credible evidence that the loss will not contribute incrementally to an increase in the horizontal extent and level of flood waters during peak flows.
2. Compensatory storage shall mean a volume not previously used for flood storage and shall be incrementally equal to the theoretical volume of flood water at each

elevation, up to and including the 100-year flood elevation, which would be displaced by the proposed project. Such compensatory volume shall have an unrestricted hydraulic connection to the same water body. Further, such compensatory volume shall be provided within the same reach of a river, stream or creek.

3. Work within Bordering Land Subject to Flooding, including work required to provide the above-specified compensatory storage, shall not restrict flows so as to cause an increase in flood stage or velocity.
4. Work in those portions of Bordering Land Subject to Flooding found to be significant to the protection of wildlife habitat shall not impair its capacity to provide important wildlife habitat functions.

(b) Isolated Land Subject to Flooding:

Any proposed project in Isolated Land Subject to Flooding shall not result in the following:

- Flood damage due to filling which causes lateral displacement of water that would otherwise be confined within said area;
- An adverse effect on public and private water supply or groundwater supply, where said area is underlain by pervious material; or
- An adverse effect on the capacity of said area to prevent pollution of the groundwater, where the area is underlain by pervious material which in turn is covered by a mat of organic peat and muck.

G. RIVERFRONT AREA

(1) Preamble

Riverfront areas are likely to be significant to protect groundwater; to provide flood control; to prevent storm damage; to protect water quality and provide pollution control; to protect wildlife habitat; to protect fisheries; and to provide recreational values. Land adjacent to rivers and streams can protect the natural integrity of these water bodies.

The presence of natural vegetation within riverfront areas is critical to sustaining rivers as ecosystems and providing these public values. The riverfront area can prevent degradation of water quality by filtering sediments, toxic substances (such as heavy metals), and nutrients (such as phosphorus and nitrogen) from stormwater, nonpoint pollution sources, and the river itself. Sediments are trapped by vegetation before reaching the river. Nutrients and toxic substances may be detained in plant root systems or broken down by soil bacteria. Riverfront areas can trap and remove disease-causing bacteria that otherwise would reach rivers and coastal estuaries where they can contaminate shellfish beds and prohibit safe human consumption. Natural vegetation within the riverfront area also maintains water quality for fish and wildlife.

Within riverfront areas, surface water interaction with groundwater significantly influences the stream ecosystem. The site of interaction between surface and groundwater at or near a river, known as the "hyporrhoeic zone," sustains communities of aquatic organisms which regulate the flow of nutrients, biomass and the productivity of organisms including fish within the stream itself. The hyporrhoeic zone extends to greater distances horizontally from the channel in large, higher order streams with alluvial

floodplains, but the interaction within this zone is important in smaller streams as well.

By providing recharge and retaining natural flood storage, as well as by slowing surface water runoff, riverfront areas can mitigate flooding and damage from storms. The root systems of riverfront vegetation keep soils porous, increasing infiltration capacity. Vegetation also removes excess water through evaporation and transpiration. This removal of water from the soil allows for more infiltration when flooding occurs. Increases in storage of floodwaters can decrease peak discharges and reduce storm damage. Vegetated riverfronts also dissipate the energy of storm flows, reducing damage to public and private property.

Riverfront areas are critical to maintaining thriving fisheries. Maintaining vegetation along rivers promotes fish cover, increases food and oxygen availability, decreases sedimentation, and provides spawning habitat. Maintenance of water temperatures and depths is critical to many important fish species. Where groundwater recharges surface water, loss of recharge as a result of impervious surfaces within the riverfront area may aggravate low flow conditions and increase water temperatures. In some cases, summer stream flows are maintained almost exclusively from groundwater recharge. Small streams are most readily impacted by removal of trees and other vegetation along the shore.

Riverfront areas are important wildlife habitat, providing food, shelter, breeding, migratory, and overwintering areas. Even some predominantly upland species use and may be seasonally dependent on riverfront areas. Riverfront areas promote biological diversity by providing habitats for an unusually wide variety of upland and wetland species, including Bald Eagle, Osprey, and Belted Kingfisher. Large dead trees provide nesting sites for bird species that typically use the same nest from year to year. Sandy areas along rivers may serve as nesting sites for turtles and water snakes. Riverfront areas provide food for species, such as Wood Turtle, that feed and nest in uplands but use rivers as overwintering areas. Riverfront areas provide corridors for the migration of wildlife for feeding or breeding. Loss of this connective function, from activities that create barriers to wildlife movement within riverfront areas, results in habitat fragmentation and causes declines in wildlife populations. Wildlife must also be able to move across riverfront areas, between uplands and the river.

Vernal pools are frequently found in depressions in riverfront areas. These pools are essential breeding sites for certain amphibians that require isolated, seasonally wet areas without fish predators. Most of these amphibians require areas of undisturbed woodlands as habitat during the non-breeding seasons. Some species require continuous woody vegetation between woodland habitat and the breeding pools. Depending on the species, during non-breeding seasons, these amphibians may remain near the pools or travel one-fourth mile or more from the pools. Reptiles, especially turtles, often require areas along rivers to lay their eggs. Since amphibians and reptiles are less mobile than mammals and birds, maintaining integrity of their habitat is critical.

(2) Definitions, Critical Characteristics, and Boundaries

A Riverfront Area is the area of land between a river's mean high water line and a parallel line measured horizontally 200 ft. outward from the mean high water line. Measured horizontally means that the Riverfront Area extends at a right angle to the Mean Annual High Water Line rather than along the surface of the land. Rivers include Perennial Streams. The Riverfront Area may include or overlap other Resource Areas or their Buffer Zones. The Riverfront Area does not itself have a Buffer Zone.

Where a River runs through a culvert more than 200 feet in length, the Riverfront Area stops at a perpendicular line at the upstream end of the culvert and resumes at the downstream end.

Where a River contains islands, the Riverfront Area extends landward into the island from and parallel to the Mean Annual High Water Line.

The boundary of the Riverfront Area is a line parallel to the Mean Annual High Water Line, located at the outside edge of the Riverfront Area. At the point where a stream becomes perennial, the Riverfront Area begins at a line drawn as a semicircle with a 200 foot radius around the point and connects to the parallel line perpendicular to the Mean Annual High Water Line which forms the outer boundary.

(3) Presumption

Where a proposed activity involves work within the Riverfront Area, the Commission shall presume that the area is significant to groundwater; flood control; erosion and sedimentation control; storm damage prevention; water quality and pollution control; wildlife habitat; fisheries; and recreation.

(4) General Performance Standards

- (a) No Permit issued hereunder shall approve any activities unless the Applicant, in addition to meeting the otherwise applicable requirements of this Ordinance, has proved by a preponderance of the evidence that:
 - There is no practicable alternative to the proposed project with less adverse effect, and
 - Such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or interests protected by this Ordinance.
- (b) 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 technology, costs of the alternatives, and overall project costs.
- (c) The Commission will apply the methods and criteria for alternatives analyses specified in the Massachusetts Wetlands Protection Act regulations at 310 CMR 10.58 (4) (c).
- (d) The work must have no significant adverse impact on the capacity of the Riverfront Area to protect the interests protected by the Ordinance.

H. BUFFER ZONES

(1) Preamble

Buffer zones are essential for wetland protection. A buffer zone adjacent to a wetland Resource Area reduces adverse impacts to the wetland functions and values from nearby activities. Naturally vegetated riparian areas act as filters to intercept and absorb nutrients, sediment and other pollutants carried by runoff from adjacent land, roads and rooftops. Without the protection afforded by the riparian areas, rivers, streams and groundwater are subjected to increased levels of pollution, and the quality of wetlands

and water bodies can be degraded.

Vegetated buffers may not be sufficient to remove large volumes of stormwater runoff. Compliance with the Massachusetts Stormwater Regulations and any Watertown Stormwater Management Regulations is also required to protect such Resource Areas from the adverse impacts of stormwater runoff.

Buffer zones may also provide valuable wildlife habitat. Such uplands adjacent to wetlands and waters may provide food, cover and travel for wildlife, especially if connected to additional habitat.

Buffer zones reduce the adverse impacts of human disturbance by blocking noise and glare, by providing visual separation, and by preventing dumping of debris or cutting or trampling of vegetation.

A project undertaken within a buffer zone has a high likelihood of causing some alteration of the adjoining wetland Resource Area, either immediately, as a consequence of construction, or over a longer period of time, as a consequence of daily operation of the completed project. Adverse impacts from construction and on-going activities in the buffer zone can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. Development on or adjacent to steep slopes may degrade Resource Areas due to increased potential for erosion and sedimentation.

The potential for adverse impacts to Resource Areas from work in the buffer zone depends on the extent of the work, the proximity to the Resource Area, the buffer zone slope, soil composition, and the extent and type of natural vegetation. Interaction of all these elements determines the effectiveness of the buffer zone in protecting adjacent Resource Areas and providing wildlife habitat.

In addition to buffer zones adjacent to Rivers, Perennial Streams, Lakes, Ponds and Vegetated Wetlands, buffer zones adjacent to two additional resources -- intermittent streams and springs -- are required to preserve the interests protected by the Ordinance. Intermittent streams (including brooks and creeks) in their natural state are important for groundwater protection, storm damage prevention, flood control, wildlife habitat, and recreation. During spring, summer, and fall, these streams disperse snow melt and storm runoff across the landscape, thereby preventing dangerous volumes and flows from spilling over roadways and properties. This broad dispersal also allows for larger volumes to infiltrate the ground, recharging groundwater supplies.

Intermittent streams and springs are an essential source of food and water for wildlife, and are often the only source of water in some areas. The moist soils that border intermittent streams and springs are often significantly richer in herbs and flowering/fruitlets plants, the base trophic level of food, than surrounding upland areas. For example, groundwater seepage keeps the soil frost-free longer than in drier uplands, thus extending the time during which conditions are favorable to biotic activity,

During all seasons, but especially in winter and spring, intermittent streams act as essential corridors for animal movement when food is scarce.

For the above reasons the upland areas surrounding intermittent streams and springs may be heavily utilized by wildlife for living space, breeding, feeding, migrating, dispersal, and security. Accordingly, the Ordinance protects land under intermittent streams of all forms (as defined in Section II of these regulations) and the adjacent upland resource within 150 feet of intermittent streams and springs.

Many of Watertown's intermittent streams are no longer in their natural state. Watertown's surface drainage once comprised an intricate pattern of small channels originating in the upland as swales, some of these fed by seasonal springs. In these headwaters, all channel flow was intermittent, but as channels converged downslope, some maintained perennial flow before discharging to a major water body, most notably the Charles River. Today, only a few of these channels remain above ground. Headwaters persist, primarily in the Oakley Country Club property, as vestigial features with reduced surface and subsurface (groundwater) flow and little or no wetland vegetation. Farther downslope, open-air segments of stream appear briefly in a few places, e.g. traversing the Gore Estate, behind the Watertown Mall, and downgradient of Sawins Pond. As the Town was developed, most surface drainage became incorporated in the underground storm drainage system, for rapid transport to discharge points along the Charles River.

New development and redevelopment provides an opportunity to restore some of the lost functions of intermittent streams, however. The Commonwealth's stormwater management guidelines encourage improving on present conditions, as opportunities arise. At a minimum, any proposed development or change of use in the vicinity of an extant intermittent stream and its 150-foot buffer must be able to demonstrate that the project will substantially enhance the interests protected by the intermittent stream Resource Area. Furthermore, wherever the original course of an altered intermittent stream can be determined, proposed activities or changes of use within the 150-foot protective buffer around this course should consider restoring original surface and subsurface flow to an approximation of its former state. Although now chiefly diverted into drain pipes and eventually the Town storm drainage system, intermittent streams may still be approximately traced in their course downgradient by the frequency of reported basement flooding and the evidence of old maps

(2) Definitions, Critical Characteristics, and Boundaries

The Buffer Zone is any land between the outer boundary of any Vegetated Wetland (including marsh, wet meadow, bog, swamp, or vernal pool), Bank, Lake, Pond, Spring, or Intermittent Stream and a parallel line 150 horizontal feet from the boundary of said resources, regardless of whether the land borders surface waters.

Intermittent Stream and Spring are defined in Section II of these regulations.

(3) Presumption

In reviewing activities within the Buffer Zone, the Commission shall presume the Buffer Zone is important to the protection of adjacent Resource Areas, and therefore of the interests to which those Resource Areas are significant. Moreover, the Commission shall presume that Buffer Zones are significant to wildlife habitat values. These presumptions are rebuttable and may be overcome in part by a showing by a preponderance of the evidence that:

- The nature of the proposed work, special design measures, construction controls, or site conditions are adequate to prevent any alteration of an adjacent Resource Area, or
- Any such alteration will cause no material or cumulative harm to the functions and values of an adjacent Resource Area, or
- Some or all of the Buffer Zone is not significant to the protection of wildlife habitat.

(4) General Performance Standards

- (a) No work in a Buffer Zone should alter an adjacent Resource Area (including Intermittent Streams or Springs), or if an adjacent Resource Area is altered by work in the Buffer Zone, the alteration must comply with the applicable performance standards for the altered Resource Area and any other conditions the Commission may require to enforce those performance requirements.
- (b) The Commission may consider the extent of work, the proximity of the work to the Resource Area, the presence of steep slopes, the extent to which the Buffer Zone has already been developed, the extent of natural vegetation, and other factors that affect the potential impact of work in the Buffer Zone on Resource Areas. Where prior development of the Buffer Zone is extensive, the Commission may require measures such as the restoration of natural vegetation adjacent to the Resource Area to protect the interests of the Ordinance.
- (c) No above ground or underground storage tanks containing hazardous materials or gasoline, oil or other fuels may be placed within 100 feet of an adjacent protected Resource Area (including Intermittent Streams and Springs.)
- (d) The following activities will be prohibited within 25 feet of an adjacent Resource Area (including Intermittent Streams and Springs):
 - Removal of trees or surface vegetation, except for selective pruning or thinning, removal of hazardous trees, replacement of non-native or invasive species with native plantings, or replacement of lawn or other significantly artificial landscape with indigenous groundcover, trees and/or shrubs.
 - Use of fertilizers or pesticides.
 - Dumping of grass clippings, brush, leaves, or other debris or trash.
 - Storage of scrap metal, construction materials or equipment, or other materials.
 - Piling of road salt, sand or snow.
 - Vehicle parking.
- (e) The Commission will not approve any alteration within 50 feet of a vernal pool, except under the provisions of Section I.D(2) or Section IV.A(9) of these Regulations. Such a waiver will at a minimum impose the same conditions and performance standards identified above for areas within 25 feet of protected Resource Areas.
- (f) Properties not currently in compliance with the performance standards for Buffer Zones will not be permitted to increase their degree of non-conformance.
- (g) The Commission may, at its sole discretion, require greater than the minimum setback distances specified above.
- (h) Erosion and sedimentation controls must be utilized for any construction within the Buffer Zone that will result in exposed soils. No silt or sediment may be allowed to enter a Resource Area during or subsequent to construction.
- (i) Limited projects in the Buffer Zone: The Commission may, at its sole discretion, waive specific requirements in this section for execution in the Buffer Zone of the following types of projects, where there are no reasonable alternatives with fewer adverse effects:
 - Construction, reconstruction, operation and maintenance of underground and overhead public utilities, such as electrical distribution or transmission lines,

communication, sewer, water or natural gas lines, and stormwater management structures.

- Construction, rehabilitation and maintenance of footpaths, bikepaths and other pedestrian or nonmotorized vehicle access to or along waterways or water bodies.
- Operation and routine maintenance, but not enlargement, of water dependent structures, including boat launching ramps and docks.
- Routine maintenance and repair of existing public roadways, but not including widening a roadway.

Best available measures shall be used to minimize adverse effects of such limited projects during construction, and surface vegetation and contours of the affected area shall be substantially restored. The Commission has the discretion to permit with conditions or deny such activities to ensure that the interests of the Ordinance are protected.

APPENDIX: FORMS

- Checklist for filing a Notice of Intent (NOI) or a Request for Determination of Applicability (RDA) or Other Wetlands Permit
- Application for Permit/Request for Determination – Watertown Wetlands Ordinance
- Watertown Fee Calculation and Transmittal Form
- Notification to Abutters Form

The following forms are available at <http://www.mass.gov/dep/water/approvals/wwfoms.htm>

WPA Form #	Title
1	Request for Determination of Applicability
2	Determination of Applicability
3	Notice of Intent
4	Abbreviated Notice of Intent
4A	Abbreviated Notice of Resource Area Delineation
4B	Order of Resource Area Delineation
5	Order of Conditions
6	Notification of Non-Significance
8A	Request for Certificate of Compliance
8B	Certificate of Compliance
9	Enforcement Order
	WPA Emergency Certification Form
	Stormwater Management Form

