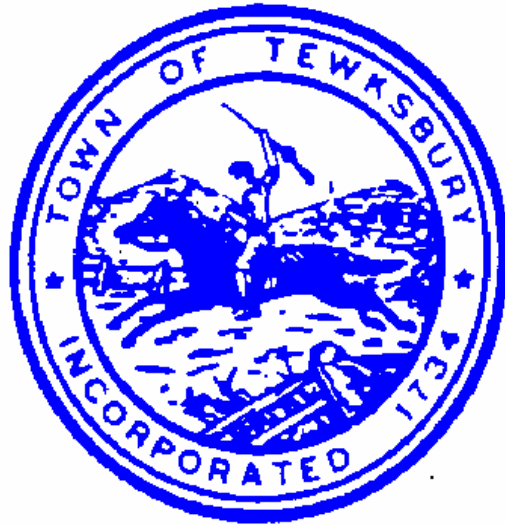


TOWN OF TEWKSBURY



CONSERVATION COMMISSION WETLANDS PROTECTION BYLAW OCTOBER 2009

CONSERVATION COMMISSION WETLANDS PROTECTION BYLAW

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Record of Revisions:

	Description	Town Meeting	Attorney General
1.	Add new Section 18.04.40, Exceptions (3)	Article 14-10/7/03 STM	11/7/03
2.	Amend entire Bylaw	Article 6-5/5/09 STM	9/30/09

18.04.010 Purpose

The purpose of the Wetlands Protection Bylaw (“Bylaw”) is to protect the wetlands, related water resources, and adjoining land areas in the Town of Tewksbury (“Town”). The present

state law is the Wetlands Protection Act, M.G.L. c.131, s.40, as amended (“Act”). The act set minimum standards for every city and town in the Commonwealth of Massachusetts to follow. This Bylaw will enable the Town to protect local resource areas and to reduce any significant or cumulative effect upon the wetlands in the Town.

The purpose of this Bylaw is to control activities deemed by the Tewksbury Conservation Commission to have a significant or cumulative effect upon wetland values, including but not limited to, the following: public and private water supplies, groundwater quantity, quality and supply, surface water quantity and quality, flood control, erosion and sedimentation control, prevention of storm damage, prevention and control of pollution, wildlife habitat, rare species habitat including rare plant and animal species, fisheries, agriculture and aquaculture and recreation values deemed important to the community. (collectively, the "wetland values protection by this Bylaw").

18.04.020 Definitions

The definitions given in 310 CMR 10.04 for the following terms shall apply to this Bylaw and statutory amendment protecting wildlife habitat in wetland resource areas enacted July 16, 1986 (Section 44 of Chapter 44 of Chapter 231 of the Acts of 1986), amending Section 40 of Chapter 131 of Massachusetts General Laws, amendments and regulations promulgated there under:

dredge, fill flood control, freshwater wetlands, lake, bordering land subject to flooding, marsh, meadow, private water supply, public water supply, river.

The following definitions shall apply in the interpretation and implementation of this Bylaw. Except as otherwise provided herein or in the Commission's regulations, the definitions of terms shall be as set fourth in the Wetlands Protection Act.

“Alter” includes, without limitation, the following activities, whether temporary or permanent, when taken to, upon or within, or when they affect local resource areas protected by this Bylaw:

- (1) Removing, excavating, or dredging of soil, sand, gravel, or aggregate materials of any kind;
- (2) Changing preexisting drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- (3) Draining or otherwise disturbing the ground or surface water level or water table;
- (4) Dumping, discharging, or filling with any material which may degrade water quality;
- (5) Placing or removing of fill or other material, which would alter the elevation or land surface;

- (6) Driving piles, erecting or repairing buildings (residential or commercial) or structures, as defined in the regulations implementing the bylaw, of any kind;
- (7) Placing of obstructions in water, whether or not they interfere with the flow of water;
- (8) Changing water temperature, biochemical oxygen demand, or any other physical, biological, or chemical characteristics of the water;
- (9) Destroying plant life, including cutting trees and shrubs;
- (10) Conducting any work or activity which may cause or tend to contribute to pollution of any body of water or groundwater;
- (11) Applying pesticides or herbicides;
- (12) Any activities, changes or work which cause alteration of wildlife habitat; and
- (13) Any activities, changes or works which pollute or cause displacement of any body of water or groundwater.
- (14) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

“Abutter” means the owner of any property any portion of which lies within 300 feet radially from any lot line of the subject property including owners of land directly opposite on any public or private street or way including any in another municipality or across a body of water. In the case of property that has frontage on a pond, abutters shall include all those properties with frontage on the pond or pond association if in existence.

“Administrative Orders” shall include but not limited to enforcement orders, violation notices, orders of conditions, orders of resource delineation and Certificates of Emergency.

“Bank” means the land area which normally abuts and confines a body of water; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

“Bogs” are areas where standing or slowly running water is near or at the surface during a normal growing season and where a vegetational community has a significant portion of the ground or water surface covered with sphagnum moss (*Sphagnum*), and where the vegetational 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: aster (*Aster nemoralis*), azaleas (*Rhododendron condense* and *R. viscous*), black spruce (*Picea Mariana*) bog cotton (*Eriophorum*), cranberry (*Vaccinium macrocarpon*) high bush berry (*Vaccinium corymbosum*), larch (*Larix laricina*) laurels (*Kalmia angustifolia* and *K. polifolia*), leatherleaf (*Chamaedaphne calyculata*), orchids (*Arethusa*, *Calopogon*, *Pogonia*), pitcher plants (*Sarracenia purpurea*),

sedges (Cyperaceae), sundews (Droseraceae), sweet gale (myrica gale) white cedar (Chamaecyparis thyoides).

“Bordering land subject to flooding” is an area with low, flat topography adjacent to and inundated by flood waters rising from creeks, streams, rivers, ponds (natural or created) or lakes. The boundary of bordering land subject to flooding is the one-hundred –year floodplain. It extends from the outer edge of a bank or bordering vegetated wetland.

“Bordering Vegetated Wetlands” are freshwater wetlands which border on creeks, streams, rivers, ponds and lakes in areas where the topography is low and flat. Bordering vegetated wetlands are areas where the soils are annually saturated and / or inundated such that they support a predominance (50% or greater) of wetland indicator plants. Types of vegetated wetlands include wet meadows, marshes, swamps and bogs. Wetlands and their boundaries shall be identified in the manner designated in the Massachusetts DEP Handbook “Delineating Bordering Vegetated Wetlands under Massachusetts Wetlands Protection Act,” March 1995, and future amendments, other DEP guidance documents generally accepted by Conservation Commissions for purposes of bordering vegetated wetland.

“Buffer Zone” means a band of land, contiguous or intermittent, with a defined dimension, subject to restriction, located in land within 100 feet of Wetland Resource Areas (200 feet in the case of rivers, and perennial streams and potentially identified or certified vernal pools). (Also known as Buffer Zone Resource Areas)

“Buffer Zone” means land within 100 feet in a parallel line of any of the established wetland resource areas, including potential and certified vernal pools.

“Commission” means the Tewksbury Conservation Commission.

“Department” is the Department of Environmental Protection (DEP).

“Drained” means a condition in which ground or surface water has been removed by either natural or artificial means.

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

“Flooded” means a condition in which the soil surface is temporarily covered with flowing water from any source, such as streams overflowing their banks, runoff from adjacent or surrounding slopes, inflow from high tides, or any combination of sources.

“Freshwater wetlands” are wet meadows, marshes, swamps and bogs.

“Hill Peat” means accumulation of organic soil in an upland position due to excess moisture resulting from subsoil seepage or lack of evapotranspiration.

“Isolated land subject to flooding” is any isolated depression without an inlet or outlet which at least once a year confines standing water to a volume of at least ¼ acre-foot of water with an

average depth of at least six inches. The boundary is the perimeter of the largest observed or recorded volume of water confined in the basin.

“Lake (great pond)” means any open body of fresh water with a surface area of 10 acres or more.

“Large Isolated Wetlands” means isolated wetlands 5,000 square feet or larger.

“Limited Project” means construction of access drives or roadways across freshwater wetlands when no alternative access exists. Construction, reconstruction, operation, and maintenance of public utilities, including electrical distribution or transmission lines, sewers, water lines, natural gas pipelines, and telecommunication lines. Maintenance and improvement of existing public roadways including maintaining and improving drainage building (residential/ commercial)s, adding shoulders, correcting substandard intersections, and widening (provided that less than a single lane is widened and as found in the Massachusetts Wetlands Protection Regulations.)

“Local Resource Areas” means those areas of the Town referenced in the “Jurisdiction” section below. The Commission has jurisdiction over these local resource areas.

“Marshes” are areas where a plant community exists in standing or running water during the growing season and where a significant part of the vegetational community is composed of, but not limited to nor necessarily including all, of the following plants or groups of plants: arums (Araceae), bladder worts (Utricularia), burr reeds (Sparganiaceae), button bush (Cephalanthus occidentalis), cattails (Typha), duck weeds (Lemnaceae), eelgrass (Vallisneria), frog bits (Hydrocharitaceae), horsetails (Equisetaceae), hydrophilic grasses (Gramineae), leatherleaf (Cahmaedaphne calyculata) pickerel weeds (Pontederiaceae), pipeworts (Eriocaulon), pond weeds (Potamogeton), rushes (Junceaceae), sedges (Cyperaceae), smartweeds (Polygonum), sweet gale ((Myrica gale), water milfoil (Haloragaceae), water lilies (Nymphaeaceae), water starworts (Callitrichaceae), water willow (Decodon verticillatus).

Mottling” means spots or blotches of different color or shades of color interspersed with the dominant matrix color.

“No Build Zone” means that portion of the Buffer Zone up gradient of the No Disturb Zone and extending to a line fifty feet (50’) from the edge of those Wetland Resources, contiguous or intermittent, with a defined dimension, subject to restriction, defined in this bylaw.

“No Disturb Zone” means that portion of the Buffer Zone which extends twenty-five feet (25’) from the edge of those Wetland Resources, contiguous or intermittent, with a defined dimension, subject to restriction, defined in this bylaw.

“Oxidation” means the combining with oxygen as in the decomposition or breakdown of organic matter when exposed to air.

“Ped” means aggregation of individual soil particles into larger units planes of weakness between them

“Permit Application” means any application for a permit or other action under the Massachusetts Wetlands Protection Act, MGL Ch. 131, Sec. 40, or the Town of Tewksbury Wetland Protection Bylaw. Examples include, but are not limited to, Notices of Intent, Abbreviated Notices of Resource Area Delineation, Requests for Determination of Applicability, Requests for a Determination of Negligible Impact, Requests for an Extension to an Order of Conditions, Requests for an Amended Order of Conditions, Requests for a Certificate of Compliance, and Requests for an amended Order of Resource Area Delineation.

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

“Ponds”:

- 1) Shall include any substantially open body of fresh water with a surface area observed or recorded, within ten years prior to the date of application, of at least 5,000 square feet. Ponds may be either naturally occurring or man-made by impoundment, excavation, or otherwise. Ponds shall contain standing water except for periods of extended drought. For the purposes of this definition, extended drought shall be defined at 310 CMR 10.58.2 as it may be amended.
- 2) Notwithstanding the above, the following man-made bodies of open water shall not be considered ponds: swimming pools or other impervious man-made basins.

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

“Resource Areas (natural or created)” include any freshwater wetlands, marshes, wet meadows, bogs, swamps, lakes, ponds (natural or created), rivers, streams, banks, vernal pools, large isolated wetlands, land under water in each resource area, riverfront area, land subject to flooding or inundation by groundwater or surface waters, and buffer zones as defined in the Bylaw.

“Resource Area Values” include but are not limited to the following: public or private water supply, groundwater, flood control, erosion, and sedimentation control, storm damage prevention, water quality, water pollution control, fisheries, wildlife habitat, rare species habitat including rare plant species, agriculture, riverfront area values and recreation values deemed important to the community.

“River” shall be defined by 310 CMR 10.58.2 and as amended.

“Riverfront” shall be defined by 310 CMR 10.58.2 and as amended.

“Stream” shall be defined by 310 CMR 10.58.2 and as amended.

“Swamps” are areas where ground water 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 vegetational community is made up of, but not limited to nor necessarily include all of the following plants or groups of plants: alders (*Alnus*), ashes (*Fraxinus*), azaleas (*Rhododendron canadense* and *R. viscosum*), black alder (*Ilex verticillata*), black spruce (*Picea mariana*), buttonbush (*Cephalanthus occidentalis*), American or white elm (*Ulmus Americana*), white Hellebore (*Veratrum viride*), hemlock (*Tsuga Canadensis*), highbush blueberry (*Vaccinium corymbosum*), larch (*Larix laricina*), cowslip (*Caltha palustris*), poison sumac (*Toxicodendron vernix*), red maple (*acer rubrum*), skunk cabbage (*Symplocarpus foetidus*), sphagnum mosses (*Sphagnum*), spice bush (*Lindera benzoin*), black gum tupelo (*Nyssa sylvatica*), sweet pepperbush (*Clethra alnifolia*), white cedar (*Chamaecyparis thyoides*), willow (*Salicaceae*), common reed (*Phragmites communis*), and jewelweed (*Impatiens capensis*).

“Vernal Pools” means a confined depression which provides habitat for vernal pool species, whether or not certified by the Massachusetts Natural Heritage program. Vernal pool species are those vertebrate and invertebrate species listed in the January 1991 edition of Massachusetts Audubon Society's “A Citizen's Step-by-Step guide to Protecting Vernal Pools”. In addition to the scientific definitions found in the Regulations, any confined basin or depression not occurring in existing lawns or driveways that , at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contain 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, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife, and regardless of whether the site is contained within another resource area shall be defined as a vernal pool. The adjacent upland buffer zone resource area for vernal pools shall extend 200 feet outward from the mean annual high-water line defining the depression.

“Wetland Resource Area” is any resource area other than the buffer zone and riverfront area.

“Wet Meadows” are areas where ground water is at the surface for the significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational 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*), vervain (*Verbena*), thoroughwort (*Eupatorium*), dock (*Rumex*), false loosestrife (*Ludwigia*), hydrophilic grasses (*Gramineae*), loosestrife (*Lythrum*), marsh fern (*Dryopteris thelypteris*), rushes (*Juncaceae*), sedges (*Cyperaceae*), sensitive fern (*Onoclea sensibilis*), and smartweed (*Polygonum*).

18.04.30 Jurisdiction

Except as permitted by the Commission or as provided in this Bylaw, no person shall alter, dredge, fill, and remove the following local resource areas:

- (1) Within 200 feet of any river, perennial stream or vernal pool;
- (2) Within 100 feet of any bordering vegetated wetlands, freshwater wetland, wet meadow, marsh, swamp or bog;
- (3) Within 100 feet of any brook, stream (intermittent or spring), pond (natural or created) or lake;
- (4) Land under any of the bodies of water listed in (1) and (2) above;
- (5) Within 100 feet of bordering or isolated land subject to flowing or inundation by groundwater or surface water. The term inundation by groundwater at or near the surface of the ground at least six months of the year.
- (6) Buffer zone where an activity is proposed within the buffer zone, the Commission shall presume that the activity has a high likelihood of altering any resource area adjacent to the buffer zone unless the proponent proves by a preponderance of the credible evidence that either;
 - a) The buffer zone does not play a role in the protection of any of the wetland values of the Bylaw or;
 - b) The activity shall occur in such a manner that any potential adverse environmental impacts on any of the wetland values are avoided.
- (7) For the No Disturb Zone which extends twenty-five feet (25') from the edge of the Wetland Resources Area, the Commission shall require the applicant to maintain a minimum continuous 25-foot wide No Disturb Zone of undisturbed, natural vegetation between the proposed activity and the resource area(s). The Commission shall also require a fifty feet (50') No Build Zone from the edge of the Wetland Resource Area, whereby the applicant is required to maintain any proposed building (residential or commercial) or structure, as defined in the regulations implementing the bylaw, at least 50 feet from the resource area(s). When partial encroachment into the No Build Zone setback is unavoidable, the applicant may mitigate this encroachment by increasing the size of the buffer strip area by an amount equal to or greater than the area of the encroachment, using the following guidelines:
 - 1) **The encroachment shall not exceed 10% of the total area of the No Build Zone setback for the lot; and**
 - 2) **The encroachment shall not exceed 25% of the recommended width of the total setback from the resource area.**

The applicant shall demonstrate to the Commission's satisfaction that future use of the site is not likely to result in intrusion into, or alteration of, the No Disturb Zone. The Commission may require the applicant to submit a use plan and narrative as part of that demonstration. At the Commission's request, the applicant shall demonstrate to the Commission's satisfaction that work or activities proposed at the edge of the No Disturb Zone are necessary and that reasonable alternatives, including reducing the scale and scope of the project or adjusting other setbacks, do not exist.

- (8) Where an activity is proposed within a vernal pool, the Commission shall presume that the activity has a high likelihood of altering the habitat for the vernal pool species unless the proponent proves by a preponderance of the credible evidence that either;

- a) The vernal pool shall not have been used by vernal pool species as habitat;
- b) The activity shall occur in such a manner that any potential adverse environmental impacts on any of the wetland values are avoided.

18.04.40 Exceptions

Other than as stated below, those exceptions provided in the Wetlands Protection Act shall not apply under this Bylaw.

(1) General Exceptions

- a) The permit and application required by this Bylaw shall not be required for:
 - i) Maintaining, repairing or replacing but not substantially changing or enlarging, an existing and lawfully located building (residential/commercial) or facility used in the service of the public to provide electric, gas, water, telephone or other telecommunication services;
 - ii) Work performed for normal maintenance or improvement of land in agricultural use or in aquacultural use;
 - iii) Mosquito control projects when performed by the Town or the Commonwealth or political subdivision thereof, or
 - iv) Maintenance by the Town of its drainage system.

These exceptions shall be permitted only if written notice with suitable plans has been given to the Commission at least twenty (20) business days prior to the commencement of work and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

b) The following are exempt minor activities as long as they are located in the riverfront area or buffer zone, but not within any resource area. These activities are described in the State Wetland Regulations (310 Code of Massachusetts Regulations 10.00 Section 10.58(6)). The landowner can proceed with these tasks without prior review by the Conservation Commission.

- i) Unpaved pedestrian walkways for private use;
- ii) Fencing that does not create a barrier to wildlife movement
- iii) Stone walls without mortared foundations;
- iv) Stacks of cordwood;
- v) Vista pruning—the selective thinning of tree branches or understory shrubs to create a window to improve visibility—as long as it occurs more than 50 feet from the mean annual high-water line within a riverfront area or from a bordering vegetated wetland, whichever is farther. (This activity does not include the cutting of trees with reduces the leaf canopy to less than 90 percent of the existing crown cover or the mowing or removal of understory brush.)
- vi) Planting of native trees, shrubs, or groundcover, but not turf lawns;

- vii) Conversion of lawns to decks, sheds, patios, and pools that accessory to single family homes, as long as:
 - a. House existed prior to August 7, 1996;
 - b. Activity located more than 50 feet from the mean annual high-water of the riverfront area or bordering vegetated wetland (whichever is farther, and
 - c. Sedimentation and erosion controls used during construction
- viii) Conversion of patios, pools, sheds, or other impervious surfaces to lawn or natural vegetation
- ix) Activities, such as monitoring wells, exploratory borings, soil sampling, and surveying, that are temporary, have negligible impacts, and are necessary for planning and design purposes.

(Note; Maintenance of existing landscaping, including lawn mowing and pruning, is exempt from review regardless of location in the buffer zone or any wetland resource area.)

c) The following are exempt minor activities as long as they are located in the No Build Zone. These activities are described in the State Wetland Regulations (310 Code of Massachusetts Regulations 10.00 Section 10.58(6)). The landowner can proceed with these tasks without prior review by the Conservation Commission.

- i) Unpaved pedestrian walkways for private use;
- ii) Fencing that does not create a barrier to wildlife movement
- iii) Stone walls without mortared foundations;
- iv) Stacks of cordwood;
- v) Vista pruning—the selective thinning of tree branches or understory shrubs to create a window to improve visibility—as long as it occurs more than 50 feet from the mean annual high-water line within a riverfront area or from a bordering vegetated wetland, whichever is farther. (This activity does not include the cutting of trees with reduces the leaf canopy to less than 90 percent of the existing crown cover or the mowing or removal of understory brush.)
- vi) Planting of native trees, shrubs, or groundcover, but not turf lawns;
- vii) Conversion of lawns to decks, sheds, patios, and pools that accessory to single family homes, as long as:
 - a. House existed prior to May 1, 2002;
 - b. Activity located more than 25 feet from the Wetland Resource Area or bordering vegetated wetland (whichever is farther, and
 - c. Sedimentation and erosion controls used during construction
- viii) Conversion of patios, pools, sheds, or other impervious surfaces to lawn or natural vegetation
- ix) Activities, such as monitoring wells, exploratory borings, soil sampling, and surveying, that are temporary, have negligible impacts, and are necessary for planning and design purposes.

(Note; Maintenance of existing landscaping, including lawn mowing and pruning, is exempt from review regardless of location in the buffer zone or any wetland resource area.)

(2) Emergency projects.

The permit and applications required by this Bylaw shall not be required for emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, and provided that all the following conditions are met:

- (a) Written notice has been given to the Commission prior to the commencement of work or within twenty-four (24) hours after commencement. In cases determined by the Commission to be extreme emergencies, verbal notice to be provided within five (5) business days.
- (b) The Commission or its agent certifies the work as an emergency project;
- (c) The work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and
- (d) Within twenty-one (21) days of commencement of an emergency project an application for permit shall be filed with the Commission for review as provided in this Bylaw.

Upon failure to meet these conditions, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

(3) Public Good

Where a project is necessary for the protection of the health or safety of the public as determined by the Police Chief, Fire Chief, Superintendent of Public Works or Board of Health, or a project substantially changes, enlarges or creates a building, facility or structure as defined in the regulations used to provide local services of sewer, water, or stormwater drainage, or state or federally regulated public utilities such as electrical distribution or transmission lines, or communication, and natural gas lines, or public sidewalks, the Commission may waive the requirements associated with the No Disturb Zone and No Build Zone setback requirements of this bylaw 18.04.30(6), and permit activities, provided that the applicant has proved by a preponderance of credible evidence that (1) there is no practicable alternative to the proposed project that would avoid or reduce the project's impact, and that (2) said project, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this bylaw. The definition of practicable shall be the same as set forth in the Massachusetts Wetland Regulations 310 CMR 10.58(4) - General Performance Standard of the Riverfront Area.

(4) Waiver

- a) Where the strict application of this Bylaw, or the rules and regulations adopted by the Tewksbury Conservation Commission, owing to the shape or topography of the applicant's property, would impose severe economic hardship, as defined either in statute or case law, on the applicant, taking into account an investment based expectation, or when a waiver would serve a substantial public benefit, the Commission may at their sole

discretion grant a waiver from the dimensional requirements of the No Disturb Zone, No Build Zone and allow impacts on the wetland areas protected by this Bylaw. Impact to the wetlands areas shall be minimized to the furthest possible and practicable extent and any appropriate replication or mitigation will be confined to the property itself. This exception shall not apply to property where the applicant, owner, or predecessors in title to the property, created the hardship or rendered the property unusable by their own actions.

- b) The Commission may grant a partial waiver from these bylaws for alteration of a wetland resource area in situations where there are no feasible alternatives that provide fewer impacts to the resource area values. The applicant is responsible for conducting an alternatives analysis to show that there are no feasible alternatives. The Commission may, after considering the alternatives analysis, allow the alteration or temporary surface disturbance of up to a cumulative total no greater than 5,000 square feet of wetland resource area.
- c) **Presumption of Significance:** Where a proposed activity involves the removing, filling, dredging, or altering of a Buffer Zone, the Commission shall presume that protection of the Buffer Zone as a resource area as identified in this Bylaw is significant to the interests specified Section 18.04.010 of this bylaw. This presumption may be overcome upon a showing of clear and convincing evidence demonstrating that the Buffer Zone does not play a role in the protection of said interests. In the event that the Commission determines that the presumption has been overcome, it shall make a written determination of its findings.

(5) Additional Waiver Standards

- a) **Roadways-** The Commission may grant a waiver from these regulations for the construction and maintenance of a new roadway or driveway of minimum legal and practical width consistent with the Planning Board dimensional requirements to provide a single means of access from an existing public or private way to an upland area of the same owner, where no such means of access would otherwise be available or would have been available across other land formerly held in common ownership with such upland area. The applicant is still bound by the maximum alteration limit of 5,000 square feet as described in section 18.04.40 (4) b) above. Replication of altered wetland resource areas shall be required by the Commission to minimize adverse impacts and to protect the interests defined in the Bylaw.
- b) **Prohibited Wetland Alterations-** Wetland alterations intended to make lands buildable, as by fulfilling septic system setback requirements, flood elevation requirements, or other minimum construction setback requirements, or to achieve minimum lot area requirements, are prohibited. Wetland alterations required to access upland parcels will not be allowed if that landowner, or a preceding owner, landlocked the parcel by selling upland access. The Commission may require the filing of a request for a waiver of certain Planning Board requirements in order to minimize wetland impacts.

- c) **Wildlife Habitat Evaluation-** Where alterations exceed the maximum allowable thresholds described in the State Regulations 310 CMR 10.00 for bank, land under a water body, bordering land subject to flooding or riverfront area, or where the alteration of a habitat of rare species is involved, or where vernal pool or vernal pool habitat would be altered, a wildlife habitat evaluation shall be performed in accordance with 310 CMR 10.60. The Commission may also require a wildlife habitat evaluation to be conducted when the applicant proposes alterations to any wetland resource area that the Commission determines to be of exceptional value to the wildlife habitat interests of the Bylaw.
- d) **Upland Habitat-** Upland habitat shall, to the fullest extent possible, not be used to locate wetland replication areas.

18.04.45 Performance Standards

- 1) The following standards apply to the Buffer Zone of all the resource areas identified in this bylaw:
 - a) **25-Foot No-Disturb Zone:** Except as otherwise provided in this bylaw, no activity is permitted within 25 feet of the delineated edge of the above-mentioned wetland resource areas. Prohibited activities include, but are not limited to, grading, landscaping, vegetation clearing, cutting, filling excavating, road construction, and driveway construction. This standard has been adopted because the alteration of land immediately adjacent to a wetland is likely to result in the alteration of the wetland itself. Alterations typically result from extension of lawns, depositing/ dumping of yard waste, over grading, siltation, deposition of construction debris, unregulated filling, and clearing of vegetation, all of which is prohibited.
 - b) **No-Disturb Zone Demarcation:** To maintain the perpetual integrity of the No-Disturb Zone and to ensure that there will be no encroachments into this Zone by the applicant or future owners of the subject property, the Commission may require the No-Disturb Zone to be marked on the ground, at the applicant's expense, with permanent markers. These markers shall be made of weather resistant material (i.e. granite, or concrete), and the Commission shall determine their number, size and location. The Commission may require one or more of these markers to bear, on their upland side, writing (i.e. permanent plaque or engraving) that shall read "No Disturbance beyond This Point by Order of the Tewksbury Conservation Commission."

18.04.50 Application for permit and requests for determination

A person shall file with the Commission a written application form provided by the Commission requesting to perform activities regulated by the by-law affecting local resource areas. The application shall include, in addition to the information and plans as

are deemed necessary by the Commission to describe proposed activities and their effects on the local resource areas. No activities shall commence without receiving and complying with a permit issued pursuant to this by-law.

The Commission in its discretion may accept as the application for permit under this by-law the Notice of Intent and plans filed under the Wetlands Protection Act.

Any person desiring to know whether or not a proposed activity or certain property is subject to this by-law may request in writing a determination from the Commission. Such a request for determination shall contain information and plans specified in the Commission's regulations.

At the time of an application for permit or Request for Determination, the applicant or requestor shall pay an application fee and, if necessary, a consultant fee.

18.04.60 Notice and hearings

Any person filing an application for permit or a Request for Determination with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivery, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water; however, if the owner's property line is more than 1500 feet from the applicant's or requestor's property line, he or she is not an abutter. The notice to abutters shall include a copy of the application for permit or request for determination, with plans, or shall state where copies may be examined and obtained by abutters free of charge. The Town shall not be responsible for providing free copies. A copy of the notice mailed or delivered and a list of all abutters and abutters to abutters as described above and their respective addresses, certified by the Board of Assessors from the most recent applicable tax list, shall be filed with the Commission at least one week prior to the public hearing date.

The Commission shall conduct a public hearing on any application for permit or Request for Determination. The applicant or requester shall give, at his or her expense, written notice of the public hearing in a newspaper of general circulation in the Town. This written notice must be published at least five (5) business days prior to the public hearing.

Request for Determination of Applicability filings submitted to the Conservation Commission exclusively for the purpose of septic system repair, shall be specifically exempted from the requirements of a public hearing including advertising and notification requirements.

The Commission shall commence the public hearing with twenty-one (21) days from receipt of a completed application for permit or Request for Determination. In the event that the hearing is postponed due to the request of the applicant or the Commission, the applicant shall renotify all of the abutters via certified mail or hand delivery informing them of the new hearing date and time. The Commission may continue the hearing if the applicant or requester authorizes an extension in writing. However, the Commission in its discretion may reject the applicant's or requestor's continuance request and proceed with the hearing. The Commission shall issue its

permit or determination in writing within twenty-one (21) days of the close of the public hearing unless a time extension is authorized in writing by the applicant or requester.

The Commission in its discretion may combine its hearing under this Bylaw with the hearing conducted under the Wetlands Protection Act.

The Commission shall have the authority to continue the hearing to a date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant, requester or others, information and plans required of the applicant or requester deemed necessary by the Commission in its discretion, or the comments and recommendations of the boards listed in Section 18.04.080. However, if the applicant or requester objects to a continuance, the hearing shall be closed and Commission shall take action on such evidence as is then available.

Public Utilities (Roadways). Permit applications for construction or maintaining public utilities in existing town roadways shall provide written notification to all abutters on both sides of the roadway for the extent of the Town road right-of-way that is located within the 100 foot buffer zone.

Public Utilities (Easements). Permit applications for constructing or maintaining public utilities located within property easements shall provide written notification to property owners of the easement and all abutters within 300 feet in all directions of the easement right-of-way for the extent of the easement that is located within the 100-foot buffer zone. Request for Determinations shall require written notification to property owners of the easement in which they intend to work.

18.04.70 Time of receipt

The date of receipt of an application for permit or Request for Determination will be considered to be the date of the first regularly scheduled meeting of the commission following submission of the completed filing at the Commission's office.

18.04.80 Coordination with other boards

Any person filing an application for permit or a Request for Determination with the Commission shall provide copies thereof at the same time, by certified mail (return receipt, requested) or hand delivery, to the Board of Selectmen, Planning Board, the Board of Appeals, the Board of Health and the Building Inspector. The person providing such, copies shall file an affidavit with the Commission stating that he or she has mailed or delivered the application for permit or request for determination to the above-named boards. The Commission shall not take final action until such boards have had fourteen (14) days from receipt of the application for permit or Request for Determination 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. The applicant or requestor shall have the right to receive any such comments and recommendations and to respond to them at a hearing of the Commission, prior to final action.

18.04.90 Permits, determinations - Conditions

If the Commission, after a public hearing, determines that the activities which are the subject of the application for permit are likely to have a significant or cumulative effect upon the wetland values protected by this Bylaw, the Commission, within twenty-one (21), days of the close of the hearing, shall issue or deny a permit for the activities requested. If the applicant gives a written authorization for an extension, the Commission may issue its permit or denial on the date specified in the authorization. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable in order to protect the wetlands values, and all activities shall be one in accordance with those conditions.

The Commission is empowered to deny an application for permit for failure to meet the requirements of this Bylaw; for failure to submit the necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards and other requirements in the Commission's regulations; for failure to avoid or prevent significant or cumulative effect upon the wetland values protected by this Bylaw; and for failure to pay all required fees. It also shall deny any application for permit where it finds no conditions are adequate to protect the wetland values. The Commission shall duly consider any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

A permit shall expire three (3) years from the date of issuance. Notwithstanding the above, the Commission, in its discretion, may issue an annual extension not to exceed six (6) years from the original date of issuance; provided that it receives a written request for a renewal at least thirty (30) days prior to the permit's expiration and provided that all work to that date has been done within the scope of the permit.

For good cause, the Commission may revoke or modify a permit issued under this Bylaw. Before revoking or modifying a permit, the Commission must comply with Section 18.04.060 by giving notice to the permit holder, the public, town boards and the abutters and by holding a public hearing.

The Commission, in its discretion, may combine the permit or other action issued under the Bylaw with the Order of Conditions issued under the Wetlands Protection Act.

With respect to an Request for Determination, the Commission, within twenty-one (21) days of the close of the hearing thereon, shall issue its determination in writing stating whether or not the proposed activity or property in question is subject to this Bylaw if the applicant gives written authorization on or before the date specified in the extension.

18.04.100 Modifications

If the applicant proposes to make any changes in the Commission's originally approved plans, the applicant shall submit the amended plans to the Commission. The Commission, in its discretion, if it deems the amendments to the plan significant, may require the filing of a new application for permit. This new application will be treated as a new application requiring a noticed hearing, application fee and, if necessary, a consultant fee.

18.04.110 Registry of deeds

No work proposed in any application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected thereby be registered land, in the land court section of the registry for the district wherein the land lies and until the permit holder certifies in writing to the Commission that the permit has been so recorded and furnishes the recording data pertaining thereto.

18.04.120 Certificate of compliance

Upon completion of the project, the applicant shall immediately request in writing a Certificate of Compliance from the Commission. If the activities were completed in accordance with plans stamped by a registered professional architect, landscape architect, civil engineer or land surveyor, a written notice by said professional certifying substantial completion with the plan and setting forth what deviations, if any, exist from the plan shall accompany the request for a Certificate of Compliance.

The Commission, any of its members, or its agent may conduct an inspection to validate the completion. The Commission shall take action on the respect within thirty (30) days of its submission at the Commission's office.

The Commission, in its discretion, may impose conditions on the Certificate of Compliance to assure continued operation and maintenance of permanent measures to prevent or control significant or cumulative effect upon the wetland values protected by this Bylaw.

18.04.130 Regulations

After public notice and hearing(s), the Commission shall promulgate regulations to effectuate the purposes of this Bylaw. Failure by the Commission to promulgate such regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate this Bylaw.

18.04.140 Enforcement

The Commission and its agents, only after showing proper identification, shall have the authority to enter upon privately owned land for the purpose of inspecting and monitoring property subject to an Request for Determination.

The Commission shall have the authority to enforce this Bylaw, the regulations promulgated hereunder, and the permits issued hereunder by issuing violation notices or administrative orders, and by bringing civil and criminal court actions, including those seeking the imposition of municipal liens.

Upon written request of the Commission, the Board of Selectmen, Town Manager and Town Counsel, may take legal action for enforcement under civil law.

The Board and Officials of the Town shall have authority to assist the Commission in enforcement. Upon written request, the Police Chief or his designee may provide assistance to the Conservation Commission as it relates to court procedure.

For good cause, the Commission may issue a cease and desist order or an enforcement order with or without prior notification to the property owner or applicant. The Conservation Administrator, upon informing the Commission Chair, may generate either or both of these actions which shall remain in effect until the next regularly scheduled meeting of the Commission. The Commission shall give the property owner or applicant notice of the meeting at least forty-eight (48) hours before convening it. At the meeting the Commission shall vote whether or not to continue the action.

The Commission may mandate the installation of temporary control measures if there is any danger of adversely affecting the local resource areas. These measures are to remain in effect and be maintained in place until the Commission allows their removal.

Under conditions of a cease and desist order or an enforcement order, another party may be retained by the Commission to complete the temporary control measures if the property owner or applicant is unable or unwilling to do the work within a reasonable time as stated in the Commission's order, and if there is an immediate hazard to the local resource areas, wetland values protected by this Bylaw, or public safety. The costs associated with this work shall be borne by the property owner or applicant.

18.04.150 Inspection

The Commission, its agents and officers shall have the authority to enter privately owned land for the purpose of performing its duties under this Bylaw, and may make or cause to be made such examinations, surveys or samplings as the Commission deems necessary.

18.04.160 Burden of proof

The applicant shall have the burden of proving a preponderance of the credible evidence that the work proposed in the application for permit will not have a significant or cumulative effect upon the local resource areas and wetland values protected by this Bylaw. Failure to provide sufficient evidence to the Commission supporting this burden shall be good cause for the Commission to deny a permit, or grant a permit with conditions or to continue the hearing to another date to enable the applicant or others to present additional evidence. However, if the applicant objects to a continuance, the hearing shall be closed and Commission shall take action on such evidence as is then available.

18.04.170 Relation to the wetlands protection act

This Bylaw is adopted under the Home Rule statutes, independent of the Wetlands Protection Act and regulation promulgated hereunder.

18.04.180 Performance guarantee

- (1) Bonds or Surety. The Commission may require the applicant to file a surety company performance bond or a deposit of money in an amount determined by the Commission to be sufficient to cover the cost of all or any part of the site alterations specified in the permit and/or shown on the plans approved by the Commission. Such bond or surety, if required to be filed or deposited, shall be approved, as to form and manner of execution by the Town Counsel and as to sureties by the Town Treasurer and shall be contingent upon the completion of such alterations with the time frame of the permit and extension, if granted. Such bond or surety shall remain in effect during an active order of conditions and any extensions granted by the Commission.
- (2) Covenant. The Commission may require the applicant to secure the performance and observance of conditions imposed on the project, by a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town and members of the public, whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.
- (3) Reduction of Bond or Surety. The penal sum of any required bond, or the amount of any deposit held hereunder may, from time to time, be reduced by the Commission and the obligations of the parties thereto released by the Commission in whole or in part.
- (4) Release of Performance Guarantee. Upon completion of site alterations required in the permit, security for the performance of which was given by bond, deposit or covenant, or upon the complete performance of the covenants with respect to the site, the applicant may request and agree on terms of release with the Commission.

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

If the Commission determines that said alterations have not been completed in compliance with the permit, it shall, within forty-five (45) days, specify to the applicant, in writing, the details wherein said alterations fail to comply with the permit.

18.04.190 Appeal

Any person aggrieved by the permit or decision of the Commission, whether or not previously a party to the proceeding, may appeal according to the Massachusetts General Laws.

18.04.200 Amendments

The rules and regulations of the Conservation Commission (as described in Section 18.04.130 of this chapter) may be amended from time to time by a majority vote of the Commission. Prior to

taking a vote on an amendment, the Commission shall have held a public hearing on the proposed change(s).

18.04.210 Penalties

Any person who violates any provision of this Bylaw, the regulations promulgated hereunder, or the permits issued hereunder shall be punished by a fine as specified in the Commission's regulations which shall not exceed \$300 for each offense. Each day the violation continues shall constitute a separate offense and each provision of the Bylaw, regulations or permit violated shall constitute a separate offense. Each day the violation alters a local resource area shall constitute a separate offense.

18.04.220 Pre-acquisition violation

Any person who purchases, inherits or otherwise acquires land upon which work has been done in violation of the provisions of this Bylaw or in violation of any permit issued pursuant to this Bylaw and such violation notice is recorded at the registry of deeds or land court, shall forthwith comply with any order of the Commission and restore such land to its condition prior to any violation; provided, however, that no action, civil or criminal, shall be brought against such person if corrective action commences within six (6) months following the date of acquisition of the land by such person or within the time specified in the Commission's order.