

DIVISION 4

CONSERVATION COMMISSION

Chapter 330

WETLAND PROTECTION REGULATIONS

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[HISTORY: Adopted by the Conservation Commission of the Town of Norfolk 5-28-1999, as amended through 2-14-2018. Subsequent amendments noted where applicable.]

§ 330-1. Introduction and purpose.

- A. Introduction. These regulations are promulgated by the Norfolk Conservation Commission pursuant to the authority granted to it under § 300-8 of the Town of Norfolk Wetlands Protection Bylaw (hereinafter referred to as the "bylaw"). These regulations shall complement the bylaw and shall have the force of law upon their effective date.
- B. Purpose.
- (1) The bylaw sets forth a public review and decisionmaking process by which activities affecting areas subject to protection under the bylaw are to be regulated in order to ensure the protection of the following interests:
 - (a) Private and public water supply.
 - (b) Groundwater and groundwater supply.
 - (c) Surface water quality in the numerous ponds, rivers, lakes and streams of the Town.
 - (d) Flood control.
 - (e) Erosion and sedimentation control.
 - (f) Storm damage prevention.
 - (g) Water pollution prevention.
 - (h) Fisheries.

- (i) Wildlife and wildlife habitat.
 - (j) Passive recreation.
 - (k) Rare species and rare species habitat.
 - (l) Aesthetics.
 - (m) Agriculture.
 - (n) Aquaculture.
 - (o) Vernal pools and vernal pool habitat.
- (2) The bylaw sets forth a public review and decision-making process by which activities affecting areas subject to the protection under the bylaw are to be regulated in order to ensure the protection of the interests listed in this § 330-1B of these regulations.
 - (3) The purpose of these regulations is to define and clarify that process by establishing standard definitions and uniform procedures by which the Norfolk Conservation Commission may carry out its responsibilities under the bylaw.

§ 330-2. Statement of jurisdiction.

- A. Areas subject to protection under the bylaw ("resource areas"). The following resource areas are subject to protection under the bylaw:
 - (1) Any freshwater wetland, marsh, wet meadow, bog, swamp, bank, beach, dune or flat;
 - (2) Any land within 100 feet of any of the areas set forth in Subsection A(1) above;
 - (3) Any lake, river, pond, stream, estuary, or watercourse (ephemeral, intermittent or perennial);
 - (4) Any land under any of the water bodies set forth in Subsection A(3) above;
 - (5) Any land within 100 feet of the water bodies set forth in Subsection A(3) above;
 - (6) Any land subject to flooding or inundation by groundwater or surface water;
 - (7) Any land within 100 feet of any land subject to flooding or inundation as set forth in Subsection A(6) above; and
 - (8) Any riverfront area.
- B. Activities subject to regulation under the bylaw.
 - (1) Any activity proposed or undertaken which will constitute removing, filling, dredging, building upon, or altering any area specified in § 330-2A is subject to regulation under the bylaw and requires the filing of either a notice of intent or a request for determination of applicability.

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- (2) Any activity proposed or undertaken outside the areas specified in § 330-2A above shall not be subject to regulation under the bylaw unless, in the judgment of the Conservation Commission, said activity will result or has resulted in the removing, filling, dredging, building upon, or altering of an area specified in § 330-2A above.
- (3) Any person who wishes to know whether or not a proposed activity or an area is subject to the bylaw may, in writing, request a determination from the Conservation Commission. Such a request for determination of applicability shall be submitted pursuant to § 330-8C of these regulations.

§ 330-3. Buffer zone performance standards.**A. Presumption of fifty-foot undisturbed buffer.**

- (1) The Conservation Commission presumes that an undisturbed forest or naturally vegetated buffer at least 50 feet wide between the edge of the resource area specified in § 330-2A(1), (3) and (6) and the area the applicant proposes to disturb during a project is necessary to protect the interests of the bylaw, the Act, and the DEP Wetlands Regulations.
- (2) An applicant proposing to disturb any area within such fifty-foot buffer shall have the burden of showing that the work proposed in the application will not harm the interests protected by the bylaw, the Act and the DEP Wetlands Regulations. Failure to provide adequate evidence satisfactory to the Conservation Commission supporting a determination that the proposed work within such fifty-foot buffer will not harm the interests protected by the bylaw, the Act and the DEP Wetlands Regulations shall be sufficient cause for the Conservation Commission to deny a permit or grant a permit with conditions, including, without limitation, such buffer as the Conservation Commission deems appropriate or, in the Conservation Commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence.
- (3) Mitigation that will improve or enhance the same resource area that was impacted/disturbed must be presented to the Commission.

B. Fifty-foot to 100-foot buffer.

- (1) Nothing in this regulation shall prevent the Conservation Commission from prohibiting activity anywhere within the 100-foot buffer zone defined by the bylaw, these regulations, the Act and the DEP Wetlands Regulations, including, without limitation, the area between the edge of the fifty-foot buffer presumed necessary by this regulation and the end of the 100-foot buffer zone.
- (2) Projects proposed within the fifty-foot to 100-foot buffer will be reviewed using the following performance criteria:
 - (a) For new lots formed and/or new subdivision roads approved after the effective date of these regulations, it is presumed that alteration to the fifty-foot to 100-foot buffer can be avoided. If a project proposes alteration

within this buffer, applicants must present a vigorous alternatives analysis showing that the proposed project avoids alteration to the fullest extent and has minimized impacts. Mitigation for all buffer zone alteration is required.

- (b) For projects on undeveloped lots in existence prior to the effective date of these regulations, the applicant must present evidence that a reasonable effort has been made to avoid and minimize impacts to the fifty-foot to 100-foot buffer.
 - (c) For projects on lots with existing structures, the applicant must minimize work within the buffer and present evidence that a smaller buffer zone will secure the protection of the interests of the bylaw, the Act, and the DEP wetlands regulations.
- (3) Mitigation that will improve or enhance the same wetland resource area that was impacted/disturbed must be presented to the Commission.

§ 330-4. Burden of going forward and burden of proof.

- A. The applicant shall have the burden of going forward by providing at least some 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 Subsection B below.
- B. The applicant shall have the burden of proving by a preponderance of the credible evidence that the activities proposed in the application will not harm the interests protected by the bylaw. Failure to meet the burden of proof shall be cause for the Commission to deny the application, along with any work or activity proposed therein.
- C. Lands within 100 feet of rivers, ponds, lakes, and other resource areas specified under § 330-2A(1), (4) and (6) of these regulations are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately as a consequence of construction, or over time as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover within the 100-foot area, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw.
- D. In the review of areas within 100 feet of rivers and streams, no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of the bylaw, has proved by a preponderance of the evidence that there is no practicable alternative to the proposed project with less adverse effects, and that such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by the bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall

project purpose (e.g., residential, institutional, commercial, or industrial purpose), logistics, existing technology, costs of the alternatives, and overall project costs.

- E. To prevent loss of resource areas (including the 100-foot buffer zone resource areas), the Conservation Commission shall require applicants to avoid alteration of resource areas wherever feasible; to minimize alteration of resource areas; and, where alteration is unavoidable, to provide full mitigation. The Conservation Commission may authorize or require replication of resource areas as a form of mitigation, but only with the adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

§ 330-5. Definitions.

The following definitions apply to the interpretation of the bylaw. Unless otherwise defined herein, definitions found in 310 CMR 10.00 also shall apply to the bylaw.

ABUTTER — Any person possessing whole or partial ownership of property directly adjacent to the property for which work is proposed. This shall include owners of land directly opposite on any private or public street or way, and abutters to the abutters within 100 feet of the property line of the applicant, including any in another municipality or across a body of water.

ACTIVITY — 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; the construction or improvement of roads and other ways; the changing of runoff characteristics; the intercepting or diverting of groundwater 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 — Retention or improvement of natural conditions, including natural lighting, sounds, odors, and significant trees and views or vistas as at the time are experienced by the public from public ways, including waterways.

ALTER — See § 300-9 of the bylaw.

AREA SUBJECT TO PROTECTION UNDER THE ACT — Any area specified in § 300-2 of the bylaw and § 330-2 of these regulations. It is used synonymously with "resource area."

BANK — Includes the land area which normally abuts and confines a water body, 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.

BOG — Any area 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 groundwater or 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 all of, the following plants or groups of plants: aster (*Aster nemoralis*), azaleas (*Rhododendrum canadense* and *R. viscosum*), black spruce (*Picea mariano*), bog cotton (*Eriophorum*), cranberry (*Vaccinium macrocarpon*), highbush blueberry (*Vaccinium corymbosum*), larch (*Lariz 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*), and white cedar (*Chamaecyparis thyoides*).

BUFFER ZONE — An area of land extending 100 feet horizontally outward from the boundary of any area specified in § 330-2A(1), (3) and (6) of these regulations. The buffer zones are resources afforded protection under the bylaw.

CERTIFICATE OF COMPLIANCE — A written determination by the Conservation Commission that the proposed work or a portion thereof has been completed in accordance with a pertinent order of conditions.

COMMISSION — The Norfolk Conservation Commission.

CONDITIONS — Those requirements set forth in an order of conditions 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 bylaw.

DATE OF ISSUANCE — The date an order of conditions, determination, or a certificate of compliance is mailed, as evidenced by a postmark, or the date it is hand delivered.

DATE OF RECEIPT — The date of delivery to an office, home, or usual place of business by mail or hand delivery.

DEPARTMENT — The Massachusetts Department of Environmental Protection (DEP).

DETERMINATION OF APPLICABILITY — A written finding by the Commission as to whether a site or the activity proposed thereon is subject to the jurisdiction of the bylaw.

DETERMINATION OF SIGNIFICANCE — A written finding by the Conservation Commission, after a public hearing, that the area on which the proposed work is to be done, or which the proposed work will alter, is significant to one or more of the interests identified in § 330-1B of these regulations.

DRIVEWAY — Any means of vehicle access to a parcel of land. Driveways can occur as gravel, crushed stone, dirt, or impervious materials such as cement or bituminous concrete.

EROSION CONTROL — The prevention or reduction of the detachment or movement of soil or rock fragments by water, wind, ice, and/or gravity or by the action of a person or machine.

INTERESTS — The wetland values (collectively, the "interests protected by the bylaw") specified in § 300-1 of the bylaw and § 330-1B of these regulations.

ISOLATED LAND SUBJECT TO FLOODING — An isolated depression or closed basin without an inlet or outlet. It is an area which at least once a year confines standing water for a minimum of two continuous months during the spring and/or summer to a volume of at least 1/8 acre-foot and to an average depth of at least six inches.

LAND SUBJECT TO FLOODING — All land subject to inundation by groundwater or surface water, including land within the 100-year floodplain, isolated land subject to flooding, and bordering land subject to flooding as defined in 310 CMR 10.57.

NOTICE OF INTENT — 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, MGL c. 131, § 40, and the Town of Norfolk Wetland Bylaw.

NOTIFICATION OF NONSIGNIFICANCE — A written finding by the Commission, after a public hearing, that the area on which the proposed work is to be done, or which the proposed work will alter, is not significant to any of the interests identified in § 330-1B of these regulations.

ORDER — An order of conditions, superseding order or final order, whichever is applicable, issued pursuant to MGL c. 131, § 40, and/or the Town of Norfolk Wetlands Protection Bylaw.

ORDER OF CONDITIONS — The document issued by a conservation commission, containing conditions which regulate or prohibit an activity under MGL c. 131, § 40, and/or the Town of Norfolk Wetlands Protection Bylaw.

PERSON — See § 300-9 of the bylaw.

PLANS — Such data, maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the Conservation Commission to describe the site and the activity, to determine the applicability of the bylaw or to determine the impact of the proposal upon the interests identified in the bylaw.

POND — Any open body of fresh water with a surface area observed or recorded within the last 10 years 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 purposes of this definition, "extended drought" shall mean any period of four or more months during which the average rainfall for each month is 50% or less of the ten-year average for that same month. Notwithstanding the above, the following man-made bodies of open water shall not be considered ponds:

- A. Basins or lagoons which are part of wastewater treatment plants;
- B. Swimming pools or other impervious man-made basins; and
- C. Individual gravel pits or quarries excavated from upland areas unless inactive for five or more consecutive years.

PROTECTION OF WILDLIFE — Includes the protection of the ability of any resource area to provide food, wildlife corridors, breeding habitat, over-wintering, or escape cover for wildlife.

QUORUM — The majority of the duly appointed members of the Conservation Commission that when duly assembled is legally empowered to transact business.

RARE SPECIES — Includes, without limitation, all vertebrate and invertebrate animal and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

REMOVE — To take away any type of material, thereby changing an elevation, either temporarily or permanently. "Remove" also means the removal of vegetation, either alive or dead.

REQUEST FOR DETERMINATION OF APPLICABILITY — A written request made by any person to the Conservation Commission for a determination as to whether a site or the proposed activity thereon is subject to the bylaw.

RESOURCE AREA — Is synonymous with "area subject to protection under the bylaw," each one of which is listed in § 330-2A of these regulations.

SEDIMENTATION CONTROL — The prevention or reduction of the collection or concentrations of sand, soil, or rock fragments by the action of water, wind, ice, gravity, person or machine.

STREAM — A body of running water, including brooks and creeks, which moves in a definite channel in or under the ground due to hydraulic gradient. A portion of a stream may flow through a culvert or beneath a bridge. A stream may be intermittent (i.e., does not flow throughout the year). A stream may also be man-made.

STRUCTURE — Any building, shed, deck, driveway, road, septic component, dock, pier, bulkhead, revetment, groin, float, pipeline, fence, guardrail, pool, tennis court or other playing surface, drainage component, storage tank, etc.

VERNAL POOL AND ITS HABITAT — Includes a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer and which is during most years free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.

WILDLIFE HABITAT — Areas having plant community composition and structure, hydrologic regime, or other characteristics sufficient to provide shelter, nutrients, growing conditions, or nesting or breeding sites conducive to the propagation and preservation of wildlife. Migratory and over-wintering areas shall also be included as wildlife habitat.

§ 330-6. Wildlife habitat and rare species.

A. Preamble.

- (1) Wildlife habitat serves a variety of functions in support of wildlife. Food, water, breeding space, shelter, security, movement and migration space, and connections to other habitat areas are all equally important. All of these wildlife habitat functions are presumed to exist in all resource areas protected under the Norfolk Wetland Protection Bylaw and regulations. No project may have an adverse impact, either project-specific or cumulative, on any wildlife habitat. The Commission finds that the zero-foot to 100-foot buffer resource is significant for the biological interaction of the wildlife and wildlife habitat. Potential presence of rare, endangered, threatened and special concern species and their specific sensitivity to buffer resource activity shall be considered in buffer resource restrictions. Prior designation of rare or endangered species habitat by the Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP) is not necessary. The Commission may consult with NHESP as it deems necessary for guidance and recommendations.

- (2) A "significant adverse project-specific impact" is defined as an impact caused by work in an area subject to protection pursuant to these regulations that would:
- (a) Result in a measurable decrease in the existing wildlife populations by altering the biological composition of the vegetation, structure or hydrology on the site or in the vicinity, exclusive of the present or future state of adjacent and nearby properties; or
 - (b) Impair, damage, destroy, or reduce in value for wildlife purposes certain specific habitat features.
- B. The following are protected habitat features within the zero-foot to 100-foot buffer resource:
- (1) Large-cavity trees.
 - (2) Turtle nesting areas.
 - (3) Existing nest trees.
 - (4) Beaver dams, dens and lodges.
 - (5) Vernal pools (even those not certified by NHESP).
 - (6) Migration corridors that provide connectivity between wildlife habitats.
 - (7) Sphagnum hummocks and pools suitable to serve as nesting habitat for four-toed salamanders.
 - (8) Stands of cinnamon fern, sensitive fern suitable to serve as habitat for spotted turtles.
- C. Accordingly, the Commission shall prohibit the destruction of the above and/or the placement of fences or other barriers to wildlife movement within and between resources and any destruction of the specific habitat features within those critical upland habitats.
- D. The applicant shall show by a preponderance of credible evidence that the activities proposed within the zero-foot to 100-foot buffer resource will not harm the wildlife interests protected by the bylaw. Failure to show such evidence is cause for the Commission to deny any work or activity proposed therein.

§ 330-7. Wetland crossings.

- A. Presumptions.
- (1) The construction of impervious surfaces such as roadways or parking lots can significantly affect the quantity and quality of stormwater runoff and affect important groundwater characteristics. Impervious surfaces reduce surface infiltration and increase potential of stormwater runoff volumes and by redirecting flows within a watershed. Impervious surfaces that direct water flows into wetlands may inundate sensitive resources and thereby destroy vital

vegetative and wildlife characteristics, reduce preexisting flood-storage capacity and contaminate groundwater recharge areas.

- (2) Conversely, impervious surfaces may direct traditional surface water and groundwater flow patterns away from wetlands and thereby destroy the necessary hydrological conditions needed to maintain wetland functions and values. The paving of driveways is allowed within a wetland resource if appropriate design measures are implemented as approved by the Commission. The design measures shall include construction details and grading of the area with the buffer resource. Therefore for the purposes of flood control, erosion control, water quality protection and wildlife preservation the Conservation Commission shall review all roadways and driveways for impact, immediate and cumulative, on resource area functions and values according to the Department of Environmental Protection's Stormwater Management Guidelines and the Norfolk Wetland Protection Bylaw and regulations.
- (3) The Commission may require review and incorporate any suggestions or recommendations by other Town officials or departments such as the Fire Department, Police Department and Department of Public Works (DPW) to ensure adequate emergency vehicle access to homes/businesses serviced by a wetland crossing.

B. Performance standards.

- (1) Any activity within a bordering vegetated wetland, watercourse, inland bank and resource area protected under the regulations is presumed to cause significant adverse impacts and is not permitted as a matter of right, but may be allowed under certain circumstances at the discretion of the Commission. The Commission may allow alteration within these resources if the activities are permitted in 310 CMR 10.00 and DEP Wetland Policy No. 88-2, which would be the minimum standards applied where there is no practical alternative for the project. In the case of roadway and driveway crossings of the above resources which will result in the permanent displacement of the wetland resource, the areas of disturbance must be minimized and replicated on a ratio of 2:1.
- (2) The extensive scientific research, in conjunction with the Norfolk Conservation Commission's experience in reviewing a wide variety of projects, demonstrates that alteration or construction activities within a bordering vegetative wetland (BVW) and a resource area result in destructive effects on the wetland and resource area which include but are not limited to:
 - (a) Disturbance of natural vegetation along the BVW boundaries.
 - (b) Runoff of pollutants into the wetlands.
 - (c) Fill material and other substances in the wetlands.
 - (d) Stockpiling or dumping of material in the wetlands.
 - (e) Debris migrating into the wetland.
 - (f) Disturbance of wildlife habitat (such as nesting sites and wildlife corridors).

- (3) In particular, the Conservation Commission will enforce the following general performance standards:
 - (a) No net change in runoff volumes or peak flows.
 - (b) No adverse impacts in runoff water quality.
 - (c) No adverse impacts to groundwater recharge.
 - (d) No adverse impacts to wildlife and wildlife habitat as a result of change of runoff flows.
 - (4) The applicant is required to prepare and complete hydrological calculations for the two-, ten-, twenty-five-, fifty- and 100-year-frequency storm events using the method set forth in § 330-14D. All calculations and analysis shall be summarized and provided in an easily readable and understandable format.
- C. Alternative analysis. In evaluating whether the applicant meets the alternatives as set forth in § 330-7B of these regulations, any self-imposed hardship shall not be considered. The Commission views any adjacent properties located nearby which are under common ownership as part of a cumulative resource area impact. The applicant or property owner is advised to prevent situations where they have created their own hardship by not carefully considering all likely impacts to areas subject to the Wetland Protection Bylaw and regulations. It is incumbent upon the applicant to plan appropriately and not fragment or phase any portion of the development without careful consideration of avoidance of impacting any resource areas. The Commission will only consider a wetland crossing when all options for accessing upland areas are unfeasible and the crossing is the only means of access after a vigorous alternatives analysis has been investigated and performed by the applicant/property owner and presented to the Commission for a final determination. The Commission will consider whether adjacent property which would have provided dry access to the uplands has been sold off or built upon. In a residential subdivision of any size, the inability to develop all proposed/conceptual lots shall not be considered a hardship as it is presumed that the applicant can configure the lots to avoid all impacts to the resource areas protected by the bylaw and regulations and the property owner/applicant continues to have beneficial and economic use of the property.
- D. Design standards for roadways and driveways.
- (1) Where stream crossings are permitted, such crossings must be designed so as to minimize the disturbance to the BVW and the banks and stream channel by use of an open-bottom arch culvert or precast spans set on footings as far from the banks as is technically feasible. The use of pipe culverts and the cut-and-fill method of construction is strictly prohibited.
 - (2) In addition, the applicant shall request any and all waivers available from the Planning Board, including but not limited to width of roadway, walkways, cross easements, length of cul-de-sac, street layout and arrangements. All waivers shall be made, in writing, to the Planning Board. The lack of grant of any waiver from the Planning Board shall be considered in the overall proposal but shall not be construed as a hardship. In all cases of wetland crossings permitted, the applicant/

property owner will be required to replace, replicate and/or mitigate for lost resources.

- E. Replication, replacement, mitigation. The history of wetland replication has shown that for the most part, replications fail to reproduce the range of values, in quantity and quality, of the wetlands they ostensibly replace. In particular, difficulties in replicating proper hydrological conditions in a consistent and enduring fashion seem to be the source of the problem. Accordingly, the Conservation Commission discourages any plan or project which requires replication. For wetland crossings, which are approved, the following criteria must be met:
- (1) The amount of each resource area temporarily and permanently altered shall be calculated and included in the plan.
 - (2) The amount of replacement area shall be calculated at a ratio of 2:1. The Commission may reduce that ratio to minimize the disturbance of upland areas it determines to be significant to the interests protected by the bylaw, in which case it may require other forms of mitigation.
 - (3) The replicated wetland must be hydrologically and geographically associated with the same water body as the original wetland.
 - (4) The replication areas must be constructed in full in connection with the wetland crossing and conditionally approved prior to the construction of any structures such as roads, driveways or buildings. (scientist, employed by the Commission and paid for by the applicant, shall oversee the wetland replication and monitor the viability of the plantings for two successive growing seasons.
 - (5) At a minimum, the replicated wetland must reproduce all the values and functions of the original wetland and resource area disturbed as determined by the Commission. In particular, in circumstances where replacement of specific functions and values would require substantial amounts of time before being completely replicated (for example, those provided by large mature trees), the Commission may require additional compensation area, functions and values, etc., beyond those required in other sections of the bylaw and its regulations.
 - (6) Prior to the start of wetland construction, detailed measurements of the depth of the soil O and A horizons within the wetland to be lost during construction shall be conducted. The project shall use this information to determine the suitability of these horizons for reuse in the replication area and to calculate the need for additional soil materials. The top 12 inches of soil from the original wetland must be transplanted with soil structure, especially lamination and density profile, as intact as possible to the replication. This is intended to preserve plant, invertebrate, and planktonic communities of the wetland and inhibit the blossoming of invasive species. Soil materials to be reused (from the wetland to be lost during construction) shall be removed and placed in the prepared replication area within one day. If this is not possible, these soils shall be stockpiled for the minimum amount of time and kept loosely covered and moist at all times.
 - (7) Erosion control barriers shall be placed around the proposed wetland replication area prior to the start of construction. Erosion control structures shall be removed

upon stabilization of the replication area to allow free circulation of water between the wetland replication area adjacent original wetland.

- (8) The proposed replication area shall be excavated to a depth of one foot below the proposed final grade, as depicted in the specifications and plans submitted as part of the notice of intent and referred to in the order of conditions. The subsoil within the replication area shall be examined by the wetland scientist to determine texture (fine sandy loam or finer, as defined by Natural Resources Conservation Service standards). If the subsoil is course textured, it shall be replaced with fine textured material to allow for the development of a capillary fringe between the groundwater and the soil surface.
- (9) A minimum of 1.5 feet (18 inches) of good-quality, organic-rich (>10% by weight) topsoil shall be placed in the replication area. This soil may consist of soil removed from the wetland. The soil may be augmented with peat moss, peat humus, or composted manure in order to provide the necessary organic matter. Soils from an outside source shall be free of chemical contamination, sticks, ash and rocks more than one inch in diameter. Reused wetland soils shall be free of sticks, trash and rocks greater than six inches in diameter. Reused wetland soils shall not be screened prior to use in order to avoid removal of existing wetland vegetation. No soils from areas containing either purple loosestrife (*Lythrum salicaria*) or common reed grass (*Phragmites australis*) shall be used in the replication area.
- (10) Following placement of topsoil, a minimum of 48 hours shall pass prior to planting of wetland vegetation to allow for rebound of buried or compacted peat. The final grade shall be adjusted as necessary.
- (11) The replication area shall be planted and seeded according to specifications and plans submitted as part of the notice of intent and referred to in the order of conditions. Plantings shall be fertilized and irrigated as necessary to promote successful establishment.
- (12) The wetland scientist shall inspect the wetland replication area twice each year, during late spring and during the mid- to late summer of the first two full growing seasons. A written report shall be submitted to the Commission at the end of each growing season. The spring inspection shall include monitoring of the groundwater elevation within a soil pit a minimum of 18 inches deep at each of three randomly distributed quadrants. The summer inspection shall include the same test as was done in the spring, as well as a vegetation survey to determine compliance with the general performance standard of 75% of the wetland surface being reestablished with indigenous wetland plant species within two growing seasons following planting. Vegetation monitoring shall occur within three randomly distributed quadrants sampled within the tree, shrub and herb strata. Photos of each quadrant shall be taken during the summer inspection and submitted with the Commission report.
- (13) An inspection report shall be submitted to the Commission no later than September 15 of each of the first two years. The report shall include all data collected during the inspections and photographs, and shall include recommendations for additional plantings or other remedial work as required.

- (14) Any replication or resonation work that creates a resource (100-foot buffer zone) on abutting properties shall require an easement from the abutting property owner covering the full extension of the resource on that property prior to commencement of the work.
- (15) A bond shall be posted that will enable the Commission to complete the replication should the applicant fail to fulfill obligations set forth in the order of conditions. The amount of the bond shall be determined by the Commission but will be no less than \$10 per square foot of replication.
- (16) Standards for the replication shall be specified and verified in terms of functions, values and actual performance. Technical and engineering specifications used for design and construction shall be considered approximate. Criteria for acceptance and approval shall be based solely on function and performance as specified in the order of conditions. In other words, replications will be evaluated on what they are expected to do, not on how closely actual construction matched the plan. For example, although elevations may be used for a design and planning of a pond, the standards shall be set in terms of volume and depth of water over the course of a year. Replications that do not properly perform the approved functions and values as specified in the order of conditions will not be deemed acceptable no matter how closely they adhere to approved engineered plans.
- (17) The Commission may set other conditions as required on a project-site-specific basis.

§ 330-8. Procedures.

- A. Time periods. All time periods of 10 days or less specified in the bylaw and these regulations shall be computed using business days only (Saturday, Sunday and legal holidays excluded). In the case of a determination of applicability or order of conditions, such period shall commence on the first day after the date of issuance and shall end at the close of business on the 10th business day thereafter. All other time periods 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.
 - (1) Where the bylaw states that a particular action (except receipt of a request or notice) 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 bylaw 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 they met pursuant to the Open Meeting Law, MGL c. 30A, §§ 18 to 25, when voting on the matter.
 - (2) Where the bylaw states that the Conservation Commission is to receive a request or notice, "Conservation Commission" means a member of the Conservation

Commission or an individual designated by the Conservation Commission to receive such request or notice.

C. Determination of applicability.

- (1) Requests for determination of applicability.
 - (a) Any person who desires a determination as to whether the bylaw applies to a site or to an activity that may affect an area subject to protection under the bylaw may submit to the Commission by certified mail or hand delivery a request for determination of applicability.
 - (b) When a person requesting a determination is other than the owner, the request, the notice of the hearing, and the determination itself shall be sent by the Commission to the owner as well as to the person making the request, and the applicant shall supply the Commission with the name and current address of the owner.
- (2) Determination of applicability.
 - (a) Within 21 days after the date of receipt of a request for determination of applicability with the minimum submittal requirements set forth in the following § 330-14, the Commission shall hold a public hearing on the request. Notice of the time and place of the public hearing at which the determination will be made shall be given by the Commission, at the expense of the person making the request, not less than five business 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 and to the owner.
 - (b) Within 21 days of the close of the public hearing, the Commission shall determine:
 - [1] Positively: that the area and the activity proposed thereon are subject to the jurisdiction of the bylaw and that the activity is deemed to affect one or more of the interests protected in the bylaw.
 - [2] Negatively: that the area in which the proposed activity is to take place is not within the jurisdiction of the bylaw or that the proposed activity is not deemed to affect one or more of the interests protected by the bylaw.
 - (c) The determination shall be signed by a majority of the Commissioners present at the public hearing and shall be sent by the Commission to the person making the request and a copy to the owner, if other than applicant, within 21 days of the close of the public hearing or any continuance thereof.
 - (d) A determination shall be valid for three years from date of issuance.
 - (e) In the event of a positive determination, a notice of intent shall be filed and all of the procedures set forth in Subsections D and E of this section shall apply.

D. Notice of intent.

- (1) Any person who proposes to do work that will remove, fill, dredge, build upon, or alter any area subject to protection under the bylaw shall submit a notice of intent and other application materials in accordance with the submittal requirements provided in § 330-14.
- (2) The Commission in an appropriate case may accept as the application and plans under the bylaw notice of intent and plans filed under the Wetlands Protection Act, MGL c. 131, § 40.
- (3) Any person filing a notice of intent with the Commission under the bylaw shall give written notice thereof, including information on the date, time, location and purpose of the public hearing, by certified mail or hand delivered, to all abutters according to the most recent record of the Assessors and to all other persons as the Commission shall, in writing, require. Abutters shall be notified at least 10 business days prior to the date of the public hearing.
- (4) When a person filing is other than the owner, the application, the notice of the hearing and the filings themselves shall be sent to the owner by the person filing the application, and the applicant shall also supply the Commission with the name and current address of the owner.
- (5) A notice of intent may be denied by the Commission if:
 - (a) The filing is deemed incomplete; or
 - (b) A special permit or variance from the Zoning Board of Appeals is required and has not been obtained or applied for.

E. Public hearings on notices of intent.

- (1) A public hearing on a notice of intent shall be held by the Commission within 21 days of receipt of the minimum submittal requirements set forth in Subsections D and E of this section and the following § 330-14 and shall be advertised at the expense of the applicant at least five business days prior to the hearing in a newspaper of general circulation in the Town and in accordance with the requirements of the Open Meeting Law, MGL c. 30A, §§ 18 to 25. Notice of the hearing shall be mailed by the Commission to the applicant and to the owner if other than the applicant.
- (2) The Commission in an appropriate case may combine its hearing under the bylaw with the hearing conducted under the Wetlands Protection Act, MGL c. 131, § 40.
- (3) Public hearings may be continued as follows:
 - (a) Within 21 days of receipt of the minimum submittal requirements, without the consent of the applicant to a date certain, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant deemed necessary by the Commission in its discretion, or comments and recommendations of other local or state boards and officials.

- (b) With the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing.

F. Permits regulating the work.

- (1) Within 21 days of the close of the public hearing, the Commission shall issue an order of conditions (hereinafter called the "order"), either approving or denying the project.
- (2) If the project is approved, the order shall impose such conditions as are necessary for the protection of one or more of the interests identified in the bylaw. The order shall prohibit any work or portion thereof that cannot be conditioned to protect said interests.
- (3) If the project is denied, it shall be for one of more of the following reasons:
 - (a) For failure to meet the requirements of the bylaw.
 - (b) For failure to submit necessary information or plans requested by the Commission.
 - (c) For failure to meet the design specifications, performance standards, or other requirements in these regulations.
 - (d) For failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by the bylaw.
 - (e) Where no conditions are adequate to safeguard wetland values protected by the bylaw.
- (4) An order shall be valid for three years from the date of its issuance; however, the Commission in its discretion may issue an order expiring five years from the date of issuance for recurring or continuous maintenance work, provided that on an annual basis the applicant gives the Commission written notification of the time and location of the work to be performed. In the event of a change of ownership before or during project work activities, prior to the transfer of ownership, the current owner must notify the new owner, by registered or certified mail, a copy of the determination of applicability or of the existing order of conditions. A copy of the notification letter must be forwarded to the Commission prior to commencing or continuing the project work activities.
- (5) The order shall be signed by a majority of the Commissioners present at the respective public hearing and shall be mailed or hand delivered to the applicant, his/her agent or the owner of record.
- (6) A copy of the plans describing the work and the order shall be kept on file by the Commission and shall be available to the public at reasonable hours.
- (7) Prior to the commencement of any work permitted or required by the order, the order shall be recorded 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. Certification of recording shall be sent to the Commission before any work is commenced. If work is undertaken without the applicant first recording the order, the issuing authority may issue an enforcement order or may itself record the order at the applicant's expense.¹

- (8) For good cause, the Commission may revoke or modify a permit or determination issued under the bylaw after notice to the holder of the permit or determination, notice to the public, abutters, and Town boards, pursuant to §§ 300-5 and 300-6 of the bylaw, and after a public hearing.
- (9) The Commission in an appropriate case may combine the order or other action on an application issued under the bylaw with the order of conditions issued under the Wetlands Protection Act, MGL c. 131, § 40.

G. Extensions of permits.

- (1) The Commission may extend an order one or more periods of up to three years each. The written request for extension shall be received by the Commission at least 30 days prior to the expiration of the order, along with the appropriate fee as per § 330-14G of the regulations.
- (2) The Commission may deny the request for an extension and require the filing of a new notice of intent 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, or in the obtaining of other necessary permits;
 - (b) Where new information, not available at the time the order was issued, has become available and indicates that the order is not adequate to protect the interests identified in the bylaw and these regulations;
 - (c) Where incomplete work is causing damage to the interests identified in the bylaw and these regulations; or
 - (d) Where work has been done in violation of the order or these regulations.
- (3) The extension permit shall be signed by a majority of the Commission.
- (4) The extension permit shall be recorded in the Land Court or the Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the Commission on the stub provided at the bottom of the extension permit. If work is undertaken without the applicant so recording the extension permit, the Commission may issue an enforcement order or may itself record the extension permit at the applicant's expense.

H. Certificates of compliance.

- (1) Upon completion of the work specified in the order of conditions, it is mandatory for the applicant to request, in writing, a certificate of compliance. The written request shall be accompanied by the proper fee as required per § 330-14G of

1. Editor's Note: Amendment pending.

these regulations. Within 21 days of receipt of the written request, the Conservation Commission, after review and inspection, shall either certify that the activity or portions thereof described in the notice of intent and plans have been completed in compliance with the order or refuse to issue a certificate of compliance, and such refusal shall be in writing and shall specify the reasons for denial. The certificate of compliance shall be signed by a majority of the Commission.

- (2) 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 order shall accompany the request for a certificate of compliance.
- (3) If the order contains conditions which continue past the completion of the work, such as (but not limited to) maintenance or monitoring, the certificate of compliance shall specify which, if any, of such conditions shall continue. The certificate shall also specify what portions of the work it applies to if it does not apply to all the work regulated by the order.
- (4) The certificate of compliance shall be recorded in the Land Court or the Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the Commission on the stub provided at the bottom of the certificate of compliance. Upon failure of the applicant to so record, the Commission may do so at the applicant's expense.

§ 330-9. Hiring outside consultants.

- A. As provided by MGL c. 44, § 53G, and § 300-4E of the Town of Norfolk Wetland Protection Bylaw, the Norfolk Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of the Wetlands Protection Act (MGL c. 131, § 40), Conservation Commission Act (MGL c. 40, § 8C), or any other applicable state or municipal statute, bylaw (ordinance) or regulation, as they may be amended or enacted from time to time. The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information or technical assistance acquirable only through outside consultants would be necessary for the among of an objective decision.
- B. Funds received by the Conservation Commission pursuant to these rules shall be deposited with the Town of Norfolk Treasurer/Collector, who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriations as provided in MGL c. 44, § 53G. Expenditures from this account shall be made only in connection with the review of a special project or projects for which a consultant fee has been collected from the applicant. Accrued interest may also be spent for the purposes hereunder. Specific consultant services may include but are not limited to resource area

survey and delineation, analysis of resource area values and impacts, hydrogeologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. Consultants include, but are not limited to, engineers, planners, wetland scientists, surveyors, attorneys or other professionals with experience in the matters that are the subject of the Commission's proceedings. The consultant shall be chosen by, and report only to, the Commission and/or its agent.

- C. The Conservation Commission shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, an estimate of the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given.
- D. The fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within 10 business days of the date of the request for payment shall be cause for the Commission to determine that the application is administratively incomplete (except in the case of an appeal). The Commission shall state such in a letter to the applicant. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee. The failure to pay requested fees on two or more occasions shall be grounds for denial of the underlying application. The applicant may appeal the selection of the outside consultant to the Norfolk Board of Selectmen, which may disqualify the outside consultant selected only on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the Norfolk Board of Selectmen and a copy received by the Conservation Commission, so as to be received within 10 days of the date consultant fees were requested by the Conservation Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Commission shall stand.
- E. At the completion of the Commission's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Commission with documentation establishing such succession in interest.

§ 330-10. Emergencies.

- A. Any person requesting permission to do an emergency project shall specify why the project is necessary for the protection of the health or safety of the public and what agency of the commonwealth or subdivision thereof is to perform the project or order it to be performed.
- B. The request may be written or oral, but if oral must be confirmed by written notice within 24 hours of work commencement.
- C. A majority of the Commission must certify the work as an emergency project to be performed only for the time and place certified by the Commission for the limited purpose of abating the emergency.
- D. An emergency certification shall be issued only for the protection of public health or safety.
- E. The time limit for performance of emergency work shall not exceed 30 days from the date of certification by the Commission.

§ 330-11. Severability.

The invalidity of any section of these regulations shall not invalidate any other section or provision thereof, nor shall it invalidate any order or determination which previously has been issued. If any court of the commonwealth shall invalidate any provision of the bylaw or these regulations, the Conservation Commission may promulgate additional regulations or present to the next Town Meeting after such invalidation amendments to the bylaw or regulations which are designed to comply with any court decision invalidating such provision or regulation, as the case may be.

§ 330-12. Effective date.

The effective date of these regulations shall be May 28, 1999, and the provisions of these regulations shall apply to all applications received on or after that date.

§ 330-13. Enforcement; violations and penalties.

The Conservation Commission shall have the authority to enforce the bylaw, these regulations and the permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions. Any person who violates provisions of the bylaw or these regulations may be ordered to restore the property to its original condition and take any other action deemed necessary to remedy such violations, or may be fined up to \$300 per day, or both.

§ 330-14. Submittal requirements.

- A. General information.

- (1) Complete applications shall be submitted at least two weeks prior to the next scheduled Conservation Commission meeting.
 - (2) The applicant should adhere to the written filing guidelines issued by the Conservation Commission, as amended from time to time.
 - (3) Incomplete applications (i.e., missing information, forms, fees, etc.) cannot proceed until such time as all required elements are received.
 - (4) The Commission requires three hard copies and one electronic copy of all supplemental information/reports, revised plans, etc., for any public hearing to be submitted to the Commission's office no later than 12:00 noon the preceding Thursday of the scheduled meeting.
- B. Certificate of good standing. Pursuant to the Town of Norfolk Bylaws, Chapter 206, Licenses and Permits, Article I, Denial, Suspension or Revocation for Failure To Pay Taxes or Charges, a good-standing approval form approved by the Town Treasurer/Collector shall be submitted with the application filed with the Conservation Commission.
- C. Plans and drawing requirements. In order to properly and accurately evaluate the potential or real effects of proposed projects:
- (1) In addition to the copies required to be provided to the various Town boards pursuant to § 300-6 of the Town of Norfolk Wetland Protection Bylaw, all notice of intent and abbreviated notice of intent applications shall be accompanied by three hard copies and one electronic copy of all documents, plans prepared and stamped by a professional land surveyor or a qualified professional engineer, whichever is applicable.
 - (2) In addition to the copies required to be provided to the various Town boards pursuant to § 300-6 of the Town of Norfolk Wetland Protection Bylaw, all requests for determination of applicability applications shall be accompanied by three hard copies and one electronic copy of a sketch or drawing showing as much detail as possible but do not require a professional land surveyor's or professional engineer's services unless the applicant is requesting a determination of the boundaries of the resource areas. Requests for determinations of applicability do not require abutter notification.
 - (3) If the design plans require a qualified professional engineer, his/her stamp shall include wet stamp shall be affixed to the plan, including an original handwritten signature and discipline adjacent to and below the licensee's seal. Each and every revision of any plans submitted to the Commission shall include a wetland stamp and handwritten signature. The Commission can request the presence of the engineer of record at the hearing to explain their documents and opinions. The Commission reserves the right to ascertain the qualifications of all representatives of the applicant in the presentation of the project. The Commission may hire any professional, such as, but not limited to, wetland scientists, biologists, engineers, stormwater management specialists, etc., at a cost to be borne by the applicant in the review of any application before the Commission (see § 330-9). The Commission reserves the right to not accept any design plans or revisions to plans that do not show an original wet stamp and handwritten signature.

- (4) Professionally prepared plans must show and label all resource areas.
- (5) All filings must be accompanied by a Town of Norfolk Assessors' locus map.
- (6) All plans and drawings shall show the immediate abutters to the project property.
- (7) All plans and drawings shall show the entire lot/parcel.
- (8) All plans and drawings must indicate linear measurements depicting setbacks from wetlands to all pertinent structures.
- (9) All revised plans shall show revision date and must indicate nature of revision within the notes.
- (10) Topographical variation must be shown on all professionally prepared plans.
- (11) All drawings and plans submitted with the request for determination of applicability or with the notice of intent under the bylaw must show the limit of the fifty-foot undisturbed buffer required, in addition to the limit of the 100-foot buffer defined by the bylaw, these regulations, the Act, and the DEP Wetlands regulations.

D. Stormwater management.

- (1) Where required by these regulations, computation of runoff shall be performed by a Massachusetts professional engineer (PE) in strict compliance with the provisions of § 325-4.19E, Hydrologic analysis, of the Rules and Regulations for the Subdivision of Land and Site Plan Approval of the Town of Norfolk Planning Board, Norfolk, Massachusetts, as amended through September 19, 2010.
- (2) The stormwater management system for subdivision projects, projects subject to site plan approval, and comprehensive permit projects that are subject to these regulations shall conform to all provisions of § 325-4.19, Stormwater management system, of the Rules and Regulations for the Subdivision of Land and Site Plan Approval of the Town of Norfolk Planning Board, Norfolk, Massachusetts, as amended through September 19, 2010.

E. On-site requirements.

- (1) All proposed structures and property corners require staking.
- (2) On-site staking must be in place by 12:00 noon on the Monday prior to the hearing date.
- (3) Lot numbers must be posted and easily visible on vacant properties.
- (4) If a building currently exists on the property, its identifying number/house number must be easily visible.

F. Flagging. The edge of each resource area relevant to the project will require staking or flagging. All flagging shall be maintained until all work activities are complete. It is the policy of the Commission to refrain from making any final boundary determination of vegetated wetlands during the period beginning November 1 and ending May 15 of the following year. This policy is based on the fact that the boundaries of bordering

vegetated wetland are partially based on the line within 50% or more of the vegetational community consisting of the wetland species identified in 310 CMR 10.00 and that between November 1 and May 15 wetland vegetation may not be present, detectable or identifiable in winter or early spring. The Conservation Commission reserves the right to require that the site be flagged or reflagged by the applicant.

- G. Bylaw (municipal) filing fees. The review of applications as well as monitoring of an active site require the expenditure of significant municipal resources. Therefore, additional fees are required for filing under the bylaw in addition to those required for filing under the Wetlands Protection Act, MGL c. 131, § 40.

WETLAND PROTECTION REGULATIONS

330 Attachment 1

Town of Norfolk

**Bylaw Fees
[Amended 2-14-2018]**

The fees for filing under the Bylaw shall be payable to the Town of Norfolk and are as follows:

A. Request for determination of applicability (WPA Form 1).

- a.) Minor projects associated with SFH (i.e., decks, pools, sheds, additions, septic repair): \$100.
- b.) All other residential subdivision/commercial/retail projects: \$200.

B. Notice of intent (WPA Form 3)* or abbreviated notice of intent (WPA Form 4)*

Category Activities and Fees.

Category 1 - Fee for each activity is \$200.

- a.) Work on single family lot; addition, pool, etc.;
- b.) Site work without a house (removal of vegetation, excavation, grading).
- c.) Control vegetation (aquatic vegetation removal, herbicides, thinning of vegetation in resource areas).
- d.) Resource improvement (clearing of brush, tree cutting).
- e.) Work on septic system separate from house (or any part thereof).
- f.) Monitoring well activities minus roadway (perc testing, disturbance/destruction of vegetation/soils).
- g.) New agricultural or aquaculture projects (includes forestry on land in forestry use).

Category 2 - Fee for each activity is \$500.

- a.) Construction of single-family house (includes site preparation, utilities, septic systems, grading, etc.).
- b.) Parking lot (construction of and repair of water-related structures and uses).
- c.) Beach nourishment;
- d.) Electric generating facility activities;
- e.) Inland limited projects, minus road crossings and agriculture;
- f.) Each crossing for driveway to single-family house;
- g.) Each project source (storm drain) discharge (includes upgrades/redevelopments);
- h.) Control vegetation in development;
- i.) Water level variations;
- j.) Any other activity not in Category 1, 3, 4, 5 or 6;
- k.) Water supply exploration.

Category 3 - Fee for each activity is \$1,200.

- a.) Site preparation (for development) beyond notice of intent scope;
- b.) Each building (for development) including site;

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- c.) Road construction not crossing or driveway;
- d.) Hazardous cleanup;
- e.) Water supply development.

Category 4 - Fee for each activity is \$2,000.

- a.) Each crossing for development or commercial road;
- b.) Dam, sluiceway, tide gate (safety) work;
- c.) Landfills operation/closures;
- d.) Sand and gravel operations;
- e.) Railroad line construction;
- f.) Bridge;
- g.) Hazardous waste alterations to resource areas;
- h.) Dredging;
- i.) Package treatment plant and discharge;
- j.) Airport tree clearing;
- k.) Oil and/or hazardous material release response actions.

Category 5 - Fee is \$4 per linear foot; total fee not less than \$100 or more than \$2,000.

- a.) Work (construction, reconstruction, repair, replace) on docks, piers, revetments, dikes, etc. (coastal or inland).

Category 6 - Fee is \$2 per linear foot for each resource area: For each resource area delineation, the fee shall not exceed \$200 for activities associated with a single-family house or \$2,000 for all other activities.

*RIVERFRONT PROJECTS - (ADD 1/2 of TOTAL FEES IF WORK IS APPLICABLE UNDER CATEGORIES 1-4.)

C. **Amended order of conditions:** \$100.

D. **Reopen public hearing:** \$100.

E. **Certificate of compliance (WPA form SB):**

- 1. Partial: \$50.
- 2. Full: \$50.

F. **Release from expired order of conditions:** \$100.

G. **Extension permit for order of conditions (WPA Form 7):**

- 1. Residential: \$50.
- 2. Nonresidential: \$50.

H. **Request for amendment of order of conditions following a denial:***

- 1. Single family house or minor projects: \$100.
- 2. Wetland crossing for a single-family house: \$100.

WETLAND PROTECTION REGULATIONS

3. Residential subdivision: two lots, to a maximum of 10 (\$15 per lot, plus \$250 administrative fee to a maximum of \$1,750).
4. Residential subdivision: 11 lots to a maximum of 25 lots: (\$200 for each house lot, plus \$300 administrative fee, to a maximum of \$6,600).
5. Residential subdivision: 26 lots and over (\$300 each house lot, plus \$350 administrative fee, to a maximum of \$9,350).
6. Commercial, retail industrial projects, including parking lots, new drainage designs, modifications to existing inadequate drainage designs: \$900 (\$500, plus \$400 administrative fee).
7. Each roadway or driveway wetland crossing associated with commercial, industrial, institutional or residential (\$1,000 for each crossing, plus \$500 administrative fee).

*Notwithstanding the above, NO application which has been finally and unfavorably acted upon by the Commission shall be acted favorably upon within one year after the date of final unfavorable action unless the Commission finds, by a majority vote, specific and material changes in the conditions upon which the previous favorable action was based and describes such changes in the record of its proceedings (§ 300-16, Town Meeting, May 2003).

Additional Information:

- a.) Checks or money orders are made payable to "Town of Norfolk" (unless otherwise indicated).
- b.) Filing fee worksheet shall be signed with your application.
- c.) Fee is nonrefundable if public hearing notice has been advertised.
- d.) The time period by which the Commission must hold the public hearing/meeting begins only when a completed application including proper filing fees and good-standing report is received.
- e.) The fees required under the Norfolk Wetland Protection Bylaw and Regulations are in addition to the fees required by the Commonwealth of Massachusetts under the Massachusetts Wetlands Protection Act.
- f.) Municipal projects are exempt from the bylaw regulation fees.
- g.) Fees for consultants the Commission may require are in addition to these fees and must be paid for by the applicant. The failure of the applicant to pay such fees may be grounds for denial of the project for lack of information.

Please complete:

Type of Activity:	Number of Activities:	Activity Fee:	Subtotal:
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
		Riverfront Fee: (if applicable)	_____
		Total	_____

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I have read and accept responsibility for the fees and filing requirements of the Norfolk Conservation Commission. I give permission to the Norfolk Conservation Commission and its agents or staff to enter upon the property for the purposes of gathering information and data that is necessary for the Commission to review the project and issue its decision, which also includes taking photographs or any other materials that are deemed necessary by the Commission from the date of the application until the date of any final certificate of compliance.

Applicant/Owner

Date