



Town of Danvers

Wetland Regulations

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Section 1 General Provisions

- 1.1 Authority:** These regulations are promulgated by the Town of Danvers Conservation Commission (hereinafter "Commission") pursuant to the authority granted by the Town of Danvers Wetlands Protection Bylaw (hereinafter "the Bylaw"), Article 39 of the Articles of Amendment to the Massachusetts Constitution (the "Home Rule" Amendment) and all other power and authority hereto enabling. These regulations shall be effective as of the date of their formal adoption by the Danvers Conservation Commission, which date is January 6, 1999.
- 1.2 Purpose:** The purpose of these regulations is to protect the wetlands, water bodies, adjoining land areas and related resources by controlling activities deemed to have a significant effect upon their values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution, fisheries, shellfish, wildlife habitat, recreation, agriculture, aquaculture and historic values (collectively, the interests protected by the Bylaw). Further, the purpose of these regulations is to define and clarify that process by establishing standard definitions, standard plan format and uniform procedures by which the Commission may carry out its responsibilities under the Bylaw.
- 1.3 Interpretation:** These Regulations shall be interpreted and applied so as to be consistent with the Bylaw. Except as specified herein, all of the standards, requirements, procedures, definitions and performance standards set forth in the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 ("Act") and the regulations promulgated thereunder by the Massachusetts Department of Environmental Protection (MA DEP), currently found at 310 C.M.R. 10.00 et seq. ("MA Regulations"), are incorporated and made part of these Regulations as if restated herein. Where these Regulations are more stringent than the MA Regulations these Regulations shall apply, and those provisions shall supersede the MA Regulations for the purposes of implementing the Bylaw. In the event of any inconsistency in or between the Bylaw and these Regulations, the more stringent provision will control.
- 1.4 Jurisdiction:** Except as permitted by the Conservation Commission pursuant to these regulations or as otherwise allowed by the bylaw, no person shall commence to alter a Resource Area or Resource Area Buffer Zone.
- 1.5 Burden of Proof:** The applicant for a permit shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application will not harm the interests protected by the Bylaw and these regulations. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not harm the interests protected by the Bylaw and these regulations, shall be sufficient cause for the Commission to deny a permit or to grant a permit with conditions.
- 1.6 Severability:** The invalidity of any section or provision of these regulations shall not invalidate any permit which previously has been issued. If any court of the Commonwealth shall invalidate any of these regulations, the Commission shall promulgate additional regulations after such invalidations, which are designed to comply with any Court decision invalidating such regulation.
- 1.7 Fees:** At the time of filing an application, the applicant shall pay a filing fee as specified in the fee schedule available in the Conservation office. These required fees are in addition to that required by the MA regulations. All fees are not refundable and failure to pay the applicable filing fees when due shall cause the application to be deemed incomplete. The Commission may, in its sole discretion, waive the filing fee for an application filed by a town, state, or federal entity or by any applicant that demonstrates significant financial hardship.
- 1.8 Procedures:** All time periods specified in the Bylaw and these regulations shall be computed on the basis of calendar days, unless the last day falls on a Saturday, Sunday or legal holiday, in which case the last day shall be the next business day following.

Section 2 Definitions

Massachusetts General Laws, Chapter 40 Section 8C and Chapter 131, Section 40 (the Act), as well as 310 CMR 10.00, Massachusetts Wetlands Regulations (hereafter referred to as the “State Regulations”), are hereby incorporated by reference and made a part hereof, except as otherwise modified by the Danvers Wetlands Protection Bylaw and its Regulations promulgated herein and any subsequent amendments. The definitions provided in the State Regulations, 310 CMR 10.04, shall apply to the Bylaw and Regulations and as modified below.

2.1

Alter: Includes, without limitation, the following actions when undertaken in resource areas subject to protection under the Bylaw:

- a) Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- b) Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- c) Drainage or other disturbance of water level or water table;
- d) Dumping, discharging or filling with any material which may degrade water quality;
- e) Placing of fill or removal of material which would change elevation;
- f) Driving of piles, erection of buildings or structures of any kind;
- g) Placing of obstructions or objects in water or waterways;
- h) Destruction of or injury to plant life including cutting of trees or their branches or roots;
- i) Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water;
- j) Any activities, changes or other work which pollute any body of water or groundwater.
- k) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by the Bylaw.

Amendment: A change in the project that the Commission deems sufficient magnitude that will require the imposition of additional conditions to ensure adequate protection of resource areas and interests covered under the Bylaw and Regulations

Applicant: Any person or persons on whose behalf, action is requested of the Commission.

Bank (Coastal): The seaward face or side of any elevated landform, which lies at the landward edge of a coastal beach, land subject to tidal action or other wetland.

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

Beach (Coastal): A coastal beach means unconsolidated sediments subject to wave, tidal and storm action, which forms the gently sloping shore of a body of salt water and includes tidal flats.

Bordering Land Subject to Flooding: An area which floods from a rise in a bordering waterway or water body (i.e. surface water).

Buffer Zone: The band of land, contiguous or intermittent, with a defined dimension, subject to restriction, extending 100 feet horizontally outward from the boundary of any resource area specified in Section 2.2 of the Bylaw.

Burden of Proof: The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not harm the interests protected by the Bylaw. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not harm the interests protected by the Bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

Critical Areas: Those areas identified under the Massachusetts Department of Environmental Protection Stormwater Management Handbook, Section 401 of the United States Clean Water Act, and the Massachusetts Surface Water Quality Standards (310 CMR 4.00 and 9.00).

Direct Discharge: Any outfall of water that empties into a resource area or resource area buffer zone, including discharge from infiltration basins or other infiltration structures.

Distance: All distances (excluding depth) noted in the Bylaw and these regulations, such as buffer zone distances, are planar distances measured along a single elevation. Consequently, on steeply sloped topography, the measured over-ground distance may not reflect accurately the distances specified in the permits and conditions specified by the Bylaw. In particular, the 100-foot Buffer Zone on steeply sloped land will measure considerably more than 100 feet when measured over-ground on the site.

Dock: Dock means the entire structure of any Pier, wharf, walkway, bulkhead or float, and any part thereof including pilings, ramps, walkways, float and/or tie-off pilings.

Growing Season: The entire period from March 15th to October 15th.

Hydric Soils: Any soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper layer.

Intermittent Stream: A body of running water, including brooks and creeks, which moves in a defined channel, that may cease to flow from time to time throughout the area, including portions upgradient of all bogs, swamps, wet meadows, and marshes.

Isolated Vegetated Wetland: A freshwater wetland, of at least 5,000 square feet in area, that does not border on a creek, river, stream, pond or lake, that does not qualify as a Vernal Pool, as defined herein, and that meets the requirements listed in Section 3.3 of these Regulations.

Minor Modification: A minor or insignificant project change (as determined by the Commission) that will not result in an adverse impact on the wetland resource areas and/or interests protected under the Act and the Bylaw.

Normal Maintenance of Agricultural Land: Shall be that as defined under 310 CMR 10.04 (b)

No-Build Zone: The portion of the Resource Area Buffer Zone, ~~up gradient of the No-Disturb Zone,~~ extending fifty linear feet (50') from the edge of any Wetland Resources, contiguous or intermittent, subject to restriction as defined herein.

No-Disturb Zone: The portion of the Resource Area Buffer Zone extending thirty-five linear feet (35') from the edge of any Wetland Resources, contiguous or intermittent, subject to restriction, as defined in the regulations.

Pond: That as defined under 310 CMR 10.04 except that the size threshold of 10,000 square feet shall not apply.

Public Hearing: A formal meeting, subject to statutory requirements, at which certain and specific determinations are made.

Public Meeting: A meeting held when a formal public hearing is not required (e.g. to discuss a project prior to a permit filing, a proposed project modification, or a request for a Certificate of Compliance).

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 Wildlife and Fisheries, regardless of whether the site in which they occur has been previously identified by the Division.

Revocation: The revoking of a Permit issued under the Act and/or the Bylaw.

River: Any natural flowing body of water that empties into any ocean, lake, pond or other river and which flows throughout the year. Rivers include streams that are perennial because surface water flows within them throughout the year. Rivers have a 200-foot Riverfront Area associated with them. River is defined further in 310 CMR 10.58(2)

Riverfront Area: The area of land between a river's mean annual high-water line, measured horizontally outward from the river and a parallel line located 200 feet away. The Riverfront Area may include or overlap other resource areas or their Buffer Zones. The Riverfront Area does not have a Buffer Zone. Riverfront Area is defined further in 310 CMR 10.58(2).

Stream: A body of flowing water, including brooks and creeks, which moves in a channel in the ground due to a hydraulic gradient, and which flows within, into or out of an area subject to protection under the Act or Bylaw. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (i.e., which is intermittent) is also considered a stream unless it is determined to be a river in accordance with these Regulations.

Sufficient Information: The compliance with all Commission requirements for submission of information, material and fees as set forth in the Bylaw and these Regulations. This includes requests of the applicant at public meetings or hearings.

Vernal Pool: Includes a confined basin depression which, at least in most years, hold water for a minimum of two continuous months during the spring and/or summer and which is free of adult fish populations, and which does not have to be located within another resource area, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries.

Volume of detention/retention basin: Basin volume shall be calculated as that volume contained between the basin's unrestricted overflow elevation and the lowest elevation of the basin floor.

Wetland Resource Area: Those areas subject to protection under the Massachusetts Wetlands Protection Act (MGL c. 131, §40) and/or the Danvers Wetlands Protection Bylaw (Chapter 26) and Regulations.

Section 3

Additional Wetland Resource Areas Protected Under the Bylaw

3.1 Restrictive Buffer Zones

Resource Area Buffer Zones are essential for protection of Resource Areas in that they reduce adverse impacts to the wetland functions and values from nearby activities and a naturally vegetated Resource Area Buffer Zone functions to protect the wetland values included in the Bylaw. In order to protect the Buffer Zone and its adjacent Resource Area(s), a 35 (thirty-five) foot No-Disturb Zone and a 50 (fifty) foot No-Build Zone have been established to limit the types of activities that are permitted in the first 50 feet of the Buffer Zone to the edge of any resource area defined in Section 2.1(a) of the Bylaw.

3.1.1 35' No-Disturb Zone Definition and Characteristics: Except as otherwise provided in these regulations, no activity is permitted within or above the area within 35 feet of the delineated edge of the adjacent wetland resource area(s) defined in Section 2.1(a) of the Bylaw. Prohibited activities include, but are not limited to, grading, landscaping, shading, vegetation clearing, mowing, cutting, filling, depositing/dumping of yard waste, excavating, road construction, and driveway construction. The 35-foot no-disturbance zone shall remain unchanged from its predevelopment project state to the greatest extent practicable.

3.1.2 Presumption of Significance: When a proposed activity involves alteration in the No-Disturb Zone, the Commission shall presume that such activity will have a significant immediate or cumulative adverse effect on the resource area it is associated with. This presumption may be overcome by the applicant's presentation of evidence sufficient to demonstrate, by a preponderance of credible evidence, that the No-Disturb Zone being altered by the project does not play a role in the protection of said interests.

3.1.3 Performance Standards:

1. Any proposal for alteration within the No-Disturb Zone shall be accompanied by a waiver request as defined in Section 5.
2. If permitted, the total allowable alteration in the No-Disturb Zone shall not exceed 10% of the total area of the No-Disturb Zone buffer setback for the lot.
3. 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 will require, as they see practicable, the no-disturbance 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 Danvers Conservation Commission."

3.1.4 50' No-Build Zone Definition and Characteristics:

1. Except as otherwise provided in these regulations, the following shall be prohibited from the area within ~~350~~- 50' of the delineated edge of the adjacent resource area(s) defined in Section 2.1(a) of the Bylaw, herein defined as the No-Build Zone:
 - a) Building/structures that require a building permit.
 - b) Structures or other fixtures that may not require a building permit, including, but not limited to, fences, retaining walls, decks, patios, sports courts, parking lots/areas, driveways/roadways (except those allowed as limited projects), sheds,

utility lines, and the like, but excluding limited or minor accessory structures or items such as lawn furniture, sandboxes, swing sets or the like.

2. Notwithstanding the foregoing, the Commission may allow, in its discretion and subject to the waiver requirements found herein, within the 50' No-Build Zone:
 1. Building/structures that it concludes will improve the 50' No-Build Zone.
 2. Temporary building structures subject to specific time frames and conditions requiring the successful return of the buffer zone to its preexisting or improved state.
 3. Certain stormwater structures and controls that are shown to provide water quality improvement and treatment.

3.1.5 Presumption of Significance: When a proposed activity involves alteration in the No-Build Zone, the Commission shall presume that such activity will have a significant immediate or cumulative adverse effect on the resource area it is associated with. This presumption may be overcome by the applicant's presentation of evidence sufficient to demonstrate, by a preponderance of credible evidence, that the No-Build Zone being altered by the project does not play a role in the protection of said interests.

3.1.6 Performance Standards:

1. Any proposal for alternation within the No-Build Zone shall be accompanied by a waiver request as defined in Section 5.
2. If permitted, the total allowable alteration in the No-Build Zone shall not exceed 20% of the total area of the No Build Zone buffer setback for the lot.

3.1.7 Replacement of buildings, structures or fixtures that existed prior to the Commission's adoption of the 35' and 50' restrictive buffer zones are exempt from these restrictions so long as:

1. The replacement structure is no larger than the existing structure, is located a greater distance from the boundary of the adjacent resource area and will not otherwise result in a greater impact to the fifty-foot buffer zone; or
2. The replacement structure is within the same footprint as the original structure and will not otherwise result in a greater impact to the fifty-foot buffer zone; and
3. Evidence is provided to the Commission that the above standards have been met.

3.2 Vernal Pools

Vernal pools and their associated habitat, including the 100-foot buffer extending from the limits of the Vernal Pool, are significant to the protection of wildlife habitat and rare plant and animal habitat. Vernal pools constitute a unique and increasingly rare type of wetland that is inhabited by many species of wildlife, some of which are totally dependent on vernal pools and their associated habitat for their survival. Areas in the immediate vicinity of the vernal pool (including, but not necessarily limited to, the 100-foot buffer zone) and the airspace above provide these species with important non-breeding habitat functions, such as migratory pathways, feeding, shelter, and over-wintering sites. Many species utilize vernal pools and their associated 100-foot buffer zones for breeding and non-breeding functions, although they are not restricted to this type of wetland. The protection of vernal pools and their associated 100-foot buffer zones are essential for the survival of wildlife species that depend on these unique and threatened resource areas.

3.2.1 Definition, Critical Characteristics and Boundary: Vernal Pools and the area within a 100-feet of its extent, are given special protection under State law, and no adverse effects on the wildlife habitat characteristics are permitted. Pools must have been certified through the Natural Heritage and Endangered

Species program or identified by a preponderance of credible evidence presented at a public hearing to be protected under the Act. The Bylaw extends this protection by presuming Vernal Pool habitat exists if a wetlands physical characteristics conform to those defined for Vernal Pools in Section 4 of the Bylaw. It is not necessary for a Vernal Pool to be located within another type of wetland resource area or to be certified as a Vernal Pool by the MA Division of Fisheries and Wildlife, to be eligible for protection under the Bylaw and these regulations.

3.2.2 Presumption of Significance: Where a proposed activity involves the removing, filling, dredging, or altering of a Vernal Pool, the Commission shall presume that the Vernal Pool is significant to the interests specified in the Act and Section 3.2 of these Regulations. This presumption is rebuttable and may be overcome upon the presentation of a preponderance of credible evidence, which in the judgment of the Commission demonstrates that the Vernal Pool and its buffer does not provide or cannot provide vernal pool habitat functions. For the purposes of overcoming the presumption of vernal pool habitat the Commission will consider:

1. Evidence that the ponding area does not hold water for at least two continuous months when not in a period of extended drought or unusual weather conditions.
2. Evidence that vernal pool species do not breed or have not bred in the ponding area.
3. Evidence that the ponding area could not be a viable breeding site for vernal pool species due to incompatible physical, chemical, biological, or other persistent conditions at the site in most years. Such evidence could include, without limitation, several months of pH and dissolved oxygen measurements yielding values incompatible with amphibian or reptile breeding.

3.2.3 Performance Standards: For areas in which the presumption set forth in Section 3.2.2 is not overcome, the following standards shall apply to vernal pools and their 100-foot buffer:

1. Any proposal for alteration within a Vernal Pool must be accompanied by a variance request as defined in 310 CMR 10.05(10).
2. Any proposal for alteration within the 100-foot buffer zone to a Vernal Pool must be accompanied by a waiver request as defined in Section 5 of these Regulations.
3. Work or final project elements shall not be allowed that obstruct the migratory pathways of vernal pool breeding species.
4. No activity is permitted within the Vernal Pool or the associated 100-foot buffer zone that is likely to destroy or otherwise impair the Vernal Pool.
5. Vernal Pools shall be subject to the 35' No-Disturb Zone and the 50' No-Build Zone buffer setbacks.

3.3 Isolated Vegetated Wetlands

Isolated vegetated wetlands are likely to be significant to the interests identified in 310 CMR 10.55(1) that are supported by bordering vegetated wetlands and other interests identified in the Bylaw, including protection of private and public water supply and groundwater, flood control, storm damage prevention, prevention of pollution, protection of fisheries, wildlife habitat, erosion and sedimentation control, and rare plant and animal habitat.

3.3.1 Definition, Critical Characteristics and Boundary: Isolated Vegetated Wetlands protected under the Bylaw are freshwater wetlands, of at least 5,000 square feet in area, that do not border on creeks, rivers, streams, ponds or lakes and that do not qualify as a Vernal Pool under Section 3.2 (in which case the area will be regulated as a Vernal Pool). The types of isolated vegetated wetlands include, but are not limited to, wet meadows, marshes, swamps and bogs. In addition to the minimum size requirement,

isolated vegetated wetlands must also meet at least two of the following three criteria:

1. The vegetation community of an Isolated Vegetated Wetland consists of 50% or more wetland indicator plants. Wetland indicator plants are classified in the following categories: facultative, facultative +, facultative wetland -, facultative wetland, facultative wetland +, or obligate wetland (source: U.S. Fish & Wildlife Service); or
2. Other indicators of hydrology, including site inundation or saturation, water marks, drift lines, sediment deposits, oxidized rhizospheres, water-stained leaves, shallow root systems, buttressed tree trunks, and recorded hydrologic data (stream gauge, aerial photo, or other); or
3. Presence of hydric soils.

3.3.2 Presumption of Significance: Where a proposed activity involves the removing, filling, dredging, or altering of an Isolated Vegetated Wetland or land within the 100-Foot Buffer Zone to an Isolated Vegetated Wetland, the Commission shall presume that the Isolated Vegetated Wetland is significant to the interests specified in Section 3.3 of these Regulations. This presumption may be overcome by the applicant's presentation of evidence sufficient to demonstrate, by a preponderance of credible evidence, that the Isolated Vegetated Wetland does not play a role in the protection of said interests.

3.3.3 Performance Standards: When the presumption set forth in Section 3.3.2 is not overcome, any proposed work in an isolated wetland or its buffer zone shall comply with the following performance standards:

1. Any proposal for alteration within an Isolated Vegetated Wetland or its 100-foot buffer must be accompanied by a waiver request, as defined in Section 5 of these Regulations.
2. No activity is permitted within the associated 100-foot buffer zone that is likely to destroy or otherwise impair the isolated vegetated wetland.
3. Isolated vegetated wetlands shall be subject to the 35' No-Disturb Zone and the 50' No-Build Zone buffer setback and associated waiver provision of Section 5.

Section 4

Supplemental Performance Standards and Requirements

Under the Bylaw, certain activities, alterations, and projects are subject to specific conditions, performance standards, and submission requirements, as set by the Commission. The complexity of these activities warrants the specific requirements set forth below:

4.1 Coastal Docks and Piers

The construction, use, and maintenance of residential and commercial docks and piers are likely to have a significant or cumulative adverse effect on the Resource area values of storm damage prevention, shellfish, fisheries, wildlife habitat, aesthetics, erosion and sediment control, aquaculture, and recreation. Construction, maintenance and use of docks can have adverse effects on Resource areas and navigation for recreational purposes. Further, docks destroyed by storms pose a threat to nearby properties by increasing water-borne debris. The intent of this Section 4.1 is to describe appropriate standards and measures applicable to all projects involving pier and dock system construction so as to avoid the adverse impacts detailed in this section.

4.1.1 Submission Requirements: In addition to any requirements required by these regulations or as so set forth in the Bylaw, all residential and commercial dock and pier projects must submit the following:

1. A narrative description of materials used, i.e., size of pilings, deck percent open area, spacing between planks, flotation materials, toxicity of any materials and potential for leaching into the water from the materials.
2. A narrative description of the construction process including the use of barges, pile driving techniques, or any other heavy equipment.
3. An accurate, detailed drawing, showing type of construction, size, means for mooring/anchoring if floating, exact location, depth of water within a fifty-foot radius of each side of dock, mean high water line (mhw), mean low water line (mlw), extreme low water line (elw), location of where boats will be tied to dock or pier (mooring field), water depths (mlw) throughout the mooring field, property boundary lines and edge of resource areas;
4. A note on the plan indicating the site for winter storage of floats and methods of hauling (if any).
5. The docks effect on navigation reviewed and approved by the Harbor Master.
6. A shellfish mitigation plan, if required by the performance standards.
7. Location of all docks and moorings within 200 feet of the proposed dock and float
8. Location of eel grass and salt marsh grass within 100 feet of the proposed structure

4.1.2 Design Specifications and Performance Standards:

1. The maximum length of a residential dock and pier systems shall be limited to that which is required to reach navigable waters and/or to berth a vessel of reasonable size as determined by the Harbormaster.
2. Pier decking must be constructed at least five feet above mean high water/ordinary high water/annual high water to provide for unobstructed lateral passage under the pier.
3. Piers shall not exceed four feet in width.
4. Floats may not exceed six feet in width and twenty feet in length.
5. Wooden pier pilings should be spaced no closer than twenty times the diameter of the piling.

6. Except for floating portions of a dock, the decking surface shall not reduce normal ambient light (sunlight), by more than 50 percent.
7. No portion of the dock or pier may be closer than ten feet from the property boundary or extended property boundary line into the intertidal and tidal zone.
8. Floating docks shall be fixed by piers utilizing a collar stop, hoop roller, or other approved designed fastening system. In instances where affixing to a pier is not possible, other methods such as float legs may be used.
9. All floats must be elevated at least eighteen inches (18") above the mud-flats during low tide. This depth shall be measured as the shortest distance from any portion of the bottom of the floating section to the seabed.
10. For projects that are within Land Containing Shellfish and/or Shellfish Habitat, as defined by the Department of Environmental Protection and the Office of Coastal Zone Management, all floats must be elevated at least twenty-four inches (24") above the mud-flats during low tide. This depth shall be measured as the shortest distance from any portion of the bottom of the floating section to the seabed. The Commission may require further evidence that the habitat resource area will not be impacted by the proposed project and may further require additional conditions to ensure the resource area is protected.

4.1.3 Standard Required Conditions: The following conditions shall be included as special conditions for all dock and pier projects:

1. Off-season storage of temporary/seasonal docks and floats shall be in upland areas.
2. The method and timing of construction must be during any regulatory conditions as specified by the Army Corp. of Engineers.
3. The street address and DEP File No. shall be clearly displayed on the seaward face of the dock, using three-inch numbers/letters of a contrasting color. This shall remain in perpetuity.
4. Boats shall be tied or attached only in those areas of the pier or dock so identified on the plan.
5. To ensure that the minimum elevation required under Section 4.1.2.9 or Section 4.1.2.10 is maintained, an inspection of the floats must be conducted by the Conservation Commission, or designee, at: (1) the time of float installation and (2) prior to float removal at the end of the boating season, for a period of three years. The following provisions shall apply to this condition:
 - a. The applicant shall be responsible for providing photographic documentation to staff, depicting the measured required minimum clearance at the time of each inspection.
 - b. If it is discovered upon inspection that the minimum required clearance is not being provided, the applicant will be required to take steps to correct the height deficiency, in an appropriate period of time as determined by the Conservation Commission, or designee. This may require another meeting with the Commission to amend any issued Order for the project. The applicant shall provide a written narrative and any associated plans depicting how the height deficiency will be corrected, to be reviewed and approved by Commission staff. Following this corrective action, a follow up staff inspection will be required to confirm that the minimum required clearance is being provided.

- c. If, upon a second inspection for conformity with minimum clearance during the three-year inspection period, a height deficiency is discovered, the Commission reserves the right to require the applicant to implement further reasonable measures to ensure the minimum required clearance is being achieved.
- d. Seasonal inspections shall be required for a period of three years, starting from the date of first float install following the issuance of a valid Order of Conditions, through the removal or storage of the floats after the third season.

4.2 **Stormwater Management**

The construction of impervious surfaces such as driveways, roadways, and parking lots can significantly alter the quantity and quality of stormwater runoff and affect important groundwater characteristics. Furthermore, the increase in surface flows from impervious surfaces may create new erosion problems where storm flows are directed and discharged. The intent of this section 4.2 is to further describe appropriate standards and measures applicable to all projects subject to any stormwater management regulations, so as to avoid the adverse impacts detailed in this section.

4.2.1 Submission Requirements:

1. Any project subject to the Town of Danvers Stormwater Management and Land Disturbance Bylaw shall apply for a Stormwater Permit with the Department of Public Works. The applicant shall include a copy of the stormwater permit application with the Notice of Intent submittal.
2. Any and all projects, including those subject to the Town of Danvers Stormwater Management and Land Disturbance Bylaw, shall show compliance with 310 CMR 10.05(6)(k-q) and the DEP Stormwater Handbook Volumes I-III, as applicable. Evidence of compliance shall accompany the Notice of Intent application.
3. All projects subject to any applicable stormwater regulations or provisions must provide the following:
 - a. Existing and proposed drainage conditions
 - b. The measures planned to mitigate adverse impacts (if any) associated with the management of runoff from the proposed development.
 - c. Measures for source-control and pollution prevention
 - d. An operation and maintenance plan describing how the system will be maintained and by which authority.

4.2.2 Design Specifications and Performance Standards:

1. Where new point source discharges are proposed within 100 feet of a resource area, either open channels or any portion of closed subsurface systems, a comprehensive stormwater management system shall be designed that will not degrade value and function of the receiving of downstream water courses, wetlands, surface and groundwater supplies. Such stormwater management systems shall employ Best Management Practice as to avoid impacting these functions and values.
2. The design of the stormwater management system shall be based on a comparative analysis of both the quantity and quality of existing and developed hydrologic conditions. The baseline hydrologic conditions of the resource areas shall be used to determine the design criteria for the proposed stormwater management system. The analysis shall include the calculation of peak flow rates, time of peak flow, volume of runoff and quality of runoff. The hydrologic analysis shall be based on a reasonable estimate of developed conditions within the entire watershed tributary to the new point source discharge. Calculations and watershed modeling shall be performed using a hydrograph

analysis approved by the Town's Engineering Division. Calculations shall be made that show the impact of the proposed alterations for the mean annual 10 and 100-year storms.

3. Mitigation of impacts for alterations of the quantity and quality of runoff water shall be required to meet appropriate performance standards for new point-source discharges: Applicants are encouraged to use the most feasible and best available stormwater runoff control strategies to reduce project impacts. Detention basins, infiltration basins, leaching catch basins, drainage dry wells, upland discharge of storm flows, and the use of other innovative and creative runoff control strategies are recommended.
4. The following standards shall apply to any proposed stormwater detention and/or retention basins:
 - a. The basin outlet works shall, to the fullest extent possible, be designed to be maintenance free, self-cleaning, and to deter acts of vandalism.
 - b. The basin inlet and outlet shall be designed to avoid scour and erosion of the basin bottom and discharge channel.
 - c. Storage capacities shall be based on the volume of active storage above the maximum seasonal ground water level. Test pits will be required to determine the maximum groundwater level.
 - d. Soil testing and test pits must be conducted for all areas intended to be used for infiltration. Test pit locations must be shown on any plans displaying proposed stormwater infrastructure and/or grading.

4.2.3 Standard Required Conditions:

1. With the exception of any improvements, water quality in all resource areas shall not differ significantly following completion of the project from the pre-development conditions.
2. There shall be no increase in the post-development discharges from the storm drainage system or any other changes in post-development conditions that alter the post-development watershed boundaries, unless specifically approved in writing by the Commission.
3. All infiltration systems shall include suitable access points, brought to finish grade, to provide for the inspection and cleaning of the infiltration system.
4. The installation of all drainage structures shall be witnessed by a Registered Professional Engineer. The engineer shall submit documentation to the Commission following each inspection.
5. The applicants, owners, and their successors and assignees shall maintain all culverts, collection basins, traps, retention and detention ponds, outlet structures, and other elements of drainage systems, unless put into an easement to the Town, in order to avoid blockages and siltation which might cause failure of the system and/or detrimental impacts to on-site or off-site resource areas, and shall maintain the integrity of vegetative cover on the site.

4.3 Erosion and Sediment Control

Sedimentation, runoff, and land erosion as a result of project construction, disturbances or alterations have long been acknowledged as identifiable sources of pollution and degradation of wetlands. The removal of a sites vegetative cover, or significantly disturbing the surface, is likely to result in sedimentation, runoff and erosion. The intent of this section 4.3 is to describe appropriate standards and measures applicable to all projects involving land disturbance activities so as to avoid the adverse impacts detailed in this section.

4.3.1 Submission Requirements: In addition to any requirements required by these regulations or as set forth in the Bylaw, all projects proposing to alter or disturb a sites vegetative cover within 100' of a resource area or within the 200' Riverfront Area, must provide the following:

1. A narrative and plan describing the location, methods, and details of all erosion control measures and devices (temporary and/or permanent) that will be used to control erosion and siltation on site.
2. The location of any fill material which will be stored/stockpiled on site.
3. A narrative detailing the anticipated sequencing of project construction including clearing, rough grading, construction of utilities, construction of infrastructure, final grading, and landscaping. Sequencing shall identify the estimated duration of exposure of cleared areas and the sequence of clearing, installation of temporary erosion and sedimentation measures, and establishment of permanent vegetation.

4.3.2 Design Specification and Performance Standards

1. Temporary erosion control measures will generally consist of silt sock and trenched silt fence.
2. There shall be no stockpiling of materials within 50' of a resource area and/or within 50' of the Mean Annual High-Water Line.
3. All exposed soil finish grade surfaces shall be immediately landscaped and stabilized, or loamed, seeded and mulched with a layer of mulch hay. Where necessary, the loam and seeding shall be held in place with jute netting. Outside of the growing season, exposed soil finish grade surfaces shall be stabilized with a layer of mulch hay until climate conditions allow for seeding. During construction, any area of exposed soils that will be left idle for more than 30 days shall be stabilized with a layer of mulch hay or other means approved by the Conservation Commission. Temporary stabilization methods may include, but not be limited to, hydro-seeding, straw mats, jute netting, sod, or other Commission approved method.
4. All stockpiles of soils existing for more than one day shall be surrounded by a row of entrenched silt fence and shall be covered.

4.3.3 Standard Required Conditions:

1. The Commission reserves the right to impose additional conditions on portions of any jurisdictional project to mitigate any impacts which could result from site erosion, or any noticeable degradation of surface water quality discharging from a project site.
2. Erosion control devices shall remain in place and properly functioning until all exposed soils have been stabilized with final vegetative cover and the Conservation Commission and/or its Administrator has authorized their removal.
3. Erosion and silt from the permitted activities shall not cause an adverse impact on any resource areas of their protected interests.

4.4 Flood Control

Projects and activities proposing alterations that affect land subject to flooding must provide engineering calculations to fully support the design of compensating flood storage. The calculations shall detail the existing incremental flood storage volumes and proposed incremental flood storage volumes up to 100-year flood elevation. There shall be no net loss of flood storage volume at any elevation. There shall be no increase in the rate of runoff as a result of any project.

4.5 Wetland Replacement and Restoration

For projects proposing wetland replacement or restoration, a complete wetland replacement or restoration plan shall be submitted prior to the close of a public hearing. Such a plan shall meet all state and local performance standards and take all site-specific and Commission-directed issues into consideration. The plan shall be prepared by a qualified wetland specialist. The plan shall include a description of the qualifications of the individual(s) who prepared the plan. The individual (s) who prepared the plan or approved designee will be on site during construction of the replacement area. All wetland replacement performance standards shall apply to wetland restoration.

4.5.1 Performance Standards: In situations where there are no feasible alternatives that provide for fewer impacts on the wetland resource values, the Commission may allow the loss, alteration or temporary surface disturbance of up to a cumulative total of five thousand (5,000) square feet of freshwater wetlands when said areas are replaced or restored in accordance with the State regulations and the following:

- a. Wetlands replacement must be of at least a 1.5:1 ratio (replicated wetland to altered wetland);
- b. Wetlands restoration (the removal of invasive species, debris, and poor soils and the planting of native wetland species in degraded wetland) must be at least a 2:1 ratio (restored wetland to altered wetland);
- c. Replacement areas must be constructed prior to other construction activity on site. The Commission will consider certain cases where this is not appropriate. Prior to construction, a sequencing schedule for construction activities shall be submitted to the Commission. This schedule shall specify dates for project commencement and dates for each anticipated procedure included in the wetland replacement plan;
- d. Replicated wetlands shall be made contiguous to existing wetlands unless the applicant is able to demonstrate that another location (adjacent to other resource areas) would have a greater ability to protect the interests of the Act and the Bylaw;
- e. Wetland soils from the altered wetland shall be excavated and kept intact to the greatest extent possible and used for the replicated wetland when these soils are suitable for such purpose.
- f. A combination of natural re-seeding, transplanting, and new plantings shall be used to reestablish a vegetated community and structural diversity similar to the disturbed area.
- g. At least 75% of the surface area of the replicated area must be established with native wetland plant species within two (2) growing seasons. If this condition is not met, the applicant must propose and implement corrective steps to be approved by the Commission. No wetland replacement area will be certified to be in compliance unless this requirement is met;
- h. An encroachment limit line shall be identified, using flagging and/or staking at the site for wetland areas that will be altered, and upland areas where wetland replacement will occur. Identify the wetland replacement area by using flagging and/or staking. This is designed to give construction workers and the Commission a clear and undisputed description of the work area during construction and through the upcoming growing seasons.
- i. Prior to any plantings, grades must be certified by a qualified wetland specialist or licensed land surveyor as designated by the Commission. Said certification and an as-built plan shall be submitted to the Commission for its approval;

- 4.5.2 The Commission may permit the construction and maintenance of a new roadway or driveway of minimum and practical width, where no alternative means of access from an existing public or private way to an upland area of the same owner is available. Replication of altered wetlands resources may be required by the Commission to minimize adverse impacts and to protect the interests identified in the Bylaw.
- 4.5.3 Wetland alterations intended to make lands buildable, as by fulfilling septic system setback requirements, flood elevation requirements, or other minimum construction setback requirements, or to achieve minimum lot area requirements are prohibited. Wetland alterations required to access upland parcels will not be allowed if that landowner landlocked the parcel by selling upland access. The Commission may require the filing of a request for a waiver of certain Planning Board or Zoning Board requirements in order to minimize wetland impacts.

4.6 Wildlife Habitat

Where alterations exceed the maximum allowable thresholds described in the state regulations for bank, land under a water body or bordering land subject to flooding, or where the alteration of a habitat of rare species is involved, or where a vernal pool would be altered, a habitat study shall be performed by a qualified wildlife biologist. The study and the design of a compensating wetland/wildlife habitat shall be performed in accordance with DEP regulations and policies as well as the Bylaw and these regulations. Projects resulting in the loss of critical habitat, or causing negative impacts on critical habitat, of rare, threatened, endangered species or species of special concern shall not be permitted.

Section 5

Waivers and Mitigation

The performance standards for wetland resource areas have been created to ensure that the interests of the Act and Bylaw are protected adequately. The Commission recognizes that, in certain situations, a waiver of a specific wetland resource area performance standard, requirement, or condition may be appropriate for a particular project when the waiver is consistent with the intent and purpose of the Bylaw and these Regulations.

5.1 General Requirements

- 5.1.1 The applicant shall have the burden of proof of demonstrating that the granting of the waiver is consistent with the intent and purpose of the Bylaw and these Regulations. The Commission shall act on the request for a waiver and shall provide to the applicant, its written decision.
- 5.1.2 The Commission may impose conditions, safeguards, and limitations in a waiver to protect the values and interests detailed in the Bylaw or the intent or purpose of the Bylaw.
- 5.1.3 A request for a waiver shall include, at a minimum:
 - a) The Waiver Application form found in Appendix C.
 - b) Evidence that an overriding public interest is associated with the project which justifies modifying one or more performance standards in these regulations, if applicable.
 - c) Sufficient information to serve as evidence that the granting of the waiver would not result in alteration that negatively impacts the protected values and interests of the Bylaw.
- 5.1.4 In addition to the above, applicants seeking to waive specific performance standards, requirements, and/or conditions for any wetland resource area defined in Section 3, must adhere to the additional waiver standards described in this Section 5.

5.2 Reasons for Denial

- 5.2.1 The Commission may, in its discretion, deny a request for a waiver, if:
 - a) The cumulative alteration of wetlands on the property and contiguous land of the same owner (now or previously) exceeds five thousand (5000) square feet or five (5%) percent of the property or properties (whichever is less);
 - b) Subdivision of the land has left the property without upland access, or another prior action of the current or previous owner has created the need for the proposed project to require a waiver;
 - c) The judgement of the Commission is that granting of the waiver would result in alteration that negatively impacts the protected values and interests of the Bylaw.

5.3 Waiver Requirements for the 35' No-Disturb and 50' No-Build Buffer Zones

- 5.3.1 The Commission may grant a waiver or a partial waiver from these Regulations for alteration within a Restrictive Buffer Zone resource area as defined in Section 3.1, in situations where there are no feasible alternatives that provide fewer impacts to resource area values. The Commission may grant a waiver from the 35' No-Disturb (NDZ) and the 50' No-Build Zone (NBZ) performance standards and impose such additional or substituted mitigative requirements as it deems necessary, upon a clear and convincing showing by the applicant that:
 - 1. There are no practicable, feasible, or reasonable alternatives that would allow the project to proceed in compliance with the Regulations. The applicant is responsible for performing an alternatives analysis, as described in Section 5.6 to show that there are no feasible alternatives; and

2. The project, or its natural and consequential effects, will not have any adverse effect upon any of the interests protected by the Bylaw. It shall be the responsibility of the applicant to provide the Commission with any information that the Commission may request to enable the Commission to ascertain such adverse effects. The failure of the applicant to furnish any information that has been so requested may result in the denial of a request for a waiver pursuant to the subsection;
 3. The project will improve the natural capacity of a resource area to protect the interests identified in the Bylaw, provided any adverse effects on any such interests are minimized by carefully considered conditions. However, no such project or alteration may be permitted within an Estimated Habitat of Rare Wildlife as defined under 310 CMR 10.59.
 4. Applicants requesting to work within a restrictive buffer zone must show the limits of proposed impacts on the submitted project plan, including impacts that are temporary for construction purposes and operations.
- 5.3.2 In instances where a waiver is granted for work in the 35' No-Disturb Zone and/or the 50' No-Build Zone, the following shall apply:
1. The total permitted disturbance in the No-Disturb Zone shall be no more than 10% of the total No-Disturb Zone for the project.
 2. The total permitted disturbance in the No-Build Zone shall be no more than 20% of the total No-Build Zone for the project.
 3. Considering the 35' NDZ is within the 50' NBZ, all alteration percentages shall be cumulative, and any alteration permitted in the NDZ shall be deducted from the amount permitted to be altered in the NBZ, following a favorable decision by the Commission to grant a waiver for alteration.
 4. The Commission may choose to grant a waiver in part or in whole and is authorized to use discretion on how much, if any, alteration shall be allowed by the grant or denial of a waiver request.

5.4 Waiver Requirements for Vernal Pools

- 5.4.1 The Commission may grant a waiver or partial waiver from the Vernal Pool performance standards listed in Section 3.2.3 and may impose such additional or substituted mitigation requirements as it determines are warranted or necessary, based on the applicant's presentation of evidence sufficient to demonstrate, by a preponderance of credible evidence, that:
1. There are no practicable, feasible, or reasonable alternatives that would allow the project to proceed in compliance with the Regulations. The applicant is responsible for performing an alternatives analysis, as described in Section 5.6 to show that there are no feasible alternatives;
 2. The project, or its natural and consequential effects, will not have any adverse effect upon any of the interests protected by the Bylaw. It shall be the responsibility of the applicant to provide the Commission with any information that the Commission may request to enable the Commission to ascertain such adverse effects. The failure of the applicant to furnish any information that has been so requested may result in the denial of a request for a waiver pursuant to the subsection;
 3. The project will improve the natural capacity of a resource area to protect the interests identified in the Bylaw, provided any adverse effects on any such interests are minimized by carefully considered conditions. However, no such project may be permitted which would have an adverse impact on rare wildlife species.

4. The work or final project elements do not obstruct the migratory pathways of vernal pool breeding species.
5. A Variance was granted from the Department of Environmental Protection per 310 CMR 10.05(10) to alter within the Vernal Pool, if applicable.

5.4.2 In instances where a waiver is granted to alter within a Vernal Pool, the following shall apply:

- a) Any loss of Vernal Pool habitat as a result of permitted fill or other permanent alteration shall be compensated at a minimum ratio of 1.5:1 (replicated habitat to altered habitat)
- b) Replicated vernal pool habitat shall be constructed according to the standards found in Section 4.5.

5.5 Waiver Requirements for Isolated Vegetated Wetlands

5.5.1 The Commission may grant a waiver or partial waiver from the performance standards for Isolated Vegetated Wetlands listed in Section 3.3.3 and may impose such additional or substituted mitigation requirements as it determines are warranted or necessary, based on the applicant's presentation of evidence sufficient to demonstrate, by a preponderance of credible evidence, that:

1. There are no practicable, feasible, or reasonable alternatives that would allow the project to proceed in compliance with the Regulations. The applicant is responsible for performing an alternatives analysis, as described in Section 5.6 to show that there are no feasible alternatives; and;
2. The project, or its natural and consequential effects, will not have any adverse effect upon any of the interests protected by the Bylaw. It shall be the responsibility of the applicant to provide the Commission with any information that the Commission may request to enable the Commission to ascertain such adverse effects. The failure of the applicant to furnish any information that has been so requested may result in the denial of a request for a waiver pursuant to the subsection;
3. The project will improve the natural capacity of a resource area to protect the interests identified in the Bylaw, provided any adverse effects on any such interests are minimized by carefully considered conditions. However, no such project or alteration may be permitted within an Estimated Habitat of Rare Wildlife as defined under 310 CMR 10.59.

5.5.2 In instances where a waiver is granted to allow alteration within an Isolated Vegetated Wetland, the following shall apply:

- a) Any loss of Isolated Vegetated Wetland as a result of permitted fill or other permanent alteration shall be compensated at a minimum ratio of 1.5:1 (replicated wetland to altered wetland)
- b) Replicated wetlands shall be constructed according to the standards found in Section 4.5.

5.6 Alternatives Analysis

5.6.1 The Commission shall require the applicant to provide an analysis of alternatives for projects and associated disturbances proposed:

- a) Within any resource area protected under the Bylaw
- b) Within the 50' No-Build and/or 35' No-Disturb Buffer Zones
- c) Within the 100' Buffer Zone to Vernal Pools
- d) Within the 100' Buffer Zone to Isolated Vegetated Wetlands.

- 5.6.2 The Alternatives Analysis shall include, at a minimum;
1. An alternative that does not alter the resource area or resource area buffer zone, and which will provide baseline data for evaluating other alternatives; and
 2. An assessment of alternatives to both temporary and permanent impacts to the resource area or resource area buffer zones, including configurations that would avoid, minimize, and mitigate disturbance and alteration including:
 - a) Moving the proposed project outside of or farther away from the resource area or resource area buffer zone.
 - b) Reducing the size of the proposed project.
- 5.6.3 Practical alternatives to locate the project outside these areas must be investigated and should one or more prove feasible, the plan must be amended to relocate all activities accordingly. The Commission shall consider as practical alternative options that were available to the applicant but appear to be precluded due to self-imposed hardships and constraints (e.g., lot, roadway, and drainage layouts engineered without prior regard to impact on Bylaw resources). The project shall be located outside the resource area or associated protected buffer zones 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.

Section 6

Filing Procedures and Application Requirements

Any person who proposes to do work that will remove, fill, alter or dredge any Area subject to protection under the Bylaw shall submit an application in accordance with the specifications outlined below. The application shall be filed with and acted upon by the Commission prior to commencing or performing any activity affecting a resource area or resource area buffer zone.

6.1 General Filing Requirements

All applications shall comply with the following, except to the extent the Commission modifies these requirements on a case-by-case basis or in its application forms or instructions.

- 6.1.1 Submission of all permit applications shall conform to the “Application Submittal Requirements” for that particular permit application (e.g. Notice of Intent, Request for Determination of Applicability, Minor Project Permit, etc.). These requirements can be found in Appendix A.
- 6.1.2 Projects required to provide professional plans must do so in accordance with the Professional Plan Requirements found in Appendix B.
- 6.1.3 In addition to the additional requirements found under the Bylaw, all applications must meet the submission requirements found under MA Wetlands Protection Act, M.G.L. Chapter 141, Section 40, as applicable.
- 6.1.4 Unless otherwise specifically identified, Orders of Conditions approving subdivisions apply only to the roads, drainage, and related infrastructure on the definitive plan, and do not apply to any individual lots. Each lot within a resource area and its Buffer Zone as defined under the Bylaw shall be required to file a separate NOI application and obtain a separate Order of Conditions permit.

6.2 Receipt and Acceptance of an Application

An application shall be deemed filed and complete pursuant to the Bylaw if it includes the forms, data, plans, fees, requisite copies, and other requirements as then set forth in these regulations and associated appendices, and as directed by the Commission and Conservation designee. No application will be accepted as complete unless all information requested is clearly and properly submitted.

- 6.2.1 An application is minimally understood to consist of:
 - 1. The proper application form requesting action by the Commission.
 - 2. A narrative description of the proposed work.
 - 3. A plan of the project.
 - 4. The applicants check appropriate to the filing fee.

6.3 Professional Plans

All plans, drawings, sketches and calculations submitted in accordance with the requirements set forth in Appendix B shall describe the proposed activity and its effects on the environment and be legible, dated and signed by the persons responsible for their preparation.

- 6.3.1 Plans and drawings involving the practice of surveying or engineering shall be stamped and signed by a properly licensed professional surveyor or engineer.
- 6.3.2 Plans must be consistent with those submitted to other Town boards and departments.
- 6.3.3 The plan content requirements specified in Appendix B, are not definitive or exclusive and the Commission may, in its sole discretion:

1. Waive any of the submission standards if it considers the standards inapplicable or not necessary to reach a Determination; or
2. Require the submittal of additional information deemed necessary to reach a Determination.

6.3.4 Any request for a waiver from these requirements from an Applicant must be submitted in accordance with Section 5.

6.4 Notification and Publication

The state Act and Section 9 of the Bylaw require the printing of public notice of hearings to be paid for by the applicant. The Commission will submit the notice to the newspaper and will ask the newspaper publishing the notice to bill the applicant directly. If the bill is forwarded to the Commission for whatever reason, the Commission shall require the bill to be paid before any permit is issued.

6.5 Public Hearings

- 6.5.1 A public hearing shall be held by the Commission within twenty-one (21) days of receipt of a submittal in accordance with the Bylaw and these regulations and shall be advertised in accordance with the Bylaw and the requirements of the open meeting law, M.G.L., c 39 s23B.
- 6.5.2 For reasons announced by the Commission at the hearing, the Commission shall have authority to continue the hearing to a date certain announced at the hearing, either for receipt of additional information offered by the applicant or others, or for information required of the applicant, deemed necessary by the Commission in its discretion. In the event the applicant objects to a continuance, the hearing shall be closed, and the Commission shall take action on such information as is available.
- 6.5.3 Public hearings on applications filed pursuant to the Bylaw and Regulations may be conducted simultaneously with public hearings held pursuant to the Act. Permit applications filed with the Commission under local and state laws shall include filings under both the Act and Bylaw under one cover.

Section 7

Permits Regulating Work

7.1 General Permit Requirements

1. If the Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which will result therefrom are likely to have a significant individual or cumulative effect upon the resource area values protected by the Bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions that the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.
2. The permit shall impose such conditions as are necessary for the protection of those areas found to be significant to one or more of the interests identified in the Bylaw. The Permit shall prohibit any work or any portion thereof that cannot be conditioned to meet said standards.
3. If the Commission finds that the information submitted by the applicant is not sufficient to describe the site, the work or the effect of the work on the interest identified in the Bylaw, it may issue a permit prohibiting the work. The permit shall specify the information which is lacking and why it is necessary.
4. A permit shall be valid for three years from the date of its issuance.
5. The permit shall be signed by a majority of the Commission members and shall be mailed, or hand delivered to the applicant, his agent, or attorney.
6. A copy of the plans describing the work and the Permit shall be kept on file by the Commission and shall be available to the public at reasonable hours.
7. Prior to the commencement of any work permitted or required by the Permit, the Permit 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 is to be done. In the case of registered land, the Permit shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. Certification of recording shall be sent to the Commission. If work is undertaken without the applicant first recording the Permit, the Commission may issue an Enforcement Order or may itself record the Permit.

7.2 Permit Extensions

1. The Commission may extend a Permit, once, for a one-year period. A request for an extension shall be made to the Commission at least thirty days prior to the expiration of the Permit. The request shall include a narrative and any additional information necessary for the Commission to issue a decision on the request.
2. The Commission may deny the request for an extension and require the filing of a new application for permit for the remaining work in the following circumstances:
 - a) Where no work has begun on the project, except where such failure is due to an unavoidable delay, such as appeals, in the obtaining of other necessary permits;
 - b) Where new information, not available at the time the Permit was issued, has become available and indicates that the Permit is not adequate to protect the interests identified in the Bylaw;
 - c) Where incomplete work is causing damage to the interests identified in the Bylaw; or, where work has been done in violation of the Permit or these regulations.

3. If issued by the Commission, 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. 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.

7.3 Minor Modifications

The Commission may modify, upon its own initiative or petition from the applicant, a permit issued under the Bylaw and its Regulations. The Commission considers a Minor Modification to be “an insignificant project change” when said change will not result in an adverse impact to wetland resource area(s) and/or the interests protected under the Act and this Bylaw and the modification will not be of sufficient magnitude in its nature, scope or impact to warrant a public hearing. The following apply to any permit modification request:

1. No public hearing is required for a minor modification to an order of conditions. However, the applicant must submit a written request fully explaining the proposed change. The applicant has the burden of proving that a proposed modification is a minor modification and that the proposed modification warrants approval.
2. A request for a minor modification will not be reviewed or considered under the following circumstances:
 - a) If the wetland is not re-flagged, or the original approved flagging is not re-established in the field. The Commission may require a new filing or the reopening of the public hearing if the wetland delineation has changed from the original submittal.
 - b) If the Order of Conditions has expired.

7.4 Permit Amendments

An Amendment, after a public hearing, is required when a change in a permitted project is proposed that the Commission deems of sufficient magnitude, in its nature, scope or impact, to potentially warrant the imposition of additional conditions or to otherwise warrant a public hearing. If the scope or purpose of the proposed project has changed substantially or the wetland interests identified in the Act and ordinance are not protected, the Commission shall require the applicant to file a new notice of intent. A request for an Amendment will not be reviewed or considered under the following instances:

1. If the appropriate filing fee and application is not submitted with the request to the Commission.
2. If the Order of Conditions has expired.
3. If the scope or purpose of the proposed project has changed substantially, or the wetland interests identified in the Act and Bylaw are not protected, in which case, the Commission may require a new Notice of Intent to be filed.
4. If the wetland is not re-flagged, or the original approved flagging is not re-established in the field. The Commission may require a new filing or the reopening of the public hearing if the wetland delineation has changed from the original submittal.

7.5 Permit Revocations

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

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

7.6 Certificate of Compliance

Upon completion of the project, the applicant shall request in writing from the Commission a certificate of compliance [see also 310 CMR 10.05(9)]. As-built plans may also be required as noted in the order of conditions issued on the project. All as-built plans must be at the same scale as the plans submitted with the Notice of Intent. The applicant or his/her representative shall attend the scheduled meeting to answer any questions the Commission may have. If the Commission determines that the requirements of the order have not been met the request for a certificate of compliance will be denied. The reasons for the denial shall be forwarded to the applicant within 21 days of the receipt of the request. The Commission may specify on the certificate of compliance that certain conditions of the order of conditions are imposed perpetually and do not expire with the issuance of the certificate of compliance. The person to whom the certificate is issued shall forthwith record it in the Southern Essex Registry of Deeds or Land Court in the chain of title of the affected property and shall notify the Commission, in writing, that said recording has occurred, by sending a copy of the stamped recorded instrument to the Commission.

Section 8

Performance Guarantee

8.1 Performance Bond

As part of a permit issued under the Bylaw, in addition to any security required by any other town or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

1. By a proper bond or deposit of money or negotiable securities sufficient in the opinion of the Commission to secure faithful and satisfactory performance of the work required by the Permit.
2. By a covenant, or other enforceable undertaking, executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Danvers and the members of the public, whereby the permit conditions shall be performed and observed before the property on which the work is to be performed may be conveyed, other than by mortgage deed. Such covenant shall be recorded with the Essex South District Registry of Deeds or with the land registry section of such registry if the land is registered land. A mortgagee who acquired title to the mortgaged premises by foreclosure or otherwise, may sell the same, subject to such covenant. Nothing herein shall be deemed to prohibit conveyance by a single deed, subject to the permit and all its conditions, and the subject covenant, of the entire parcel of land of which the area that is the subject of the permit is a part, as described by the deed or deeds established ownership of the area subject to the permit at the time the permit is issued. If this form of security is used, the permittee shall deliver to the Commission, prior to the issuance of the permit, certified copies of said deed or deeds.

8.2 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 their parties thereto released by the Commission in whole or in part.

8.3 Release of Performance Guarantee

1. 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 the terms of release with the Commission.
2. 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 deposit to the person who furnished same, or release the covenant, if appropriate. If the Commission determines that said alterations have not been completed in compliance with the permit, it shall within 45 days, specify to the applicant, in writing, the details wherein said alterations fail to comply with the permit.

Section 9 Additional Regulation Provisions

- 9.1 **Availability:** Copies of these Regulations and the Bylaw shall be made available for purchase from the Danvers Conservation Commission for the price of \$10.00 payable to the Town of Danvers.
- 9.2 **Policies:** These regulations may be supported by policy statements issued by the Commission. These policies will be made available to any individual upon request. Persons seeking permits under the Bylaw and Regulations should review the Policy statements available in the Commission Office.
- 9.3 **Amendments:** These regulations 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 changes.
- 9.4 **Effective Date:** An advertised public hearing was held on these Regulations on December 10 & December 17, 1999. The Commission voted to adopt these Regulations on January 6, 1999, effective immediately. All other amendments shall be effective upon their adoption by the Commission following a public hearing and filing with the Town Clerk.
- 9.5 **Enforcement:** The Commission may enforce these Regulations, Orders, Permits or Determinations issued thereunder, in any manner consistent with Section 14 of the Bylaw and all other laws.

APPENDIX A
APPLICATION SUBMITTAL REQUIREMENTS

These submittal requirements are intended to supplement the regulations and requirements for wetland filings made under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 141, Section 40, in the Town of Danvers.

1. Minor Project Permit (MPP)

1. Completed Minor Project Permit Application form, obtained from the Conservation office or online.
2. All other requirements as stated on the MPP application form as directed by the Conservation office.

2. Request for Determination of Applicability (RDA)

1. Completed WPA Form 1 which will serve as an application under both the Wetlands Protection Act (WPA) and the Town of Danvers Wetlands Bylaw and its Regulations. The form must be signed by the property owner.
2. A narrative describing the proposed work and mitigation measures to be taken. The narrative shall include a description of:
 - a) The resource area and delineation details
 - b) The existing and proposed conditions
 - c) The intended construction timeline
 - d) How the project meets the applicable performance standards
 - e) Square footage summaries indicating existing, proposed and net changes in impervious surface areas and coverage.
3. An 8.5"x11" section of the U.S. Geologic Survey quadrangle or other map of the area containing sufficient information for the Conservation Commission and the Department to locate the site.
4. A 24" x 36" plan showing the following details.
 - a) Parcel lines, easements, pavement, edge of lawn
 - b) Existing and proposed grades shown in two-foot contours
 - c) Erosion and Sediment control measures
 - d) Topography
 - e) Limit of work or alteration
 - f) Distances from wetlands to structures
 - g) Stormwater and drainage infrastructure
 - h) Signature and stamp of a Registered Professional Engineer or Registered Land Surveyor.
5. A check made out to the Town of Danvers for the appropriate filing fee
6. Pre-construction photographs of the site
7. One copy of a Certified Abutters List obtained from the Conservation office
8. One copy of the Affidavit of Service form, certifying that all abutters within 300-feet of the project site were notified of the given hearing date
9. One copy of the completed abutter notification form that was sent to each abutter
10. An electronic version of the entire application package in PDF format submitted via email. All plans and supplemental reports/documents must be submitted separate from the application.

3. Notice of Intent/Abbreviated Notice of Intent (NOI/ANOI)

1. Completed WPA Form 3 which will serve as an application under both the Wetlands Protection Act (WPA) and the Town of Danvers Wetlands Bylaw and its Regulations. The form must be signed by the property owner.
2. A narrative describing the proposed work and mitigation measures to be taken. The narrative shall include a description of:
 - a) The resource area and how it was delineated
 - b) The sites existing and proposed conditions
 - c) The intended construction timeline
 - d) How the project meets the applicable performance standards
 - e) Square footage summaries indicating existing, proposed and net changes in impervious surface areas, broken down for buffer zones as 0-35 feet, 35-50 feet and 50-100 feet. For riverfront areas, the summary shall additionally break down areas into inner (0-100 feet) and outer (100-200 feet) riparian zones. A table displaying these proposed alteration numbers shall be shown on any submitted site plan.
3. An 8.5"x11" section of the U.S. Geologic Survey (USGS) quadrangle or other map of the area containing sufficient information for the Conservation Commission and the Department to locate the site.
4. Professional Plans as described in Appendix B.
5. Soil logs showing the type of material, soil horizons, elevation of existing grades, maximum groundwater elevation, depth of hole, and percolation rates.
6. One copy of the DEP's Bordering Vegetated Wetland Delineation Field Data Form. This form must be submitted when the project requires the delineation of a Bordering Vegetated Wetland, either by vegetation alone or by vegetation and other indicators of wetland hydrology. If a detailed vegetative assessment is not necessary for the site, a note detailing such must be provided on the data form.
7. Pre-construction photographs of the site.
8. A check made out to the Town of Danvers for the town's portion of the WPA filing fee and all applicable Bylaw fees.
9. One copy of a Certified Abutters List obtained from the Conservation Office.
10. One copy of the Affidavit of Service form, certifying that all abutters within 300-feet of the project site were notified of the given hearing date.
11. One copy of the completed abutter notification form that was sent to each abutter
12. An electronic version of the entire application package in PDF format submitted via email. All plans and supplemental reports/documents must be submitted separate from the application form.
13. Additional requests, narratives and documents, as applicable, including but not limited to the required materials relative to:
 - Section 4.1 Coastal Docks and Piers
 - Section 4.2 Stormwater Management
 - Section 4.3 Erosion and Sediment Control
 - Section 4.4 Flood Control
 - Section 4.5 Wetland Replacement or Restoration
 - Section 4.6 Wildlife Habitat

4. Abbreviated Notice of Resource Area Delineation (ANRAD)

1. Completed WPA Form 4A and the ANRAD Wetland Fee Transmittal Form which will serve as an application under both the Wetlands Protection Act and the Town of Danvers Wetlands Bylaw and its Regulations. The form must be signed by the property owner;
2. A narrative description of the site and any present, delineated resource areas.
3. The method of determination for any Bordering Vegetated Wetlands as specified in 310 CMR 10.55(2)(c). One copy of the DEP's Bordering Vegetated Wetland Delineation Field Data Form must be submitted with the application.
4. Professional Plans as described in Appendix B.
5. One copy of a Certified Abutters List obtained from the Conservation Office.
6. One copy of the Affidavit of Service form, certifying that all abutters within 300-feet of the project site were notified of the given hearing date.
7. One copy of the completed abutter notification form that was sent to each abutter
8. A check made out to the Town of Danvers for the town's portion of the WPA filing fee and all applicable Bylaw fees.
9. An electronic version of the entire application package in PDF format submitted via email. All plans and supplemental reports/documents must be submitted separate from the application package.

5. Certificate of Compliance (COC)

1. Completed WPA Form 8a which will serve as an application under both the Wetlands Protection Act (WPA) and the Town of Danvers Wetlands Bylaw and its Regulations. The form must be signed by the property owner.
2. Two as-built plans (stamped, dated and signed) as required by the Order of Conditions.
3. A letter from a Professional Engineer or Land Surveyor stating compliance with the Order and detailing any deviations that exist and their potential effect on the project. A statement that the work is in "substantial compliance" with no detailing of the deviations will not be accepted.
4. A check made out to the Town of Danvers for the town's portion of the WPA filing fee and all applicable Bylaw fees.
5. Post-construction photos of the site.

APPENDIX B PROFESSIONAL PLAN REQUIREMENTS

Project plans shall adequately describe the proposed activity and its effect on wetlands and related resource areas and adjoining land areas. The following items are set out as a minimum standard and are not intended to be a complete and final presentation as to what a plan would show. The applicant may submit, or be required to submit to the Commission, any additional information which would assist in the review and which is deemed necessary to determine the proposed effect on the interest protected by the Danvers Wetlands Bylaw.

1. General Submission Requirements

1. All plans shall be drawn with the title designating the name of the project, location and names of the person(s) preparing the drawings and the date prepared, including the latest revision date. The plans and calculations must be prepared and stamped by a registered Professional Engineer (PE). Registered Professional Engineers shall indicate the engineering discipline in which they are certified. Plans depicting proposed drainage systems must be certified by a registered Professional Civil Engineer.
2. All plans must be at a scale of one-inch equals not more than 40 feet (1" = 40')
3. Three paper copies (two full size and one 11x17 inch format) of the complete plan(s), with up to four additional paper copies to be provided at the request of the Conservation Administrator.
4. One electronic PDF copy of the plan(s), in a separate file from the electronic NOI application.
5. Abbreviated Notice of Resource Area Delineation (ANRAD) applications or any Notice of Intent application (NOI) delineating more than 300 linear feet must submit one copy of the coordinates for all wetland resource flags, in an Excel Spreadsheet format, referenced to the Massachusetts State Plan NAD83 format.

2. Technical Data Requirements

1. The electronic plans must be highlighted as follows:
 - a. **Green:** Edge of Bordering Vegetated Wetland
 - b. **Red:** Limit of 35' No-Disturb Zone
 - c. **Orange:** Limit of 50' No-Build Zone
 - d. **Yellow:** Extent of 100' Buffer from BVW
 - e. **Blue:** 200' Riverfront Area
 - f. **Dotted Blue:** Bank
 - g. **Purple:** Intermittent Stream
 - h. **Pink:** Limit of proposed work
 - i. **Brown:** Erosion and sediment controls
6. Plans shall show the location of consecutively numbered flags denoting the wetland resources.
7. Plans must show the sites existing conditions and proposed work, including but not limited to:
 - a. Buildings and structures
 - b. Pavement and impervious coverage
 - c. Edge of lawn/landscaping
 - d. Stormwater structures

- e. 2-foot contours or smaller
 - f. Limit of work
 - g. Erosion and sediment control measures
 - h. Property lines, building envelopes, restrictions and/or easement areas, including areas affected by conservation restrictions, if applicable.
 - i. 100-year flood elevations of all natural and man-made waterways and water bodies as determined from the FEMA Flood Insurance Rate Maps and Flood Boundary and Floodway Maps. Where the floodplain of wetlands and water bodies has not been mapped by FEMA, hydrologic and calculations may be required, prepared by a Professional Engineer to determine the boundary of the 10 and 100-year floodplain;
 - j. Construction entrances
 - k. Fill or spoil stockpile areas
 - l. Staging areas
 - m. Snow stockpiling areas
8. All offset distances from the proposed foundation(s), well(s) and septic system(s) or other proposed work to all wells, septic systems, wetland resources, property lines, streams, watercourses, drainage structures, or easements within 150 feet.
9. Locations of test holes and percolation tests.
10. Distances of proposed alterations from the edge of the bordering vegetated wetlands in several locations, including the closest limit of work.
11. The plan scale shall be no less than 1" = 40'
12. The plan must include the stamp of a Registered Professional Engineer.

Appendix C – Waiver Request Form

**Town of Danvers
Conservation Commission
Request for Waiver
Danvers Wetlands Bylaw & Regulations**

Date: _____

Name: _____ Telephone: _____

Mailing Address: _____

Location of Project: _____

Map & Parcel: _____

Section 5 of the Danvers Wetlands Bylaw Regulations states that “ a waiver of a specific wetland resource area performance standard, requirement, or condition may be appropriate for a particular project when the waiver is consistent with the intent and purpose of the Bylaw and these Regulations.”

Waiver(s) Requested:

Reason for Requesting Waiver(s):

Explanation of how the granting of the requested waiver is consistent with the intent and purposes of the Bylaw:
