

**Chapter 235**

**WETLANDS RULES AND REGULATIONS  
Updated to 12-9-2020**

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**[HISTORY: Adopted by the Conservation Commission of the Town of Westford 1-1-1989 and Revised 12/9/2020.]**

**§235-1. General Provisions.**

- A. Authority. These rules and regulations are promulgated by the Westford Conservation Commission ("Commission") pursuant to authority granted to it under the Westford Non-zoning Wetlands Protection Bylaw ("bylaw") § 171-8. These regulations complement the bylaw and have the force of law in implementing and enforcing the bylaw.
- B. Purpose. These rules and regulations are promulgated to create uniformity of process and to help clarify the provisions of the bylaw. The bylaw sets forth a public review and decision-making process by which the Commission regulates activities affecting wetlands, related water resources and adjoining land areas. The purpose of these regulations is to define and clarify this process by establishing standard definitions, performance standards and set-backs, and uniform procedures by which the Commission shall carry out its responsibilities under the bylaw.

Through these Rules and Regulations the protection of wetland interests are identified. The purpose of this regulatory process is to ensure the conservation and protection of wetlands, related water resources, and adjoining land areas. This conservation and protection of all resource areas under the bylaw includes no net loss of functions, which contribute to the protection of the interests. This conservation and protection include no net loss of a resource area under the bylaw, except that the Commission may permit loss in the resource area if excepted in the bylaw (§ 171-3).

This conservation and protection contribute to the following critical wetland resource values:

- Protection of public and private water supplies;
- Protection of groundwater;
- Flood control;
- Erosion and sedimentation control;
- Prevention of storm damage;
- Prevention of water pollution;
- Protection of fisheries;
- Protection of shellfish;
- Preservation of wildlife habitat;
- Protection of recreation; and
- Protection of aquaculture values.

Because the provisions of MGL C. 131, §40, shall, where appropriate, be applied simultaneously with those of the bylaw, the applicant is advised to refer also to the MA Department of Environmental Protection (MA DEP) Wetlands Protection Act Rules and Regulations, as well as to that Act itself (310 CMR 10 C. 13 S. 40). All of the standards, requirements and procedures set forth in the Massachusetts

Wetlands Protection Act and regulations published at 310 CMR 10.00 et seq. are incorporated and made part of these regulations. Where these regulations differ from the state regulations, these regulations will be applied in addition to the state regulations.

- C. Revision. These regulations may be revised from time to time by a majority vote of a quorum of the Commission, provided that two (2) advertised public hearings have been held for discussion of the proposed revisions.
- D. Jurisdiction. Resource areas under the bylaw are the wetlands, related water resources and adjoining land areas.

Alteration of Resource Areas under the bylaw: Any activity proposed or undertaken that constitutes altering, building upon, within, or under; removing anything from; filling; degrading; polluting; discharging; dredging into any resource area, including adjacent upland resource areas and land within one hundred (100) feet of the one hundred-year floodline, is subject to regulation under the bylaw and requires a filing of a bylaw Notice of Intent or Request for a Determination of Applicability.

Activities Outside Bylaw Protected Resource Areas That May Alter Such Resource Areas: Any activity proposed or undertaken outside the resource areas, where in the judgment of the Commission, said activity has the potential of altering or has resulted in the removing, filling, degrading, polluting, discharging, dredging, building upon, or otherwise altering any resource area.

Where there is a question as to whether an activity outside a resource area will alter a resource area, the individual should submit a Request for Determination of Applicability.

Where an activity outside a resource area causes an alteration to that protected resource area, the responsible person and the owner of the property upon which the activity occurred, shall be subject to enforcement.

- E. Burden of Proof. Any individual filing a request for Determination of Applicability or Notice of Intent under the bylaw to perform any activity within a wetland, water resource or adjoining land area, has the burden of going forward with a preponderance of evidence from a competent source(s). See Section 235-3 for submission requirements and sufficient information to protect resource interests and enable the Commission to evaluate potential impacts to the resource area(s).
- F. Presumption. Wetlands, Related Water Resources and Adjoining Land Areas shall be presumed significant to resource interests to the extent that they:
- Protect private and/or public water supplies;
  - Protect groundwater;
  - Provide flood control;

- Provide erosion and sedimentation control;
- Prevent storm damage;
- Prevent water pollution;
- Protect fisheries, shellfish and wildlife habitat;
- Protect recreation values; and
- Protect aquaculture values.

**§235-2. Resource Areas, Prohibitions, Standards and Setbacks.**

A. Wetlands. A wetland is a distinct ecosystem that is flooded by water, either periodically or permanently. In wetlands where oxygen-free processes prevail, unique hydric soils develop over time. A factor that often distinguishes wetlands from other landforms or water bodies is the characteristic vegetation of plants adapted to the unique flooding and soil conditions. A wetland may also be an area where the water table breaks out into surface of the ground. Subsurface water may flow along the water table and break out as seeps, creeks, streams and rivers. These break outs may be contained by a bank or may flow freely in an undefined manner. Wetlands are constantly changing and evolving. Some change in shape and form, streams and rivers may cut new banks or deposit sediment creating beaches, hydrology is rarely stable and may fluctuate over time.

Wetland Resource Areas Include:

- Banks
- Bogs
- Beaches
- Creeks, Rivers, Streams
- Floodplain
- Fresh Water Wetland
- Ponds or Lakes
- Land Subject to Flooding
- Land Under Waters
- Marshes
- Seeps
- Swamps
- Riverfront Areas
- Vernal Pools
- Wet Meadows

B. Related Water Resources. Natural water resources are aquatic ecosystems that regulate ecological processes and life support systems. These resources contribute to the maintenance of a healthy environment. They recycle nutrients, purify water, attenuate floods, recharge ground water and provide habitats for wildlife. Some aquatic ecosystems are also used for recreation. The Commission presumes the relationship of these aquatic ecosystems benefit from the protection of wetlands

and adjoining land areas and together they provide ecosystem services and protect wetland values.

- C. Adjoining Land Areas. Based on experience to date, as well as the latest scientific information available, the Commission presumes that the adjoining land areas play a vital role in the function of the wetland and water resources. Adjoining land areas help control water flow and prevent flooding, filter out pollutants before they reach sensitive bodies of water, screen wetlands from human disturbance, and provide habitats for key wetland species. The Commission presumes that Adjoining Land Areas are best left in an undisturbed and natural state to protect the wetlands and related water resources.

These presumptions are rebuttable and may be overcome upon a clear showing that the nature of the proposed work, special design measures, construction controls or site conditions will prevent alteration of the wetlands and related water resources and will minimize the alteration of the adjoining land area to the greatest extent practicable. Depending on site conditions and project characteristics, the Commission may also find that work at greater distances from the wetlands will alter the wetlands, related water resources and adjoining land areas.

Where a proposed activity involves the removal of vegetative cover, or significant disturbance of the surface, erosion is presumed to occur. This presumption may be overcome by providing a preponderance of credible evidence to the Commission that site conditions (e.g. soil and slope) will prevent sediment from leaving the disturbed area. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect.

- D. Prohibited Activities and Uses. No septic system or other sewage disposal system, or any component of any septic system or sewage disposal system shall be installed in wetlands or within the buffer zone/adjoining land area unless they meet the exceptions outline in the bylaw section 171.2(B)(1)(a - d), (2) and (3).

- E. Performance Standards and Setbacks.

- (1) Practicable Alternatives. Applicants are required to demonstrate that there are no practicable alternatives to the proposed project with less adverse impact on the protected wetlands, related water resource areas, adjoining land areas and associated interests. A practicable alternative is an available and feasible alternative, which will accomplish the project's purpose, considering costs, logistics, the proposed use, and the most current technology. The scope of alternatives shall be commensurate with the type and size of the project. The effect of the practicable alternatives analysis and the purpose of evaluating alternatives is to determine whether impacts to wetlands, related water resource areas, adjoining land areas can be avoided. Projects shall not be segmented, and cumulative impacts shall be presented.

- (2) No Significant Adverse Impacts. An applicant is required to demonstrate that any work, including proposed mitigation measures, will have no significant adverse or cumulative impact on the wetlands, related water resources and adjoining land areas.
- (3) Mitigation Requirements. Mitigation in the form of restoration, replication and permanent conservation will be required for alterations of wetlands, related water resources and adjoining land areas. The Commission recognizes that the history of mitigation, and specifically vegetated wetland replication is mixed. Scientific reviews conclude that for the most part, vegetated wetland replications fail to reproduce the range of values of the wetlands they are intended to replace. Difficulties in replicating proper hydrological conditions in a consistent and enduring fashion seem to be a major source of the problem. The Commission strongly discourages any plan that requires wetland replication. Projects that necessitate wetland replication to mitigate unavoidable impacts to wetlands, related water resources, and adjoining land areas shall reproduce all the values and functions of the wetlands, related water resources, and adjoining land areas proposed to be altered, as determined by the Commission.
- (4) Impervious Areas. Impervious areas can affect water quality and water quantity and diminish habitat. The amount of impervious coverage shall be minimized to the maximum extent feasible. Measures shall be taken to infiltrate runoff from impervious areas using stormwater best management practices and devices and by increasing vegetative cover.
- (5) Erosion. Where the presumption of erosion occurring is not overcome, the project shall meet the following performance standards. Any proposed alteration shall not expose or cause soil to be exposed so that uncontrolled erosion occurs. Evidence of this condition may include the formation of gullies, the cutting back of existing banks by stormwater flow or the presence of visible sediment in the runoff. Erosion shall be mitigated by a combination of the following means as appropriate to the specific site:
- Minimize the amount of exposed ground and the length of time it is exposed.
  - Reduce the steepness and length of slopes on the site.
  - Divert flows away from disturbed areas during construction in an approved manner.
  - Protect exposed surfaces through vegetative or other stabilizing cover.
  - Decrease the velocity of runoff through acceptable construction practices, e.g. check dams, slope breaks, berms, and improved (i.e., vegetation, riprap) drainage surfaces.

- Trap sediment in basins and behind barriers (e.g., staked strawbales, straw wattles and fencing). The barriers are to be keyed into the ground to prevent sediment from passing under them.
- Maintain and adjust erosion and sediment control measures continuously during construction.
- Implement Best Management Practices (BMP's).
- Total Suspended Solid (TSS) removal shall be provided.

(6) Projects within Wetlands and Related Water Resources. The quality and quantity of resource values and functions, as well as pre-project conditions, such as ground slope, soil conditions, vegetation, and prior disturbance of the site shall be considered in evaluating projects. There shall be no net loss of wetland function and value. Applicants shall integrate climate change and adaptive planning considerations into their project to promote climate resilience to protect and promote wetland, related water resource areas and adjoining land area values into the future. These considerations include but are not limited to increased heat waves, extreme precipitation events, stormwater runoff, changing precipitation patterns and changes in flooding.

(7) Minor Activities with Limited or No Review. The Commission allows some minor activities within Adjoining Land Areas with the review and approval of their staff or designee. Site disturbance dramatically increases the chance of damage to the wetlands and related water resource areas unless erosion control measures are used correctly and effectively. The staff shall consider methods that minimize site disturbance, especially minimize both removal of natural vegetation and exposure of bare soil and implementation of erosion controls when considering the approval of a minor activity without Commission review and approval. At a minimum a sketch plan shall be provide locating the wetlands, related water resource areas and distances of the activity to these areas. If the staff determines insufficient information has been provided or they believe there might be an impact to the wetlands, related water resource areas or adjoining land areas they may require an application be submitted to the Commission. The staff may approve the following:

- Removal of invasive aquatic vegetation on a lake/pond bed during drawdown is permitted by hand. No power equipment may be used. A disposal plan for pulled plant material must be provided.
- Removal of invasive aquatic vegetation by hand. A disposal plan for pulled plant material must be provided.
- Removal of dead or broken tree limbs.
- Removal of up to 2 dead or dying, and dangerous trees if certified by a licensed arborist to be dead or dying, and dangerous, and trees will be replaced with similar trees. More than 2 dead, dying or dangerous trees will require an application filing with the Conservation Commission.

- Replace an existing deck and/or stairs within the same foot print and on the same pilings or piers. Administrative approval may be given for up to 3 new footings for a deck expansion if the deck is in the same general location and provided that the footings are no closer to the wetlands and related water resources.
  - Activities that are temporary in nature, have negligible impacts, and are necessary for planning and design purposes (e.g., installation of monitoring wells, exploratory borings, sediment sampling and surveying and percolation tests for septic systems, provided that resource areas are not crossed for site access.
- (8) No Review Required. The Commission will not require review or permitting of the following, unless or until the Commission or its staff determine there may be an impact to wetlands, related water resources or adjoining land areas.
- Basic Yard Maintenance Within an Existing Yard (No Expansion): Basic yard maintenance is considered to be raking, mowing, and non-chemical yard grooming, with all clippings, cuttings, or grooming materials properly disposed of outside of the wetlands, related water resources and at a minimum of 50-feet from wetlands and related water resources.
  - Trimming tree branches overhanging a habitable structure (i.e. house, office building),
  - Routine gardening and landscaping within an existing garden or landscape area accessory to an existing single-family residential structure, housing development or business.
  - Trail maintenance including repair to bridges and boardwalks that does not include new footings or alteration of the ground and does not expand the width of the trail from the existing condition.
- (9) Minimum Set-Backs. The following are the minimum distances (setbacks) of activity from the edge of wetlands and related water resource areas. No activity shall be allowed within these setbacks except as provided below. These setbacks are the minimum and may be extended further if deemed necessary for the protection of the interests of the bylaw by the Commission.

*(see chart on next page)*

### Minimum Set-Backs

<b>Type of Project</b>	<b>Limit of Work (feet) from wetland edge</b>	<b>Limit of Building (feet) from wetland edge</b>
Work on a lot with an existing structure where work is proposed on an artificial surface area of the lot.	30	55
Work on a lot with an existing structure where work is proposed within an existing non-artificial surface area.	50	75
Work on an undeveloped lot	50	75

For the purposes of the table above, “work” means cutting or removal of vegetation, filling, excavation, grading, operation of motorized construction equipment, storage or stockpiling of earth or construction materials or debris or brush or other wood or yard waste or placement of vehicles, recreational equipment such as swing sets or trampolines or fences, and “building” means any structure requiring a building permit, as well as a shed or other storage structure of any size.

Additionally, the term “Undeveloped Lot” shall mean a parcel of land which has never had a building or structure of any kind located within it; “artificial surface” shall mean land surfaces which have been converted to areas including, but not necessarily limited to, formal landscaping, lawns, or maintained ground cover areas, as well as any non-organic surface, including but not necessarily limited to paved areas, gravel drives or parking areas and structures. The term “artificial surface” shall not apply to such areas as, but not necessarily limited to, active or abandoned agricultural fields, hayfield, pastures, sand and gravel pits and gardens, or cleared or thinned forest stands or tree plantations.

No new activity shall commence, and no new structure shall be located closer to the edge of wetlands or related water resources than existing non-conforming like activities or structures.

Where access to the buildable portion of an undeveloped lot can only be provided via a wetland crossing or by work closer than the prescribed limits, then work in association with only the roadway or driveway may occur closer than the prescribed limits. Such roads and driveways must be designed to cross or approach wetlands in such a fashion to minimize impact within the wetlands, related water resources and adjoining land areas. In order to assist in the evaluation of a project's impact, an alternative analysis shall be provided. The applicant shall submit an additional concept plan for each wetland crossing proposed. The additional concept plan must show a potential use of the property under a configuration, which eliminates each proposed crossing. For example, if an applicant proposes two wetland crossings, three plans should be submitted, one showing the proposed project with two crossings, and alternatives showing the project with one crossing and no crossings. A concept plan requires only existing topography, wetlands, roadways, lot lines, and wetland impact areas.

Water dependent uses that require direct access to the water such as docks, piers and retaining walls may also be allowed within the minimum setback areas. Any water dependent project shall minimize alterations to the wetland, water resources and adjoining land areas to the greatest extent practicable. Other activities or work such as the removal of a dead or dangerous tree in a resource area may be permissible within the setback. Replication or restoration of a resource area may also be permissible.

(10) Vernal Pool Standards. These typically small pools of water are often only a few feet in depth and often dry up so no fish can live in them providing unique breeding habitat for wildlife. Some of the wildlife that breed in these pools use upland areas for much of their life cycle.

- No disturbance within the vernal pool depression.
- Maintain a minimum of 75% of the critical terrestrial habitat as unfragmented forest with at least a partly-closed canopy of overstory trees to provide shade, deep litter and woody debris.
- Maintain or restore forest corridors connecting wetlands and significant vernal pools
- Minimize forest floor disturbance
- Maintain native understory vegetation and downed woody debris.

These regulations shall not apply if they result in the complete deprivation of value of the property.

**§235-3. Definitions.**

Terms used in the regulations or commonly used at a public hearing that are not already defined in the bylaw. Certain terms defined in the bylaw have also been further clarified in the definitions below.

Abutter – The owner of record of land located within 100 feet of the property line of the proposed activity in any direction, including lands located across any public or private street, way, or body of water. A certified list of abutters (not more than 3 months old) shall be obtained from the Town of Westford Board of Assessors. In the case of land having a common border with or containing a boundary of the Town of Westford, a list of abutters shall include those abutters listed by the Board of Assessors of the adjoining town.

Activity – As defined in the bylaw and any change to wetland characteristics including but not limited to changes in surface drainage, groundwater, destruction of vegetation and wildlife habitat; or other changing of the physical characteristics of the land.

Adjoining Land Areas – All lands within 100 feet of wetlands, including the floodplain, except for perennial streams and rivers for which the adjoining land area extends for two hundred feet (200') from the top of the bank.

Alter – As defined in the bylaw and

- Activities that change plant communities from serving as shelter, nesting, or breeding areas; or food sources for wildlife.
- Changes in habitat including but not limited to loss of cavity nesting vegetation, loss of detritus, fallen logs, crevasses, hollow logs, flat rocks.
- Changes in biodiversity.
- Incremental activities that may or may not have a cumulative adverse impact on the wetlands, related water resources and adjoining land areas protected by this bylaw.

Alternative Analysis – An analysis provided in writing by all applicants showing that the proposed project offers the best mitigation measures to assure compliance with the standards of the bylaw and these regulations over all other possible configurations of the project.

Appurtenance – Any structural adjunct or incidental construct to a single-family residential structure or on any parcel of land, such as a septic system, garage, shed, deck, dock, porch, patio, or swimming pool.

Applicant – Any person who files a Notice of Intent or Request for a Determination of Applicability or on whose behalf such Notice or Request is filed.

Application – A Notice of Intent or Request for a Determination of Applicability.

Aquaculture – Land in aquaculture means land presently and primarily used in the growing of aquatic organisms under controlled conditions, including one (1) or more of the following uses: raising, breeding or producing a specified type of animal or vegetable life.

Bank – As defined in the bylaw.

Beach – As defined in the bylaw.

Best Management Practices – The use of design and maintenance criteria that minimize to the greatest extent possible adverse effects on the environment, including without limitation controlling and abating the discharge of pollutants and inadvertent alterations of wetlands, related water resources and adjoining land areas.

Bog – The term “bog” as used in this definition shall mean areas where standing or slowly running water is near or at the surface during a normal growing season and where a vegetational community has a significant portion of the ground or water surface covered with sphagnum moss (*Sphagnum*) and where the vegetational community is made up of a significant portion of one or more of, but not limited to nor necessarily including all, of the following plants or groups of plants: aster (*Aster nemoralis*), azaleas (*Rhododendron canadense* and *R. viscosum*), black spruce (*Picea mariana*), bog cotton (*Eriophorum*), cranberry (*Vaccinium macrocarpon*), high-bush blueberry (*Vaccinium corymbosum*), larch (*Larix laricina*), laurels (*Kalmia angustifolia* and *K. polifolia*), leatherleaf (*Chamaedaphne calyculata*), orchids (*Arethusa*, *Calopogon*, *Pogonia*), pitcher plants (*Sarracenia purpurea*), sedges (*Cyperaceae*), sundews (*Droseraccae*), sweet gale (*Myrica gale*), white cedar (*Chamaecyparis thyoides*)

Brook – As defined in the bylaw.

Buffer Zone – As defined in the bylaw. See Adjoining Land Areas.

Bylaw – Chapter 171 of the General Bylaws of the Town of Westford, otherwise known as the Town of Westford Non-zoning Wetland Bylaw and referred to in these regulations as “bylaw”.

Certificate of Compliance – This the final document issued by the Conservation Commission to certify that work performed under an Order of Conditions has been completed or in the case where no work ever commenced that the Order of Conditions has expired.

Commission – The Conservation Commission of the Town of Westford comprised of up to seven (7) members appointed by the Select Board.

Creek – A natural stream of water normally smaller than and often tributary to a river.

Cumulative Impact – The impact on the environment which results from incremental action when added to other past, present, and reasonably foreseeable future actions. Cumulative adverse impacts can result from individually minor but collectively significant actions taking place over a period of time.

Determination – A written finding by the Commission whether the proposed work shall or shall not require the filing of a Notice of Intent and/or whether the proposed work to be done is significant to the interests described in the bylaw.

Dredge – Any cleaning, deepening, widening or excavating, either temporarily or permanently, of any area subject to the bylaw.

Drought – A drought is a period of unusually persistent dry weather that continues long enough to cause serious problems such as low stream flows, decreased aquifers, vulnerability to plant communities and habitat loss.

Effect on the Environment – Includes the possible effect of the proposed activity upon public or private water supply, groundwater, flood control, erosion control, storm damage, water pollution, wildlife habitat, fisheries, shellfish, recreation and aquaculture.

Erosion Control – The prevention or reduction of the movement of soil particles or rock fragments by water, wind, ice and/or gravity.

Evidence –

- Clear and Convincing Evidence–Proof beyond a reasonable well-founded doubt that is more than a preponderance of the evidence but less than needed in to establish criminal liability
- Credible Evidence from Competent Source– Evidence from state or federal agencies or the Conservation Commission members or staff, or from a professionally qualified individual that was collected using acceptable scientific methodology or best available reliable practices or that which is based on personal knowledge.
- Preponderance of Evidence– Greater weight of the evidence; evidence that is more credible and convincing to the mind.
- Substantial Evidence– Evidence showing the existence of a fact (as opposed to discrediting a witness) that supports the decision of the Conservation Commission so that considering the total evidence presented during the administrative hearing process, a court of competent jurisdiction would not find that the Commission acted arbitrarily or capriciously in making its decision.

FEMA Floodline – The boundaries specified by the Federal Emergency Management Agency, as located on Flood Insurance Rate Maps for the Town of Westford dated June 15, 1983 and as amended from time to time

Fill – The placing of any material that raises, either temporarily or permanently, the elevation of any area subject to the bylaw. Clean fill is fill free from contamination, trash, debris, asphalt, brick, concrete, metal, wood, recycled construction materials or other deleterious materials.

Fisheries – Any water body containing any species of fish and any land containing shellfish. Also, definitions of “Protection of Fisheries” and “Protection of Land Containing Shellfish”.

Flood Control – The prevention or reduction of flooding and flood damage.

Flooding – A local and temporary inundation or as a rise in the surface of a body of water, such that it covers land not usually under water.

Flood Plain – Any land susceptible to being inundated by a flood having a one percent or greater chance of being equaled or exceeded in any given year.

Freshwater Wetland – As defined in the bylaw and with the added definition of bog, seep and vernal pool.

Ground Water – All water beneath any land surface including water in the soil and bedrock beneath water bodies.

Hearing – An open meeting held for purposes of answering questions and hearing comments from interested citizens.

Intermittent Stream – A stream that does not flow throughout the year. Said stream may not have a definite channel and may flow into or out of a resource area.

Lake – As defined in the bylaw.

Land Subject to Flooding – Any area, which floods due to a rise in a water body or waterway; or any area which serves as a ponding area for runoff or high groundwater which has risen above the ground surface.

Land Under Water – Land below water including but not limited to brook, creek, river, stream, pond, lake or vernal pool. Said land may be composed of organic muck or peat, fine sediments, rocks or bedrock.

Maintenance – The work or activity of maintaining but not expanding.

Majority – The number of signatures necessary for an order or denial and shall consist of more than half of the duly appointed members of the Commission.

Marsh – As defined in the bylaw

Notice of Intent – The written application filed by any person to give notice of a project intending to perform an activity that might fill, dredge or alter any wetland, related water resource or adjoining land areas.

Order of Conditions – A document issued by the Commission stating conditions which regulate the proposed activity or work in whole or in part. An Order of Conditions may also prohibit all or part of an activity or work.

Party – A person, applicant, Conservation Commission, any intervenor(s) or abutter.

Permit – See Determination of Applicability and Order of Conditions.

Person – As defined in the bylaw.

Pond – As defined in the bylaw.

Potential Vernal Pool – Uncertified vernal pools that have the characteristics of a vernal pool in that they are small, often shallow ponds characterized by a lack of fish and annual or semi-annual periods of dryness.

Prevention of Pollution – The prevention or reduction of contamination or degradation of the physical, chemical or biological characteristics of wetlands, related water resources, adjoining land areas, surface or ground water.

Private Water Supply – Any source or volume of surface or ground water demonstrated to be in any private use or demonstrated to have a potential for private use as water supply.

Protection of Fisheries – Protection of the capacity of an area to prevent or reduce contamination or damage to fish; and serve as their habitat and nutrient source, including all species of freshwater finfish and shellfish.

Protection of Land Containing Shellfish – Protection of the capacity of an area prevent or reduce contamination or damage to shellfish; and serve as their habitat and nutrient source.

Protection of Wildlife Habitat – The measures necessary to safeguard and otherwise preserve any and all of the following:

- Rare species: Any plant or animal species listed as endangered, threatened or special concern, or on the Watch List by the Massachusetts Natural Heritage Program; listed as Federally Endangered or Federally Threatened by the U.S. Fish and Wildlife Service; deemed locally threatened, in writing, by the Commission.
- Wildlife: Any non-domesticated mammal, bird, reptile, amphibian, fish, mollusk, arthropod, or other invertebrate, other than a species of the Class Insecta or

predaceous arachnids of the Order Araneida, that have been determined by the Commonwealth of Massachusetts or any agency thereof to be a pest whose protection under the provisions of the bylaw would be a risk to man.

- **Habitat:** The ability of any resource area to provide food, breeding habitat, shelter, or escape cover for species falling within the definition of wildlife set forth in these regulations. See also definition of “alteration” above.

**Recreation** – Any passive leisure activity that does not conflict with or diminish wetland functions and values, related water resources and adjoining land areas. Examples include, but are not limited to, the following: legally licensed fishing or hunting, boating, swimming, walking and hiking, canoeing, and bird watching.

**Remove** – The act or process of taking away any type of material that changes the elevation, plant community or wildlife habitat either temporarily or permanently, of any area subject to the bylaw.

**Request for a Determination of Applicability** – A written request made by any person to the Commission for a determination as to whether a site or work thereon is subject to regulation under the bylaw.

**River** – a natural flowing body of water that empties into any ocean, lake or other river and which flows throughout the year.

**Riverfront Area** – a 200-foot resource area associated with perennial streams that extends horizontally from the mean annual highwater or top of bank whichever is greater.

**Sedimentation** – The process of depositing material which has been suspended in water.

**Seep** – A seep is an area where groundwater oozes or trickles to the surface, sometimes to from a pool. The circumference of such a pool may be small and water may evaporate in periods or drought. Seep boundaries are to be determined by the area of increased wetness due to water trickling from the seep. Seep boundaries shall be determined between March 21 and June 21, and when overall precipitation conditions are normal.

**Shellfish** – See "Protection of Land Containing Shellfish" and “Fisheries”.

**Significant** – That standard to be used by the Commission in determining whether activity subject to the bylaw plays a role in the provision or protection of an interest of the bylaw. Some factors to be considered in establishing significance may include one (1) or more of the following:

- Any actual or potential contamination to public, private or ground water supply, including aquifers or recharge areas.
- Any reduction of the flood storage capacity of a freshwater wetland, river, stream or creek, brook or floodplain.

- Any reduction of function to provide erosion and sedimentation control.
- Any alteration of a river, stream or creek that results in any increase in the volume or velocity of water which may cause flooding or storm damage.
- Any actual or potential alteration that will cause water pollution.
- Any alteration or loss of wildlife habitat including fisheries, shellfish and upland species that utilize adjoining land areas to wetlands and related water resources.
- Any actions which shall remove, fill, dredge or alter any area subject to the bylaw.
- Any reduction in the capacity to provide recreation.
- Any actual or potential reduction in the capacity to limit aquaculture.

Storm Damage Prevention – The prevention of damage caused by water from storms, including, but not limited to, erosion and sedimentation, damage to vegetation, property or buildings or damage caused by flooding, waterborne debris or waterborne ice.

Stream – As defined in the bylaw and including creek as defined above.

Swamp – As defined in the bylaw.

Vernal Pool – As defined in the bylaw.

Vernal Pool Habitat – Habitat that is important to species that breed in vernal pools because these species use it to complete part of its life cycle.

Wet Meadow – As defined in the bylaw.

Wildlife Habitat – Those areas subject to the bylaw which, due to their plant community composition and structure, hydrologic regime or other characteristics, provide important food, shelter, migratory or overwintering areas or breeding areas for wildlife.

Wildlife Habitat Analysis – Analysis conducted of wetlands, related water resources and adjoining land areas, that considers the areas capacity to provide habitat functions such as (but not limited to) food, shelter, breeding space, or interhabitat/intrahabitat movement.

**§235-4. Application Procedures.**

- A. Notice of Intent applications shall be submitted on the MA DEP's official Notice of Intent ("NOI") form. The date of filing of the application shall be deemed the date of receipt either by postal delivery or in person by the Commission, and all time periods set forth in the bylaw shall commence from this date. An application shall not be deemed filed under the bylaw unless it is completed on the appropriate form and includes plans (see §235-4), information in a narrative form that is sufficient to understand the scope of the project and potential impact to wetlands, related water resources and adjoining land area, maps including a locus map (see §235-4), a certified list of abutters prepared by the Assessors Department, the filing fee, and (8) additional copies of the entire application packet.
- B. Request for a Determination of Applicability (see definition of "Request for a Determination of Applicability" in §235-2). Any person who desires a determination as to whether the bylaw applies to an area or an activity shall submit a written request to the Commission. The Request for a Determination of Applicability shall be on the MA DEP's official Request for Determination of Applicability form and shall be submitted together with a scaled plan showing at a minimum: the property lines, wetlands, related water resources and adjoining land areas, and the proposed project or area in question. The application packet will include a locus map, information in a narrative form that is sufficient to understand the scope of the project and potential impact to the wetlands, related water resources and adjoining land areas; a certified list of abutters prepared by the Assessors Department; and the filing fee. Additional information that may be useful on the plan are contour lines or spot grade elevations; elevations of existing and proposed grades, trees over 10-inches in diameter, utilities, and septic leach field. The Request for a Determination of Applicability shall not be deemed filed under the bylaw unless it is complete on the appropriate form and includes the materials described above and (8) additional copies of the entire application. The date of filing of the application shall be deemed the date of receipt either by postal delivery or in person by the Commission and all time periods set forth in the bylaw shall commence from this date.
- C. Notification to abutters shall mean that the applicant has notified by certified mail through the United States Postal Service all abutters. In the case of a condominium association or homeowners association notification by certified mail shall be made to the Trustees of the association. The notice shall state a brief description of the project or proposal and the date of any Commission hearing or meeting date if known.
- D. Extension Permit. If work has not been completed within the three-years from the date of issuance of a permit and the permit has not expired, a person may request an extension of time for up to three years. The issuance of an extension is discretionary. If there has been a significant change of the proposed activity, a violation of the Order that has not been corrected, the wetland boundaries have changed or any other circumstance that the original permit would not adequately protect the wetlands, related water resources or adjoining land areas at the time the request for an

extension is made, the Commission may require a new filing of an application and a new hearing.

E. Fees for Outside Consultants

- (1) Purpose. As provided by G.L. Ch. 44 §53G, the Westford Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services. Such services shall be 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 (G.L. Ch. 131 §40), the Westford non-zoning wetlands bylaw (Ch. 171, Bylaws of the Town of Westford), Conservation Commission Act (G.L. Ch. 40 §8C), or any other state or municipal statute, bylaw, ordinance or regulation, as they may be amended or enacted from time to time. The Conservation Commission may also impose fees for other consultant services, related to application review, or permit conditioning or monitoring, under any of the above-referenced laws or regulations.
- (2) Special Account. Funds received pursuant to these rules shall be deposited with the Westford town treasurer 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 appropriation as provided in G.L. Ch. 44 §53G. Expenditures from this account shall be made only in connection with a specific project or projects for which a consultant fee has been collected from the applicant. Expenditures of accrued interest may also be made for these purposes.
- (3) Consultant Services. Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. Services may also include on-site monitoring during construction, or other services related to the project deemed necessary by the Commission. The consultant shall be chosen by, and report only to, the Commission and/or its administrator.
- (4) Notice. The Conservation Commission shall give written notice to the applicant of the selection of an outside consultant. Such notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice 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.
- (5) Payment of Fee. The fee must be received prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary, review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay

the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to deny the permit application. An appeal stops the clock on the above deadline; the countdown resumes on the first business day after the appeal is either denied or upheld. A denial for lack of information may be based solely on the lack of the third-party consultant review identified as necessary by the Commission. The Commission shall specify in its denial the nature of the information lacking which its chosen consultant would provide, e.g. the questions it needs answered.

- (6) Appeals of Selected Consultant. The applicant may appeal the selection of the outside consultant to the Select Board, who may only disqualify the outside consultant selected 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 three 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 Select Board and a copy received by the Conservation Commission, so as to be received within ten (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.
- (7) Return of Unspent Fees. When the Commission's review of a project is completed and an Order of Conditions issued, any balance in the special account attributable to that project shall be returned within 30 days. The excess amount, including interest, shall be repaid to the applicant or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Commission with appropriate documentation. A final report of said account shall be made available to the applicant or applicant's successor in interest.

#### F. Application Fee

- a. There shall be a twenty-five-dollar filing fee required in addition to the fee required under the Massachusetts Wetlands Protection Act for any application filed with the Commission.
- b. No fee is charged for Extension Permits.
- c. Town, county, state and federal projects are exempt from fees.

There shall be a One Hundred and Fifty-dollar (\$150.00) fee assessed to any person requesting a Certificate of Compliance after the Order of Conditions has expired.

**§235-5. Plans and Application Submittal Documents to Accompany a Notice of Intent**

Plans shall describe the proposed activity and its effect on the environment. All plans, drawings, sketches and calculations shall be dated and signed by the person(s) responsible for their preparation. Plans and drawings involving the practice of surveying or engineering shall be stamped and signed by the appropriate design professional who shall be registered in the Commonwealth of Massachusetts.

A. Site Plans, drawings or sketches may be required by the Commission to include, among other items, any of the following information:

- Wetlands including wetland flag numbers for field delineated wetlands
- Related water resource areas and adjoining land areas
- Bylaw set-back distances from wetlands
- The proposed project and limit of work
- Location, extent and area of all present and proposed structures
- Location of fill
- Location of snow storage areas
- Property lines
- Contour lines
- Elevations of existing and proposed grades
- Paved and hardscape areas
- Landscape improvements including existing plants and proposed plants
- Trees that might be impacted by the project
- Floodplains, flood plain elevations and flood profiles
- Erosion control measures
- North arrow
- Scale
- Date of plan and revisions dates

B. Subdivision Plans or other professionally prepared plans may also need to include:

- Watershed areas.
- Water Quality Classifications
- A title page designating the name of the project, the project location, the name(s) of the persons preparing the drawings and the date prepared, including all the latest revision dates.
- Layout and site plans shall be drawn at commonly acceptable scales, preferably forty (40) feet to the inch, with detail and profile drawings drawn to appropriate scales; present and proposed contours at two-foot intervals of the entire site.
- Present and proposed location of all rights-of-way, easements, overhead and underground utilities.

- Water quality classifications (General Laws Chapter 21, the Clean Waters Act).
- Drainage information, including: location of proposed and existing water retention and detention areas, all existing and proposed storm drainage pipes, ditches, structures, culverts and outfalls, fully described with information on inverts, slopes, materials entrance and outlet conditions, bedding in unstable soils, details of drainage structures and end walls and other standard engineering data on such work.
- Location of areas to be removed, dredged, filled or otherwise altered in any way, including the grading of these areas, and areas to be left untouched.
- Cross sections showing slope, bank and bottom treatment of each watercourse or wetland proposed to be altered. Locations of cross sections shall be specified.
- Compensatory flood storage.
- Wetland replication and adjoining land area restoration.
- Locations and elevations of cellars or floors; locations, bottom elevations and designs of sewage disposal systems which comply with local and state environmental codes.
- Typical cross sections, elevations and stability calculations for water retaining weirs, dams and dikes and of earth-retaining structures alongside open waterways and wetlands.
- Soil, Water Table and Groundwater Information including:
  - USDA soil classification
  - Soils and groundwater elevation information from all deep hole and percolation tests performed on the site
  - Locations, logs and water table information of all test borings, test pits and other subsurface explorations; direction of flow of groundwater indicated to the best precision possible from the available information. (Monitoring wells or other tests may be required to determine the direction of groundwater flow)

C. Additional Information that may be required:

- A Geographic Information System (GIS) locus map showing the location of the proposed activity, names of nearby roads, rivers, ponds, and other named water bodies
- DEP Field Data Sheets
- Operation and Maintenance Plan
- Long Term Pollution Prevention Plan
- Drainage calculations
- Stormwater Best Management Practices (BMP's)
- Means and methods for construction
- Wildlife habitat analysis
- Analysis of Impact on Fisheries
- Analysis of Impact on Recreation

**§235-6. Certificate of Compliance.**

- A. For all projects issued an Order of Conditions (OOC), the applicant, property owner or their representative shall, submit a Request for a Certificate of Compliance (COC) on the official MA DEP Request for COC form seeking a Certificate of Compliance from the Commission prior to the expiration of the OOC. The request shall be accompanied by a written statement from the applicant's engineer or, in the absence of engineered plans, by the applicant certifying that the activity described in the application and plans has been completed in accordance with the OOC and shall note any deviations from the approved plans.. The request for COC shall also be accompanied by as-built plans prepared by a Registered Professional Engineer and signed and stamped by said engineer unless waived by the Conservation Commission.
- B. After receipt of the request for a Certificate of Compliance and as-built plans, an on-site inspection may be made by the Commission or its agent.
- C. If it is determined by the Commission that the Order of Conditions has not been satisfied, the Commission may deny the issuance of a Certificate of Compliance. When a project has been completed in accordance with the Order of Conditions, the Commission shall issue a Certificate of Compliance with any ongoing or continuing conditions noted in the COC.

**§235-7. Emergencies.**

- A. An application shall not be required for emergency projects necessary for the protection of health or safety of the Town of Westford or the Commonwealth.
- B. An emergency project shall mean any project certified to be an emergency by the Commission, its agent or the Select Board.
- C. Any person requesting certification of an emergency project shall specify why the project is necessary for the protection of the health and safety of the Town or Commonwealth. If ordered by another government agency or board, the reason for the ordered project shall be specified. The certification of emergency shall describe the work which is to be allowed. No such work shall be allowed beyond that necessary to abate the emergency. A site inspection may be made by the Commission or its agent prior to certification. In a situation that sufficient information is provided digitally a site visit may be waived.
- D. The time limitation for emergency work shall not exceed thirty (30) days unless it is with the written approval of the Commission.

**§295-8 Appeal of Decision.**

Any person with standing may appeal any decision of the Commission to Superior Court according to the provisions of Mass. Gen. Laws, c. 249, §4. A bylaw Order is not final until the disposition of all court appeals.

**§295-9. Severability.**

If any provision of the bylaw or of these regulations or their application is held invalid, such invalidity shall not affect the remaining provisions of the bylaw or regulations. Nor shall such invalidate any bylaw Order that the Commission previously issued.

**§235-10. Effective date.**

- A. The effective date of these regulations shall be December 9, 2020.
- B. All proceedings and actions commenced under the bylaw prior to the effective date of the within regulations shall remain in full force and effect.