



Town of Braintree Bylaw

Wetland Bylaw Chp. 12.20

Adopted May 1999

TOWN OF BRAINTREE MASSACHUSETTS  
WETLAND BYLAW  
CHAPTER 12.20 BRAINTREE BYLAW

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**WETLAND BYLAW**  
**CHAPTER 12.20 BRAINTREE BYLAW**

**I. FINDINGS OF FACT AND PURPOSE**

**A. FINDINGS OF FACT**

1. The wetland areas of Braintree are indispensable but fragile natural resources subject to flood, erosion, soil bearing capacity limitations and other hazards. In their natural state, they serve multiple functions for storage and passage of flood waters, pollution control, wildlife, aquifer recharge, erosion control, protection of ground- water quality, education, scientific study, open space and recreation.
2. Considerable acreage of these important wetland areas has been lost or impaired by draining, dredging, excavating, filling, building, pollution and other acts inconsistent with the natural uses of such areas. Other wetlands are in jeopardy of being lost, despoiled or impaired by such acts, contrary to the public safety and welfare.
3. It is therefore, the policy of Braintree to protect its citizens, including generations yet unborn, by preventing the despoliation and destruction of wetlands.

**B. PURPOSE**

The purpose of this Bylaw is to protect wetlands, water resources, groundwater quality and adjoining areas in Braintree by regulating activities deemed by the Conservation Commission [COMMISSION] likely to have a significant or cumulative effect upon the following wetland values: public or private water supply, flood control, water quality, groundwater, storm damage prevention including coastal storm flowage, erosion and sedimentation control, water pollution control, fisheries, shellfish, wildlife habitat, rare species habitat, recreation and aesthetics (the "wetland values protected by this Bylaw").

**II. JURISDICTION**

Except as permitted by the Commission or as provided in this Bylaw, no person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter any:

freshwater wetland, coastal wetland, marsh, wet meadow, bog, swamp, bank, dune, beach or land within 100 feet of any of the aforesaid resource areas [the 100 foot buffer zone]; land under a lake, pond, creek, river, stream [whether natural or manmade, intermittent or continuous], estuary or ocean;

land subject to flooding or inundation by groundwater or surface water;

land subject to tidal action, coastal storm flowage or flooding;

land which may cause degradation or change to the physical characteristics of groundwater;

alteration of land which requires the creation of detention or retention ponds or basins, 1000 sf in size or greater, which are required to control drainage for siltation or surface runoff or

riverfront area.

(These are the "RESOURCE AREAS" protected by this Bylaw. Said resource areas shall be protected whether or not they border surface waters.)

### III. APPLICATIONS FOR PERMITS AND REQUESTS

#### A. NOTICE OF INTENT

1. A written Notice of Intent [NOTICE] shall be filed with the Commission to perform activities effecting the resource areas protected by this Bylaw. Said Notice shall include such information and plans deemed necessary by the Commission to describe proposed activities and their effects on said resource areas. No activity shall commence without receiving and complying with a permit issued pursuant to this Bylaw.
2. The Commission in an appropriate case may accept, as a Notice under this Bylaw, a Notice of Intent filed under Massachusetts Wetlands Protection Act MGL Chp. 131 Sec. 40 and Wetland Protection Act Regulations 310 CMR, 10.00.
3. With the filing of a Notice, an applicant shall pay a fee as set by the Commission. Said fee is in addition to that required by MGL Chp. 131 Sec. 40 and 310 CMR 10.00.

B. REQUEST FOR DETERMINATION OF APPLICABILITY

Any person desiring to know whether or not a proposed activity or an area is subject to this Bylaw may request in writing a determination from the Commission. Such a Request for Determination of Applicability [Request] shall include information and plans deemed necessary by the Commission.

C. WAIVER OF FEES COSTS AND EXPENSES

The Commission may waive all filing fees, costs and expenses associated with a Notice or Request by a government agency or nonprofit organization.

IV. CONDITIONAL EXCEPTIONS

A. Any Notice/Request required by this Bylaw shall not be required for maintaining, repairing or replacing [but not substantially changing or enlarging] an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services provided that:

1. written notice has been given to the Commission prior to commencement of work and
2. the work conforms to all performance standards and design specifications adopted by the Commission.

B. Any Notice/Request required by this Bylaw shall not be required for emergency projects necessary to protect the health and safety of the public provided that:

1. the work is performed by or is ordered by an agency of the Commonwealth or a political subdivision thereof;
2. advance notice [oral or written] has been given to the Commission prior to commencement of work or within 24 hours after commencement;
3. the Commission or its agent certifies the work as an emergency project;
4. the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency and
5. within 21 days of commencement of work, a Notice/Request shall be filed for review as provided by this Bylaw.

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

- C. Any other exception provided in MGL Chp. 131 Sec. 40 and 310 CMR 10.00 shall not apply under this Bylaw.

V. NOTICE AND HEARINGS

A. NAMES AND ADDRESSES OF ABUTTERS

1. Parties of Interest for a Notice/Request shall include:

Applicant and the owner [if different from the applicant] of the parcel(s) to which a Notice/Request relates;

Owners of all parcels of land that are adjacent to the parcel(s) to which a Notice/Request relates;\*\*

Owners of parcels land directly opposite on a public way or street or waterbody to which a Notice/Request relates;\*\*

The Conservation Commission of an adjacent municipality if the parcel(s) to which a Notice/Request relates is within 100 feet of a municipal boundary line.

\*\*SUCH PERSONS ARE PARTIES OF INTEREST EVEN IF THEIR LAND LIES IN ANOTHER CITY OR TOWN.

2. The identity of all parties of interest listed above shall be taken from the most recent tax list of the applicable city or town.
3. If notice is required to be given to the owner of any portion of a condominium as a party of interest and if the units within the condominium are separately assessed, each unit owner within the condominium as well as the association of unit owners, are parties of interest.

B. NOTICE OF PUBLIC HEARING [HEARING]

1. Notice of any hearing required by the Bylaw shall be made in a newspaper of general circulation in the Town

not less than five working days prior to the date of the hearing. In calculating the five day period, the day of publication shall be counted but the day of the hearing shall be excluded.

2. Notice of any hearing required by this Bylaw shall be posted in a conspicuous place in Town Hall at least five working days prior to the date of the hearing.
3. Notice of any hearing required by this Bylaw shall be sent by mail to all parties of interest at least five work days prior to the date of the hearing.
4. All notices of hearings required by this Bylaw shall be prepared by the Department of Planning and Conservation and shall include the following information:

Name of the applicant,

Subject matter of the hearing,

Description of proposed activities,

Address or other adequate identification of the location of the parcel(s) to which a Notice/Request relates,

Date, time and place of the public hearing,

Wetland Resource Areas impacted and

Location where the Notice/Request may be review.

5. Should a party of interest not receive a notice of a hearing, the Commission may accept a waiver of notice or an affidavit of actual notice from said party or may order special notice to said party giving 5 additional days to reply.
6. If the Commission fails to comply with any notice requirement, the Commission may continue the hearing until the notice requirement has been satisfied.

#### C. PUBLIC HEARING

1. Within 21 days of receipt of a completed Notice/Request, the Commission shall conduct a hearing on said Notice/Request unless an extension is authorized in writing by the applicant.



2. The Commission in an appropriate case may combine its hearing under this Bylaw with the hearing conducted under the MGL Chp. 131, Sec. 40, and 310 CMR 10.00.
3. An applicant may appear on his own behalf or may be represented by an agent or attorney. If an applicant or a representative does not appear at the hearing, the Commission may, in its discretion, decide the matter using the information it has received.
4. The Commission shall have authority to continue a hearing for the following reasons:
  - a. Failure to comply with the notice requirements,
  - b. Lack of a quorum,
  - c. To allow comment and recommendations from Town Boards and Officials and
  - d. For additional information which is deemed pertinent to the Notice/Request.
5. If a hearing is continued to a date, time and place certain which is announced at the hearing, no additional notice shall be required. If a hearing is not continued to a date, time and place certain, the hearing shall reconvene within 21 days after the submission of a specified piece of information or the occurrence of a specified action and the notice requirements as set forth in this Bylaw shall apply to the continued hearing.
6. A hearing shall be closed by vote of the Commission when all pertinent information has been placed on the record and the Commission has determined that all of its questions have been answered.

D. CONSERVATION COMMISSION DECISIONS

1. Approval of a Notice/Request shall require a majority vote of the Commission.
2. The Commission shall issue a decision in writing on a Notice/Request within 21 days of the close of a hearing thereon unless an extension is authorized in writing by the applicant.

**VI. OUTSIDE PROFESSIONAL SERVICES**

- A. If at any point during its review the Commission determines that the assistance of outside consultants is warranted due to the size, scale or complexity of a Notice/Request, the Commission shall require an applicant to pay any reasonable costs incurred by the Commission for the employment of said consultants. [The Commission may engage wetlands scientists, engineers, planners or other appropriate professionals.]
- B. In such instances, the Commission shall notify the applicant of the need to engage a consultant and shall provide the opportunity for the Notice/Request to be amended or withdrawn.
- C. **RESERVED**
- D. **RESERVED**
- E. An applicant may take an administrative appeal of the selection of a consultant to the Board of Selectmen. The grounds for said appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum qualifications. Minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field.

The required time limit for action on a Notice/Request by the Commission shall be extended by the duration of an administrative appeal. If no decision is rendered by the Selectmen within 30 days following the filing of the appeal, the selection made by the Commission shall stand.

- F. Consultant fee to be reimburse shall reflect reasonable cost and expenses and shall be based on the following schedule:

| Project Cost               | Maximum Fee |
|----------------------------|-------------|
| Up to \$100,000            | \$10,000    |
| \$100,001 to \$500,000     | \$15,000    |
| \$500,001 to \$1,000,000   | \$17,500    |
| \$1,000,001 to \$1,500,000 | \$20,000    |
| \$1,500,001 to \$2,000,000 | \$20,500    |

Each additional \$500,000 project cost increment (over \$2,000,000) shall be charged at an additional \$5,000 maximum fee per increment.

- G. An applicant shall submit an estimate of project costs at the Commission's request. Project costs shall mean the cost of the total project including, but not limited to, site preparation, building construction, landscaping, and site improvements. A project shall not be segmented to reduce the amount of the consultant fee. Failure to provide said estimate shall not relieve an applicant of the obligation to pay the consultant fee. Failure of an applicant to furnish the required funds shall be grounds for denial of a Notice.

**VII. COORDINATION WITH OTHER BOARDS**

- A. Notice of any hearing required by this Bylaw shall be provided by the Commission, at least five work days prior to the date of the hearing, to the Board of Selectmen, Planning Board, Zoning Board of Appeals, Board of Health, Town Engineer, Building Inspector and Water and Sewer Commission.
- B. The Commission shall not take final action on a Notice/Request until it has received reports from the above cited boards and officials or until fourteen days have elapsed from the date of notice without the submission of a report.
- C. The Commission shall take said reports into account but said reports shall not be binding on the Commission. The applicant shall have the right to review and respond to any report.

**VIII. DETERMINATIONS, PERMITS AND CONDITIONS**

**A. DETERMINATIONS**

- 1. The Commission shall have the authority, after a hearing on a Request, to determine whether a specific parcel of land contains resource areas protected under this Bylaw. If the Commission finds that no such resource areas are present, it shall issue a negative determination.
- 2. The Commission shall have the authority, after a hearing on a Request, to determine whether the activities which are the subject of the Request are likely to have a significant detrimental effect upon the resource areas protected under this Bylaw. If the Commission finds that said activities are not likely to have a significant detrimental effect upon any resource areas, it shall issue a negative determination. If the Commission finds that said activities are likely to

have a significant detrimental effect upon any resource areas, it may require the filing of a Notice on said activities.

B. PERMITS

1. If after a hearing, the Commission determines that the activities which are the subject of a Notice or the land and water uses which will result therefrom are likely to have a significant individual or cumulative impact upon the resource areas protected by this Bylaw, it shall issue or deny a permit for the activities requested.
2. The Commission shall issue a permit only if it finds that the applicant has demonstrated by a preponderance of the evident that the activities proposed will:
  - a. Result in minimum feasible alteration or impairment of the wetland's functional characteristics and its existing contour, vegetation, fish and wildlife resources and hydrological conditions;
  - b. Not adversely effect a rare species;
  - c. Not cause significant degradation of groundwater or surface water quality;
  - d. Comply with all applicable state, local and federal laws, including those related to sediment control, pollution control, and floodplain zoning;
  - e. Provide a buffer zone of not less than 25 feet between wetlands and upland activities for those portions of a regulated activity that need not be conducted in the wetland [Alterations to existing single-family houses and lots shall be exempt form this requirement.];
  - f. Comply with this Bylaw and the Commission's regulations, including those pertaining to wetland creation and restoration and
  - g. Not degrade or alter groundwater quality.
3. The Commission may attach to a permit such conditions it deems necessary to carry out the purposes of the Bylaw. Such conditions may include (but not be limited to):

- a. Limitation on the total portion of any lot or the portion of the resource areas on a lot that may be graded, filled or otherwise modified;
  - b. Requirements that structures be elevated or otherwise protected against natural hazards;
  - c. Modification of waste disposal and water supply facilities;
  - d. Imposition of operational controls and deed restrictions concerning future use of lands such as flood warnings, reservation of undeveloped areas as open space and limitations on vegetation removal;
  - e. Dedication of easements to protect resource areas;
  - f. Setbacks for structures, deposit of fill and other activities from resource areas;
  - g. Replanting of wetland vegetation and construction of new wetland areas to replace damaged or destroyed wetlands;
  - h. Modifications in project design to ensure continued water supply to wetlands and circulation of waters;
  - i. Erosion control and stormwater management measures;
  - j. Time limitation on the commencement of construction and/or the completion of the approved development;
  - k. Establishment of vegetated buffers separating and protecting resource areas from proposed activities.
4. The Commission is empowered to deny a permit for:
- a. failure to meet the requirements of this Bylaw;
  - b. failure to submit necessary information and plans requested by the Commission;
  - c. failure to meet the design specifications, performance standards and other requirements as set by the regulations of the Commission;

- d. failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this Bylaw;
- e. where no conditions are adequate to protect those values or
- f. failure to meet the qualifications for issuance of a permit as set forth in Section VI.B.2. of this Bylaw.

In denying a permit, due consideration shall be given to any demonstrated hardship on the applicant as presented at the hearing.

C. BUFFER ZONE

Lands within the 100 foot buffer zone are presumed important to the protection of wetland areas because activities undertaken in close proximity to said areas have a high likelihood of adverse impacts upon them as a consequence of construction or as a consequence of daily operation or existence of said activities. Impacts may include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality and loss of wildlife habitat. The Commission therefore shall require an applicant to maintain, at a minimum, a continuous undisturbed vegetative strip abutting a wetland 25 feet in width and may set other conditions as it deems necessary, unless the applicant provides evidence deemed sufficient by the Commission that the buffer zone may be disturbed without harm to the values protected by the Bylaw. Alterations to existing single-family houses and lots shall be exempt from this requirement.

D. RIVER FRONT AREA

A permit may be issued for activities within a River Front Area provided the applicant:

1. Complies with all applicable requirements of this bylaw;
2. Proves by a preponderance of the evidence that there is no practicable alternative to the proposed project with less adverse impacts and
3. Should there be no practicable alternative, that such activities, including proposed mitigation measures, will have no significant adverse impact upon resource areas or wetland values protected by this Bylaw.

The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration: proposed property use, overall project purposes, logistics, existing technology, costs of the alternatives and overall project costs.

E. WETLANDS LOSS/REPLICATION

1. In order to prevent wetlands loss, the Commission shall:
  - a. require an applicant to avoid wetlands alteration wherever feasible;
  - b. minimize wetlands alteration where alteration is unavoidable and
  - c. require full mitigation of any wetlands alteration.
2. As a condition of a permit issued or as an enforcement actions under this Bylaw, the Commission may require that the applicant restore or create a wetlands in order to offset, in whole or in part, the losses resulting from an applicant's or violator's actions. In making a determination of whether such a requirement will be imposed, and, if so, the degree to which it would be required, the Commission will consider the following:
  - a. The long- and short-term effects of the action upon the wetland and associated aquatic ecosystem and the reversible or irreversible nature of the impairment or loss;
  - b. The type and benefit of the wetland functions and associated resource lost;
  - c. The type, size and location of the wetland altered, and the effect it may have upon the remaining watershed of which the wetland is a part;
  - d. Observed or predicted trends with regard to the gains or losses of this type of wetland in the watershed, in light of natural and human process;
  - e. The cost and likely success of the possible compensation measures in relation to the magnitude of the proposed project or violation and

- f. The degree to which an applicant has made a good-faith effort to incorporate measures to avoid or minimize wetland impacts from the proposed project.

F. LENGTH OF PERMIT

1. A permit shall expire one year from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring 5 years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission.
2. A permit may be renewed for additional one year periods, provided that:
  - a. a request for renewal is received in writing by the Commission at least 30 days prior to expiration of the permit;
  - b. the Commission finds that good cause has been shown for such extension and
  - c. such extension will not have significant adverse effect upon any of the wetland values protected by this Bylaw.

Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely or until permanent protection is in place.

3. If the activities authorized under a permit are not completed or operations totally cease within the time period indicated on the approved permit, the developer shall be required to restore the natural appearance and biological character of effected resource areas to the conditions prior to institution of the development to the maximum extent practicable.

G. MODIFICATION/RECISION

After notice and a hearing pursuant to Sec. V of this Bylaw, the Commission may modify, suspend or revoke a permit if it finds that the applicant has not complied with the conditions set forth in a permit or has exceeded the scope of work set forth in a Notice.



H. RELATIONSHIP TO MGL CHP. 131, SEC. 40 AND 310 CMR 10.00

The Commission in an appropriate case may combine the permit issued under this Bylaw with the Order of Conditions issued under the MGL Chp. 131, Sec. 40 and 310 CMR 10.00.

I. RECORDING OF PERMIT

No work authorized by any permit issued by the Commission shall be undertaken until said permit has been recorded in the registry of deeds and/or Land Court and until the holder of the permit certifies in writing to the Commission that said permit has been recorded.

IX. REGULATIONS

- A. After notice and hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this Bylaw. At a minimum these regulations shall define key terms in this Bylaw not inconsistent with the Bylaw, establish procedures governing the filing of a Notice or Request and set fees for the processing of a Notice.
- B. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.

X. DEFINITIONS

Words or phrases used in this Bylaw shall defined as follows. Where ambiguity exists, words or phrases shall be interpreted so as to give this Bylaw its most reasonable application in carrying out the regulatory purpose.

**ALTER** shall include any of the following:

Removing, excavating, or dredging of soil, sand, gravel or aggregate materials of any kind.

Changing preexisting drainage, flood retention or flushing characteristics; salinity distribution; sedimentation patterns or flow patterns.

Drainage or other disturbance of water level or water table.

Dumping, discharging or filling with any material which may degrade water quality.

Placing of fill or removal of material which would alter elevation.

Driving of piles, erection or repair of buildings or structures of any kind.

Placing of obstructions or objects in water.

Destruction of plant life including cutting of trees.

Changing temperature, biochemical oxygen demand or other physical, biological or chemical characteristics of any water.

Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

Application of pesticides or herbicides.

Incremental activities which have, or may have, a cumulative adverse effect on the resource areas protected by this Bylaw.

**APPLICANT** shall mean the person filing a Notice/Request under this Bylaw.

**BANK** shall mean the land area which normally abuts and confines a water body, the lower boundary being the mean annual low flow level and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

**BOGS** 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*).

**COASTAL WETLANDS** shall mean any bank, marsh, swamp, meadow, flat or other lowland subject to tidal action or coastal storm flowage.

**DETENTION/RETENTION PONDS OR BASINS** shall mean any basin that is excavated on site to control drainage of runoff on site. This shall also include all detention/retention basins to control the release of runoff for the site to an off site drainage system including streams, storm drains, rivers or other bodies of water.

**FRESHWATER WETLANDS** shall mean wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent plant communities in inland waters; that portion of any bank which touches any inland waters.

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

**MEAN ANNUAL HIGH-WATER LINE** shall mean, with respect to a river, the line that is apparent from visible markings or changes in the character of soils or vegetation due to the prolonged presence of water and which distinguishes between predominantly aquatic and predominantly terrestrial land. The mean high tide line shall serve as the mean annual high water line for tidal rivers.

**PERSON** shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town Bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

**POND** shall mean any open body of fresh water with a surface area observed or recorded within the last ten years of at least 2,500 square feet. Ponds shall contain standing water except periods of extended drought. Not included as ponds are swimming pools, artificially lined ponds or pools or constructed waste water lagoons.

**RARE SPECIES** shall mean, without limitation, all vertebrate and invertebrate animal and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife.

**RIVER** shall mean a natural flowing body of water that empties to any ocean, lake, or other river and which flows throughout the year and is identified on the most recent USGS Topographic Map of the town or on a map provided by the Commonwealth of Massachusetts.

**RIVERFRONT AREA** shall mean that area of land situated between a river's mean annual high-water line and a parallel line located A **maximum** 200 feet away, measured outward horizontally from the river's mean annual high-water line. [THE COMMISSION MAY AFTER A PUBLIC HEARING DESIGNATE A RIVERFRONT AREA OF LESS THAN 200 FEET FOR DENSELY DEVELOPED AREAS.] This definition shall not create a buffer zone, so-called, beyond such riverfront area. The riverfront area shall not include land now or formerly associated with historic mill complexes in existence prior to nineteen hundred and forty-six and situated landward of the waterside facade of a retaining wall, building, sluiceway, or other structure existing on the effective date of this Bylaw. The riverfront area shall not apply to any mosquito control work done under the provisions of clause (36) of MGL Chap. 40 Sec. 5, of MGL Chapters 200 and 52 or of any special act, and to construction, expansion, repair, maintenance or other work on piers, docks, wharves, boat houses, coastal engineering structures, landings, and all other structures and activities subject to licensing or permitting under MGL Chapter 91 and its regulations; provided that such structures and activities shall remain subject to statutory and regulatory requirements under MGL Chap. 91 and MGL Chap 100 Sec. 40 and MGL Chap. 31 or is the site of any project authorized by special act prior to January 1, 1973.

**RIVERFRONT AREA BOUNDARY LINE** shall mean the line located at the outside edge of the riverfront area.

**SWAMPS** shall mean areas where ground water is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface, and where a significant part of the vegetational community is made up of, but not limited to nor necessarily include all of the following plants or groups of plants: alders (*Alnus*), ashes (*Fraxinus*), azaleas (*Rhododendron canadense* and *R. viscosum*), black alder (*Ilex verticillata*), black spruce (*Picea Mariana*), buttonbush (*Cephalanthus occidentalis*), American or white elm (*Ulmus americana*), white Hellebore (*Veratrum viride*), hemlock (*Tsuga canadensis*), highbush blueberry (*Vaccinium corymbosum*), larch (*Larix laricina*), cowslip (*Caltha palustris*),

poison sumac (*Toxicodendron vernix*), red maple (*Acer rubrum*), skunk cabbage (*Symplocarpus foetidus*), sphagnum mosses (*Sphagnum*), spice bush (*Lindera benzoin*), black gum tupelo (*Nyssa sylvatica*), sweet pepperbush (*Clethra alnifolia*), white cedar (*Chamaecyparis thyoides*), willow (*Salicaceae*).

**VERNAL POOL** shall mean a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression.

**WET MEADOWS** shall mean areas where ground water is at the surface for the significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges and rushes; made up of, but not limited to nor necessarily including all of the following plants or groups of plants: blue flag (*Iris*), vervain (*Verbena*), thoroughwort (*Eupatorium*), dock (*Rumex*), false loosestrife (*Ludwigia*), hydrophilic grasses (*Gramincae*), loosestrife (*Lythrum*), marsh fern (*Dryopteris thelypteris*), rushes (*Juncaceae*), sedges (*Cyperaceae*), sensitive fern (*Onoclea sensibilis*), smartweed (*Polygonum*).

## **XI. SECURITY**

As a condition of a permit issued under this Bylaw, the Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by a proper bond, deposit of money, negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission. The particular amount and the conditions of said surety shall be consistent with the purpose of this Bylaw.

## **XII. ENFORCEMENT**

A. No person shall

1. remove, fill, dredge, build upon, degrade or otherwise alter resource areas protected by this Bylaw or cause, suffer or allow said activities;
2. leave in place unauthorized fill or otherwise fail to restore illegally altered land to its original condition;

3. fail to comply with a permit or an enforcement order issued pursuant to this Bylaw.
- B. The Commission or its agents and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this Bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.
  - C. The Commission shall have authority to enforce this Bylaw and its regulations and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions. Any person who violates provisions of this Bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.
  - D. Upon request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law.
  - E. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
  - F. Any person who violates any provision of this Bylaw, the Commission's regulations, permit or administrative order issued thereunder may be punished by a fine of up to \$300 per offense.
    1. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense.
    2. Each provision of the Bylaw or regulations, permits or administrative orders violated shall constitute a separate offense.
  - G. As an alternative to criminal prosecution, the Commission may issue citations under the non-criminal disposition procedures authorized in the Town's general Bylaws.

### **XIII. BURDEN OF PROOF**

An applicant shall have the burden of proving, by a preponderance of the credible evidence, that the activities proposed in a Notice/Request will not have significant or cumulative effect upon the Resource Area and Wetland Values protected by this Bylaw.

Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a Notice or to grant a Notice with conditions.

#### **XIV. ABROGATION AND GREATER RESTRICTION**

It is not intended that this Bylaw repeal, abrogate or impair any exist regulations, easements, covenants or deed restrictions. However, where this Bylaw imposes greater restrictions, the provisions of this Bylaw shall prevail.

#### **XV. INTERPRETATION**

The provisions of this Bylaw shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the goals of the Bylaw.

#### **XVI. APPEALS**

A decision of the Commission shall be reviewable in the Superior Court in accordance with MGL Chp. 249 Sec. 4.

#### **XVII. RELATION TO THE WETLANDS PROTECTION ACT**

This Bylaw utilizes the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes to protect additional resource areas for additional values, with additional standards and procedures stricter than those of MGL Chp. 131, Sec. 40 and 310 CMR 10.00 and is independent of MGL. Chp. 131, Sec. 40 and 310 CMR 10.00.

#### **XVIII. SEVERABILITY**

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.