



Framingham Conservation Commission

Wetlands Protection Regulations



- Promulgated at the February 9, 2005 Conservation Commission Public Meeting
- Amended at the August 31, 2005 Conservation Commission meeting to Promulgate Local Filing Fee language.
- Amended at the October 20, 2005 Conservation Commission meeting to include Enforcement Section
- Amended at the January 18, 2006 Con Com meeting to include Vernal Pool language in Section II and new waiver form and amended ACP
- Amended at the March 29, 2006 Con Com meeting to modify fee section
- Amended at the November 5, 2008 Con Com meeting to modify waiver provisions and fee section
- Amended at the September 15, 2010 Con Com meeting to clarify purpose, jurisdiction, definitions, fees, and performance standards

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SECTION I: GENERAL PROVISIONS

A. AUTHORITY

These Regulations are promulgated by the Town of Framingham Conservation Commission pursuant to the authority granted to it under Section 18 of the Town of Framingham Wetlands Protection Bylaw ("the Bylaw"). These Regulations shall complement the Bylaw and will have the force and effect of law in implementing and enforcing the Bylaw upon their effective date.

The failure of these Regulations to address all aspects of the Bylaw, or a legal declaration of their invalidity by a court of law, shall not act to suspend or invalidate the effect of the Bylaw. Moreover, to the extent that any provision or section of these Regulations are deemed invalid by a court of competent jurisdiction, the remaining provisions of said Regulations shall remain in full force and effect to the extent permitted by law.

B. PURPOSE

The purpose of these Regulations is to fully protect all Jurisdictional Areas (defined in I.C. below). Any permit issued under the Bylaw and Regulations must not adversely affect the interests identified in the Massachusetts Wetlands Protection Act and Massachusetts Rivers Protection Act (MGL Ch. 131 S.40, "the State Acts"). These interests include:

- public/private water supply
- groundwater supply
- flood control
- storm damage prevention
- prevention of pollution
- protection of land containing shellfish
- protection of wildlife habitat
- protection of fisheries

As well as additional municipal interests and values identified in the Bylaw, including but not limited to:

- erosion and sedimentation control
- water pollution prevention
- protection of wildlife
- passive recreation
- aquaculture
- agriculture

These Regulations define and clarify jurisdiction, definitions, standards and processes applied under the Bylaw by which the Conservation Commission may carry out its responsibilities under the Bylaw.

- Jurisdiction is clarified
- Terms and definitions used herein are consistent with usage in the Bylaw, unless otherwise provided herein (see Appendix 6).
- Performance standards have been identified for each area of jurisdiction
- Processes have been clarified

C. JURISDICTION

The Bylaw and these Regulations pertain to all Jurisdictional Areas. Jurisdictional Areas include:

1. All Resource Areas defined in the Massachusetts Wetland Protection Act (310CMR 10.00) and state-defined Buffer Zones to those Resource Areas, listed below in 1a through 1f:

- | | | |
|---|---|---|
| <ol style="list-style-type: none"> a. <u>Any</u> <ul style="list-style-type: none"> · Bank · Freshwater wetland · Coastal wetland · Beach · Dune · Flat · Marsh <u>or</u> · Swamp | B
o
r
d
e
r
i
n
g

o
n | <u>Any</u> <ul style="list-style-type: none"> · Ocean · Estuary · Creek · River · Stream · Pond <u>or</u> · Lake |
|---|---|---|
- b. **Land Under any of the Water Bodies** listed above
 - c. Land Subject to Tidal Action
 - d. Land Subject to Coastal Storm Flowage
 - e. **Land Subject to Flooding**
 - f. **Riverfront Area**

2. Additional areas not covered by the Massachusetts Wetland Protection Act, identified in the Bylaw, including:

- a. **Wetland areas listed above in 1a Column 1 that do not border on the wetland areas listed in 1a Column 2.**
- b. **A 125-foot Buffer Zone** (i.e., that area of land extending one hundred twenty five (125) feet horizontally outward from the boundary of the area) around all Jurisdictional Areas – *with the exception of Land Subject to Flooding, and Riverfront Area.*
- c. No-Alteration Zones
 - i. **A 30-foot No-Alteration Zone** around all Jurisdictional Areas – *with the exception of Land Subject to Flooding, and Riverfront Area.*
 - ii. **Unique Habitat No-Alteration Zones** (See Section III for definitions and performance standards):
 - a. **Important Bird Areas** that fall within jurisdictional Resource Areas under the Act, or that fall within 125-foot Buffer Zones Appendix 1)
 - b. **The “Wild and Scenic” portions of the Riverfront Area of the Sudbury River** (See Appendix 2)
 - c. **Estimated Habitat for Rare Wetlands Wildlife** that fall within Jurisdictional Areas, or that fall within 125-foot Buffer Zones (See Appendix 3 for a recent map by Natural Heritage and Endangered Species Program)
 - iii. **A 125-foot No-Alteration Zone around all Vernal Pools** (See Appendix 4)

Projects exempt from the need to file are listed in Appendix 7.

SECTION II: 125-FOOT BUFFER ZONE

A. DEFINITION

The 125-foot Buffer Zone is that area within 125 feet (measured horizontally outward from the boundary of) any Jurisdictional Area -- *with the exception of:*

- *Riverfront Area*
- *Bordering Land Subject to Flooding*
- *Important Bird Areas*
- *“Wild and Scenic” portions of the Sudbury River, and*
- *Estimated Habitat for Rare Wetlands Wildlife.*

B. PREAMBLE

The 125-foot Buffer Zone is presumed to be significant to protecting the interests and values identified in I.B., above. Buffer zones are vital in protecting the interests and values of the Bylaw in many ways, including but not limited to:

1. Scattering sunlight and providing shade thereby lowering water temperature within wetlands;
2. Slowing water flow thereby decreasing water velocities, allowing infiltration, and reducing the erosion potential of stormwater runoff;
3. Trapping sediment and other insoluble pollutants;
4. Producing leaf litter and biomass which increases the humus content of the soil and increase absorption and infiltration;
5. Providing essential habitat for wetland-associated species;
6. Reducing nutrient overloading by filtering nutrients bound to sediment in the surface flow, and removing nutrients from groundwater through uptake in vegetation.¹
7. Protecting Jurisdictional Areas because activities undertaken in close proximity to wetlands have a high likelihood of adverse impact upon the wetland itself, either immediately as a consequence of construction, or over time as a consequence of daily operation or existence of such activities.

C. PRESUMPTIONS OF SIGNIFICANCE

The Conservation Commission shall begin with the presumption that Buffer Zones are best left in an undisturbed and natural state. Where a proposed activity involves the clearing, filling, dredging, building upon, contributing nutrients, or otherwise altering the Buffer Zone, the Conservation Commission shall presume that such activity will have an impact on the adjacent Resource Area.³ The Commission therefore may require that the Applicant maintain a strip of continuous, undisturbed vegetative cover in part or all of the 125-foot Buffer Zone and may set other conditions on this area, unless the Applicant provides clear and convincing evidence deemed sufficient by the Commission that the Buffer Zone or part of it may be disturbed without harm to the interests and values specified in this Bylaw.

¹ Castelle, A.J., C. Conolly, M. Emers, E.D. Metz, S. Meyer, M. Witter, S. Mauermann, T. Erickson, S.S. Cooke. 1992. Wetland Buffers: Use and Effectiveness. Adolphson Associates, Inc., Shorelands and Coastal Zone Management program, Washington Department of Ecology, Olympia, Pub. No. 92-10.

D. PERFORMANCE STANDARDS

1. The Applicant must prove to the Commission that all reasonable efforts to avoid, minimize, and mitigate adverse impacts on the Buffer Zone have been analyzed and/or proposed.
2. Activities within any portion of the 125-foot Buffer Zone shall not adversely affect the form or function of the 30-foot No Alteration Zone or the adjacent Jurisdictional Area.
3. In considering the types of work and activities allowable in the Buffer Zone, the Conservation Commission shall consider – so the Applicant should present:
 - a. Values and functions of the adjacent Jurisdictional Area(s);
 - b. Pre-project characteristics of the site (e.g. ground slope, soil conditions, vegetation, and prior disturbance); and
 - c. Wildlife habitat and rare species (both flora and fauna).

SECTION III: NO-ALTERATION ZONES

A. 30-FOOT NO-ALTERATION ZONE AROUND WETLANDS

1. Definition

The 30-Foot No-Alteration Zone is that area within 30 feet (measured horizontally outward from the boundary of) any Jurisdictional Area – *with the exception of:*

- *Riverfront Area*
- *Bordering Land Subject to Flooding*
- *Important Bird Areas*
- *“Wild and Scenic” portions of the Sudbury River, and*
- *Estimated Habitat for Rare Wetlands Wildlife.*

2. Preamble

The 30-Foot No-Alteration Zone, because of its close proximity to the wetland, offers crucial protection for the wetland and has its own intrinsic value as an ecological transition zone.

3. Presumptions of Significance

The Conservation Commission shall begin with the presumption that the inner 30 feet of Buffer Zones are the most vital to Resource Area health, and are best left in an undisturbed and natural state. Where a proposed activity involves the clearing, filling, dredging, building upon, contributing nutrients, or otherwise altering the 30-Foot No Alteration Zone, the Conservation Commission shall presume that such activity will have an adverse impact on the adjacent Resource Area.

4. Performance Standards

- a. **Undisturbed 30-Foot No-Alteration Zone.** Undisturbed land is land determined by the Commission to be of a predominantly natural character or to have been altered after August 28, 1992 without a permit from the Conservation Commission.
 1. No alterations are permitted within the 30-Foot No Alteration Zone.
 2. The Commission may require the No-Alteration Zone be delineated with permanent boundary markers, as approved by the Commission. (See Appendix 5)
- b. **Disturbed 30-Foot No-alteration Zone.** Disturbed land is land determined by the Commission to be of a legally modified nature (e.g., parking lot, lawn, non-native landscaping, patio, etc.), modified prior to August 28, 1992, or after that date with a permit from the Conservation Commission.

1. No alterations will be permitted which adversely affect conditions in the 30-Foot No-alteration Zone or adjacent wetland including but not limited to a net:
 - a net increase in impervious surface area
 - a net increase in non-native or invasive species
 - a net increase in stormwater runoff
 - a net increase in lawn area
 - a net decrease in vegetative cover.
2. No structures shall be constructed or placed on pervious ground without compensatory restoration and mitigation.
3. The Commission may require the No-Alteration Zone be delineated with permanent boundary markers, as approved by the Commission. (See Appendix 5)

B. VERNAL POOL NO-ALTERATION ZONE

1. Definition

To clarify language used in the Bylaw, the operational definition of “Vernal Pool Habitat” shall be consistent with the initial description found in the State Wetlands Regulations (310 CMR 10.04)

“Vernal pool habitat means confined basin depressions which, at least in most years, hold water for a minimum of two continuous months during the spring and/or summer, and which are free of adult fish populations ...”

However, under the Bylaw and these Regulations:

1. Vernal pools need not be “within an Area Subject to Protection Under M.G.L. c. 131, § 40 as specified in 310 CMR 10.02(1)” to be protected under this bylaw
2. Vernal pools need not be certified by the state
3. All Vernal Pools have a 125-Foot Vernal Pool No-Alteration Zone which extends 125 feet horizontally outward from the Mean Annual High Water line

2. Preamble

Vernal Pools and their associated uplands are critical to the protection of wildlife habitat and rare plant and animal habitat. These areas are essential breeding habitat, and provide other extremely important wildlife habitat functions during non-breeding season as well, for a variety of wildlife species. Vernal Pools constitute a unique and increasingly rare type of wetland that is inhabited by many species of wildlife, some of which are totally dependent on Vernal Pools and their associated upland habitat for their survival. Areas in the immediate vicinity of the Vernal Pool provide these species with important non-breeding habitat functions, such as migratory pathways, feeding, shelter, and over-wintering sites. Many other species utilize Vernal Pools and their associated uplands for breeding and non-breeding functions, although they are not restricted to this type of wetland. The protection of Vernal Pools and their associated upland habitats is essential for the survival of wildlife species that depend on these unique and threatened resource areas.

Accordingly, a 125-Foot No-Alteration Zone shall be established around all Vernal Pools. (See also Appendix 4)

3. Presumptions of Significance

The Commission shall presume that Vernal Pool Habitat is significant to the protection of wildlife habitat and rare plant and animal habitat.

4. Performance Standards

When the presumption set forth above is not overcome, the following standards shall apply to Vernal Pool Habitat:

- a. **125-foot No-Alteration Zone for undisturbed conditions:** No alterations shall be permitted within Vernal Pool Habitat.
- b. **125-foot No-Alteration Zone in prior disturbed lands:** No activity which will further degrade the habitat or its function shall be permitted within Vernal Pool Habitat.
- c. **No-Alteration Zone Demarcation:** To maintain the perpetual integrity of the 125-foot No-Alteration Zone and to ensure that there will be no encroachments into this Zone by the Applicant or future owners of the subject property, the Commission may require the No-Alteration Zone be delineated with permanent boundary markers, as approved by the Commission. (See Appendix 5)

C. UNIQUE HABITAT NO-ALTERATION ZONES

1. Definitions

Land where the following unique habitats overlap with other Jurisdictional Areas is protected as No-Alteration Zones.

- a. **Important Bird Areas (IBA):** two sites in Framingham identified by the national IBA program that provide essential habitat to one or more species of breeding, wintering, and/or migrating birds. (See Appendix 1 for greater detail)
- b. **The “Wild and Scenic” portions of the Riverfront Area of the Sudbury River:** The Sudbury River, from the Danforth St. Bridge, north to the Town line, has been nationally designated as part of a Wild and Scenic River. It received this designation in 1999 in recognition of its unique literary and historical significance, its beauty, and its value for recreation and wildlife. (See Appendix 2)
- c. **Estimated Habitat for Rare Wetlands Wildlife:** Sites in Framingham identified by Natural Heritage and Endangered Species Program (NHESP), critical for the survival of rare, threatened, endangered, or special concern species. (See Appendix 3 for a recent map)

2. Preamble

These additional areas of recognized ecological importance are protected in Framingham under these Regulations.

3. Presumption of Significance

Where a proposed activity involves the clearing, filling, dredging, building upon or otherwise altering within one of the areas defined in Section I.C.1, above, the Conservation Commission shall presume that such activity will have an impact on the area.

4. Performance Standards

- a. No alteration shall be permitted within the aforementioned unique habitats as long as said habitat falls within a Jurisdictional Area protected under the State Act, the Bylaw, or these Regulations.
- b. The Commission may require the No-Alteration Zone be delineated with permanent boundary markers, as approved by the Commission. (See Appendix 5)

SECTION IV: PROCEDURES

A. APPLICATIONS FOR PERMITS

Written applications shall be filed with the Commission to officially determine the boundaries of Jurisdictional Areas and/or Buffer Zones protected by the Bylaw and/or to perform activities altering said areas. A permit application, shall include such information and plans and completed DEP Field Data

Forms, Stormwater Management Form, and Riverfront Area Form as are deemed necessary by the Commission to determine Jurisdictional Area boundaries and to describe proposed activities and their effects on Jurisdictional Areas and areas protected by the Bylaw. A permit application is not complete until all required application materials have been received by the Conservation Commission. No hearing or meeting for the proposed project will be scheduled until all required application materials have been received.

1. Permit applications accepted by the Conservation Commission include:

- a. Requests for Determination of Applicability (RDA) – for projects that are unlikely to adversely impact a Jurisdictional Area,
- b. Notices of Intent (NOI) – for projects that could adversely impact a Jurisdictional Area,
- c. Abbreviated Notices of Intent (A-NOI) – for projects that could adversely impact a Jurisdictional Area,
- d. Abbreviated Notices of Resource Area Delineation (ANRAD) – for applicant who wish to have the wetland line confirmed by the Commission,
- e. Requests for an Amended Order of Conditions (RA-OOC) – for small changes to projects,
- f. Requests for Certificates of Compliance (R-COC) – for projects that have been satisfactorily completed.

2. Timing of Submissions and Delineations

- a. **All documentation** is required at least two (2) weeks prior to the Conservation Commission Meeting at which the material will be discussed.
- b. **If additional information is requested as part of a continuance** of a public meeting, the Applicant must submit said information no later than 5 business days prior to the scheduled public hearing, or its continuation. This is the minimum time needed to allow the Commission and staff to properly review, analyze, and check the information provided. Documentation submitted with fewer than the minimum five business days for review may be excluded from consideration at the scheduled hearing and held for discussion at a subsequently scheduled meeting.
- c. **Jurisdictional Area boundary delineations** shall be reviewed only between April 1 and December 1 of each year. Delineations may be reviewed at the sole discretion of the Commission or its agents between December 1st and April 1st, and shall be reviewed only when site conditions are such that the Commission or its agents believe they can adequately review the relevant resource area indicators (e.g., soils, vegetation, topography, and hydrology).
- d. **Vernal Pool determination:** Many of the indicators of vernal pools are seasonal. Consequently, failure to find evidence of breeding must be tied explicitly to those periods during which the evidence does not indicate that the site is not a vernal pool. Accordingly, in the case of challenges to the presumption of vernal pool habitat the Conservation Commission may require that the determination be postponed until the appropriate time period consistent with the evidence being presented. The Commission may also require its own site visits as necessary to confirm the evidence.

3. Submission Requirements (Please note that at any time, the Commission may require the submission of fewer or more copies of application materials.)

- a. **RDAs:** The Applicant shall submit eight copies of the state form and eight copies of all supporting documentation (plans, narratives, etc.).
- b. **NOIs, A-NOIs, and ANRADs:** The Applicant shall submit eight copies of the state form, eight copies of all supporting documentation (plans, narratives, etc.), and two copies of the stormwater management report if applicable.

- c. **Revisions, supplemental information, and amendments:** The Applicant shall submit to the Commission eight copies of the memo of request and eight sets of any revised, amended, or supplemental information introduced by or referred to by the Applicant during the course of the public hearings on the application.
- d. **R-COCs:** The Applicant shall submit one copy of the state form and one copy of all required documents (such as as-built plans and monitoring reports)

4. Plan requirements

The following minimum requirements apply to plans submitted with Notices of Intent, Requests for an Amended Order of Conditions, Requests for a Certificate of Compliance, or Abbreviated Notices of Resource Area Delineation. Failure to provide this information, or provision of erroneous or false information shall be grounds for denying, suspending, or revoking the permit as outlined in Section 18.7 of the Bylaw. At its sole discretion the Commission may relax these requirements for certain projects.

- a. **Jurisdictional Area Designations on Plans:** All plans submitted to the Conservation Commission for a permit under the Bylaw and these Regulations must show all Jurisdictional Areas (indicated by numbered points corresponding to flags placed in the field, where appropriate) and within 125 feet of the property lines (200 feet in the case of perennial streams) on the property, regardless of whether or not the proposed work is expected to occur within the Jurisdictional Areas associated with the resource. In those instances where the project is part of a subdivision, a plan must be submitted to the Conservation Commission showing all wetland resources located within the subdivision boundaries and within 125 feet of those boundaries (200 feet in the case of perennial streams).
- b. **Buffer Zone and No-Alteration Zone boundary lines** of all Jurisdictional Areas on the property and within 125 feet of the property line
- c. **Scale**, as needed to show all necessary details, but at a ratio no greater than 1"=40'
- d. **Property boundaries, rights-of-way, easements, etc.**
- e. **Existing structures and conditions**, e.g. buildings, grading/contours (intervals no greater than two feet), vegetation/tree-line, drainage, etc.
- f. **All proposed alterations**, to, e.g. buildings, grading/contours (intervals no greater than two feet), vegetation/tree-line, drainage, etc.
- g. **Proposed erosion/sedimentation control measures**
- h. **Proposed replication areas** if applicable

5. Municipal Filing Fees

The review of applications and monitoring of projects requires the expenditure of significant municipal resources. Therefore, the following municipal filing fees are required at the time of filing. These fees are not refundable. The fee is in addition to that required by the Wetlands Protection Act, G.L. Ch. 131 §40, and Regulations, 310 CMR 10.00. No municipal filing fee shall be assessed for projects of the Massachusetts Bay Transportation Authority, the Dept. of Environmental Protection, or cities and towns of the Commonwealth.

Application	Municipal Filing Fee (in addition to any applicable State fees)
<ul style="list-style-type: none"> • Administrative Approval requiring site visit 	<ul style="list-style-type: none"> • \$25
<ul style="list-style-type: none"> • Request for Determination of Applicability 	<ul style="list-style-type: none"> • \$100
<ul style="list-style-type: none"> • Notice of Intent • Abbreviated Notice of Intent • Abbreviated Notice of Resource Area Delineation 	<ul style="list-style-type: none"> • Fee equal to the full filing fee under the Massachusetts Wetlands Protection Act (refer to 310 CMR 10.03(7)), plus \$50 to cover a Certificate of Compliance site visit.
<ul style="list-style-type: none"> • Request for Certificate of Compliance for expired projects 	<ul style="list-style-type: none"> • \$50
<ul style="list-style-type: none"> • Request for duplicate original of Order of Conditions • Amended Order of Conditions • Certificate of Compliance 	<ul style="list-style-type: none"> • \$25
<ul style="list-style-type: none"> • Request for Amended Orders of Conditions - for all “Category 1 Activities”* 	<ul style="list-style-type: none"> • \$110
<ul style="list-style-type: none"> • Request for Amended Orders of Conditions - for all “other Categories of Activities”** 	<ul style="list-style-type: none"> • \$200

* As defined in 310 CMR 10.03(7)(c)1.: A description of projects subject to Notice of Intent Fees

** As defined in 310 CMR 10.03(7)(c)2-6.: A description of projects subject to Notice of Intent Fees

6. Abutter and Newspaper Notification Requirements

- a. The Applicant is responsible, at the Applicant’s expense, for the notification of all abutters, as described in the Framingham Wetlands Protection Bylaw.
- b. If a proposed project’s public hearing process is continued without a public hearing for more than 6 months, the Applicant is responsible, at the Applicant’s expense, for the re-notification of all abutters
- c. The Conservation Commission is responsible, at the expense of the Conservation office, for placing an initial notification of the subject public hearing/meeting in the local newspaper. Subsequent notifications, if necessary, are the responsibility of the Applicant.

7. Staking Limit of Work and Proposed Structures

The Conservation Commission may require the Applicant to stake, at the Applicant’s expense, the proposed limit-of-work line and the corners of pertinent proposed construction areas or structures prior to a Commission site visit and prior to the issuance of a permit.

B. CERTIFICATES OF COMPLIANCE

Upon receipt of a properly filed Request for Certificate of Compliance (COC) for an active project, the Commission:

- 1. Shall issue a Certificate of Compliance (COC) if all of the conditions described on the Order of Conditions have been satisfactorily met. Any “on-going conditions” that were described on the Order of Conditions (OOC) shall be listed on the COC.
- 2. May issue a Partial COC if it determines that minor issues remain to be rectified. The Partial COC shall describe in detail exactly what is and is not being released, and list the specific conditions which still must be met, including, if appropriate, the issuance of a performance bond.
- 3. May refuse to issue a COC (310 CMR 10.59(9)(c)), if it determines that major issues remain. A written denial shall be issued to the Applicant listing the reasons for the denial and what needs to be done to bring the project into compliance. The denial shall be hand delivered or sent by certified mail return receipt to the Applicant. A bond may be required at this point in time. (See Appendix 8)

C. OUTSIDE CONSULTANTS AND PEER REVIEWERS

As provided by GL Ch. 44, § 53G, the Commission may impose upon and collect from Applicants reasonable fees for the employment of outside consultants, for services deemed necessary by the Commission to adequately review an application submitted to the Commission.

D. REVIEW AND EXECUTION OF ORDERS OF CONDITIONS

After the close of a public hearing, the Conservation Commission will discuss one or more draft Orders of Conditions for possible approval. Approval consists of a successful motion to approve the Order of Conditions, and the signatures of a majority of the Commission. Review and approval will take place at a public meeting, held either at the same meeting that the public hearing was closed, or at a subsequent meeting.

SECTION V: WAIVERS AND MITIGATION

A. PREAMBLE

The performance standards for Jurisdictional Areas and Buffer Zones have been adopted to ensure that the interests and values of the Bylaw and these Regulations are adequately protected. The Commission recognizes that, in certain situations, a waiver of a specific performance standard may be appropriate for a particular project where no feasible alternative provides less impact upon the area or its functions and values and when the waiver is consistent with the intent and purpose of the Bylaw and these Regulations. The Commission may grant a waiver of a performance standard and impose such additional or substituted mitigation requirements as it deems necessary.

In the case where a waiver is granted, the Commission shall require mitigation measures to be implemented to offset impacts or potential impacts to Resource Areas. The mitigation must maintain or improve the natural capacity of a Resource Area to protect the interests identified in the Bylaw. The ultimate goals of mitigation are long-term or perpetual:

1. Renaturalization of impaired, developed or degraded areas
2. Improvement of degraded areas (See Appendix 7).

B. PERFORMANCE STANDARDS

1. Alternatives Analysis

The Applicant is responsible for conducting an alternatives analysis.

- a. The alternatives analysis must show that there are no practicable alternatives or conditions to the proposal that would allow the proposed project to proceed in compliance with the Regulations. The Commission shall consider as practical alternatives options that were available to the Applicant but appear to be precluded due to self-imposed hardships and constraints (e.g., lot, roadway, and drainage layouts engineered without prior regard to impact on Bylaw Resource Areas).

2. Project Proposal

- a. The Applicant must show that the proposed project, or its natural and consequential effects, will have the least possible adverse effects upon any of the Jurisdictional Areas and interests and values protected by the Bylaw and these Regulations.
- b. The Applicant must show, clearly and convincingly that the granting of the waiver is consistent with the intent and purpose of the Bylaw and these Regulations.

3. Mitigation

The Applicant is responsible for proposing appropriate mitigation.

- a. Such mitigation must maintain or improve the natural capacity of a Jurisdictional Area and/or Buffer Zone to protect the interests and values identified in the Bylaw and these Regulations.
- b. Mitigation shall occur in close proximity to the subject Jurisdictional Area(s) and/or Buffer Zones.
- c. Required mitigation may involve permanent land protection in the form of a deed restriction on the area of mitigation.

SECTION VI: ENFORCEMENT

The Conservation Commission shall employ its Enforcement Guidelines, as appropriate, to individual situations of violation, in an effort to bring about the most prompt and effective compliance.

SECTION VII: APPEALS

Decisions of the Commission, including Determinations of Applicability, Approved Orders of Condition, Denied Orders of Condition, and Enforcement Orders, may be appealed to the Superior Court of Massachusetts.

Appendix 1: Important Bird Areas

An Important Bird Area (IBA) is a site providing essential habitat to one or more species of breeding, wintering, and/or migrating birds. The IBA program is a national program that utilizes conservation partnerships to identify and monitor places that are critical to birds during some part of their live cycle, in order to minimize the effects of habitat loss and degradation on bird populations. These sites contain vulnerable, threatened or endangered species, endemic species, species representative of a biome, or concentrations of seabirds, waterfowl, raptors, shorebirds, waders, or migratory land birds.

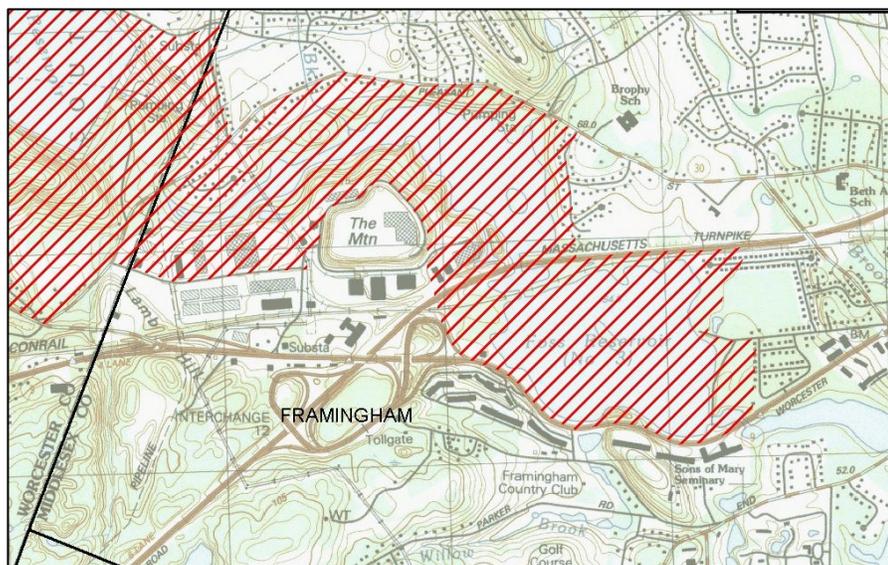
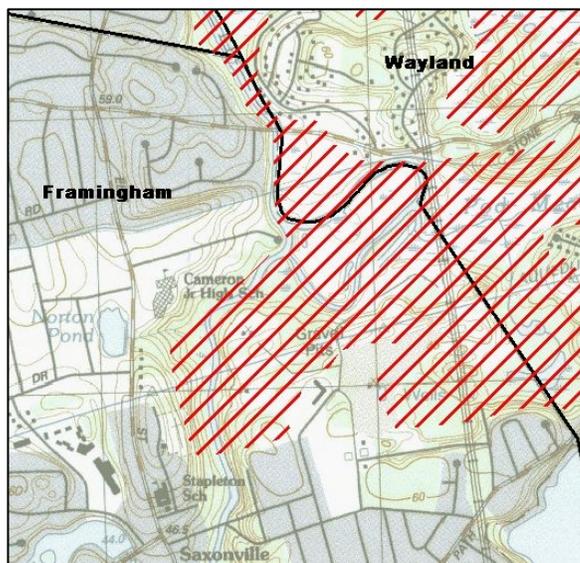
Massachusetts Audubon Society has identified and approved 79 sites in Massachusetts. Two of these sites (Sudbury and Foss Reservoirs and Sudbury/Concord River Valley) are found in Framingham (see maps below). Volunteers from both an IBA technical committee and the public nominated the IBAs. This process relied on the collective knowledge of environmentalists, birders, and professional conservationists.

For a site to be nominated, it had to meet certain criteria, and be approved for nomination by IBA staff. Five criteria were established (see Mass Audubon’s web site (http://www.massaudubon.org/Birds_&_Beyond/IBAs/criteria.php)). Sites may be protected or unprotected, public or private. The sites may vary in size but are usually discrete and distinguishable in character, habitat, or ornithological importance from surrounding areas. Site boundaries may be either natural (e.g., rivers, watersheds) or human-made (e.g., roads, property boundaries). An IBA, whenever possible, should be large enough to supply all or most of the needs of birds during the season for which the IBA is important. A site that meets any one of the criteria in the five categories may qualify as an Important Bird Area, and some sites may meet several criteria.

Nominations were submitted by volunteers that described a site's adherence to these criteria and the extent to which the criteria were supported by data on the abundance and diversity of birds that use the site. Nomination forms, along with maps and supporting documentation, were submitted to Mass Audubon IBA staff and approved in Dec. 2003. A complete site listing can be found at: http://www.massaudubon.org/Birds_&_Beyond/IBAs/sites.php

Sudbury and Foss Reservoir IBA

Sudbury/Concord River IBA



Massachusetts Important Bird Areas Site Summary: Sudbury and Foss Reservoirs

Nominated By: Mark Lynch, Sheila Carroll

Size: 4,500 acres

Towns and Counties: Framingham, Marlboro, Southboro; Middlesex, Worcester

Ownership: Department of Conservation and Recreation, Sudbury Valley Trustees

Major Habitats: oak-conifer forest, lake/pond, river/stream, urban/suburban, migratory stopover site

Land Use: hunting and fishing, other recreation or tourism (walking and jogging), forestry (DCR projects), water supply, suburban/residential

IBA Criteria: Category 3: Sites where birds concentrate in significant numbers in the breeding season, in winter, or during migration. **3c. Waterfowl:** The site regularly supports 500 or more waterfowl at any one time. The designation "waterfowl" includes birds such as loons, grebes, cormorants, geese, ducks, coots, and moorhens.

Site Description: This IBA is a portion of the watershed of the Sudbury and Foss Reservoirs (18,000 acres), an emergency water supply for eastern Massachusetts. The Sudbury Reservoir is fed by the Assabet River to the east. The area around the reservoir is second-growth mixed forest with stands of Red Pine. A network of trails maintained by the DCR is found on the eastern shore. The irregular shape of the reservoir includes many inlets and bays as well as several small islands, making this very attractive to migrating waterfowl. Both spring and fall, this site hosts large numbers of migratory waterfowl including significant numbers of Ring-necked and Ruddy Ducks, American Wigeons, Common Goldeneyes, Buffleheads, mergansers, and American Coots.

Current Conservation Status: Industrial development near the Foss Reservoir is extensive and care needs to be taken to prevent point pollution. Traffic along Routes 9 and the MassPike, which run adjacent to the reservoirs, may provide other sources of pollution. Human disturbance is growing, as the area becomes better known to hikers, joggers, and fishermen.

Ornithological Significance: Other waterfowl species not listed below that regularly migrate through this area include: Pied-billed Grebe, Double-crested Cormorant (generally fewer than 20), Canada Goose (counts of 160 to 290), Mallard (counts of 50), American Black Duck (generally fewer than 10 per day), Green-winged Teal (small numbers), Hooded Merganser (typically 20 to 50 per daily count), American Coot (daily counts in fall range from 2 to 12). Waterfowl species not typically found in central Massachusetts that have appeared in just the last few years include: Canvasback, Redhead, and Eurasian Wigeon. Besides the concentration of waterfowl, there is the Great Blue Heron rookery (four nests and increasing) on an island in the southern section of the Sudbury Reservoir. Migrant land birds find the area very attractive, especially the eastern shore. Several species that linger into winter are very uncommon in that season in Worcester County: Gray Catbird, Hermit Thrush, and Yellow-rumped Warbler.

State Listed Species:

Species	Breeding	Winter	Migration
Pied-billed Grebe	* None known*	* None known*	4 per day in fall

Other Important Species:

Species	Season	Max. No.	Years
Bufflehead	FM	27	1995
Greater Scaup	FM	60+	2000
Common Goldeneye	SM	39	1999
Common Merganser	SM	124	2000
American Wigeon	FM	124	2000
Ruddy Duck	FM	125	1996
Ruddy Duck	FM	210	1997
Ruddy Duck	FM	466	1999
Ring-necked Duck	FM	856	1997
Ring-necked Duck	FM	538	1995
Ring-necked Duck	FM	664	1994
Ring-necked Duck	FM	1180	2000

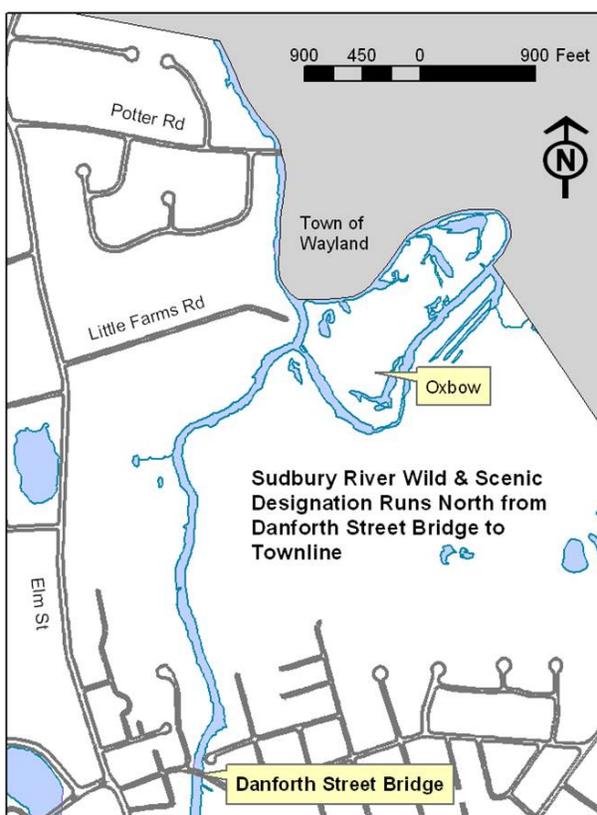
Other Flora or Fauna of Significance: None listed.

Data Sources: Systematic point counts are of the Sudbury Reservoir section only and were conducted by the authors for the past 10 or so years. The counts above represent typical single-day counts at Sudbury Reservoir where the authors run a standardized point count predominantly in the fall. Counts of Foss Reservoir are difficult to do because of geography (bordered by private corporate land, Mass Pike, and Route 9). NB: waterfowl of all species mentioned appear both spring and fall in both bodies, but generally the highest counts of most species are in the fall.

Appendix 2: Wild and Scenic River Area

Twenty-nine miles of the Sudbury, Assabet and Concord Rivers, from Framingham to Billerica, have been nationally designated as Wild and Scenic Rivers. They received this designation in 1999 in recognition of their unique literary and historical significance, their beauty, and their value for recreation and wildlife. With this designation, Congress joined with eight river towns and the State in acting to protect the unique values of this river. Section 7 of the Wild and Scenic Rivers Act restricts federal activities that have a direct and adverse effect on the values for which the river was designated. Each of the towns along the wild and scenic segment have also committed to work to protect the river resources. The Wild and Scenic River Stewardship Council (RSC), on which Framingham is represented, was created and directed in legislation, to work with the Department of Interior to ensure the long term protection of these Rivers.

The presence of natural vegetation within Riverfront Areas is critical to sustaining rivers as ecosystems and providing these public values. The Riverfront Area can prevent degradation of water quality by filtering sediments, toxic substances (such as heavy metals), and nutrients (such as phosphorus and nitrogen) from stormwater, nonpoint pollution sources, and the river itself. Sediments are trapped by vegetation before reaching the river. Nutrients and toxic substances may be detained in plant root systems or broken down by soil bacteria. Natural vegetation within the riverfront area also maintains water quality for fish and wildlife.



Wild & Scenic Segment of Sudbury River in Framingham

References:

Sudbury, Assabet and Concord Wild and Scenic River Study, River Conservation Plan, March, 1995, 62pp.

Online Information Sources:

<http://www.sudbury-assabet-concord.org/> (website of the Sudbury, Assabet, and Concord River Stewardship Council)

<http://www.mass.gov/dfwele/river/suascowild.htm> (has the best map of the entire designation)

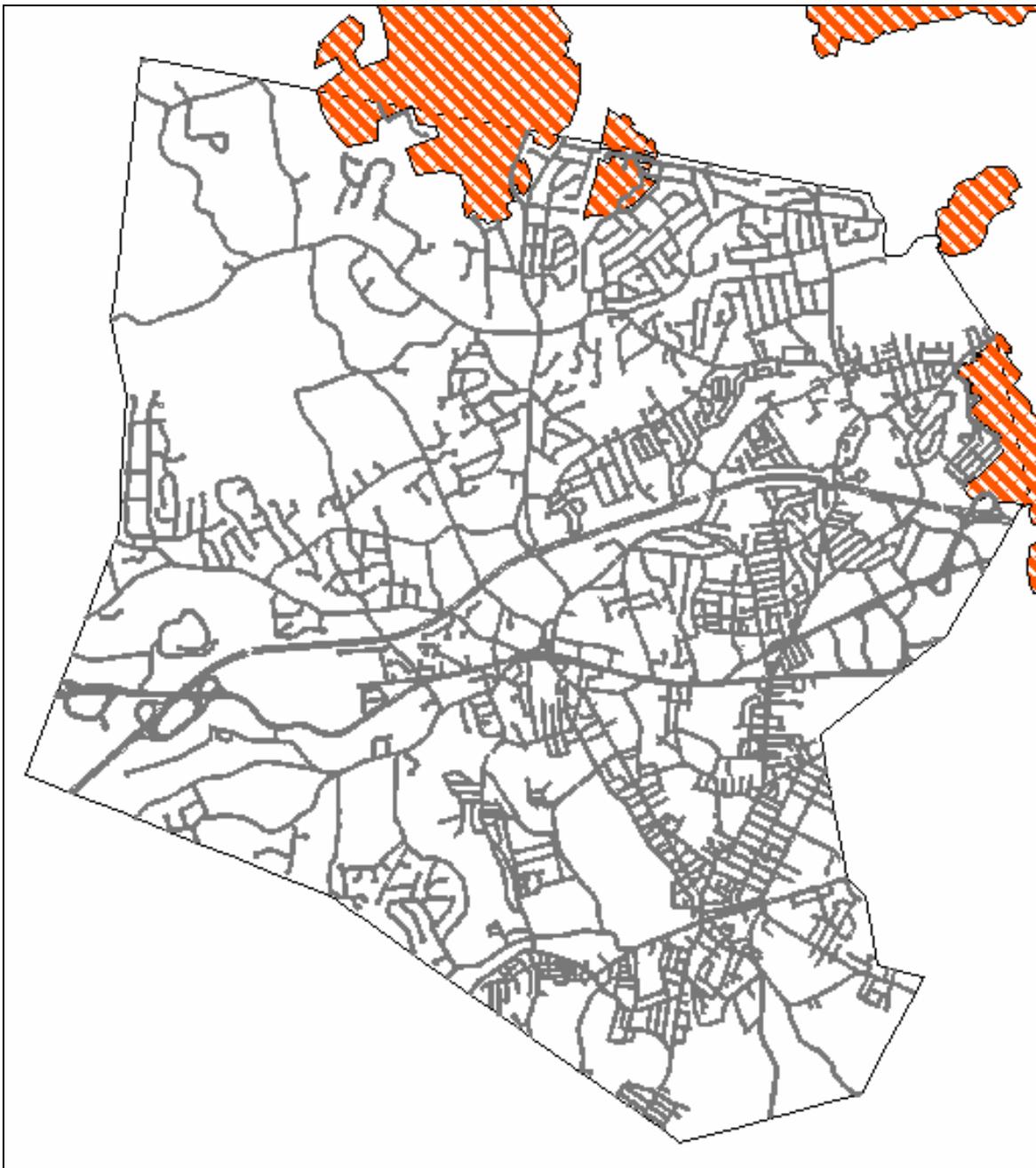
<http://www.nps.gov/rivers/wsr-suasco.html> (National Park Service Wild & Scenic Rivers)

<http://www.nps.gov/nero/rivers/sudbury.htm> (Nat. Park Service site about the Sudbury)

http://www.nps.gov/ncrc/programs/pwsr/suasco_pwsr_sub.html (NNPSe site about the Sudbury)

Appendix 3: Estimated Habitat for Rare Wetlands Wildlife as identified by Natural Heritage and Endangered Species Program (NHESP)

(October 1, 2008)



Appendix 4: Upland Habitat of Vernal Pool Species

Vernal Pools are temporary bodies of fresh water that provide critical habitat for many vertebrate and invertebrate wildlife species. Vernal pools provide unique habitat for a variety of forest and wetland organisms, some of which depend on this pool habitat for their survival. Vernal pools do not support fish because they dry out annually or at least periodically. Some may contain water year round, but are free of fish as a result of significant draw-downs that result in extremely low dissolved oxygen levels. “Obligate” vernal pool species, such as the wood frog (*Rana sylvatica*), mole salamanders (*Ambystoma sp.*), and fairy shrimp (*Order Anostraca*) will only breed in vernal pools and therefore are dependent on this critical habitat. “Facultative” species, such as certain amphibians and reptiles along with several kinds of aquatic invertebrates often exploit the fish-free waters of vernal pools but do not depend on them.

Presumption of Vernal Pool Habitat

The Bylaw presumes vernal pool habitat exists if a wetland’s physical characteristics conform to those defined for vernal pools in these Regulations, or if it is so indicated as such in the *Massachusetts Aerial Photo Survey of Potential Vernal Pools*.

The presumption of vernal pool habitat may be overcome, however, with the presentation of credible evidence, which in the judgment of the Conservation Commission demonstrates that the wetland does not provide, or cannot provide, vernal pool habitat functions.

Demonstrating that a Ponding Area is not a Vernal Pool

For the purposes of overcoming the presumption of vernal pool habitat, the commission will consider:

- Evidence that the ponding area does not hold water for at least two continuous months in most years. The term “most years” shall mean 3 out of 5 consecutive years.
- Evidence that vernal pool species do not breed or have not bred in the ponding area. The Conservation Commission shall provide explicit guidelines for this evidence.
- Evidence that the ponding area could not be a viable breeding site for vernal pool species due to incompatible physical, chemical, biological, or other persistent conditions at the site in most years; such as dissolved oxygen measurements yielding values incompatible with amphibian or reptile breeding.

References

Burne, M. 2001. *Massachusetts Aerial Photo Survey of Potential Vernal Pools*. Westborough, MA: Massachusetts Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program.

Colburn, E. 2004. *Vernal Pools Natural History and Conservation*. The McDonald & Woodward Publishing Co. Virginia.

Massachusetts Division of Fisheries and Wildlife. 1988. “Guidelines for certification of vernal pool habitat.” Westborough, MA: Natural Heritage and Endangered Species Program.

Appendix 5: Marking the No-Alteration Zone

To maintain the integrity of a No-Alteration Zone and to ensure no encroachment into a No-Alteration Zone, the Commission may require the No-Alteration Zone be marked on the ground, at the Applicant's expense, with permanent, weather-resistant markers, such as iron rods, granite bounds, boulders or other permanent indicators. The Commission shall determine their number, location, size, and if necessary, accompanying text.

If required, a No-Alteration Zone shall be defined by metes and bounds on a plan prepared by a Registered Land Surveyor of the Commonwealth of Massachusetts. The permanent survey markers and/or the engraved granite monument(s) shall be shown and identified on this plan. The plan shall be recorded together with the Order of Conditions within 30 days of issuance at the Middlesex County Registry of Deeds or, if the land is registered, at the Land Court. Proof of recording shall be submitted to the Conservation Commission within 21 days of recording of the Order of Conditions and the plan.

The Commission may require the Certificate of Compliance to reference an as-built plan showing the No-Alteration Zone. Both the Certificate and the as-built plan shall be recorded at the Registry of Deeds at the Applicant's expense.

Appendix 6: Clarifications of Bylaw Language

A. SECTION 18.9 DEFINITIONS: AGRICULTURE

To clarify language used in the Bylaw, the operational definition of “Agriculture” shall be consistent with that found in the State Wetlands Regulations 310 CMR 10.04.



Appendix 7: Exemptions and Administrative Approvals Under the Wetland Act and Bylaw

Framingham Conservation Commission

Room 213, Memorial Building, 150 Concord Street, Framingham, MA, 01702

Phone: (508) 532-5460 Fax: (508) 872-5616 Conservation.Commission@framinghamma.gov



- A. **Project Address:** _____ **Owner:** _____
Proposed Approved Project: _____
Approved by: _____ **Approved Date:** _____
- B. According to our maps, the work you propose is not within wetland or Buffer Zone, but these exist on your property. **If you intend to expand or change the scope or nature of your project (to include, for example, regrading, cutting of vegetation, construction, etc.), consult the Conservation Commission, as a permit may be required.**
- C. According to our maps at least a portion of your property is within wetland or Buffer Zone protected by the Mass. Wetlands Protection Act (310CMR 10.00) and/or the Framingham Wetlands Protection Bylaw (Art. V, Sec 18). Specifically, **all or a portion of your property is:**
- In Riverfront Area (land within 200 feet of the bank of a stream or river)
 - In 100-year flood plain
 - In Buffer Zone of a Resource Area (land within 125 feet of a wetland, vernal pool, bank, pond or lake).
- D. Your proposed project is within wetland or Buffer Zone, but Agent discretion has determined that the work will not impair the interests and values of the Act and Bylaw*.
- Anywhere within a wetland resource area or Buffer Zone**
- Removal of ____ (up to 10) hazard (likely to damage a person or a structure) trees (over 4" dbh)
 - No equipment shall enter the wetland.
 - ____ tree(s) must be cut at least ____ feet above the ground, leaving the trunk/roots intact.
 - ____ tree(s) may be cut flush with the ground and the stump ground.
 - ____ cut tree(s) may/must remain on site (though not in or across a water body).
 - ____ cut tree(s) may/must be removed from the site.
 - Restoration planting required: _____.
 - Maintaining, repairing, or replacing an existing structure, and/or replacement or enhancement of sonotubes under existing decks, sunrooms, sheds, etc. as long as no filling or grading will occur.
 - Minor filling within Flood Zone if: (1) total fill is <18 cu ft; (2) fill is in existing lawn; and (3) fill is over 30 feet from all other wetland resource areas (*Note: said fill may be placed in Riverfront Area).
- Anywhere within Buffer Zone, riverfront, and flood zone**
- Installation of pervious (unpaved, wood-chipped, or gravel) pedestrian walkways for private use
 - Fencing, stonewalls, or stacks of cord-wood that do not bar wildlife movement
 - Plantings of native species of trees, shrubs, or groundcover, but excluding turf lawns
 - Conversion of impervious surfaces to vegetated surfaces such as lawn, shrubs, and trees
- Anywhere outside the 30-foot-no-alteration-zone**
- Conversion of lawn to backyard accessories where no excavation/grading is necessary (e.g., play sets, gazebos, above-ground pools)
 - Vista pruning of non-landscaped or "wild" or "natural" vegetation
 - The conversion of lawn to uses accessory to residential structures such as decks, sheds, and patios, and additions placed on sonotubes that do not require excavation
- Erosion controls must be installed**
- You must: (1) properly install and maintain erosion controls prior to and during construction, (2) properly disposed of erosion controls after the project is finished, and (3) appropriately stabilize the site with vegetation.
- E. This completed form and an accompanying plan of the work shall be kept on file in the Conservation office and shall be sent or hand-delivered to the resident.

**Interests and Values of the Act and Bylaw*

- | | | |
|--|--|----------------------------|
| 1. Protection of public & private water supply | 6. Protection of land containing shellfish | 11. Protection of wildlife |
| 2. Protection of ground water supply | 7. Protection of fisheries | 12. Passive recreation |
| 3. Flood control | 8. Protection of wildlife habitat | 13. Aquaculture |
| 4. Storm damage prevention | 9. Erosion and sedimentation control | 14. Agriculture |
| 5. Prevention of pollution | 10. Water pollution prevention | |