

TOWN OF AMHERST
WETLAND PROTECTION BYLAW REGULATIONS
(Amended 2/12/14)

I. GENERAL PROVISIONS

A. Introduction

These regulations are promulgated by the Amherst Conservation Commission pursuant to the authority granted to the Commission under Section 8 of the Town of Amherst Wetlands Protection Bylaw. These rules and regulations complement and amplify the bylaw and shall have the force of law upon their effective date.

B. Purpose

1. The Amherst Wetlands Protection Bylaw sets forth a public review and decision-making process by which activities affecting resource areas subject to protection under the bylaw are to be regulated in order to contribute to the following interests (collectively the “resource interests protected by this bylaw”):

- a. protection of public and private water supply
- b. protection of groundwater
- c. flood control
- d. erosion and sedimentation control
- e. storm damage prevention
- f. protection of water quality
- g. water pollution control
- h. protection of wildlife habitat
- i. protection of rare species habitat
- j. protection of agricultural value
- k. protection of aquacultural value
- l. protection of recreation value

2. These regulations serve to implement the Amherst Wetlands Protection Bylaw by establishing standard definitions, uniform procedures, design specifications, and performance standards by which the Commission may carry out its responsibilities under the bylaw.

C. Statement of Jurisdiction

1. Areas Subject to Protection under the Bylaw

- a. any freshwater wetland, marsh, wet meadow, bog, swamp, isolated wetland, vernal pool, bank, reservoir, pond, intermittent stream, or watercourse;
- b. any land within 100 feet of the areas set forth in Sec.I. C.1.a above;
- c. any river or perennial stream;
- d. any land within 200 feet of the water bodies set forth in Sec.I. C.1.c above;
- e. any water within the water bodies set forth in Sec.I. C.1.a and Sec. I. C.1.c. above;
- f. any land under any of the water bodies set forth in Sec.I. C.1.a and Sec.I. C.1.c above;

- g. any land subject to flooding or inundation by groundwater, surface water, or storm flowage;
- h. any land within 100 feet of any land subject to flooding or inundation as set forth in Sec. I. C.1.g above.

2. Activities Subject to Regulation Under the Bylaw

- a. Any activity proposed or undertaken which constitutes removing, filling, dredging, building upon, degrading, discharging into, or otherwise altering any areas specified in Section I. C.1 above is subject to regulation under the bylaw and requires the filing of a Notice of Intent (NOI).
- b. Any person desiring to know whether or not a proposed activity or an area is subject to the bylaw may request in writing a determination from the Commission. Such a Request for Determination (RFD) shall be submitted pursuant to Section III. C of these regulations.

D. Exceptions and Variances

1. Conditional Exceptions

- a. The application and permit required by the 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, or sanitary or storm sewers, provided that written notice has been given to the Commission prior to the commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
- b. The application and permit required by the bylaw shall not be required for work performed for normal maintenance or improvement of land which is lawfully in agricultural use at the time the work takes place, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
- c. The application and permit required by the bylaw shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to the commencement of the work or within 24 hours after commencement; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by the bylaw. Upon failure to meet these and 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.
- d. The application and permit required by the bylaw shall not be required for exemptions under the Rivers Act (310 CMR 10.58[6]).

- e. Other than stated in this section, the exceptions provided in the Wetlands Protection Act (G.L. Ch. 131 Sec. 40) and regulations (310 CMR 10.00) shall not apply under the bylaw.

2. Variances

- a. The Commission shall have the power, after the filing for a permit and the conduct of a public hearing in accordance with Section III, to grant with respect to a particular project a variance from the terms of the bylaw. A variance will be granted only when the Commission finds, based on clear and convincing evidence adduced by the applicant, that owing to circumstances relating to the soil conditions, hydrological conditions, topography of such land and especially affecting such land but not affecting generally wetlands in the Town, a literal enforcement of the provisions of the bylaw would involve substantial hardship to the applicant. In addition, the applicant must demonstrate that desirable relief may be granted without material detriment to the values protected by the bylaw and without substantially derogating from the intent or purpose of the bylaw. Such variances are intended to be granted only in rare and unusual cases. It shall be the responsibility of the applicant to provide the Commission with any and all information which the Commission may request in order to enable the Commission to ascertain any such material detriment to the values protected by the bylaw. The failure of the applicant to furnish any of the information so requested shall result in the denial of a request for a variance pursuant to this subsection.
- b. The Commission may impose conditions, safeguards, and limitations in a variance to protect further the interests protected by the bylaw or the intent or purpose of the bylaw.
- c. A variance shall expire on a date specified by the Commission, not later than three years from the date of issuance of the permit, and may be reestablished only after notice and a new hearing pursuant to this section.

E. Burden of Going Forward and Burden of Proof

- 1. The applicant shall have the burden of going forward by providing credible evidence from a competent source in support of all matters asserted by the applicant in accordance with the burden of proof pursuant to Sec. I. E.2 below.
- 2. The applicant shall have the burden of proving by a preponderance of the credible evidence that the activities proposed in the application will not have a significant or cumulative effect on the values protected by the bylaw. Failure to meet the burden of proof shall be cause for the Commission to deny the application for permit, along with any work or activity proposed herein.

II. DEFINITIONS

- 1. Activity means any form of draining, dumping, dredging, damming, discharging, excavating, filling, or grading; the erection, reconstruction, or expansion of any buildings or structures; the driving of pilings or erection of walls; the construction or improvement

of roads and other ways; the changing of runoff characteristics; the intercepting or diverting of ground or surface water; the installation of drainage, sewage, or water systems; the discharging of pollutants; the destruction of plant life; or any other changing of the physical characteristics of land, or of the physical, biological, or chemical characteristics of water.

2. Administrative Order. See Enforcement Order.
3. Alter means, without limitation, the following actions when undertaken upon or affecting any of the areas subject to protection under the bylaw and listed in Sec. I. C.1 of these regulations:
 - a. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
 - b. Changing the preexisting drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
 - c. Drainage or other disturbance of water level or water table;
 - d. Dumping, discharging, or filling with any material that may degrade water quality;
 - e. Placing of fill, or removal of material, that would alter elevation;
 - f. Driving of piles or erection of buildings or structures of any kind;
 - g. Placing of obstructions or objects in water;
 - h. Destruction of or significant injury or alteration to wetland vegetation as described and listed in the National Wetlands Inventory 1;
 - i. Changing water temperatures, biochemical oxygen demand, or other physical or chemical characteristics of water;
 - j. Any activities, changes, or work that may pollute any body of water or groundwater.
3. Applicant means a person filing an application for a permit, or a person on whose behalf an application is filed.
4. Aquaculture means the growing of aquatic organisms under controlled conditions.
5. Areas Subject to Flooding means depressions or closed basins which serve as ponding areas for runoff, snowmelt, heavy precipitation, or high ground water which has risen above the ground surface, and areas which flood from a rise in a bordering waterway or water body.
6. Area Subject to Protection under the Bylaw means any area specified in Sec. I. C.1 and is used synonymously with Resource Area.
7. Bank is defined in 310 CMR 10.54 (2). See also Section IV.A of these regulations.
8. Best Available Measures means the most up-to-date technology or the best designs, measure, or engineering or bioengineering practices that have been developed and that are commercially available.
9. Bog is defined in the Wetlands Protection Act [G.L. Ch. 131 Sec.40(6)]. See also Sec. IV. B of these regulations.

10. Bordering means touching.
11. Bordering Vegetated Wetland (BVW) is defined in 310 CMR 10.55(2).
12. Boundary means the boundary of a Resource Area.
13. Breeding Area means any area used by wildlife for courtship, mating, nesting, or other reproductive activity, and rearing of young.
14. Buffer Zone means that area of land extending 100 feet horizontally from the boundary of any Resource Area.
15. Bylaw means the Amherst Wetlands Protection Bylaw.
16. Certificate of Compliance means a written determination by the Commission that the proposed work or a portion thereof has been completed in accordance with a Permit.
17. Conditions means those requirements set forth in a written Permit issued by the Commission for the purpose of permitting, regulating, or prohibiting any activity that removes, fills, dredges, builds upon, or alters any Resource Area.
18. Conservation Commission or Commission means that body comprised of members lawfully appointed pursuant to MGL Ch. 40 Sec. 8C.
19. Date of Issuance means the date an Order is mailed, as evidenced by a postmark or the date it is hand delivered.
20. Date of Receipt means the date of delivery to an office, home, or usual place of business by mail or hand delivery.
21. Department means the Massachusetts Department of Environmental Protection (DEP).
22. Determination (of Applicability) means a written finding by the Commission as to whether an area or an activity is subject to the jurisdiction of the bylaw.
23. Determination of Significance means a written finding by the Commission, after a public hearing, that the area on which the proposed work is to be done, or which the proposed work will alter, is significant to one or more of the interests identified in the Bylaw. A Notification of Non-Significance means a written finding by the Commission, after a public hearing, that the area on which the proposed work is to be done, or which the proposed work will alter, is not significant to any of the interests of the bylaw.
24. Dredge means to deepen, widen, or excavate, either temporarily or permanently.
25. Enforcement Order means a written notice issued by the Commission requiring the cessation of all activities that are in violation of M.G.L. Ch. 131 Sec. 10 or of the bylaw.

26. Erosion Control means the prevention of the detachment or movement of soil or rock fragments by water, wind, ice, or gravity.
27. Extension Permit means a written permission issued by the Commission extending the time within which an authorized activity shall be completed.
28. Fill means to deposit any material so as to raise an elevation, either temporarily or permanently.
29. Flood Control means the prevention or reduction of flooding and flood damage.
30. Groundwater Supply means water below the earth's surface in the zone of saturation.
31. Interest means the resource values (collectively, the "interests protected by the bylaw") specified in Sec. I. B of these regulations.
32. Issuing Authority means the Conservation Commission.
33. Lake means any open body of fresh water with a surface area of 10 acres or more, and shall include great ponds.
34. Land in Agricultural Use is defined in 310 CMR 10.04, under "Agriculture."
35. Land Subject to Flooding or Inundation by groundwater or surface water means land within the 100-year Flood Plain.
36. Land Under Water Bodies means the bottom or land under the surface of any lake, river, pond, perennial or intermittent stream, or watercourse.
37. Majority means more than half of the members of the Commission then in office.
38. Marsh is defined in M.G.L. Ch. 131 Sec.40 (10). See also Sec. IV. B of these regulations.
39. Mitigation means rectifying an adverse impact by repairing, rehabilitating, or restoring the affected Resource Area or compensating for an adverse impact by enhancing or providing replacement resource areas.
40. Non-transient Macro-organisms means animals visible to the naked eye, including but not limited to: *Eubrachiopods*, *Isopods*, *Amphipods*, and *Pisidiid* clams.
41. Notice of Intent (NOI) means the written Application for Permit filed by any person intending to remove, fill, dredge, or alter any Area Subject to Protection under the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, Sec.40) or the bylaw.

42. Obstructions or Objects in Water means but is not limited to debris, dams, weirs, sluice gates, docks, bulkheads, pilings, and floats.
43. Order of Conditions means the written document issued by the Commission containing conditions which regulate or prohibit an activity in a Resource Area Subject to Protection under the Wetlands Protection Act or the bylaw.
44. Owner means the person who own the property upon which the activity(ies) are proposed.
45. Parties in Interest means all abutters as determined from the most recent records of the Assessor, all owners of land directly across a body of water (including those persons in another municipality), and all abutters to abutters within 300 feet of the property line of the owner.
46. Permit means the document issued by the Commission containing conditions which regulate or prohibit an activity under the bylaw. The Commission in an appropriate case may combine the Permit or other action on an application issued under the bylaw with the Order of Conditions issued under the Wetlands Protection Act (M.G.L. Ch. 131, Sec. 40).
47. Person means 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, the Town of Amherst, or any other legal entity, its legal representatives, agents, or assigns.
48. Plans mean such data, maps, engineering drawings, calculations, specifications, schedules, and other materials, if any, deemed necessary by the Commission to describe the area and the activity; to determine the applicability of the bylaw; or to determine the impact of the proposal upon the interests identified in the bylaw.
49. Pond means any open body of fresh water, either naturally occurring or man-made, which has standing water due to natural causes at least once each year. Basins or lagoons which are part of waste water treatment plants shall not be considered ponds, nor shall swimming pools or other impervious man-made retention or detention basins.
50. Prevention of Pollution means the prevention or reduction of contamination of surface or groundwater.
51. Private Water Supply means any source or volume of surface or groundwater demonstrated to be in any private use or demonstrated to have a potential for private use.
52. Protection of Fisheries means protection of the capacity of a Resource Area to prevent or reduce contamination or damage to fish, and to serve as their habitat and nutrient source. Fish includes all species of freshwater finfish.
53. Public Water Supply means any source or volume of surface or groundwater demonstrated to be in public use or approved for water supply pursuant to M.G.L.. Ch.

111, Sec.160 by the Division of Water Supply or the DEP, or shown to have a potential for public use.

54. Quorum means the majority of the duly appointed members of the Commission that when duly assembled is legally empowered to transact business.
55. Rare Species Habitat means those areas designated in the most recent map of estimated habitats of rare wildlife and certified vernal pools.
56. Remove means to take away any type of material, thereby changing an elevation, either temporarily or permanently.
57. Request for Determination (of Applicability) means a written request made by any person to the Commission for a determination as to whether an area or activity is subject to the bylaw.
58. Reservoir means a body of water impounded for purposes of municipal water supply.
59. Resource Area means any area specified in Sec. I C.1 and is synonymous with Area Subject to Protection Under the Bylaw.
60. River means any naturally flowing body of water that empties to any ocean, lake, pond, or river, and which flows throughout the year.
61. Riverfront Area is defined in 310 CMR 10.58(2).
62. Seasonal Wetland is an isolated depression or closed basin which temporarily confines water during periods of high water table or high input from spring runoff, snowmelt, or heavy precipitation, which supports populations of non-transient macro-organisms and provides breeding habitat for select species of amphibians. Cf. Vernal Pool.
63. Sedimentation Control means the prevention or reduction of the collection or concentration of sand, soil, or rock fragments by the action of water, wind, ice, or gravity.
64. Select Species of Amphibians means species of amphibians which depend upon vernal pools (seasonal wetlands) for breeding habitat, including but not limited to mole salamanders (*Ambystoma maculatum*, *A. jeffersonianum*, *A. laterale*, *A. opacum*); four-toed salamanders (*Hemidactylium scutatum*); eastern spadefoot toads (*Scaphiopus holbrookii*); American and Fowler's toads (*Bufo a. americanus* and *B. woodhousii fowleri*); spring peepers (*Hyla c. crucifer*); gray treefrogs (*Hyla versicolor*); and wood frogs (*Rana sylvatica*).
65. Significant means plays a role.
66. Storm Damage Prevention means 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.

67. Storm Flowage means any inundation caused by a storm up to and including the 100-year flood
68. Stream means any body of running water, including brooks and creeks, which moves in a definite channel in the ground due to the hydrologic gradient. A portion of a stream may flow through a culvert or beneath a bridge. A stream may be intermittent (discontinuous) or ephemeral (does not flow throughout the year). A stream does not necessarily drain an upgradient wetland.
69. Swamp is defined in M.G.L. Ch. 131, Sec.40(8). See also Sec. IV. B of these regulations.
70. Town means the Town of Amherst.
71. Vernal Pool means a pool or pond which is a confined basin or depression which, at least in most years, holds water for a minimum of two (2) continuous months during the spring or summer, which is free of adult fish populations, and supports select species of amphibians and/or non-transient macro-organisms. Cf. Seasonal Wetland.
72. Watercourse means a stream wholly or partially man-made.
73. Wetlands is defined in the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.
74. Wet Meadow is defined in the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40. See also Sec. IV. B of these regulations.
75. Wildlife means any non-domesticated native mammal, bird, reptile, amphibian, fish, mollusk, arthropod, or other invertebrate.
76. Work means the same as activity.

III. PROCEDURES

A. Time Periods

All time periods of ten days or less specified in the bylaw and in these regulations shall be computed upon business days only. In the case of a Determination or Permit, such period shall commence on the first day after the date of issuance and shall end at the close of business on the tenth business day thereafter. All other time periods specified in the bylaw and these regulations shall be computed on the basis of calendar days, unless the last day falls on a Saturday, Sunday, or legal holiday, in which case the last day shall be the next business day following.

B. Abutter Notification

Concurrent with the filing of the Request for Determination or the Notice of Intent, the applicant also shall provide notification to all abutters and any property owners within 300 feet of the property line of the land where the delineation or activity is proposed including properties separated from that land by a public or private street or a body of water. The applicant shall provide notification at the mailing addresses shown on the most recent applicable tax list from the municipal assessor. Notification shall be at the applicant's expense. The notification shall state where copies of the Request for Determination or the Notice of Intent may be examined or obtained and where information on the date, time, and location of the public hearing may be obtained. The applicant shall notify abutters by certified mail (return receipt requested), or certificates of mailing, or hand delivery. Mailing at least seven days prior to the public hearing shall constitute timely notice. The applicant shall present the certified mail or certificates of mailing receipts for all abutters at the beginning of the public hearing. The presentation of the receipts for all abutters identified on the tax list shall constitute compliance with abutter notification requirements. The Conservation Commission shall determine whether the applicant has complied with abutter notification requirements.

C. Actions by Conservation Commission

Where the bylaw states that a particular action (except receipt of a Request for Determination or Application for Permit) is to be taken by the Commission, that action is to be taken by more than half the members present at a meeting of at least a quorum. Where the bylaw states that a permit or notification shall be issued by the Commission, that action is to be taken by a majority of the members then in office, who need not convene as a body in order to sign said permit or notification, provided they met pursuant to the Open Meeting Law (G.L. Ch. 39 Sec. 23A-23C) when voting on the matter.

D. Determination of Applicability

1. Request for Determination of Applicability
 - a. Any person who desires a determination as to whether the bylaw applies to an area or activity may submit to the Commission by certified mail or hand delivery two copies of a Request for Determination of Applicability. The Request for Determination shall include such data and plans as are required by the Commission.
 - b. Any person filing a Request for Determination with the Commission shall at the same time give written notice thereof, by certified mail (return receipt requested), or certificates of mailing, or hand delivery, to all parties in interest, including abutters (including owners of land directly opposite any public or private street or way) and abutters to the abutters within 300 feet of the property line of the applicant (including any in another municipality or across a body of water). The notice shall enclose a copy of the Request with plans, or shall state where copies of plans may be examined and obtained by parties in interest. Any person filing a Request for Determination shall also comply with the Notice requirements in Sec. III.F.
 - c. When a person requesting a Determination is other than the owner, the Request, the notice of the hearing, and the Determination itself shall be sent by the Commission to the owner as well as to the person making the Request, and the applicant shall supply the Commission with the name and current address of the owner.

2. Determination of Applicability
 - a. Within 21 days after the date of receipt of a completed Request for Determination of Applicability, the Commission shall hold a public hearing on the Request. Notice of the time and place of the public hearing at which the Determination will be made shall be given by the Commission at the expense of the person making the Request not less than five business days prior to such hearing, by publication in a newspaper of general circulation in the Town.
 - b. At the public hearing the Commission will determine:
 - Positively: that the area or activity is subject to the jurisdiction of the bylaw; or
 - Negatively: that the area or activity is not subject to the jurisdiction of the bylaw.
 - c. The Determination shall be signed by a majority of the Commission and shall be sent by the Commission to the person making the Request and the owner within 21 days of the close of the public hearing or any continuance thereof.
 - d. A Determination shall be valid for three years from the date of issuance.
 - e. In the event of a positive Determination, an Application for Permit shall be filed for any activity subject to jurisdiction of the bylaw, and all of the procedures set forth in Section III relative to such applications shall apply.
 - f. Public hearings may be continued as follows:
 - i. with the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing; or
 - ii. with the consent of the applicant for a period not to exceed 21 days after the submission of a specified piece of information or the occurrence of a specified action. The date, time, and place of said continued hearing shall be publicized in accordance with the bylaw, and notice shall be sent to any person at the hearing who so requests in writing.

E. Application for Permit (Notice of Intent, or NOI)

1. Any person who proposes work that will remove, fill, dredge, build upon, or alter any resource area shall submit an Application for Permit and other application materials in accordance with the submittal requirements set forth in Sections III and V of these regulations.
2. The applicant for a Permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the Permit Application will not have unacceptable significant or cumulative effect upon the resource area values protected by the bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.
3. If the Commission determines that an application is incomplete or improper, it shall notify the applicant within 21 days of the date of receipt. The Commission may:
 - a. return the application, in which case all required time periods for application processing will be terminated;
 - b. require additional information or materials be submitted within a specified period of time which shall be no later than the date of the scheduled public hearing;

- c. continue the public hearing, at the applicant's expense, for a period to be determined by the Commission.
4. The Commission may accept as the application and plans under the bylaw the Notice of Intent and plans filed under the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.
5. The person making an Application for Permit shall send by certified mail (return receipt requested), or certificates of mailing, or delivery by hand notice of the time and place of the public hearing or state where this information may be obtained to the owner, to all parties in interest, including abutters (including owners of land directly opposite any public or private street or way) and abutters to the abutters within 300 feet of the property line of the applicant (including any in another municipality or across a body of water) at least seven days prior to the hearing date. The notice shall state where copies of the Application may be examined and obtained by parties in interest.
6. Any person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of the provisions of the bylaw or in violation of any permit issued pursuant to the bylaw shall forthwith comply with any order to restore said land to its condition prior to said violation.
7. When a person filing an application is other than the owner, the application, the notice of the hearing, and the findings themselves shall be sent by the Commission to the owner as well as to the person filing the application, and the applicant shall supply the Commission with the name and current address of the owner confirmation of notification by certified mail.
8. Upon receipt of the application materials referred to in subsection D.1 above, the Commission shall issue a file number for the application. The designation of a file number shall not imply that the plans and supporting documents have been judged adequate for the issuance of a Permit but only that the minimum submittal requirements have been filed.
9. In the event that only a portion of a proposed activity lies within a Resource Area, all aspects of the activity shall be described in the detail called for, including without limitation a description and calculation of peak flow and estimated water quality characteristics of any drainage discharge from a point source (whether closed or open channel) outside a Resource Area.
10. Notwithstanding the foregoing, if the Commission determines that an activity outside a Resource Area has in fact altered a Resource Area, it may require an application including such plans, supporting calculations, and other documentation as are necessary to describe the entire activity.

F. Public Hearing on Application for Permit (NOI)

1. A public hearing on an Application for Permit shall be held by the Commission within 21 days of receipt of the minimum submittal requirements set forth in Sections III and IV

and shall be advertised at the expense of the applicant at least five business days prior to the hearing in a newspaper of general circulation in the Town and in accordance with the requirements of the Open Meeting Law (G.L., Ch. 39 Sec. 23B). Notice of the hearing shall be mailed by the Commission to the applicant and to the owner if other than the applicant.

2. The Commission may combine its hearing under the bylaw with the hearing conducted under the Wetlands Protection Act (G.L., Ch. 131 Sec. 40) and Regulations (310 CMR 10.00 et seq.).
3. Public hearings may be continued as follows:
 - a. without the consent of the applicant to a certain date, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant or others deemed necessary by the Commission at its discretion, or comments and recommendations of other local or state boards or officials;
 - b. with the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing; or
 - c. with the consent of the applicant for a period not to exceed 21 days after the submission of a specified piece of information or the occurrence of a specified action. The date, time, and place of said continued hearing shall be publicized in accordance with the bylaw, and notice shall be sent to any person at the hearing who so requests in writing.
4. Public hearings must be continued to a future date in the absence of a DEP number.

G. Coordination with Other Boards and Offices

1. Any person filing a Permit Application or Request for Determination with the Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested), or certificates of mailing, or hand delivery, to the planning board, health inspection, town engineer, building inspector, and zoning board.
2. The boards and offices referred to in Section G.1 above may file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. Any such written comments and recommendations that are not privileged will be provided to the applicant and owner when they are filed with the Commission. The applicant and owner shall have the right to respond to such written comments and recommendations at a hearing of the Commission prior to final action.

H. Permit Regulating the Work

1. Within 21 days of the close of the public hearing the Commission shall issue or deny the Permit or issue a Notice of Non-Significance if the Commission determines that the area on which the proposed work is to be done is not significant to any interest identified in the bylaw.

2. If the Permit is issued, it shall impose such conditions as are deemed necessary for the protection of one or more of the interests identified in the bylaw. The permit shall prohibit any activity or portion thereof that cannot be conditioned to protect said interests.
3. The Permit shall impose conditions upon an activity or the portion thereof that will in the judgment of the Commission result in removing, dredging, filling, building upon, or altering a Resource Area. The Permit shall impose conditions setting limits on the quantity and quality of discharge from any point source (whether closed or open channel) when said limits are appropriate to protect the interests identified in the bylaw. The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.
4. If the Permit is denied, it shall be for one or more of the following reasons:
 - a. for failure to meet the requirements of the bylaw;
 - b. for failure to submit necessary information or plans requested by the Commission;
 - c. for failure to meet design specifications, performance standards, or other requirements in these Regulations;
 - d. for failure to avoid or prevent unacceptable significant or cumulative effects upon the Resource Area values protected by the bylaw; or
 - e. where no conditions are adequate to safeguard the wetland values protected by the bylaw.
5. A Permit shall expire three years from the date of issuance.
6. The Permit shall be signed by a majority of the Commission and shall be mailed or hand delivered to the applicant, his agent, or the owner of record.
7. A copy of the plans describing the work and the Permit shall be kept on file by the Commission and shall be available to the public at reasonable hours.
8. Prior to the commencement of any work permitted or required by the Permit, the Permit shall be recorded in the registry of Deeds or the land court for the district in which the land is located within the chain of title of the affected property. In the case of recorded land, the Permit shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the Permit shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. Certification of recording shall be sent to the issuing authority. If work is undertaken without the applicant first recording the Permit, the issuing authority may issue an Enforcement Order.
9. For good cause the Commission may revoke or modify a Permit issued under the bylaw after public notice and public hearing, and notice to the holder of the Permit.

10. The Commission may combine the Permit or other action on an application issued under the bylaw with the Order of Conditions issued under the Wetlands Protection Act (G.L., Ch. 131 Sec. 40).

I. Security

As part of a permit or variance issued under the bylaw, in addition to any security required by any other municipal or state board, agency, or official, 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 one or both of the methods described below:

1. by a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission. Such bond or surety, if required to be filed or deposited, shall be approved as to form and manner of execution by the Town Counsel, and as to sureties by the Town Treasurer, and shall be contingent upon the satisfaction of such conditions within the time frame of the permit and extension. Such bonds shall be approved by the Commission prior to the close of the public hearing.
2. by acceptance of a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town, whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed (such method to be used only with the consent of the applicant).

J. Extension of Permit

1. The Commission may extend a Permit once for an additional one-year period. Requests for extension shall be made to the Commission in writing at least 30 days prior to the expiration of the Permit.
2. The issuing authority may deny the request for an extension and require the filing of a new Application for Permit for the remaining work in the following circumstances:
 - a. where no work has begun on the project, except where such failure is due to an unavoidable delay, such as appeals, in the obtaining of other necessary permits;
 - b. where new information, not available at the time the Permit was issued, has become available and indicates the permit is not adequate to protect the interests identified in the bylaw;
 - c. where incomplete work is causing damage to the interests identified in the bylaw;
 - d. where work has been done in violation of the Permit or these Regulations.
3. If issued by the Commission, the Extension Permit shall be signed by a majority of the Commission.

4. The Extension Permit shall be recorded in the Registry of deeds or land Court, whichever is appropriate. Certification of recording shall be sent to the issuing authority. If work is undertaken without the applicant so recording the Extension Permit, the Commission may issue an Enforcement Order.

K. Enforcement

1. The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land at reasonable times for the purpose of performing their duties under the bylaw and may make or cause to be made such examinations, surveys, or samplings as the Commission deems necessary, subject to the constitution and laws of the United States and the Commonwealth of Massachusetts.
2. The Commission shall have authority to enforce the bylaw, its regulations, and permits and variances issued thereunder by violation notices, enforcement orders, and civil and criminal court actions.
3. Upon request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for the enforcement under the civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.
4. As an alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure set forth in G.L., Ch. 40 sec. 21D. For purposes of non-criminal disposition, enforcing persons shall be the Conservation Director and/or Police Officers, and the penalty for such violation shall be \$300.00. Each day or portion thereof during which the violation continues shall constitute a separate offense, and each provision of the bylaw, regulations, permit, or variance violated shall constitute a separate offense.
5. When the Commission determines that an activity is in violation of the bylaw or a permit issued under the bylaw, the Commission may:
 - a. issue an Enforcement Order; and/or
 - b. hold an Administrative Hearing to consider whether the landowner should be fined for the violation.
6. Violations include, but are not limited to:
 - a. failure to comply with a Permit, such as failure to observe a particular condition or time period specified in the Permit;
 - b. failure to complete work described in a Permit, when such failure causes damage to the interests identified in the bylaw; or
 - c. failure to obtain a valid Permit prior to conducting an activity subject to regulation under the bylaw.
7. An Enforcement Order issued under the Wetlands protection Act (G.L., Ch. 131 Sec. 40) will constitute a warning that an Administrative Hearing and possible fine may result. In

the appropriate case, the Commission may issue an Enforcement Order in lieu of or in addition to an Administrative Order.

8. An Enforcement Order issued by the Commission shall be signed by a majority of the Commission. In a situation requiring immediate action, the Order may be signed by a single member or agent of the Commission. Such an Order must be ratified by a majority of the members at the next scheduled meeting of the Commission.
9. If a fine or an adjustment of fine for a violation is contemplated, the Commission shall hold an Administrative Hearing to discuss the violation and to give the owner or owner's representative an opportunity to respond to the evidence and circumstances. The owner must be given at least forty-eight (48) hours' notice in writing of the date, time, and place of an Administrative Hearing, by certified mail return receipt requested or hand delivery. If a majority of the Commission present at the Hearing finds a preponderance of the evidence that a violation has occurred, the owner shall be fined not more than \$300 per violation. The amount of the fine per violation will be determined by the Commission at the Administrative Hearing.
10. An owner may apply in writing for a continuance of the Administrative Hearing stating in full the reason for the request. The Commission may grant a continuance for compelling and/or environmentally sound reasons.
11. The Commission shall take into account the nature of the violation as follows:
 - a. in the case where restitution is possible, each day or portion thereof during which a violation continues or is repeated shall constitute a separate offense, and each provision of the bylaw or permit violated shall constitute a separate offense;
 - b. in the case where restitution is impossible or inadvisable, the Commission will decide what procedural or legal remedies to take, in the case of destruction of vegetation perhaps requesting that all activity on the site cease until the vegetation has reemerged, grown, or otherwise replenished itself to the Commission's satisfaction.
12. The notice of a fine or fines and explanation thereof, including the date from which daily violations may be counted, will be sent in writing to the responsible owner(s) by certified mail return receipt requested or hand delivery. The fine or fines are payable to the Town of Amherst within 21 days of the date of issuance of the notice.
13. The Town Collector may record in the registry of Deeds a conservation lien for non-payment of accumulated fines. The lien shall be against all property in the Town of Amherst held by the owner at the time of the violation which is contiguous to the area of the violation. The Commission shall hold an Administrative Hearing, to which the owner is given written notice as described above, in order to decide the amount of the lien, which may not exceed the amount of accumulated fines to date.
14. The Commission reserves the right to adjust a fine in response to new information or new circumstances at an Administrative Hearing to which the owner will be given notice as above. A written notice of the adjustment of fine shall be sent to the owner by certified mail or hand delivered.

15. The Commission may accept a written plan with timetable for full restitution of the violation and may then withhold sending the notice of fine(s) for a specified time period. If satisfactory restitution is not made in a timely manner, the notice of fines is retroactive.
16. Unless otherwise stated in the bylaw and regulations promulgated under the bylaw, the definitions, procedures, and performance standards of the Wetlands Protection Act (G.L., Ch. 131 Sec. 40) and associated Regulations (310 CMR 10.00) as promulgated April 1, 1983, and as most recently amended, shall apply.

L. Certificate of Compliance

1. Upon completion of the work for which a Permit was issued, the applicant may request in writing a Certificate of Compliance, certifying that the activity or portions thereof described in the application and plans has been completed in compliance with the Permit. If issued by the Commission, the Certificate of Compliance shall be signed by a quorum of the Commission.
2. Prior to the issuance of a Certificate of Compliance, a site inspection shall be made by members or agents of the Commission in the presence of the applicant or the applicant's agent.
3. If the Commission determines, after review and inspection, that the work has not been done in compliance with the Permit, it may refuse to issue a Certificate of Compliance. Such refusal shall be issued in writing within 21 days of receipt of a request for a Certificate of Compliance, specifying the reasons for denial.
4. If a project has been completed in accordance with plans stamped by a registered professional engineer, architect, landscape architect, or land surveyor, a written statement by such a professional person certifying compliance with the plans and setting forth what deviation, if any, exists from the plans approved in the Permit shall accompany the request for a Certificate of Compliance.
5. If the activity or portions thereof described in the Application for Permit and plans has been completed in compliance with the Permit, a Certificate of Compliance shall be issued by the Commission within 21 days of receipt thereof.
6. If the Permit contains conditions which continue past the completion of work, such as maintenance or monitoring, the Certificate of Compliance shall specify which, if any, of such conditions shall continue. The Certificate shall also specify to what portions of the work it applies, if it does not apply to all work regulated by the Permit.
7. The applicant shall submit the Certificate of Compliance to the Registry of deeds or Land Court, whichever is appropriate, to be recorded, and shall send proof of the recording to the Commission.

M. Appeal

Any person may appeal the decision of the Commission under provisions of G.L., Ch. 249 Sec. 4. Such appeal shall be made within 21 days of the date of issuance of the Commission's decision. Notice of said appeal and a copy of the complaint shall be sent, by certified mail return receipt requested or hand delivery, to the Commission and the Town Counsel so as to be received within said 21 days.

N. Severability

1. The invalidity of any section or provision of these regulations shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination previously issued.
2. If any Court of the Commonwealth shall invalidate any provision of the bylaw or these regulations, the Commission shall promulgate additional regulations, or present amendments to the bylaw or regulations designed to comply with any court decision invalidating such provision or regulation at the next Town Meeting after such invalidation.

O. Effective Date

These regulations shall become effective upon passage by the Commission, and the provisions of these regulations shall apply to all work performed after that date.

IV. STANDARDS FOR INLAND WETLANDS**A. Banks (Naturally Occurring Banks and Beaches)**

1. Preamble
 - a. Banks are likely to be significant to wildlife habitat, public or private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, and the protection of fisheries. Where banks are composed of concrete, asphalt, or other artificial impervious material, said banks are likely to be significant to flood control and storm damage prevention.
 - b. Banks are areas where groundwater discharges to the surface and where, under some circumstances, surface water recharges the groundwater.

- c. Where banks are partially or totally vegetated, the vegetation serves to maintain the bank's stability, which in turn protects water quality by reducing erosion and siltation.
 - d. Banks may also provide shade that moderates water temperatures, as well as providing breeding habitat, escape cover, and food, all of which are significant to the protection of fisheries. Banks which drop off quickly or overhang the water's edge often contain numerous undercuts which are favorite hiding spots for fish.
 - e. Banks act to confine floodwaters during storms, preventing the spread of water to adjacent land. Because banks confine water during storms to an established channel, they maintain water temperatures and depths necessary for the protection of fisheries. The maintenance of cool water temperatures during warm weather is critical to the survival of many species. An alteration of a bank that permits water to spread frequently or consistently over a larger and more shallow area increases the amount of property that is routinely flooded, as well as elevating water temperatures and reducing fish habitat within the main channel.
 - f. The topography, plant community composition and structure, and soil structure of banks together provide important food, shelter, migratory and overwintering areas, and breeding areas for wildlife. Topography plays a role in determining the suitability of banks to serve as burrowing or feeding habitat. Soil structure also plays a role in determining the suitability for burrowing, hibernation, and other cover. Bank topography and soil structure impact the bank's vegetative structure as well. Bushes and other undergrowth, trees, vegetation extending from the bank into the water, and vegetation growing along the water's edge are also important to a wide variety of wildlife. A number of tubers and berry bushes also grow in banks and serve as important food for wildlife. Finally, banks may provide important shelter for wildlife which needs to move between wetland areas.
2. Definitions, Critical Characteristics, and Boundaries
 - a. A bank is the portion of the land surface that normally abuts and confines a water body. It occurs between a water body and a vegetated bordering wetland and adjacent flood plain, or, in the absence of these, between a water body and an upland.
 - b. A bank may be partially or totally vegetated, or it may be comprised of exposed soil, gravel, stone, or sand.
 - c. The physical characteristics of a bank, as well as its location, as described in the foregoing subsections 2.a and 2b. are critical to the protection of the interests specified in Section IV.A.1.
 - d. The upper boundary of a bank is the first observable break in the slope or the mean annual flood level, whichever is higher. The lower boundary of a bank is the mean annual low flow level.
3. Presumptions
 - a. Where a proposed activity involves the removing, filling, dredging, or altering of a bank, the Commission shall presume that such area is significant to the interests specified in the Preamble above. This presumption is rebuttable and may be overcome upon a clear showing that the bank does not play a role in the protection of said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

- b. Land within 100 feet of a bank (200 feet in riverfront) is likely to be significant to the protection and maintenance of the bank, and therefore to the protection of the interests specified in the Preamble above.
4. General Performance Standards.
- a. No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of a bank, or of land within 50 feet of any bank, shall be permitted by the Commission, except for activity which is allowed under a variance from these regulations granted pursuant to Section I.D.
 - b. Any proposed work permitted by the Commission on a bank or within 100 feet of the upper boundary of a bank (200 feet in riverfront), shall not impair the following: (1) the physical stability of the bank; (2) the water-carrying capacity of the existing channel within the bank; (3) groundwater and surface water quality; (4) the capacity of the bank to provide breeding habitat, escape cover, and food for fisheries; or, (5) the capacity of the bank to provide important wildlife habitat functions.
 - c. A project or projects on a single lot, for which Notice(s) of Intent is filed on or after November 1, 1987, that (cumulatively) alter(s) up to 10% or fifty (50) feet (whichever is less) of the length of the bank found to be significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to provide important wildlife habitat functions. Additional alterations beyond the above threshold may be permitted if they will have no adverse effects on wildlife habitat as determined by procedures contained in 310 CMR 10.60.
 - d. No structure of any kind shall be permitted on an eroding bank to protect any building or other structure built pursuant to a Permit granted after the effective date of these regulations.

B. Vegetated Wetlands, Bordering and Isolated (Wet Meadows, Marshes, Swamps, and Bogs)

1. Preamble
- a. Freshwater wetlands are likely to be significant to public or private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, and protection of fisheries and wildlife habitat.
 - b. The plant communities, soil, and associated low topography of freshwater wetlands remove or detain sediments, nutrients (such as nitrogen and phosphorous) and toxic substances (such as heavy metal compounds) that occur in runoff and flood waters.
 - c. Some nutrients and toxic substances are detained for years in plant root systems or in the soils. Others are held by plants during the growing season and released as the plants decay in the fall and winter. This latter phenomenon delays the impact of nutrients and toxins until the cold weather period, when such impacts are less likely to reduce water quality.
 - d. Freshwater wetlands are areas where ground water discharges to the surface and where, under some circumstances, surface water discharges to the ground water. The profusion of vegetation and the low topography of freshwater wetlands slow down and reduce the passage of flood waters during periods of peak flows by providing

- temporary flood water storage, and by facilitating water removal through evaporation and transpiration. This process reduces downstream flood crests and resulting damage to private and public property. During dry periods the water retained in freshwater wetlands is essential to the maintenance of base flow levels in rivers and streams, which in turn is important to the protection of water quality and water supplies.
- e. Wetland vegetation provides shade that moderates water temperatures important to fish life. Wetlands flooded by adjacent water bodies and waterways provide food, breeding habitat, and cover for fish. Fish populations in the larval stage are particularly dependent upon food provided by over-bank flooding that occurs during peak flow periods (extreme storms), because most river and stream channels do not provide sufficient quantities of the microscopic plant and animal life required for food.
 - f. Wetland vegetation supports a wide variety of insects, reptiles, amphibians, mammals, and birds that are a source of food for important game fish. Bluegills (*Lepomis macrochirus*), pumpkinseeds (*Lepomis gibbosus*), yellow perch (*Perca flavescens*), rock bass (*Ambloplites rupestris*), and all trout species feed upon nonaquatic insects. Large-mouth bass (*Micropterus salmoides*), chain pickerel (*Esox niger*), and northern pike (*Esox lucius*) feed upon small mammals, snakes, nonaquatic insects, birds, and amphibians.
 - g. Freshwater wetlands are probably the Town's most important habitat for wildlife. The hydrologic regime, plant community composition and structure, soil composition and structure, topography, and water chemistry of freshwater wetlands provide important food, shelter, migratory and overwintering areas, and breeding areas for many birds, mammals, amphibians, and reptiles. A wide variety of vegetative wetland plants, the nature of which are determined in large part by the depth and duration of water, as well as soil and water composition, are utilized by various species as important areas for mating, nesting, brood rearing, shelter, and (directly and indirectly) food. The diversity and interspersed structure is also important in determining the nature of its wildlife habitat. Different habitat characteristics are used by different wildlife species during summer, winter, and migratory seasons.
2. Definitions, Critical Characteristics, and Boundary
 - a. Vegetated wetlands are freshwater wetlands. They may border on rivers, streams, or ponds, or may be isolated. The types of freshwater wetlands are riverine wetlands, marshes, wet meadows, bogs, and swamps that meet both of the following requirements: 1) 50% or more of the natural vegetative community consists of obligate or facultative wetland plant species as included or identified in the Wetland Plant List (Northeast Region) for the National Wetlands Inventory, U.S. Fish and Wildlife Service, as most recently amended; and 2) saturated or inundated conditions exist as evidenced by hydric soils.
 - b. Hydric soils are those soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part. For the purposes of these Regulations, "upper part" is defined as 6 inches for Somewhat Poorly Drained Soils. Poorly and very Poorly Drained Soils are presumed to be hydric, unless they have been artificially drained or otherwise altered. In such special

- cases, the “upper part” shall be defined as within 12 inches of the soil surface. Oxidized rhizospheres and mottling within the “upper part” of the soil as defined above shall be considered as evidence of anaerobic conditions, and the soil shall be considered hydric. Also for the purposes of the Regulations, wetland plant communities which are dominated by plants rated as FACW by the Fish and Wildlife Service and which contain obligate wetland plants shall be presumed to be hydric soils.)
- c. The drainage classification of a soil shall be determined as designated in “Delineating Bordering Vegetated Wetlands under the Massachusetts Wetlands protection Act” (March, 1995). The Commission recognizes however that some hydric soils in Amherst do not meet these published guidelines, and so reserves the right to make a case-by-case determination of a soil’s drainage classification. These unusual soils include: soils developed in red parent materials, recently deposited sediments, and soils formed in oxygenated groundwater seeps.
 - d. In situations where the natural vegetative community may have been destroyed, as for example by lawn or agricultural use, the Commission may determine an area to be a freshwater wetland on the basis of hydric soils alone or, at the request of the applicant or landowner, may defer the determination until the natural vegetation has regrown.
 - e. In situations where the Commission determines that the natural vegetative community has been destroyed in violation of the bylaw, the Commission itself may elect to defer any determination of the presence or absence or (or boundaries of) a freshwater wetland until the natural vegetation has regrown, and until that time may determine the area to be a freshwater wetland on the basis of hydric soils alone.

4. Presumptions

- a. Where a proposed activity involves the removing, filling, dredging, or altering of a freshwater wetland, the Commission shall presume that such an area is significant to the interests specified in the Preamble above (B1). This presumption is rebuttable and may be overcome upon a clear showing that the freshwater wetland does not play a role in the protection of said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.
- b. Land within 100 feet of a vegetated wetland is likely to be significant to the protection and maintenance of vegetated wetlands and therefore to the protection of the interests that these resource areas serve to protect.

5. General Performance Standards

Replication. Where the presumption set forth above is not overcome, any proposed work in a freshwater wetland shall not destroy or otherwise impair any portion of said area.

Notwithstanding this, the Commission may issue a Permit allowing work that results in the loss of up to 5,000 square feet of wetland when said area is replaced in accordance with the following general conditions, as well as any additional conditions the Commission deems necessary to ensure that the replacement area will function in a manner similar to the area being lost:

- a. The surface of the replacement area being created shall be double that of the lost area.
- b. The groundwater and surface water elevation of the replacement area shall be approximately equal to that of the lost area.
- c. The overall horizontal configuration and location of the replacement area with respect to the bank shall be similar to that of the lost area.
- d. The replacement area shall have an unrestricted hydraulic connection to the same water body or waterway associated with the lost area.
- e. The replacement area shall be located within the same general area of the water body or reach of the waterway as the lost area.
- f. At least 75% of the surface of the replacement area shall be reestablished with indigenous wetland plant species within two growing seasons, and prior to said vegetative reestablishment any exposed soil in the replacement area shall be temporarily stabilized to prevent erosion in accordance with U.S. Soil Conservation Service methods.
- g. The replacement area shall be provided in a manner that is consistent with all other general performance standards for each resource area described in these Regulations.
- h. The Commission may, at its discretion, issue a Permit if the wetland in question has a surface area of less than 500 square feet; takes the form of a narrow, linear finger-like wetland extending into an adjacent upland; or if in the judgment of the Commission it is not reasonable to scale down, redesign, or otherwise change the proposed work so that it could be completed without loss of said wetland.
- i. If the Commission determines that it is unfeasible to create a replacement wetland on site, it may require the applicant to contribute financially to the construction of an off-site replacement area in wetlands under the control of the Commission, the contribution not to exceed the actual cost of the wetland replacement.
- j. Notwithstanding the above provisions, no project may be permitted that might have adverse effect on: (1) habitat sites of rare plants, as well as vertebrate or invertebrate species as identified on the Natural Heritage and Endangered Species Estimated Habitat Maps on file with the Commission and identified under "Estimated Habitats of Rare Wildlife" (Section 10.59) of the state Wetlands Protection Act Regulations, or (2) any portion of a bordering vegetated wetland that is within an Area of Critical Environmental Concern designated by the Secretary of Environmental Affairs under M.G.L. Ch. 21A, Sec. 2(7) and 310 CMR 12.00.
- k. These provisions shall not apply to maintenance of stormwater detention, retention, or sedimentation ponds, or to maintenance of stormwater emergency dissipating structures, that have been constructed in accordance with a valid Order of Conditions.

C. Land Under Water Bodies (Rivers, Streams, Ditches, Ponds, Pools)

1. Preamble

- a. Land under water bodies and waterways is likely to be significant to wildlife habitat, public and private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, and protection of fisheries and wildlife habitat. Where such land is composed of concrete, asphalt, or other artificial impervious material, said land is likely to be significant to flood control and storm damage prevention.

- b. Where land under water bodies and waterways is composed of pervious material, such land represents a point of exchange between surface and groundwater.
 - c. The physical nature of land under water bodies and waterways is highly variable, ranging from deep organic and fine sedimentary deposits to rocks and bedrock. The organic soils and sediments play an important role in the process of detaining and removing dissolved and particulate nutrients (such as nitrogen and phosphorous) from the surface water above. They also serve as traps for toxic substance such as heavy metal compounds.
 - d. Land under water bodies and waterways, in conjunction with banks, serves to confine floodwater within a definite channel during frequent storm activity. Filling within a channel blocks flow, which in turn causes backwater and overbank flooding during such storms. An alteration of land under water bodies and waterways which causes water frequently to spread out over a larger area at a lower depth increases the amount of property that is routinely flooded. It also results in an elevation of water temperature and a decrease in habitat in the main channel, both of which are detrimental to fisheries, particularly during periods of warm weather and low flows.
 - e. Land under water bodies and waterways that is composed of gravel allows the circulation of cold, well oxygenated water necessary for the survival of important game fish species. River and stream bottoms with a diverse structure composed of gravel, large and small boulders, and rock outcrops provide escape cover and resting areas for game fish species. Such bottom structures also provide areas for the production of aquatic insects essential to fisheries.
 - f. Land under ponds is vital to a large assortment of warm-water fish during spawning periods. Species such as largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieu*), bluegills (*Lepomis macrochirus*), pumpkinseeds (*Lepomis gibbosus*), black crappie (*Pomoxis nigromaculatus*), and rock bass (*Ambloplites rupestris*) build nests on the bottom substrates within which they shed and fertilize their eggs.
 - g. The plant community composition and structure, hydrologic regime, topography, soil composition, and water quality of land under water bodies and waterways provide important food, shelter, migratory, and overwintering areas, and breeding areas for wildlife. Certain submerged, rooted vegetation is eaten by waterfowl and some mammals. Some amphibians (as well as some invertebrate species eaten by vertebrate wildlife) attach their eggs to such vegetation. Some aquatic vegetation protruding out of the water is also used for nesting, and many species use dead vegetation resting on land under water but protruding above the surface for feeding and basking. Soil composition is also important for hibernation and for animals that burrow their tunnels under water. Hydrologic regime, topography, and water quality not only affect vegetation but also determine which species feed in an area.
2. Definitions, Critical Characteristics, and Boundaries
- a. Land under water bodies is the land beneath any river, stream, ditch, pond, or vernal pool. Said land may be composed of organic muck or peat, fine sediments, gravel, rock, or bedrock.
 - b. The physical characteristics and location of land under water bodies and waterways specified in the subsection above (2.a) are critical to the protection of the interests specified in the Preamble to this category.

- c. The boundary of land under water bodies is the mean annual low water level.
3. Presumptions
 - a. Where a project involves removing, filling, dredging, or altering any land under a water body or waterway, the Commission shall presume that such an area is significant to the interests specified in the Preamble above. This presumption is rebuttable and may be overcome upon a clear showing that said land does not play a role in the protection of said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth the grounds.
 - b. Land within 100 feet of land under water bodies is likely to be significant to the protection and maintenance of the land under the water bodies, and therefore to the protection of the interests which these water bodies serve to protect.
 4. General Performance Standards
 - a. Where the presumption set forth above (C.3) is not overcome, any proposed work permitted by the Commission on land under water bodies or within 100 feet of land under water bodies shall not impair the following:
 - i. the water-carrying capacity within the defined channel, as provided by said land in conjunction with the banks;
 - ii. ground and surface water quality;
 - iii. the capacity of said land to provide breeding habitat, escape cover, and food for fisheries; or,
 - iv. the capacity of said land to provide important wildlife habitat functions.
 - b. Notwithstanding the provisions of 4.a above, no project may be permitted which will have any adverse effect on specified habitat sites of rare plants or rare vertebrate or invertebrate species as identified by procedures established under 310 CMR 10.59.

D. Bordering Land Subject to Flooding

1. Preamble
 - a. Land bordering a waterway or water body subject to flooding is likely to be significant to flood control and storm damage prevention. Such land provides a temporary storage area for flood water that has overtopped the bank of a river, stream, or ditch, or the basin of a pond or pool.
 - b. During periods of peak runoff, flood waters are both retained (slowly released through evaporation and percolation) and detained (slowly released through surface discharge) by bordering land subject to flooding.
 - c. Over time, incremental filling of bordering land subject to flooding increases the extent and level of flooding. Filling causes lateral displacement of ponded water onto contiguous properties, which may result in damage to said properties.
 - d. Land subject to flooding is likely to be significant habitat for various plant and animal species.
2. Definitions, Critical Characteristics, and Boundaries

- a. Bordering land subject to flooding is an area with a low, flat topography adjacent to and subject to inundation by flood waters rising from rivers, streams, ditches, ponds, or water courses. It extends from the banks of said waterways or water bodies, or from any bordering vegetated wetlands adjacent to said waterways or water bodies.
 - b. The topography and location of bordering land subject to flooding as specified in 2.a above make such lands critical to the protection of the interests specified in D.1 above. Where bordering land subject to flooding is significant to the protection of wildlife habitat, the physical characteristics as described in 310 CMR 10.57(1)(a) are critical to the protection of that interest.
 - c. The boundary of bordering land subject to flooding is the estimated maximum lateral extent of flood water which will theoretically result from the statistical 100-year frequency storm. Said boundary shall be determined by reference to the most recently available flood profile data prepared for Amherst under the National Flood Insurance Program (NFIP), currently administered by the federal Emergency Management Agency (FEMA). Where NFIP profile data is unavailable, the boundary shall be the maximum lateral extent of flood water which has been observed or recorded. In the event of a conflict, the Commission may require the applicant to determine the boundary by engineering calculations.
 - d. The boundary of the ten year floodplain is the estimated maximum lateral extent of the flood water which will theoretically result from the statistic ten-year frequency storm. Said boundary shall be determined as specified under 310 CMR 10.57 (2)(a)3, except that where NFIP Profile data in unavailable, the boundary shall be the maximum lateral extent of flood water which has been observed or recorded during a 10 year frequency storm and, in the event of conflict, engineering calculations under 310 CMR 10.57 (2)(a)3.a shall be based on a design storm of 48/10 (4.8) inches of precipitation in 24 hours.
3. Presumptions
- a. The boundary of bordering land subject to flooding as determined by NFIP shall be presumed accurate. This presumption may be overcome only by credible evidence from a registered professional engineer or other qualified professional.
 - b. Where a proposed activity involves removing, filling, dredging, or otherwise altering land subject to flooding, the Commission shall presume that such an area is significant to the protection of the interests specified in D.1 above. This presumption is rebuttable and may be overcome only upon a clear showing that said land does not play such a role. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.
4. General Performance Standards
- a. Compensatory storage shall be provided for all flood storage volume that will be lost as the result of a proposed project within bordering land subject to flooding, when in the judgment of the Commission said loss will cause an increase or will contribute incrementally to an increase in the horizontal extent and level of flood waters during peak flows. Compensatory storage shall mean a volume not previously used for flood

- storage and shall be incrementally equal to the theoretical volume of flood water at each elevation, up to and including the 100-year flood elevation, which would be displaced by the proposed project. Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or water body. Further, with respect to waterways, such compensatory volume shall be provided within the same reach of the river or stream.
- b. Work within bordering land subject to flooding, including the work required to provide compensatory storage, shall not restrict flows so as to cause an increase in flood stage or velocity.
 - c. Any activity undertaken on land subject to flooding or within 100 feet of land subject to flooding shall not result in the following: (1) flood damage due to filling causing lateral displacement of water that would otherwise be confined; (2) an adverse effect on public or private water supply or groundwater supply, where said area is underlain by pervious material; (3) an adverse effect on the capacity of said area to prevent pollution of groundwater, where the area is underlain by pervious material covered by a mat of peat or muck; or (4) an impairment of the area's capacity to provide wildlife or rare plant species habitat.
 - d. A project or projects on a single lot, for which Notice(s) of Intent is filed on or after November 1, 1987, that (cumulatively) alter(s) up to 10% or 5,000 square feet (whichever is less) of land in a resource area found to be significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to provide important wildlife habitat functions.
 - e. Notwithstanding the above provisions, no project may be permitted that might have adverse effect on habitat sites of rare vertebrate or invertebrate species as identified on the Natural Heritage and Endangered Species Estimated Habitat Maps on file with the Commission and identified under "Estimated Habitats of Rare Wildlife" (Section 10.59) of the state Wetlands Protection Act Regulations.

E. Seasonal Wetlands (Temporary Ponds, Isolated Areas Subject to Flooding, and Vernal Pools)

1. Preamble
 - a. Seasonal wetlands, found in flood plains and in saddles at the base of slopes, temporarily confine water during periods of high water table or high input from spring runoff, snowmelt, or heavy precipitation, and thus are likely to be locally significant for flood control, storm damage prevention, and groundwater and public and private water supply. Such wetlands are characteristically small, but there is no minimum threshold size and a given pool can vary in size from year to year depending upon the amount of rainfall or snowmelt.
 - b. Where such areas are underlain by pervious materials, they form a point of exchange between ground and surface water, and so are likely to be significant to public or private water supply and to groundwater supply. Where such land is underlain by pervious materials covered by a mat of organic peat and muck which detains and removes contaminants, it is likely to be significant in the prevention of pollution from substance such as herbicides, pesticides, fertilizers, road salts, and septic system discharges.

- c. Vernal pools, which are seasonal wetlands that confine water for a minimum of two continuous spring months but lack vertebrate predators such as adult fish, are significant in the support of duckweed, caddis flies, and mollusks, thus providing habitat for members of the fingernail and pea clam family (*Sphaeriidae*), numerous amphibians, reptiles (including spotted turtle, painted turtle, and snapping turtle) and a number of other animals.
 - d. Vernal pools, in addition, provide critical breeding habitat for the Jefferson salamander (*Ambystoma jeffersonianum*), blue-spotted salamander (*A. laterale*), marbled salamander (*A. opacum*), spotted salamander (*A. maculatum*), and wood frog (*Rana sylvatica*), as well as feeding and occasional breeding habitat for the gray treefrog (*Hyla versicolor*), spring peeper (*H. crucifer*), American toad (*Bufo americanus*), and four-toed salamander (*Hemidactylium scutatum*).
 - e. Land under vernal pools is crucial breeding habitat for amphibian species, and, as most of these amphibians remain near the breeding pool during the remainder of their lifecycle, areas immediately surrounding vernal pools are critical in serving all of the non-breeding habitat functions of amphibians that require the pools for breeding. Such areas also provide food for many reptiles, birds, and mammals.
2. Definitions, Critical Characteristics, and Boundaries
- a. Seasonal wetlands (isolated areas subject to flooding and temporary ponds) constitute land that does not border on a river, stream, or pond, but that contains a depression or closed basin which holds water for an extended period of time or even continuously but is too small to be called a pond or lake. The depression may occur in otherwise flat topography, where the water may pool to the surface at least once a year or may be contained in the top 24 inches of soil, or may occur on a downslope of a sidehill steep.
 - b. Seasonal wetlands typically produce a well-developed layer of organic matter, primarily through trapping airborne leaves in the fall. The presence of water-stained leaves in a dry depression is a good indicator that the area temporarily serves to pool water.
 - c. The vegetation and soil of seasonal wetlands may be like the vegetative community and hydric soil found in a freshwater wetland, or, if the presence of water is of short duration, the vegetation and soil may be those of a seasonal wetland.
 - d. The boundary of a seasonal wetland shall be defined as one of the following (depending upon the available information), with the measuring method containing the largest area being adopted: 1) an area consisting of at least 50% of the natural vegetative community of obligate or facultative wetland species; 2) the broadest extent of pooling observed or recorded in said area; 3) the extent of the presence of water stained leaves; 4) the extent of the presence of caddis fly cases and/or fingernail or pea clams; 5) the area calculated to be inundated by runoff from the 100-year storm; or, 6) the area of hydric soil.
 - e. Vernal pools are seasonal wetlands in the form of isolated depressions or closed basins which temporarily (for a minimum of two continuous spring months in most years) confine water during periods of high water table or high input from spring runoff, snowmelt, or heavy precipitation. Being free of adult fish populations and other vertebrate predators, they support populations of non-transient macro-organisms, duckweed, caddis flies, and mollusks, and provide habitat for members of

the fingernail and pea clam family (*Sphaeriidae*), numerous amphibians, reptiles (including spotted turtle, painted turtle, and snapping turtle), and a number of other animals.

3. Presumptions

- a. Where a proposed activity involves the removing, filling, dredging, or otherwise altering of a seasonal wetland, the Commission shall presume that such an area, as well as the area within 100 feet of the mean annual boundary of said wetland, is significant to the interests identified in the preamble and, in the case of vernal pools, to the protection of wildlife habitat, particularly amphibian breeding habitat. This presumption is rebuttable and may be overcome upon a clear showing that the seasonal wetland does not play a role in the protection of wildlife habitat. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.
- b. Since a seasonal wetland may also be significant for the prevention of flooding and flood damage, protection of public and private water supplies and groundwater, and the prevention of pollution, if a presumption of wildlife habitat is overcome, a determination for these other interests may be considered as set forth under Section D above.
- c. Provided the isolated wetland subject to flooding is not a vernal pool and is less than 500 square feet in size, it is presumed not to be significant to the resource areas protected by the bylaw.

4. General Performance Standards

Where the presumptions set forth in E.3 above are not overcome, any proposed work permitted by the Commission on seasonal wetlands or within 100 feet of seasonal wetlands shall not result in the following:

- a. Any impairment of the capacity of the seasonal wetland, as well as the area within 100 feet of the mean annual boundary of said wetland, to provide wildlife habitat.
- b. Flood damage due to filling that causes lateral displacement of water which would otherwise be confined within said area.
- c. An adverse effect of public and private water supply or groundwater supply, where said area is underlain by pervious material.
- d. An adverse effect on the capacity of said area to prevent pollution of groundwater, where said area is underlain by pervious material covered by a mat of organic peat and muck.
- e. An adverse effect on specified wildlife habitat of rare vertebrate or invertebrate species, as identified by procedures established under 310 CMR 10.59.

F. Limited Projects

Notwithstanding the provisions of IV.A through IV.E above, the Commission may issue a Permit and impose such conditions as will contribute to the interests identified in the bylaw permitting limited projects as specified in the state Wetlands Protection Act Regulations, 310 CMR 10.53 (3).

G. Buffer Zones

1. Preamble

- a. Any project undertaken near a wetlands resource area has a high likelihood of altering that area, either immediately, as a consequence of construction, or over a longer period of time, as a consequence of daily operation of the completed project. Accordingly, these regulations require that any person intending to perform work within 100 feet of a resource area must submit to the Commission either a Request for Determination of applicability or a Notice of Intent application. In this way the Commission has an opportunity to review the proposed project to determine whether any alteration of a neighboring resource area will occur, and whether any resulting alteration is in compliance with other applicable performance standards.
- b. If, in response to a Request for Determination of applicability, the Commission finds that work within the Buffer Zone will not alter the resource area, it may issue a Negative Determination of applicability, with or without conditions.

2. Definitions and Critical Characteristics

- a. The Buffer Zone is that area of land extending 100 feet *horizontally* outward from the boundary of any resource area specified in IV.A through IV.E above.
- b. Vegetative cover and soils within the Buffer Zone filter runoff, thus protecting water quality within the resource area. The vegetation and soils may also slow surface runoff, thereby permitting infiltration of precipitation, thus maintaining the hydrologic regime to which the resource area is adapted.
- c. Vegetative cover, soils, and topography may help to control the surface and groundwater regime in the resource area in a Buffer Zone even where drainage is not towards a resource area.

3. Presumptions

- a. The Commission shall presume that work in the types of projects listed below, within the designated distances from a resource area, will result in alteration of the resource area. For purposes of the table below: “work” means filling, excavating, grading, operating construction equipment, and storing or stockpiling earth or construction materials; “building” means a structure requiring a building permit.

<i>Type of Project</i>	<i>No-work Distance from Resource Area</i>	<i>Building Set-back Limit</i>
Residential lot	30 ft.	50 ft.
Subdivision lot (with lot preparation done in conjunction with road construction)	30 ft.	50 ft.
Commercial/Industrial	30 ft.	75 ft.
Driveways/Utilities	25 ft. (except for permitted crossings)	
Parking lot	25 ft.	
Other roads	25 ft. (except for permitted crossings)	
Vernal Pools	100 ft.	100 ft.

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 resource area.

- b. The following activities in the Buffer Zone are presumed not to alter a resource area, but still require (as a minimum) filing of a Request for Determination of Applicability in order for the Commission to determine whether this presumption applies:
 - i. discharge of subsurface drainage from a single lot or residential building;
 - ii. discharge of roof and driveway runoff from a total impervious area of less than 4000 square feet (per project) meeting the above separation distances;
 - iii. landscape plantings of non-invasive species, provided that areas disturbed are mulched immediately and there is no change in grade;
 - iv. construction or installation of fences or structures not requiring a building permit;
 - v. percolation tests or soil borings carried out to gather information for submittal with a Notice of Intent application.

These presumptions are rebuttable and may be overcome when the nature of the work or site conditions will result in alteration of the resource area unless special preventive measures are taken.

4. General Performance Standards

- a. Work within the Buffer Zone shall result in either no alteration of a resource area, or in alteration permitted by the Commission that complies with the applicable performance standards for the resource area and any other conditions the Commission may require to enforce those performance standards.
- b. For small projects such as single-family lots, point discharge of surface runoff within or through a Buffer Zone shall be controlled to minimize increase in peak flow in the watercourse downstream of the discharge point for the runoff, as determined for the 2-year, 10-year, and 100-year storms, and to cause no increase in flood elevations outside the project site.
- c. For large projects, Massachusetts storm water management standards shall apply.

V. FILING FEES, PLAN REQUIREMENTS, AND WORK CONDITIONS

A. Filing Fees

1. Preamble

- a. Any person filing an Application for Permit or Request for Determination pursuant to the bylaw shall, at the same time, pay a filing fee in accordance with the Filing Fee Schedule.
- b. If the project is other than an addition or alteration to a one-family or two-family dwelling or related parking structures, the person shall agree, in writing, to pay the fees, costs, and expenses of any expert consultant deemed necessary by the Commission to review the Application for Permit or Request for Determination.
- c. Municipal projects are exempt from these requirements.

2. Permit Fee Schedules

a. Request for Determination

- i. \$50 for the first five acres or less
- ii. \$5 for each additional acre or part

b. Abbreviated Notice of Resource Area Delineation

\$2 per linear foot of determined bordering vegetated wetland:

- i. up to a maximum of 100 feet (\$200) for a single-family lot;
- ii. up to a maximum of 1,000 feet (\$2,000) for a commercial subdivision or industrial development, or a subdivision with more than four lots.

c. Notice of Intent

Where proposed work falls under the jurisdiction of the Town of Amherst Wetland Protection Bylaw, only the town's portion of the state filing fee shall be submitted.

d. Amended Order of Conditions - \$100

e. Extension of Order of Conditions - \$50

f. Certificate of Compliance - \$50

g. Emergency Certification - \$75

h. Re-issue Order of Conditions or Certificate of Compliance - \$50

B. Plan Requirements for Requests for Determination

Any person filing a Request for Determination shall adhere to the plan requirements specified for the state form WPA 1.

C. Plan Requirements for Notices of Intent

1. Preamble

- a. Plans shall describe the proposed activity and its effect on the environment, with due regard shown for all natural features such as large trees, water courses and water bodies, historic features, wildlife habitat, and recreational areas.
- b. The applicant may submit, or be required to submit, any further information which will assist in the review and which is deemed necessary to determine the proposed effect on the interests protected by the bylaw.
- c. The applicant must submit the original material to the Commission, plus two (2) copies of the appropriate Permit Application, including an 8.5 x 11 inch reproduction of the USGS quadrangle sheet showing the project locus. In the case where the project requires two or more plans to show the locus, an 8.5 x 11 inch sheet clearly identifying the proposed site and work, with labeled boundaries of the resource areas, must be submitted.

2. General Submission Requirements

- a. The names and addresses of the record owner(s), the applicant(s), and all abutters, as determined by the most recent local tax list unless the applicant shall have more recent knowledge of such abutters.

- b. Description of any alteration to flood storage capacity on the site, including calculations and watershed maps. If a change of flood storage capacity is proposed, compensatory storage at every elevation in the floodplain must be indicated.
 - c. Percolation test calendar dates of measurements and samplings, regardless of planned sewer connection.
 - d. Soil characteristics in representative portions of the site.
 - e. A runoff plan and calculations using TR-55 or the Modified Soil Cover Complex Method (for areas greater than 20 acres) and based on the 10 year, 50 year, and 100 year flood frequency event periods. Calculations must show existing and proposed runoff conditions for comparative purposes. Other methods of calculations will be considered by the Commission at its discretion based on site-specific conditions.
 - f. Methods to be used to stabilize and maintain any embankments facing any wetland, or to show slope on plans of less than or equal to 3:1.
 - g. A siltation and erosion control plan to be implemented during and after the work.
3. Detailed Plan Requirements
- a. All drawings shall be drawn (1" = 40' max.) with the title designating the name of the project location(s), the name(s) of the person(s) preparing the drawings, and the date prepared, including all revision dates. Drawings shall be stamped and signed by a registered professional engineer or registered land surveyor of the Commonwealth of Massachusetts. Pencil notations will not be accepted.
 - b. Drawings must include numbered delineations of all wetland resource areas which have been identified by a wetland scientist, both permanent and seasonal, whether natural or man-made, and should be clearly delineated regardless of whether or not the applicant believes the work is subject to the Wetlands Protection Act (G.L. Ch. 131 Sec. 40) or the Amherst Wetlands Protection Bylaw:
 - c. Drawings must include delineations of all alterations proposed in or adjacent to wetlands and floodplains, with clear explanations of the alterations in text or footnotes,
 - d. Drawings must indicate buffer zones to all state and local resource areas
 - e. Drawings must indicate different resource areas by color coding with the recommended coding as follows: wetlands (blue), upland (brown) and open space (green).
 - f. Drawings must include the following additional information:
 - i. existing and final contours (with the contour intervals used), including pond bottom and stream invert contours
 - ii. soil characteristics in representative parts of the property, including depth of peat and soil types in wetlands, and test-boring logs
 - iii. locations, sizes, and slopes of existing and proposed culverts and pipes
 - iv. cross-sections of all wetlands, showing slopes, banks, and bottom treatments
 - v. existing and proposed water-storage capacity of the property, including the calculations and data on which the capacity is based
 - vi. effect of loss of storage on downstream channels and culverts, if filling is proposed
 - vii. location and elevation of the benchmark used for the survey
 - viii. invert elevations on catch basins

- ix. proposed on-site pollution control devices, such as hooded catch basins, oil absorption pillows, detention/retention basins, flow dissipaters, or vegetative buffers
 - x. locations/details of erosion control devices
 - xi. Assessor's map and lot number(s)
4. **Site Requirements Prior to Inspection**
 Before site inspections can be made by the Commission or the Commission's agent, the following conditions must be met (and please note that failure to meet these requirements may result in non-review and hence costly delay of the project):
- a. stakes indicating the corners of proposed houses or other proposed structures nearest the wetland resource area
 - b. stakes indicating the limit of proposed work
 - c. lot number or house number posted at the location
 - d. edges of all resource areas clearly delineated with numbered flags or stakes

D. Minimal Conditions Regulating the Work

1. No activity may proceed until the applicant has received all other permits required by law, including but not limited to any permit required by Health Inspections, Planning Board, Zoning Board of Appeals, Department of Environmental Protection, and/or the Army Corps of Engineers.
2. The Commission shall receive forty-eight (48) hours advance notice, in writing, before the commencement of any activity within, or within the 100 foot buffer zone of, the resource area(s), including site preparation and construction.
3. The location of siltation and erosion controls shall be approved by the agent for the Commission. Such controls shall remain in place and be maintained until all disturbed areas have been stabilized to the satisfaction of the Commission.
4. A copy of the Permit shall be kept on-site at all times during construction. All contractors and sub-contractors engaged during construction shall be provided with a copy of the Permit, and should be prepared to produce said Permit upon request of the Commission or its agent.
5. Work shall proceed in strict accordance to referenced plan(s) in the Permit, and to information submitted in the Application.
6. All structures, facilities, and equipment as part of the project shall be continually operated and maintained so as to comply with the Permit. This provision applies specifically to all heavy equipment used on the project. Any leakage of oil, hydraulic fluid, gasoline, or any other pollutant must be cleaned up immediately, and the defective equipment responsible for said leaking shall be repaired immediately or taken off-site.
7. All work shall be completed in such a manner as to prevent eutrophication or sedimentation in wetlands, water bodies, or public or private water supplies.
8. Any substantial changes made or intended to be made in the plans shall require the applicant to file a new Notice of Intent or to inquire of the Commission, in writing or by certified mail, whether the change is so substantial as to require the filing of a new Notice.
9. The Permit is granted under Section VII of the Amherst Wetlands Protection Bylaw subject to the conditions proposed herein. Requests for an extension of the Permit must

be submitted, in writing, no less than thirty (30) days prior to the expiration date of that Permit, or else the applicant will be required to file a new Notice of Intent.

10. Violation of any of these conditions shall be subject to a daily fine, pursuant to Section XI of the Town of Amherst Wetlands Protection Bylaw, until said violation(s) has been corrected to the satisfaction of the Commission.
11. A Certificate of Compliance shall be requested from the Commission upon completion of the proposed work. Said request shall be accompanied by a written statement from the professional who prepared the plan certifying compliance with all plans, as well as an “as built” plan.

VI. AMENDMENTS

These rules and regulations may be amended from time to time by a majority vote of the Commission if, prior to such a vote, the Commission has held a public hearing on the proposed changes.