

**Town of Ashburnham
Rules and Regulations
Under the Ashburnham Wetlands
Protection Bylaw**



**RULES AND REGULATIONS
UNDER THE ASHBURNHAM WETLANDS PROTECTION
BYLAW**

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SECTION 1 GENERAL PROVISIONS

1.1 Introduction

1.1.1 These rules and regulations (hereinafter referred to as the Regulations) are promulgated by the Ashburnham Conservation Commission (hereinafter referred to as the Commission) pursuant to the authority granted to it under Section 13.1 of the Ashburnham Wetlands Protection Bylaw (hereinafter referred to as the Bylaw). These regulations shall compliment the Bylaw. They shall be used to enforce and implement the Bylaw and shall have the same force of law upon their effective date.

1.2 Purpose

1.2.1 The Bylaw sets forth a public review and decision making process by which activities likely to have an impact or cumulative effect upon resource areas under the Bylaw are to be regulated in order to ensure the protection of wetlands including: protection of public and private water supplies, protection of groundwater supply, flood control, storm damage prevention, prevention of pollution, protection fisheries, and protection of wildlife habitat, as identified in the Wetlands Protection Act M.G.L. c.131 s.40

1.2.2 The purpose of these Regulations is to create a uniformity of process and to clarify and define the provisions of the Bylaw by which the Commission shall carry out its responsibilities. Both the bylaw and these regulations may be amended when necessary.

1.2.3 In instances where these Regulations are more stringent than 310 CMR 10.00, these local Regulations shall prevail (see 310 CMR 10.01 (2)).

1.3 Jurisdiction

1.3.1 Except as permitted by the Commission or as provided by this Bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any wetlands; marshes; wet meadows; bogs; swamps; lakes; ponds; rivers; streams; creeks; banks; vernal pools; lands under waterbodies; lands subject to flooding or inundation by groundwater or surface water; and, lands within 200 feet of a perennial river or stream, (hereinafter “resource areas”).

1.3.2 Consistent with M.G.L. c.131 s.40 310 CMR 10.02, any activity other than minor activities identified in 310 CMR 10.02(2)(b)1 proposed or undertaken within 100 feet of a resource area (hereinafter called the Buffer Zone) which, in the judgment of the Commission, will alter a resource area is subject to regulation under this Bylaw, and requires the filing of an application with the Commission.

1.4 Definitions

1.4.1 Except as otherwise provided below or in the Ashburnham Wetlands Protection Bylaw, the definitions of terms in these Rules and Regulations shall be as set forth in the Wetlands Protection Act (G.L. Ch. 131 s.40) and Regulations (310 CMR 10.00).

- 1.4.1.1 Abutter - The owner of land in accordance with the most recent records of the Ashburnham Tax Assessor's Office. The abutters' properties are within one hundred (100) feet in any horizontal direction of any boundary of the site, which is listed in the permit.
- 1.4.1.2 Activity - Any form of removing, filling, grading, dredging, building upon, expansion, reconstruction, altering, changing, enlarging, draining, withdrawing, damming, discharging, excavation, driving of pilings, construction, improvement, intercepting and/or diverging of water, installations of pipes or drainage systems, discharging of pollutants, destruction or cutting of plant life (including, but not limited to trees), and any change to the physical characteristics of land or the physical or chemical characteristics of water.
- 1.4.1.3 Bylaw - The Town of Ashburnham Wetlands Protection Bylaw
- 1.4.1.4 In-kind Replication - creation of a wetlands replication area with the use of plants indigenous to the project area, ideally, derived from plant stock with local and New England regional origins.
- 1.4.1.5 Permanent Alteration - shall include, without limitation, the following actions when undertaken in areas subject to this Bylaw:
1. Removal, excavation or dredging of soil, sand, gravel or aggregate material of any kind;
 2. Changing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, low patterns and flood retention characteristics;
 3. Drainage or other disturbance of water level or water table;
 4. Dumping, discharging or filling with any material which may degrade water quality;
 5. Driving of piles, erection of buildings or structures of any kind;
 6. Placing of obstructions whether or not they interfere with the flow of water;
 7. Destruction of plant life, including cutting or removal of trees proximate to resource areas;
 8. Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water.
 9. Any activities, changes or work which may cause or tend to contribute to pollution of any resource area or groundwater;
 10. Incremental activities which have, or may have a cumulative adverse impact on the resource areas protected by this Bylaw.
- 1.4.1.6 Unacceptable Acts, work, etc. – Any activity or disturbance that will have a negative impact on a resource area.
- 1.4.1.7 Vernal Pool Habitat: a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or the summer, is free of adult fish populations, as well as, the area within one hundred (100) feet of the mean annual boundary of such depression, which is certified or certifiable by the Massachusetts Division of Wildlife and Fisheries Natural Heritage & Endangered Species Program vernal pool certification program.

1.5 Performance Standards

- 1.5.1 In performance of its duties under the Bylaw and these regulations, the Commission shall apply the following Performance Standards, without limitation, which the Bylaw seeks to protect. Those Standards not listed herein shall be found in the Wetlands Protection Act Regulations (310 CMR 10.00). The Standards of 310 CMR 10.53 through 10.60 are herein incorporated by reference.
- 1.5.2 The Commission or its agent shall not flag wetlands. The Commission shall only approve or disapprove a wetland delineation. It is the responsibility of the Applicant to hire a qualified Wetlands Consultant or Botanist to flag the wetland boundary.
- 1.5.3 Bordering any wetland, the Commission may require a zone of natural vegetation of sufficient width to assure that silt, soil, fertilizer in solutions, organic chemicals, herbicides, organic manure, oils or petroleum products which may be carried by surface runoff shall not reach that wetland, but instead shall be trapped by the natural mulch, soil and roots. This requirement would depend on slope, soil type, ground cover and the project proposed. The Commission shall encourage stabilization of upgradient areas beyond the one hundred (100) foot line.
- 1.5.4 Any proposed work in a Protected Resource Area and any proposed work that involves a new storm drain system or connection to an existing storm drain system that discharges to a Protected Resource Area, shall not result in an increase in the peak rate of surface runoff during either a 2-year, 10-year or 100-year storm event to areas beyond the boundaries of the property on which the activity is to be conducted, or any resource area within the site. All filings involving a new storm drain system or connection to an existing storm drain system shall provide the Commission with a detailed stormwater pollution prevention plan for during construction, as well as, for long-term maintenance of the stormwater system. This plan shall specify detailed construction methods for erosion control, identify responsible parties and shall include a signed affidavit that all conditions of the pollution prevention plan shall be met. The discharge of any substances in to the storm drain system, other than stormwater, is strictly prohibited.
- 1.5.5 New proposed side slopes within 100 feet of a resource area shall have a finished grade according to the following:
1. The Commission requires a 3:1 slope unless the 2:1 slope will eliminate the proposal for wetland alteration.
 2. Vegetated and mulched slopes shall be no greater than a 3:1 slope.
 3. Stone rip-rapped slopes shall be no greater than a 2:1 slope. The use of jutte-matting, landscaped slopes, or other methods of slope stabilization may be required.

1.6 Burden of Proof

- 1.6.1 The applicant shall have the burden of proof by clear and convincing evidence that the work proposed in an application, shall not have unacceptable significant cumulative or harmful effects upon the values protected under the Bylaw. Failure by the Applicant to provide sufficient evidence to the Commission shall be sufficient cause for the Commission to deny the application along with any work or activity proposed therein.

1.7 Waiver

- 1.7.1 Strict compliance with these Regulations may be waived when, in the judgment of a majority of the Ashburnham Conservation Commission, such action is in the public interest or when strict compliance would result in the following, but not limited to, severe economic, physical, legal, contextual hardship far greater in magnitude than the public interest to be served. Any request for a waiver must be submitted to the Commission in writing at a regularly scheduled meeting of the Conservation Commission and must state the public interest involved. The Commission shall act upon the request within 21 days of the date of receipt and will then notify the Applicant in writing within 7 days of said action. The Commission shall include the public interests that are protected or enhanced by issuing a waiver from these Regulations.

1.8 Emergencies

- 1.8.1 Depending upon their availability, the Chairman, Vice-chairman or the Agent, may make binding decisions upon the Commission in cases of emergency.

1.9 Appeals

- 1.9.1 Any decision by the Commission made under the jurisdiction of the Bylaw, including, but not limited to, Determinations of Applicability, Order of Conditions, Enforcement Orders, Certificates of Compliance, Partial Certificates of Compliance and Extension Permits, shall be reviewable in Superior Court in accordance with M.G.L. c. 249 sec 4 or as otherwise provided by law, but is subject to the filing of a notice of appeal which must be received by the Commission within 10 days of the issuance of the decision.

1.10 Severability and Invalidity

- 1.10.1 The invalidity of any section of the Rules and Regulations shall not invalidate any other section or provision nor shall it invalidate any Request for Determination, Determination of Applicability, Notice of Intent, Order of Conditions, Extension Permit, Certificate of Compliance or Enforcement Order which previously has been received or issued.

1.11 Effective Date

- 1.11.1 The effective date of these Rules and Regulations shall be the date on which these rules and regulations are approved by a majority of the Commission after conducting a Public Hearing. These Rules and Regulations shall apply to all Requests for Determination, Determination of Applicability, Notice of Intent, Order of Conditions, Extension Permit, Certificate of Compliance or Enforcement Order, which are filed or issued after that date.

SECTION 2 PROCEDURES

2.1 Receipt of Filings

- 2.1.1 A Request for Determination, Notice of Intent or other applications and/or requests, shall be considered filed with the Commission when a complete application in accordance with the check-off list provided in Appendix A is submitted to the Commission, its Agent, or staff at its office during the Commission's regular business hours.

2.1.2 If an application is deemed to be insufficient to fully describe the proposed activity and its effect on the environment, the Commission may: (a) notify the applicant, by certified mail within 10 days of receipt of the application, of the additional information that will be necessary to render the application sufficiently complete for acceptance. The twenty one (21) day review period shall not begin until a complete application is submitted; or (b) inform the applicant at or prior to the public hearing of the additional information required, and offer the applicant the opportunity to continue the public hearing so that the additional information can be submitted for review.

2.2 Forms

2.2.1 The Commission may accept as the permit application submittal under this bylaw, the permit applications filed under the Wetlands Protection Act, MGL Chapter 131, Section 40 and in accordance with Regulations set forth in 310 CMR 10.00.

2.3 Deadline

2.3.1 The deadline for filing a Notice of Intent, Request for Determination or Abbreviated Notice of Resource Area Delineation under the Wetlands Protection Act or the Ashburnham Wetlands Protection Bylaw is 10:00AM on the Monday, fourteen (14) days prior to the Public Meeting. If the Monday is a holiday, it must be filed by the Friday before the deadline date.

2.4 Meetings

2.4.1 The meetings of the Commission are generally held on the second and fourth Monday of the month at the Ashburnham Senior Center or at a previously posted date and location. Changes of Meeting dates may occur due to conflicts with other town functions and holidays.

2.5 Public Hearings

All Hearing procedures and timelines shall be as provided in G.L. c. 131 Sec. 40, and regulations hereunder. The Public Hearing required by this Bylaw and the one required under G.L. c.131 Sec. 40 may be combined into one Hearing and notification process.

2.5.1 Within twenty-one (21) days of receipt of a complete Request for Determination, Notice of Intent or Abbreviated Notice of Resource Area Delineation application, the Commission shall hold a hearing to consider the application filed under the By-Law. 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 (5) days prior to such meeting by publication in a newspaper of general circulation in Ashburnham. The applicant shall be responsible for providing the Commission evidence of notification of abutters by certified mail or by obtaining signatures.

2.5.2 If more information is needed or the Commission needs to conduct an on-site inspection, the Commission may continue the hearing for receipt of the requested information or to conduct the on-site inspection. Thereafter, the Hearing may be continued with the mutual agreement of the Commission and the applicant. Upon receipt of all information requested, the Commission shall close the hearing.

2.5.3 As referred to in the Wetlands Protection Act, in case of challenges to the presumption of vernal pool habitat, the Conservation Commission may require that the Hearing be postponed until the

appropriate time period consistent with the evidence being presented. The Commission may also require its own site visits as necessary to confirm the evidence. It is the Commission's intent that no applicant will be required to wait longer than one breeding season for a vernal pool determination except in periods of extended drought.

- 2.5.4 Prior to or during the public hearing process, the Commission may also require the area to be staked, to receive drainage and/or hydrological studies and calculations, habitat studies per the Department of Environmental Protection's Wildlife Habitat Protection Guidance Document, detailed replication plans including narratives, wildlife studies or any other information necessary to determine if the area or work is significant to or may have a cumulative effect upon the resource areas protected by the Bylaw prior to the closing of the Public Hearing.
- 2.5.5 All revisions made to a Notice of Intent, Request for Determination of Applicability and/or Abbreviated Notice of Resource Area Delineation applications shall be submitted to the Conservation Office no later than 7 (seven) days prior to the next scheduled hearing.

Within twenty-one (21) days of closing the hearing, providing all payments of fees and expenses have been paid and all necessary information has been received and evaluated, the Commission shall issue or deny a permit for the activities requested. Said Determination, Order or other permit shall be valid for three (3) years from the date of issuance, unless otherwise permitted and/or extended.

- 2.5.7 If the Commission issues an Order of Conditions, the approved work may commence within 10 (ten) days from the date the Order of Conditions is issued or delivered providing no appeal or notice of appeal has been received or no notice of a superceding order from the DEP has been received and provided that proof of Recording has been received by the Commission. Said Order of Conditions shall contain those Conditions, which the Commission deems necessary in order to protect the interests and the areas subject to protection. The Commission may reserve the right to require additional Order of Conditions upon receipt of additional information, which will supplement the Notice of Intent. The Commission may also issue additional conditions on the work if it determines that the interests are not protected.
- 2.5.8 If the Order of Conditions is appealed to Superior Court under the appeal provisions of the Bylaw, no work may commence until a final decision has been rendered by the Courts approving the activity and all further appeal periods have expired.

2.6 Concurrent Issuance of Order of Conditions

- 2.6.1 Any Order of Conditions issued under the Bylaw may be issued concurrently with and by using the same form as an Order of Conditions under the Massachusetts Wetlands Protection Act, M.G.L. c 131 sec. 40.

2.7 Recording of the Order of Conditions

- 2.7.1 The original copy of the Order of Conditions shall be recorded in the Land Court or the Registry of Deeds in the appropriate District at the expense of the applicant. Proof of recording shall be sent to the Commission.

2.8 Amendment to the Order of Conditions

2.8.1 An applicant shall follow all of the same procedures as required for the filing of the Notice of Intent including notification to abutters, public notice, and corresponding filing fee.

2.9 Extension of Order of Conditions

2.9.1 At least thirty (30) days prior to the expiration of the Order of Conditions, an applicant may request, in writing, an extension of said Orders of Condition.

2.9.2 An on-site visit, re-flagging or additional information may be required by the Commission, and the Order of Conditions may be changed or modified.

The Commission may deny the request for an extension and require the filing of a new Notice of Intent for the remaining work in the following circumstances:

1. where no work has begun on the project within the three year period from the date of issuance of the Order, except where such failure is due to an unavoidable delay such as appeals, in the obtaining of other necessary permits;
2. where new information, not available at the time of issuance of the Order of Conditions, has become available and indicates the Order of Conditions is not adequate to protect the interests identified in the Bylaw;
3. where incomplete work is causing damage to the interests identified in the Bylaw;
4. where work has not been done in accordance with the Order of Conditions or approved plans;
5. where regulations have changed.

2.9.3 The extension of an Order of Conditions under the Bylaw may be issued concurrently with and by using the same form as an Extension Permit of an Order of Conditions under the Wetlands Protection Act, M.G.L. c. 131 sec. 40.

2.10 Certificate of Compliance and Partial Certificate of Compliance

2.10.1 Within thirty (30) days of completion of all of the work approved and ordered in the Order of Conditions and shown on the approved plans and documents of record, the Applicant shall request in writing a Certificate of Compliance.

2.10.2 Unless waived by a majority of the Commission, the request shall include an "As-built Plan" by a registered Professional Engineer indicating any deviation from the approved plans and Order of Conditions and a narrative, which shall include the reasons for those deviations. The as-built plan shall be comparable to that which was required with the Notice of Intent application. As an alternative, the Commission may require a letter signed, stamped and dated by either a Professional Engineer or registered Professional Land Surveyor certifying that the project was constructed in accordance with the approved plans and the Order of Conditions.

2.10.3 For sewer/septic repairs and new systems, the Commission shall also require a written certification from the installer that the old system was properly abandoned, as defined in Title V, and the new system was installed in accordance with the approved plans and the Order of Conditions.

- 2.10.4 Prior to the issuance of a Certificate of Compliance, the Commission or its agent shall conduct an on-site visit to determine the extent of the project completion and compliance with the Order of Conditions.
- 2.10.5 The Commission shall approve or deny a Full Certificate of Compliance or issue a Partial Certificate of Compliance within twenty one (21) days of receipt of the written request. The applicant and the Commission may request a continuance of the request when such a continuance may allow correction by the applicant of minor problems which can be corrected or completed in a short period of time.
- 2.10.6 The Certificate of Compliance or Partial Certificate of Compliance under the Bylaw may be issued concurrently with and using the same form as the Certificate of Compliance under the Massachusetts Wetlands Protection Act, M.G.L. c 131 sec. 40.

2.11 Enforcement Order

When the Commission determines an activity is in violation of the Bylaw, they may issue an enforcement order to the owner of record and/or the violator ordering that the activity cease immediately. Violations may include, but are not limited to:

1. Alteration of a resource area or vernal pool without an Order of Conditions issued pursuant to this Bylaw;
2. Work within the buffer zone without prior submittal of Request for Determination or Notice of Intent;
3. Failure to provide or maintain sedimentation controls required by an Order of Conditions;
4. Disposal of construction debris within the buffer zone;
5. Failure to construct stormwater or drainage structure according to plans;
6. Removal of trees designated for protection;
7. Storage of fill, construction material or equipment within the buffer zone.
8. Any activity which would require a filing and/or be prohibited under these Bylaws

- 2.11.1 An enforcement order shall be issued on a form provided by the Commission. In a situation requiring immediate action, an enforcement order may be signed by the Agent, a Commission member or a majority of the Commission, if said Order is ratified by a majority of the members of the Commission present at the next scheduled Public Meeting of the Commission.

SECTION 3 FILING FEES, PERFORMANCE BONDS and CONSULTANTS FEES

3.1 Purpose

- 3.1.1 The purpose of the fee system is to defray the costs of administering the Bylaw, provide engineering and consultants services, requests for action from the Commission, or to secure and endure satisfactory performance of work required by any Permit.

3.2 Authority

- 3.2.1 The filing fee schedule is promulgated pursuant to Section 5 of the Bylaw.
- 3.2.2 The escrow account, performance bond or other security mechanism used to ensure satisfactory performance of work is promulgated in accordance with Section 15 of the Bylaw.

3.3 Time of Payment and Waiver of Fee

- 3.3.1 At the time of submission of a Notice of Intent or a Request for a Determination, or other request, the applicant shall pay a filing fee.
- 3.3.2 Fees for a Certificate of Compliance shall not be required for projects with an active Order of Conditions existing on the effective date of these Regulations.
- 3.3.3 The filing fee may be waived for a Notice of Intent, Request for Determination or other request filed by a government agency.
- 3.3.4 After a duly noticed Public Hearing, the Commission shall have the right to change the fee schedule shown below. Any change of the fee schedule must be advertised and posted at the Town Hall at least thirty (30) days prior to the date the changes become effective.

3.4 Disputes over Filing Fees

- 3.4.1 Whenever the Commission or its Agent determines that an inadequate fee has been paid, the time period for the Commission to act shall be stayed until the balance of the fee is paid.
- 3.4.2 The applicant may appeal the fee(s) pursuant to the Massachusetts General Laws.
- 3.4.3 The applicant may bring the matter to the Commission at a regular meeting prior to the filing of an application or other request for the Commission's approval.

3.5 Filing Fee Schedule (Effective September 10, 2009)

<u>Type of Activity</u>	<u>Fee</u>
Determination of Negligible Impact	\$25.00
Request for Determination of Applicability	\$50.00
Notice of Intent:	
Work on a Single Family Lot:	
⇒ Construction of a Single Family House	\$250.00
⇒ Site Modifications: including additions; pools; site work without a house; and, work on a septic system	\$75.00
⇒ Wetland Crossings/Alterations	\$350.00 + \$0.25/s.f. of Impact
Water Level Fluctuations: <i>(For: Sunset Lake, Upper and Lower Naukeag Lakes, Stodge Meadow Pond, Lake Watatic, Billy Ward Pond, Lake Wampanoag, Lake Winnekeag)</i>	\$500.00 (All other water bodies not listed shall be charged \$100.00)
Resource Area Improvement	\$350.00

Control Vegetation: ⇒ Chemical ⇒ Mechanical (For: Sunset Lake, Upper and Lower Naukeag Lakes, Stodge Meadow Pond, Lake Watatic, Billy Ward Pond, Lake Wampanoag, Lake Winnekeag)	\$500.00 \$350.00 (All other water bodies not listed shall be charged \$100.00)
Work within the Riverfront Area	Activity Fee Plus 50% Additional Fee
New Agriculture/Aquaculture Project	\$100.00
Work Within a New Subdivision	
⇒ Roadways and utilities	\$250.00 + \$2.00 per foot of roadway side line within 100-foot buffer zone
⇒ Lots in proposed subdivisions	\$100.00 per lot for lots within 100-foot buffer zone
⇒ Multi-family Dwelling Units	\$250.00 + \$100.00 per dwelling unit if all or part of which lies within 100-foot buffer zone
⇒ Wetland Crossings/Alterations	\$500.00 + \$0.50/s.f. of Impact
Commercial and Industrial Sites:	\$500.00 + \$0.50 per square foot of resource area disturbance (including buffer zone impact)
Parking lots	\$250.00 + \$0.50/s.f. Buffer Zone Impact, including stormwater management measures
Abbreviated Notice of Resource Area Delineation	\$50.00 Plus \$1.00/linear foot
Time Extensions	\$50.00
Amendments to Orders of Conditions:	Amendments to existing Orders of Conditions shall require the appropriate Activity Fee for activities of similar extent, in accordance with the above listed Fees
Certificate of Compliance	\$50.00 (Due upon issuance of an Order of Conditions)
After the Fact Applications:	All fees associated with after the fact applications without an enforcement order will be increased 50%.
Enforcement Orders	\$250.00 + all fees associated with applications filed in conjunction with an Enforcement Order shall be doubled
⇒ Non-Compliance	Punishable by a fine in the amount of \$100 per violation, per day. Each day or portion thereof during which a violation continues shall constitute a separate offense; if there is more than one, each condition violated shall constitute a separate

3.5.1 **Inspection:** Inspections listed in Appendix C are free. If multiple visits are required for an applicant to satisfy an inspection requirement, a \$25.00 fee per additional site visit shall be imposed. Failure to provide the Commission with a written request for each required inspection shall result in a \$50.00 fee.

3.6 **Refund of Fee**

3.6.1 If, at any time, the applicant withdraws the Notice of Intent or Request for Determination, which has been filed, there will be no refund of the fee, which was paid.

3.7 **Consultants Fees**

3.7.1 As provided by M.G. L. Ch. 44 Sec.53G, the Ashburnham Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission for specific expert services deemed necessary to the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of the Wetlands Protection Act (G.L. c. 131 Sec. 40) and the Town of Ashburnham Wetlands Protection Bylaw, Conservation Commission Act (GL c. 40 Sec. 8C), or any other state or municipal statute, bylaw or regulation as they may be enacted or amended from time to time. The Commission shall not require consultant fees for buffer zone projects on individual single family lots unless the Commission determines that such work will have a negative impact on a resource area.

3.7.2 Funds received by the Conservation Commission pursuant to these rules shall be deposited with the Ashburnham Treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the discretion of the Conservation Commission without further appropriation as provided in G.L c. 44 Sec. 53G. Expenditures from this account shall be made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant.

3.7.3 Specific consultant services may include, but are not limited to resource area, survey and delineation, analysis of resource area values, hydro-geologic and drainage analysis, impacts on municipal conservation lands and environmental or land use law. The consultant shall be chosen by, and report only to, the Commission and or its Agent.

3.7.4 The Conservation Commission shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for the payment of the fee in its entirety. Such notice shall be deemed to have been given on the date it was mailed or hand delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date the notice is given.

3.7.5 The fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services.

3.7.6 Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to determine that the

application is administratively incomplete (except in the case of an appeal). The Commission shall state such in a letter to the applicant, copied to DEP. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee.

- 3.7.7 The applicant may appeal the selection of the outside consultant to the Board of Selectmen who may disqualify the outside consultant only on the grounds that the consultant has a conflict or interest or does not possess the minimum qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field (in the case of engineering issues the consultant must be licensed by the Commonwealth of Massachusetts). The applicant may not appeal on the basis of the scope of the work and the amount of the fees. Such an appeal must be in writing and received by the Board of Selectmen and a copy received by the Conservation Commission within ten (10) days of the date consultant fees were requested by the Conservation Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

3.8 Performance Bond

- 3.8.1 The Commission may require the establishment of an escrow account or other security for the benefit of the Town of Ashburnham, sufficient as to form and surety in the opinion of the Commission to secure faithful and satisfactory performance of work required by any Order of Conditions in such sums and upon such conditions as the Commission may require.
- 3.8.2 Notwithstanding the above, the amount of such escrow account or security shall not exceed the estimated cost, including inflation, for the Commission to complete the work required or the restoration of affected lands and properties if the work is not performed as required, whichever is greater. Forfeiture of any such escrow account or security shall be as detailed in M.G.L. c. 41 sec. 81U.
- 3.8.3 For replication projects, the applicant shall provide an escrow bond for the duration of a monitoring program plus one (1) year to cover the correction of any deficiencies revealed by the program. Said bond shall, at a minimum, be equal to the initial cost of the replication.

EFFECTIVE BY VOTE OF THE ASHBURNHAM CONSERVATION COMMISSION AFTER HEARINGS HELD ON OCTOBER 23, 2006, NOVEMBER 13, 2006, NOVEMBER 27, 2006, JANUARY 8, 2007, JANUARY 27, 2007, AND FEBRUARY 12, 2007 AND AS VOTED ON FEBRUARY 12, 2007 .

Appendix A

STANDARDS FOR COMPLETENESS OF APPLICATION

- Two signed applications and five copies of a completed Notice of Intent, Abbreviated Notice of Intent, Amended Notice of Intent, Request for Determination of Applicability, or Abbreviated Notice of Resource Delineation.
- Two sets of full sized plans and two reduced sized sets, stamped by a professional engineer, land surveyor, or registered sanitarian as appropriate for industrial, commercial, residential subdivision, or multifamily projects. Additionally, the submission of the plan via a pdf file is strongly encouraged. Detail requirements for plans can be found in Appendix B. For small projects, plans of a lesser standard deemed appropriate by the Conservation Agent shall be submitted. At a minimum single family plans shall include scaled drawings based on certified plot plans or subdivision plans. The Conservation Commission may override the Agent's recommendation if the Commission feels additional plans are appropriate.
- A letter of description discussing the proposed project with the signature of the owner of the property if the applicant is not the owner and has no other demonstrated interest in the property such as a Purchase and Sale Agreement.
- Two copies of drainage calculations, and other engineering data, if applicable to the project.
- Pictures of proposed wetland alteration areas, if applicable
- Four copies of a locus map showing the parcel where the proposed work is to take place with sufficient streets or points of interest around the parcel to readily identify its location.
- An original abutters list certified by the Assessor's Office with proof of notification to all listed abutters, in the form of signatures on a letter listing all information relevant to the hearing, or certified receipts from the Post Office. A copy of the notice should be included with the abutter's list. An abutter for the purposes of the Ashburnham Conservation Commission shall be the owner of any parcel within one hundred (100) feet of the parcel or parcels on which the project is proposed. Notice given to the association of a condominium complex is sufficient; notice to each unit owner will not be required. A copy of the Notification to Abutters and Affidavit of Service forms are attached. Notification forms should be reviewed by the Conservation Agent prior to mailing.
- Proof of mailing of the above to the Department of Environmental Protection (DEP), 627 Main Street, Worcester, MA 01608, in the form of a certified receipt from the Post Office. The mailing to the DEP should also include a copy of the Affidavit of Service.
- The appropriate filing fee, including the local bylaw fees where applicable, made out by check to the Town of Ashburnham.
- The appropriate advertising fee for the Legal Ad.

Appendix B

GUIDANCE FOR FORMS AND PLANS

Forms and plans shall describe the proposed activity and its effect on wetlands, flooding, and off-site runoff. The following items are set out as a minimum standard and are not intended to be a complete and final presentation as to what the form or plan should include. The applicant may submit or be required to submit to the Commission any further information which will assist in the review and which is deemed necessary to determine the proposed effect on the interest protected by this Bylaw. All applications should include the original material and one (1) copy.

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

Narratives shall include a discussion of the proposed activity and its impacts on the wetland functions and values (or interests). Section 1.5 lists the performance standards which must be addressed. One word answers such as none or minimal may not be accepted. If the applicant contends that there will be no effect on the interests which the Bylaws protect, the applicant must demonstrate to the Commission's satisfaction why there will be no effect.

For small projects, plans of a lesser standard deemed appropriate by the Conservation Agent may be submitted. At a minimum single family plans shall include scaled drawings based on certified plot plans or subdivision plans. The Conservation Commission may override the Agent's recommendation if the Commission feels additional plans are appropriate. All plans submitted under any section of these rules and regulations shall be of adequate size, scale and detail to completely and accurately describe the site and the work proposed. The Ashburnham Conservation Commission reserves the right to request additional narrative information on the forms or other information on the plans.

All plans, calculations or supporting data submitted under the provisions of the Notice of Intent, and Certificate of Compliance sections of these Rules and Regulations shall meet the following requirements unless otherwise deemed sufficient by the Commission:

1. Maximum sheet size shall be 24" x 36" and minimum sheet size shall be 8 ½" x 11".
2. For subdivisions of land, the first sheet shall clearly show the entire subdivision and all the proposed lots and roadways. This scale may be greater than 1" – 50'.
3. Applicant shall color code at least one plan to be presented to the Commission which shall be color coded as follows:
 - Edge of all resource areas and wetlands, flood plains, and other freshwater wetland areas - blue
 - Buffer Zones -orange
 - Riverfront areas including inner and outer riparian zones, violet and violet crosshatch respectively
 - Aquifer Protection Zone – pink
 - Areas of no disturbance - green
 - Resource areas to be altered – blue crosshatched
 - Replication areas – green crosshatch
 - Siltation barrier – yellow

Other colors may be used to designate other areas which are important for the board to make its determination.

4. Scale shall be not more than 1" = 40', 1" = 20' is recommended.
5. Graphical scale.
6. Lines, symbols, clouding, colors, etc. shall be identified and referenced in a legend.
7. North arrow
8. USGS locus map 1" = 1000'
9. Locations, elevation and datum of the benchmark used for survey;
10. Bearings and distances of all property lines with existing and proposed boundary control points.
11. Existing contour lines at contour intervals no greater than two feet up to the abutters' property lines.
12. Proposed contour lines up to the abutters' property line, at contour intervals no greater than two feet.
13. Wetland line indicated by numbers and flags and the type of resource area named, i.e. Bordering Vegetative Wetlands, River, Pond etc.
14. Edge of wetland, flood plain, 100 foot buffer zone and 200 foot riverfront area including division between the inner and outer riparian zone;
15. Replication areas shall be clearly identified including the existing and proposed elevations.
16. Replication areas shall include specific locations of plants, their species and a planting schedule.
17. Locations, inverts, sizes, and slopes of existing and proposed culverts, pipes, catch basins, detention facilities and other storm drainage structures. All existing catch basins located within 200 feet, downgradient of the project shall be located.
18. Locations of all catch basins located downgradient within 200 feet of the project site.
19. Existing and proposed locations, rim elevations and invert elevations of all catch basins, drains, culverts and other drainage structures immediately downgradient, upstream and downstream of the site, as well as on-site
20. Proposed on-site pollution control devices such as oil/gas separators, oil absorption pillows, hooded catch basins, flow dissipaters, detention basins, berms, and vegetative buffers
21. Location and details of erosion sedimentation control devices both temporary and permanent
22. Proposed lowest elevations for cellars or floors
23. Calendar dates, locations of samplings, and results including but not limited to, groundwater tests, percolation tests, soil borings, soil logs, wetland delineation performed, habitat and/or wildlife evaluations and water testing
24. Soil characteristics in representative parts of the property as identified in the Worcester County Soil Conservation Survey and/or as field identified
25. Existing major features of the property such as structures, including, but not limited to, buildings, foundations, stone walls, wells (public or private), embankments, stockpiles of fill, piers, wharves, riprap, cement area, asphalt areas, pools, bridges, trails, historic areas, fuel storage tanks, trees exceeding 12" caliper, vegetation
26. Existing and proposed locations of containment units for solid waste, chemicals, liquid waste, radioactive materials, explosives and other materials or substances as required by the Commission.
27. Abutters' names, with maps and lot numbers of property
28. Title block which shall be located in the bottom right-hand corner and include identification of project, name(s) of owner, house number if applicable, assessor's map and lot numbers, names of existing or proposed streets, name of sub-division date, revision dates and scale
29. If the entire parcel is not shown on the plan, the plan shall include a notation that the area not shown has not been addressed by the Request for Determination or Notice of Intent.
30. The following NOTE shall be included on the plan:

ATTENTION: The work proposed on this plan is allowed by an Order of Conditions issued by the Ashburnham Conservation Commission, which includes strict standards and requirements. No work is to proceed until the contractor has reviewed and agreed to abide by all the conditions therein by notation on said plan.

31. The Professional Engineer's \ Registered Land Surveyor's \ Sanitarian's name, wet stamp, signature and date signed.

The Commission shall require proper certification of construction documents by a PE (Registered Professional Engineer qualified in the branch of civil engineering or environmental engineering), a RLS (Registered Professional Land Surveyor) or RS (Registered Sanitarian) based on the following list:

- Engineering Design PE
- Site Plans PE & RLS
- Subsurface Sewer Design PE
(over 2000 GPD)
- Subsurface Sewer Design PE or RS
(under 2000 GPD)
- Percolation Tests and deep observation holes Soil Evaluator
- Definitive Subdivision Plans PE & RLS

Wetland Crossings

If a Notice of Intent includes crossing of a wetland, the applicant shall submit five (5) copies of the Notice of Intent plans, calculations, replication plans, pictures, narratives and supporting data to the Commission.

The applicant shall also provide proof that there is no ability to access the upland section of their property except through the crossing of the wetland. Said proof shall include letters from the abutting property owners indicating they will not grant access through their property.

Work Within a Wetland

If the Notice of Intent includes work within a wetland, the applicant shall also submit two (2) copies of a narrative which shall explain how the work will be performed; a replication plan including details of types and locations of plant species which will be planted, pictures, wetland assessment, and a wildlife assessment in accordance with MGL c 131 sec 40, and 310 CMR 10:59 and 10:60.

Replication Plans

All replication plans shall include the following:

1. In-kind replication of the same type of system
2. Replication of an area at least equal to the area to be disturbed
3. Detailed plans which shall include construction schedule, planting plan, monitoring and reporting plan
4. Field delineation of existing wetlands, including plants and proposed replication areas
5. Land and groundwater elevations of the area to be replaced and the area proposed after grading
6. Plans, analyses, construction supervision by experts
7. Transfer of topsoil from wetland being filled which will contain seeds, roots and tubers,

8. Use of only native plants and in-kind plants to the wetland being disturbed
9. Replication at first stage of project
10. Siltation barriers to prevent siltation and show limits of work
11. Progress reports at end of each growing season
12. Notice to Commission of major steps

Appendix C

Inspections Schedule

All Projects:

Limit of Clearing: The limit of clearing for the entire project, or each phase if the project is phased, shall be staked under the supervision of a registered Professional Engineer or a Registered Professional Land Surveyor and approved by the Commission and/or its Agent prior to any clearing activities.

Erosion Control Barrier: The Commission and/or its Agent must inspect and approve the installation of the erosion control barrier prior to commencement of work.

Foundations: All foundations or other structures shall be staked under the supervision a registered Professional Engineer or a Registered Professional Land Surveyor prior to installation as required by the Order of Conditions and approved by the Commission and/or its Agent prior to installation.

Certificate of Compliance: The Commission and/or its Agent must inspect and approve the project upon completion of work and stabilization of site.

Residential Subdivisions/Commercial & Industrial Development:

Erosion Control Barrier: The Commission and/or its Agent must inspect and approve the installation of the erosion control barrier prior to commencement of work.

Limit of Clearing: The limit of clearing for the entire project, or each phase if the project is phased, shall be staked under the supervision of a registered Professional Engineer or a registered Professional Land Surveyor and approved by the Commission and/or its Agent prior to any clearing activities.

Roadway and Stormwater Mangement Facilities: The roadway and stormwater management facilities shall be staked out by a registered engineer and approved by the Commission and/or its Agent prior to commencement of work.

Foundations: All foundations or other structures shall be staked under the supervision of a registered Professional Engineer or a registered Professional Land Surveyor prior to installation as required by the Order of Conditions and approved by the Commission and/or its Agent prior to installation.

Certified Plot Plan: When required by the Order of Conditions, a certified plot plan prepared by a registered Professional Land Surveyor shall be submitted and approved by the Commission and/or its Agent prior to erection of the structure.

Certificate of Compliance: The Commission and/or its Agent must inspect and approve the project upon completion of work and stabilization of site. At a minimum, a Partial Certificate of Compliance should be requested before receiving an Occupancy Permit.

APPENDIX D

PROJECTS OF NEGLIGIBLE IMPACT

WITHIN THE BUFFER ZONE AND OUTSIDE ANY OTHER RESOURCE AREA

The activities listed below shall require a Determination of Negligible Impact from the Conservation Commission prior to commencement of work.

Clearing of vegetation

Planting of native vegetation

Sheds

Small additions (under 500 s.f.) more than 50 feet away from a resource area.

Impervious/pervious pedestrian walkways.

Fences

Decks

Patios