

Chapter 365

WETLANDS REGULATIONS

[HISTORY: Adopted by the Conservation Commission of the Town of Sturbridge 11-22-2002; amended 2-17-2004 and 11-28-2018.¹ Subsequent amendments noted where applicable.]

1. Editor's Note: The Conservation Commission voted 6-15-2021 to approve the codification of its regulations as Ch. 365 of the Town Code.
365:1

ARTICLE I
Introduction

§ 365-1.1. Statement of jurisdiction; protected interests; general restrictions; waivers.

- A. Areas subject to protection under the Sturbridge Wetlands Bylaw and its Regulations include all resource areas protected under the Wetlands Protection Act and its regulations: bank, land under water bodies and waterways, bordering vegetated wetlands, riverfront area, land subject to flooding and lands within the 100-foot buffer zone of bank and bordering vegetated wetland. In addition, under the Sturbridge Wetlands Bylaw and Regulations, the following resource areas are subject to protection: seasonal wetlands, vernal pools, lands subject to flooding or inundation and lands within the 200-foot buffer zone of any of the aforesaid jurisdictional areas under the Wetlands Protection Act or Sturbridge Wetland Protection Bylaw, whether or not they border surface waters. For the purpose of this document, "resource areas identified" or "resource areas protected" refer to the above-stated areas.
- B. Resource area interests include those listed in the Wetlands Protection Act and its regulations: protection of public and private water supply, protection of groundwater supply, flood control, storm damage prevention, prevention of pollution, protection of fisheries and protection of wildlife habitat (protection of land containing shellfish is not applicable, since this refers to "land under the ocean"). The following five additional interests apply to the Sturbridge Wetlands Bylaw and Regulations: erosion and sedimentation control, protection of water quality, protection of rare species habitat, protection of recreational values and protection of agriculture and aquiculture activities.
- C. Activities within the areas subject to protection, as well as activities within the 200-foot buffer zones to areas subject to protection, and 500-foot buffer zone of areas with 8% slope or greater which will remove, fill, dredge, build upon, degrade, discharge into or otherwise alter said resource areas and buffer zones fall under the jurisdiction of the Sturbridge Conservation Commission ("the Commission"). Said activities, if in an area subject to the Wetlands Protection Act, require a public hearing for prior review and approval by the Commission to insure there will be no significant adverse impact to the resource area. Said activities, if in an area subject to protection under the Sturbridge Wetlands Protection Bylaw and Regulations, require review and approval during a public meeting of the Conservation Commission to insure there will be no significant adverse impact to the resource areas and buffer zones specifically covered by these regulations.
- D. Activities undertaken in close proximity to wetlands and other resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction or over time, as a consequence of daily operation or other activities. These adverse impacts from construction and use can include but are not limited to erosion, siltation, loss of groundwater recharge, disruption of hydrologic connections, nutrient runoff, poor water quality, harm to wildlife habitat or disruption of wildlife habitat corridors. The Commission may therefore require that the applicant maintain a strip of continuous, undisturbed vegetative cover in part or all of the 200-foot area and set other conditions on this area, unless the applicant provides evidence deemed sufficient by the Commission that the area or part of it may be disturbed without harm to the values protected by the law.
- E. Work and activity within 200 feet of wetlands and resource areas should be avoided and discouraged and reasonable alternatives pursued. Accordingly, the Conservation Commission shall begin with the presumption that lands within 200 feet of the resource areas previously discussed in this section are best left in an undisturbed and natural state.
- F. Disturbance of vegetation or soils within 25 feet of a resource area creates direct observable impacts to the resource area, including but not limited to those stated elsewhere in these regulations. The minimum strip of continuous undisturbed vegetative cover for any and all resource areas is 25 feet from the outermost edge of the resource area in all directions. The twenty-five-foot buffer is to be considered a "no disturb" buffer.
- G. Any structures less than 50 feet from a resource area can create temporary construction and long-term "normal

daily use" impacts within the twenty-five-foot buffer. The minimum distance for a new structure will be 50 feet from any resource area. The fifty-foot "no structure" buffer will not apply to any structure existing prior to the adoption of these regulations. However, structures being removed and replaced must comply with the regulations in effect at the time of the reconstruction. For preexisting structures within the fifty-foot buffer, which are not being removed but for which the footprint is changing, any increase in footprint must take place no closer than 50 feet to the resource area.

H. Waivers.

- (1) The Commission shall have the power to issue a waiver to perform activities as described in § 365-1.1 of this Town of Sturbridge Wetlands Bylaw Regulation, after said applicant files a notice of intent (if proposed activities are subject to the Wetlands Protection Act) with the Commission and the Commission conducts a public hearing. If said activity is subject to the Sturbridge Bylaw and Regulations, the applicant shall file a wetland bylaw permit application. Such waiver shall be set forth by the issuance of an order of conditions or wetland bylaw permit by the Commission. In order for the Commission to issue a waiver with respect to a particular project, the Commission must find, based on clear and convincing evidence set forth by the applicant, that owing to circumstances relating to soil conditions, hydrological conditions, topography of such land and especially affecting such land but not generally affecting wetlands within the Town, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the applicant, and that desirable relief may be granted without detriment to the values protected by the Town Wetlands Bylaw and these regulations and without substantially derogating from the extent or purpose of the Town Wetlands Bylaw and these regulations.
- (2) A waiver (as stated above) to the fifty-foot "no structure" buffer and the twenty-five-foot "no disturb" buffer may also be granted to applicants under the following circumstances: the area is already previously disturbed and the proposed project will improve the protection to the resource area; or the applicant can prove with documented evidence that there are no other substantially equivalent alternatives available. Said applicant must show that measures will be incorporated into the project to ensure that there will be no significant adverse impact to the resource area and must provide additional protection at a ratio of 2:1 to the value of the resource buffer being altered.
- (3) Single-family homes, existing prior to the adoption of these regulations, on small, lakefront lots may, on a case-by-case basis, be granted a partial waiver from the twenty-five-foot and fifty-foot buffer requirements. Granting of a waiver will be based on the following minimum criteria;
 - (a) A plan providing for 2:1 mitigation for area disturbed. Said plan shall include, but not be limited to, plantings of naturally occurring vegetation, along the lakefront, which increase the vegetative cover and decrease erosion within the first twenty-five-foot buffer to the lake.
 - (b) Any proposed disturbance shall be minimized and shall be located at the furthest possible distance from the lake.
 - (c) Said plan shall prioritize sedimentation and erosion control improvement issues along the most disturbed and vulnerable portions of the lakefront.
 - (d) Mitigation must occur within the twenty-five-foot buffer first and work outward until the required mitigative effects are achieved.
 - (e) Any additional structure in the fifty-foot buffer must be minimized and placed as far from the lake as possible.
 - (f) Walkways and pathways within the fifty-foot buffer shall utilize pervious materials, to be approved by the Commission.
- (4) The Commission may impose conditions, safeguards and limitations in a waiver permit to protect

or further the interests protected by the Sturbridge Wetlands Bylaw and Regulations. It should be understood that waivers are intended to be granted only in rare and unusual cases and are issued at the sole discretion of the Commission.

- I. At the discretion of the Commission, concrete bounds or other appropriate permanent markers clearly delineating the twenty-five-foot "no disturb" buffer, or any alternative approved-width "no disturb" buffer the Commission imposes for each property, are to be installed prior to the start of any work on-site.

§ 365-1.2. Practicable alternatives.

- A. Applicants are required to demonstrate that there are no practicable alternatives to the proposed project with less adverse impact on the protected resource and interests. A "practicable alternative" is an available and feasible alternative which will accomplish the project's purpose, taking into account costs, logistics, the proposed use and the most current technology.
- B. The area in consideration must extend to the subdivided lots [this includes approval not required (ANR) lots], any parcel out of which the lots were created, any adjacent parcels held in common ownership or interest, any parcels which are in the process of being obtained, any parcels previously held in common ownership or interest with the subject property and any other land, which can reasonably be obtained, as of the effective date of the related regulation as listed in § 365-4.19 of these regulations 90% upland requirement. (Also see Sturbridge Zoning Bylaws § 300-4.1D.)
- C. The effect of the practicable alternatives analysis and the purpose of evaluating alternatives is to determine whether impacts to resource areas can be avoided. See the Alternatives Analysis Scope of Requirement in the appendices of these regulations for a complete description.²

§ 365-1.3. No significant adverse impacts.

- A. An applicant is required to demonstrate that any work, including proposed mitigation measures, will have no significant adverse impacts on the resource area. The Commission requires a twenty-five-foot undisturbed vegetated corridor ("no disturb" buffer) around all resource area boundaries; with the exception of certified or identified vernal pools, which will require a minimum of a 100-foot undisturbed buffer. This buffer may range up to 200 feet depending on the characteristics and species present. The term "identified vernal pool" refers to a vernal pool for which sufficient evidence to certify the vernal pool is present and is identified by the Commission or a representative of the Commission. The Commission prohibits the use of pesticides, fertilizers and herbicides within the 100-foot buffer to all resource areas and prohibits the use of salts, quick-release pesticides, quick-release fertilizers and quick-release herbicides within the 200-foot buffer to all resource areas except by licensed applicators. Activities which increase the potential for hazardous impact to the resource areas, such as vehicle maintenance, are prohibited within the 200-foot buffer to resource areas.
- B. When determining whether significant adverse impact could occur/has occurred, the Commission shall include in its review all potential cumulative impacts to resource areas and all work conducted within the 200-foot buffer from the time of adoption of the applicable regulation (See § 365-4.19.) through the proposed project time frame.
- C. Additional limitations exist under the Sturbridge Bylaw and Regulations for riverfront resource areas. Riverfront area (RFA) is the area of land extending between a river's mean annual high water line measured horizontally 200 feet (in a horizontal line). The 200-foot RFA consists of a 100-foot inner riparian zone and a 100-foot outer riparian zone. No disturbance is allowed within the inner riparian zone. Disturbance of up to 5,000 square feet or 10% of the riverfront area within the lot, whichever is greater, may be allowed by the Conservation Commission on a case-by-case basis. Alternatives analysis may be required. See § 365-5.5 of these Sturbridge Wetland Regulations. Additional definitions, requirements, conditions and performance

2. Editor's Note: The Alternatives Analysis Scope of Requirement is included as an attachment to this chapter.

standards under the Wetlands Protection Act Regulations can be found at 310 CMR 10.58. Work may not impair the capacity of the riverfront resource area to provide wildlife and vernal pool habitat. A wildlife habitat evaluation may be required for work within riverfront resource areas. A wildlife habitat evaluation may also be required at the discretion of the Commission for work within the 200-foot buffer to any other resource area on a case-by-case basis. Certified and identified vernal pools are protected at the same standard as rare species habitat. Vernal pools, which are state-certified or locally documented during the course of the public hearing, are also protected at the same standard as rare species habitat.

- D. These standards are intended to identify the level of protection that the Commission must impose in order to contribute to the protection of the interests identified. It is the responsibility of the owner to insure that proposed work is designed and completed in conformance with these performance standards. It is the responsibility of the Commission to impose such conditions on a proposed project as to ensure that the project is designed and completed in a manner consistent with these standards.

§ 365-1.4. Buffer zones.

- A. This section is intended as a general overview. Additional regulations, restrictions or waivers may apply to the specific buffer, project or site in question. For additional information, please refer to the chapters and sections noted in the Table of Contents or contact the Commission office.
- B. As of the date of these regulations, a summary of the state and local conservation-related buffer zones are as follows:

25-foot	"No disturb" buffer - for new construction (See § 365-1.1F.)
25-foot	No additional disturbance allowed for reconstruction. Projects must result in better conditions for the resource area based on scientific evidence of benefit to the resource, 2:1 mitigation required for any new work in this buffer. (See § 365-1.1H.)
50-foot	"No structure" buffer - no new structures (See § 365-1.1G.)
50-foot	Addition to existing structures must be no closer to the resource area than the existing structure. 2:1 mitigation required for reconstruction. Change of the footprint is considered new construction. (See § 365-1.1H.)
100-foot	Wetlands Protection Act (WPA) and Sturbridge Wetland Protection Bylaw buffer, work requires the filing of a state WPA permit. A notice of intent will be required for all work in a resource area, or if there is actual or potential resource area alteration. A request for determination of applicability will be required for any work within the WPA 100-foot buffer zone. All new disturbance should be located outside the 100-foot buffer to the extent possible. (See § 365-1.1D and E.) If the proposed activity is considered a minor activity as defined under 310 CMR 10.02(1), Minor Activities, a wetland bylaw permit or tree removal permit will be required.
200-foot	Local Wetlands Bylaw buffer, review by the SCC is required to ensure no significant adverse impact. Any work proposed between the 100- and 200-foot buffer requires the filing of either a request for determination of applicability, a wetland bylaw permit, or a tree removal permit.
200-foot	Riverfront resource area starts at the edge of mean annual high water mark. This area is considered a resource area and not a buffer zone. The Conservation Commission carefully reviews all proposed riverfront area alterations and requires a notice of intent be filed with the Conservation Commission.

Vernal pool buffer, the first 100 feet is to be considered the minimum "no disturb" buffer. This buffer zone may be extended to 200 feet based on site conditions and impacts to critical wildlife habitat needed to keep the pool viable. A 500-foot buffer may be applied where slopes exceed 8%.

ARTICLE II
Definitions

§ 365-2.1. Terms defined.

As used in these regulations, the following terms shall have the meanings indicated:

ABUTTER — The same as "owner of land abutting the activity," defined as any property with a lot line within 200 feet of any lot line of the subject property.

ACT — The Wetlands Protection Act, MGL c. 131, § 40 or 310 CMR 10.00.

ACTIVITY — Any form of draining, dumping, dredging, damming, discharging, excavating, filling or grading; the construction, reconstruction or expansion of any buildings or structures; the driving of pilings; the construction or improvement of roads and other ways; the changing of run-off characteristics; the intercepting or diverging of ground or surface water; the installation of drainage, sewage and water systems; the discharging of pollutants; the destruction of plant life; and any other changing of the physical characteristics of land.

AGGRIEVED — Person aggrieved.

AGRICULTURE — Land in agricultural use means land within resource areas or the buffer zone presently and primarily used in producing or raising one or more agricultural commodities for commercial purpose.

ALTER — As defined in Chapter 286, Wetlands, of the Town bylaws, § 286-9, definition of "alter."

AQUACULTURE — Land in aquacultural use means land presently and primarily used in the growing of aquatic organisms under controlled conditions.

ARBORIST — A professional certified in the practice of arboriculture. Arborists frequently focus on health and safety of individual trees, or wooded landscapes, rather than managing forests or harvesting wood.

AREA SUBJECT TO PROTECTION — As defined in § 365-1.1 of these regulations.

BANK (INLAND) — Portion of land surface which normally abuts or confines a waterway. It occurs between a water body and bordering vegetated wetland and adjacent to floodplain, or in the absence of these it occurs between a water body and upland. The upper boundary of bank is the first observable break in slope or mean annual flood level, whichever is higher. The lower boundary of bank is the mean annual low flow level. Where slopes leading to a wetland or water body are greater than or equal to 1:4, the area is still considered bank, subject to an enhanced performance standard.

BANKFULL DISCHARGE — Corresponds to the elevation, or stage of the river, that actively creates, modifies and maintains the river's channel. In the context of these regulations, the river's channel can be described broadly as the cross-sectional area that carries the river's annual high water flows, which typically occur in early spring. During bankfull discharge, the water is moving sediment, forming or removing bars, forming or changing bends and meanders, and generally doing work that results in morphologic change to the river system. These morphologic changes to the river system can be observed in the field. Bankfull field indicators include changes in vegetation (usually changes in vegetational community), stain lines, top of point bars (depositional features), changes in slope, changes in bank material and bank undercuts. However, in some river reaches, characterized by features such as a low gradient, meanders, oxbows, histosols, a low-flow channel or poorly defined or nonexistent banks, the mean annual high water (MAHW) line will be evidenced by some combination of the bankfull field indicators listed above. It is important to understand that no one bankfull field indicator should be taken alone; multiple corroborating features should be sought. Bankfull field indicators may be quite subtle in a meandering river with a broad floodplain, or in a wetland stream, so multiple observations along both sides of the river, combined with field indicators located up and down the river reach, may be necessary.

BANKFULL FIELD INDICATORS — Changes in vegetation (usually changes in vegetational community), stain lines, top of point bars (depositional features), changes in slope, changes in bank material and bank undercuts in regards to rivers.

BEACH (INLAND) — A naturally occurring inland beach means an unvegetated gently sloping bank abutting a pond or lake and the site of potential recreational activities.

BEST AVAILABLE MEASURES — The most up-to-date technology or the best designs, measures or engineering practices that have been developed and that are commercially available.

BEST PRACTICAL MEASURES — Technologies, designs, measures or engineering practices that are in general use to protect similar interests.

BORDERING — An area is bordering on a water body listed if some portion of the area is touching the water body or if some portion of the area is touching another area, some portion of which is in turn touching the water body.

BORDERING VEGETATED WETLAND (BVW) — Is defined in § 365-5.2A of these regulations.

BOUNDARY — The boundary of an area subject to protection. A description of the boundary of each area is found in the appropriate section of these regulations.

BREEDING AREAS — Areas used by wildlife for courtship, mating, nesting or other reproductive activity, and rearing of young.

BROOK, CREEK OR RUN — The same as a stream.

BUFFER ZONE — Area of land extending horizontally outward from the boundary of any resource area.

CERTIFICATE OF COMPLIANCE — Written determination by the issuing authority that work or a portion thereof has been completed in accordance with an order.

COMMISSIONER — A Commissioner of the Sturbridge Conservation Commission.

CONDITIONS — Requirements set forth in a written order of conditions or determination issued by a Conservation Commission for the purpose of permitting, regulating or prohibiting any activity that will remove, fill, dredge, build upon, degrade, discharge into or otherwise alter an area subject to protection.

CONSERVATION COMMISSION and COMMISSION — Body comprised of members lawfully appointed pursuant to MGL c. 40, § 8C. For the purposes of MGL c. 131, § 40, 310 CMR 10.00, and the Town of Sturbridge Bylaws.

DATE OF ISSUANCE — The date an order is mailed, as evidenced by a postmark, or the date it is hand delivered.

DATE OF RECEIPT — The date of delivery to an office, home or usual place of business by mail or hand delivery.

DBH (dbh) — Diameter at approximately breast height (4 1/2 feet).

DEP — Department of Environmental Protection, and shall include the Commissioner of Environmental Affairs and any other person employed by said.

DETERMINATION —

- A. A "determination of applicability" (Form 2) means a written finding by the Conservation Commission or the DEP as to whether a wetland delineation is correct and confirmed as accurate, and/or whether a given area and/or the work proposed thereon is subject to the jurisdiction of the Wetlands Protection Act, and/or whether the work proposed is jurisdictional under the local bylaw.
- B. A "determination of significance" means a written finding by the Conservation Commission, after a public hearing, or by the DEP, 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.
- C. A "notification of nonsignificance" means a written finding by the Conservation Commission, after a public hearing, or by the DEP, 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 identified.

DFW-NHESP — Department of Fisheries and Wildlife, Natural Heritage and Endangered Species Program.

DFWELE — Department of Fisheries and Wildlife, Environmental Law Enforcement.

DREDGE — To dig, deepen or widen a given area by excavation, either temporarily or permanently.

DROUGHT — Periods of extended drought for purposes of 310 CMR 10.00 and these local regulations shall be those periods, in specifically identified geographic locations, determined to be at the "Advisory" or more severe drought level by the Massachusetts Drought Management Task Force.

EXISTING — Existence at the time of the adoption of the relevant policy, regulation, bylaw or law.

EXTENSION PERMIT — A written extension of time within which the authorized work shall be completed.

FEN — One of the six major types of wetlands. It is low, marshy and frequently flooded area of land, typically fed by groundwater. A fen is bog-like, but far less acidic due to its water source and, predictably, a high water table in these areas.

FILL — To deposit or discharge any material so as to raise an elevation of given resource or jurisdictional area, either temporarily or permanently.

FINAL ORDER — The order issued by the Commissioner of Environmental Affairs after an adjudicatory hearing or, if no request for hearing has been filed, the superseding order or, if no request for a superseding order has been filed, the order of conditions.

FLOOD CONTROL — The prevention or reduction of flooding and flood damage.

FOOTPRINT — The surface area of space covered by structures [i.e., building(s), house(s), garage(s), other accessory structures and impervious surfaces].

FRESHWATER WETLANDS — Wet meadows, marshes, swamps, bogs, fens and vernal pools. Areas where groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent plant communities in inland waters; freshwater wetlands can be bordering or isolated. If delineated, must have evidence of hydrology and vegetation (hydric soils are also considered an indicator of hydrology).

GENERAL PERFORMANCE STANDARDS — Those requirements established by 310 CMR 10.00 for activities in or affecting jurisdictional resource areas.

GROUNDWATER SUPPLY — Water below the earth's surface in the zone of saturation.

IMPORTANT WILDLIFE HABITAT FUNCTIONS — Important food, shelter, migratory, breeding or overwintering areas, or breeding areas for wildlife.

INTERMITTENT STREAM — Intermittent streams are not rivers as defined in 310 CMR 10.58 because surface water does not flow within them throughout the year. Certain identified intermittent streams receive increased protection under this local regulation based on their significance to surrounding resource areas and wildlife habitat needs.

ISSUING AUTHORITY — The Conservation Commission.

LAKE — Any open body of fresh water with a surface area of 10 acres or more, and shall include great ponds.

LAND SUBJECT TO FLOODING — Defined in § 365-5.4 of these regulations.

LAND UNDER WATER BODIES AND WATERWAYS — The bottom of, or land under, the surface of the ocean or any estuary, creek, river, stream, pond or lake. The boundary of land under water bodies and waterways is the mean annual low water level.

LOT — An area of land under common ownership or interest. For the purpose of these regulations, "lot" will mean both "lot" and "parcel."

MAJORITY — More than half of the members of the Conservation Commission holding an office.

MARSH — Defined in MGL c. 131, § 40, paragraph 11.

MEADOW (OR WET MEADOW) — Defined in MGL c. 131, § 40, paragraph 10.

MEAN ANNUAL HIGH-WATER LINE — The line that is apparent from visible markings or changes in the character of soils or vegetation due to the prolonged presence of water as evidenced by bankfull field indicators or "bankfull discharge.

MEPA — Massachusetts Environmental Policy Act.

MIGRATORY AREAS — Areas used by wildlife moving from one habitat to another, whether seasonally or otherwise.

MITIGATION — Rectifying an adverse impact or potential adverse impact by repairing, rehabilitating or restoring the affected resource area or compensating for an adverse impact by enhancing or providing replacement resource areas.

NO SIGNIFICANT ADVERSE IMPACT — Meeting or exceeding the level of protection of the performance standards provided throughout these regulations while concurrently not causing alteration to resource areas or buffer zones as defined in these regulations.

NOTICE OF INTENT — WPA Form 3 filed for an activity proposed in a jurisdictional area, which may alter (remove, fill, dredge, build upon, degrade, discharge into) an area subject to protection.

ORDER — Order of conditions (WPA Form 5), superseding order or final order or an order of resource area delineation (WPA Form 4B), whichever is applicable.

ORDER OF CONDITIONS — WPA Form 3 document issued by a Conservation Commission containing conditions which regulate or prohibit an activity.

OWNER OF LAND ABUTTING THE ACTIVITY — The owner of land sharing a common boundary or corner within 200 feet of any property line for the property containing the site of the proposed activity in any direction, including land located directly across a street, way, creek, river, stream, brook or canal.

PARCEL — An area of land under common ownership or interest. Within these regulations, "parcel" and "lot" mean the same.

PARTY TO ANY PROCEEDING BEFORE THE DEP — The applicant, the Conservation Commission and the DEP, may include the owner of the site, any abutter, any person aggrieved, any 10 residents of the city or Town where the land is located and any 10 persons pursuant to MGL c. 30A, § 10A.

PERSON — Includes any individual, group of individuals, business or social organization, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth of Massachusetts or political subdivision thereof, administrative agency, public or quasi-public corporation or body and any other legal entity, its legal representatives, agents or assigns.

PERSON AGGRIEVED — Any person who, because of an act or failure to act by the issuing authority, may suffer an injury in fact which is different either in kind or magnitude from that suffered by the general public and which is within the scope of the interests identified. Such person must specify in writing sufficient facts to allow the DEP or Superior Court to determine whether or not the person is in fact aggrieved.

PLANS — Such data as maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the issuing authority to describe the site and/or the work, to determine the impact of the proposed work upon the interests identified.

POND —

- A. Any open body of fresh water of any size. Ponds may be either naturally occurring or man-made by impoundment, excavation or otherwise. Ponds shall contain standing water except for periods of extended drought.
- B. The following man-made bodies of open water shall not be considered ponds:

- (1) Basins or lagoons which are part of stormwater management systems;
- (2) Swimming pools or other impervious man-made basins; and
- (3) Individual gravel pits or quarries excavated from upland areas unless inactive for five or more consecutive years.

PRACTICABLE — Available and capable of being done after taking into consideration costs, existing technology, proposed use, logistics and potential adverse consequences (e.g., degradation of rare species habitat, increased flood impacts to the built environment) in light of the overall project purposes and is permissible under existing federal and state statutes and regulations.

PRESUMPTION — The ground, reason or evidence lending probability to a belief.

PREVENTION OF POLLUTION — The prevention or reduction of contamination of surface or ground water.

PRIVATE WATER SUPPLY — Any source or volume of surface or ground water demonstrated to be in any private use or demonstrated to have a potential for private use.

PROGRAM — Shall refer to the Massachusetts Natural Heritage and Endangered Species Program (NHESP).

PROJECT PURPOSE — The general, functional description of an activity proposed within the riverfront area (e.g., construction of a single-family house, expansion of a commercial development).

PROTECTION OF FISHERIES — The protection of the capacity of an area subject to protection in order to prevent or reduce contamination or damage to fish; and to serve as their habitat and nutrient source.

PUBLIC WATER SUPPLY — Any source or volume of surface or ground water demonstrated to be in public use or approved for water supply pursuant to MGL c. 111, § 160 by the Division of Water Supply of the DEP, or demonstrated to have a potential for public use.

RARE SPECIES — Vertebrate and invertebrate animal species, without limitation, listed as endangered, threatened or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division. Estimated and priority habitats of rare and endangered species can be found on the most current NHESP Map.

RECREATION —

- A. **ACTIVE RECREATION** — Recreation that involves playing fields and team participation.
- B. **PASSIVE RECREATION** — The use and enjoyment of natural surroundings in a manner consistent with their preservation (i.e., hiking, mountain biking, horseback riding). Activities shall not be detrimental to resource areas.

REDEVELOPMENT — Replacement, rehabilitation or expansion of existing structures, improvements of existing roads or reuse of degraded or previously developed areas due to impervious surfaces from existing structures or pavement, absence of topsoil, junkyards or abandoned dumping grounds.

REMOVE — To take away any type of material, thereby changing an elevation, either temporarily or permanently.

REQUEST FOR DETERMINATION OF APPLICABILITY (RDA) — The filing of Form 1 by any person to the Conservation Commission or the DEP for a determination as to whether a resource delineation is confirmed as accurate, whether a given area or work in a given area is subject to MGL c. 131 § 40, 310 CMR 10 or the Town of Sturbridge Wetlands Bylaw.

RESOURCE AREA — Any of the areas specified § 365-1.1 of these regulations.

RIVER — Any natural flowing body of water that empties to any ocean, lake, pond or other river and which flows throughout the year. "River" is defined further in § 365-5.5 of these regulations.

RIVERFRONT AREA — Is defined in § 365-5.5 of these regulations. In addition, the presumption of the mean annual flood level (i.e., the beginning of the 200-foot riverfront resource area) shall be coincident with the outer

edge of BVW. This presumption shall rule unless conclusive scientific evidence is presented to the contrary.

RUN, BROOK OR CREEK — The same as a stream.

SCC — Sturbridge Conservation Commission.

SEASONAL WETLAND — As defined in Chapter 286, Wetlands, of the Town bylaws, § 286-9, definition of "seasonal wetland."

SELECT SPECIES OF AMPHIBIANS — Shall define species of amphibians which depend on seasonal wetlands for breeding habitat, including, but not limited to: mole salamanders (*Ambystoma maculatum*, *A. jeffersonianum*, *A. laterale*, and *A. opacum*); four-toed salamanders (*Hemidactylum 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*).

SHELTER — Protection from the elements or predators.

SIGNIFICANT — Plays a role. A resource area is significant to an interest identified when it plays a role in the provision or protection, as appropriate, of that interest.

SNAG — A standing dead or dying tree, often missing the top or most of its branches.

STATE-LISTED SPECIES — The same as "rare species."

STORM DAMAGE PREVENTION — The prevention of damage caused by water from storms, including, but not limited to, erosion and sedimentation, damage to vegetation, property or buildings, or damage caused by flooding, water-borne debris or water-borne ice.

STREAM — A body of running water, including brooks and creeks, which moves in a defined topographically observable channel in the ground due to a hydraulic gradient, and which flows within, into or out of an area subject to protection. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (i.e., which is generally intermittent) is a stream, except for that portion upgradient of all bogs, swamps, wet meadows, marshes and underground watercourses.

STRUCTURE — Any man-made or man-assembled impervious or partially impervious combination of materials and includes but is not limited to buildings, asphalt driveways, retaining walls, patios, swimming pools, sheds (decks, porches), framework, or any part thereof existing on, above or below the level of land or water.

SUBDIVIDED — Any part or parcel of land created by redefining property boundaries which includes but is not limited to approval not required lots, subdivision lots, commercial or industrial lots, etc., regardless of size or proposed or existing use.

SUPERSEDING DETERMINATION — A determination of applicability, of significance or of nonsignificance, as the case may be, issued by the DEP.

SUPERSEDING ORDER — A document issued by the DEP containing conditions which regulate or prohibit an activity.

SWAMP — Area where groundwater is at or near the surface of the ground for a significant part of the growing season; for full definition, see MGL c. 131, § 40, paragraph 9.

TREE — Any woody vegetation with a stem diameter of two inches at 4 1/2 feet from the ground (dbh).

TSS — Total suspended solids.

VERNAL POOL HABITAT — As defined in Chapter 286, Wetlands, of the Town bylaws, § 286-9, definition of "vernal pool."

WAIVER — A permit issued to an applicant or homeowner who proves to the satisfaction of the Commission that, owing to circumstances relating to soil conditions, hydrological conditions, topography of such land and especially affecting such land but not generally affecting wetlands within the Town, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the applicant, and that desirable relief

may be granted without detriment to the values protected by the Town Wetlands Bylaw and these Regulations and without substantially derogating from the extent or purpose of the Town Wetlands Bylaw and these Regulations.

WATER-DEPENDENT USES — Those uses and facilities which require direct access to, or location in, inland waters and which therefore cannot be located away from said waters, including, but not limited to: marinas, public recreational uses, navigational fishing and boating facilities, water-based recreational uses, navigation aids, basins, and channels, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or process water which cannot reasonably be located or operated at an upland site, crossings over or under water bodies or waterways (but limited to railroad and public roadway bridges, tunnels, culverts, as well as railroad tracks and public roadways connecting thereto which are generally perpendicular to the water body or waterway), and any other uses and facilities as may further hereafter be defined as water-dependent.

WORK — The same as "activity."

ARTICLE III
General Provisions

§ 365-3.1. Burden of proof; presumption of significance.

- A. When a proposed activity will remove, fill, dredge, build upon, degrade, discharge into or otherwise alter a resource area, the Commission shall presume that said area is significant to the interests identified. The burden shall be on the applicant to overcome the presumption of significance.
- B. Any person who files a notice of intent, request for determination or other permit application, to perform any work within an area subject to protection or within the buffer zone to any resource area, has the burden of demonstrating to the Commission beyond any reasonable doubt:
 - (1) That the area is not significant to the protection of any of the interests identified; or
 - (2) That the proposed work within a resource area will contribute to the protection of the interests by complying with the general performance standards for that area; or
 - (3) That proposed work within the buffer zone will contribute to the protection of the interests identified; except that proposed work which lies both within the riverfront area and within all or a portion of the buffer zone to another resource area shall comply with the performance standards for both areas, with the strictest performance standards being required to be met.
- C. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny the application or to grant the permit with limits or conditions which modify the proposed project.

§ 365-3.2. Building on subdivided lots.

- A. Review of projects which fall under the Town of Sturbridge Wetlands Bylaws shall be based on reasonable use of property based on pre-subdivided lot lines and on any other land owned in common or in common interest or which is reasonably obtainable as detailed in the Alternatives Analysis Basis of Request and Scope of Alternatives in the Appendices of these regulations.³
- B. Any deliberations and decisions issued by the Commission, based on state law or regulation, shall be based on reasonable use of property based on lot lines as they existed at the time of the adoption of the referenced laws and regulations and on any other land owned in common or in common interest or which is reasonably obtainable as detailed in the Alternatives Analysis Basis of Request and Scope of Alternatives in the Appendices of these regulations. See § 365-4.3 of these regulations for a listing of effective dates for laws and regulations.
- C. For projects which must comply with state law, the Sturbridge Wetlands Bylaw, state or local regulation, or policy, the strictest regulations shall apply.
- D. Developments or projects, whether subdivisions or not, owned in common by an individual, a corporation or a group of individuals with a common interest, with adjacent or bordering lot lines, whether during or prior to a project proposal, shall be considered a single project. Review, approval or denial, and conditioning shall be based on the cumulative impacts of the project and pre-divided site, as a whole, not on individual or separate parts of the project.

§ 365-3.3. Alternatives for minor activities without review.

- A. The Commission allows some minor activities without review, including:

³ Editor's Note: The Appendixes are included as attachments to this chapter.
365:17

- (1) Removal of invasive aquatic vegetation on a lakebed during drawdown is permitted by hand. No power equipment may be used.
 - (2) Removal of dead or broken tree limbs, and limited dead brush. Note: Removal of dead or dying trees will require filing of a tree removal application with the Conservation Commission.
- B. Basic yard maintenance. Basic yard maintenance is considered to be raking, mowing and non-chemical yard grooming, with all clippings, cuttings or grooming materials properly disposed of outside of the resource area and buffer.
- (1) The following do not constitute normal maintenance: stripping embankments, grading, installing retaining walls or work requiring large power equipment, such as a backhoe or other earth-moving equipment.
 - (2) Inconsequential brush cutting (less than 1/10 of the vegetation removed cumulatively within any five-year period) outside the twenty-five-foot "no disturb" buffer line from any resource area is covered under this policy. This does not include tree cutting.
- C. For the purpose of this regulation, trees are defined as woody vegetation with a stem diameter of two inches or more at a height of approximately 4 1/2 feet from the ground (dbh).
- D. Site disturbance dramatically increases the chance of damage to the resource area unless erosion control measures are used correctly and effectively. Use methods that minimize site disturbance, especially minimize both removal of natural vegetation and exposure of bare soil.

§ 365-3.4. Wetland bylaw permits and tree removal permits.

(See § 365-6.2.)

- A. Wetlands Bylaw permit.
- (1) The following may be permitted through a wetland bylaw permit application filed with the Commission office at least seven calendar days in advance of a public meeting:
 - (a) Any and all work taking place outside of the state 100-foot buffer zone.
 - (b) Any work within the 100-foot WPA buffer zone, which is classified under 310 CMR 10.02(1) as a minor activity under the Wetlands Protection Act.
 - (c) Replacement of beach material which constitutes normal grooming of any existing beach and not the expansion of or creation of a new beach. Grooming is considered to be adding or re-grading in a manner that results in an insignificant change in the amount, nature or distribution of surface materials. The work must be done by hand, with a rake, shovel, similar hand tool or wheel barrow. The work may only be conducted during annual lake drawdown and must be done without disturbance to the buffer zone or lake. Addition of the equivalent of more than one pickup truck load (considered to be two cubic yards) goes beyond normal maintenance. Any sand to be placed on the beach must be washed sand.
 - (2) Wetland bylaw permits must be filled out in their entirety and identify all buffer zone impacts, signed by the property owner and accompanied by a plan. Plans must be at a minimum one inch equals 20 feet for consideration and should be drawn clearly and to scale. Depending on the scope of the project, the Commission has the discretion to require plans to be stamped and signed by a registered professional engineer, architect, landscape architect or surveyor. Plans should always be submitted in a "plan view" and as necessary may be required in a "profile view."
- B. Tree removal permit application.

- (1) Removal of trees and woody vegetation may be permitted through a tree removal permit application filed with the Commission office at least seven calendar days in advance of a public meeting.
- (2) Tree removal within the 200-foot buffer zone must receive prior approval from the Conservation Commission. Tree removal approved in a request for determination or notice of intent does not require separate approval. Trees and natural cover provide excellent protection against erosion, and provide habitat, food and shelter for wildlife in and around the resource area. Trees provide essential shading, direct and indirect cooling and promote good water quality. Root systems provide bank stability and protect against erosion into the resource area. Trees should be retained along and around the resource area as much as possible. Tree removal will only be considered in situations where the tree poses a threat to health or safety by being a hazard or in situations where a tree is diseased or partially dead. Healthy trees which pose no hazard will otherwise not be approved for removal, unless it is determined by the Commission that removal will pose no significant impact to resource area or buffer zone.
- (3) The Conservation Commission may require planting of up to two trees for each tree removed under a tree removal permit. The Conservation Commission shall consider remaining tree canopy and proximity to the resource area when requiring replacement of trees.
- (4) Tree removal previously reviewed and approved under an approved forest cutting plan are not subject to this permit.

§ 365-3.5. Limited projects.

(See Chapters 40 and 61 of MGL.)

- A. Limited projects are activities within the existing wetlands which can proceed at the discretion of the Commission without fully meeting the resource area performance standards due to a lack of any practicable alternatives. Self-imposed hardship disqualifies an applicant from limited project consideration.
 - (1) In permitting limited projects, the Commission may issue an order of conditions and impose such conditions as will contribute to the interests identified.
 - (2) No such project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species, as identified by DFW-NHESP.
 - (3) In the exercise of this discretion, the Commission shall consider the magnitude of the alteration and the significance of the project site to the interests identified, the availability of reasonable alternatives to the proposed activity, the extent to which adverse impacts are minimized and the extent to which mitigation measures, including replication or restoration, are provided to contribute to the protection of the interests identified.
- B. Limited project applications. Limited project applications may be approved, provided they are carried out in accordance with the following general conditions and any additional conditions deemed necessary by the Commission:
 - (1) There shall occur no change in the existing topography or the existing soil and surface water levels of the area.
 - (2) No fertilizers, pesticides, herbicides, salts and other such materials shall be used within 200 feet of any resource area except by Massachusetts state-licensed applicators.
 - (3) All activities shall be undertaken in such a manner as to prevent erosion and siltation of adjacent resource area.
 - (4) A minimum of 2:1 in-kind mitigation shall be provided for any and all resource area disturbance. Riverfront resource area shall also be mitigated at a minimum ratio of 2:1.

- C. Limited project permits may be issued for the following:
- (1) Work on land to be used primarily and directly in the raising of animals.
 - (2) Work on land to be used primarily and directly in the raising of forest products under a planned program.
 - (3) The construction, reconstruction, operation and maintenance of underground and overhead public utilities.
 - (4) The construction and maintenance of a new roadway or driveway of minimum legal and practical width (provided general performance standards for alteration are met).
 - (5) Maintenance and improvement of existing public roadways.
 - (6) The excavation of wildlife impoundments, farm ponds and ponds for fire protection.
 - (7) The maintenance of beaches and boat launching ramps which existed on April 1, 1983; documentation of such is the responsibility of the applicant.
 - (8) The maintenance, repair and improvement (but not substantial enlargement) of structures, including dams and reservoirs which existed on April 1, 1983. When water levels are drawn down for the maintenance, repair or improvement of dams or reservoirs or appurtenant works to such dams or reservoirs, water levels that existed immediately prior to such projects being undertaken shall be restored upon completion of the work, and a new notice of intent need not be filed for such restoration.
 - (9) The construction and maintenance of catwalks, footbridges, wharves, docks, piers, boathouses, boat shelters, duck blinds, skeet and trap shooting decks and observation decks; provided, however, that such structures are constructed on pilings or posts so as to permit the reasonably unobstructed flow of water and adequate light to maintain vegetation.
 - (10) The routine maintenance and repair of road drainage structures, including culverts and catch basins, drainage easements, ditches, watercourses and artificial water conveyances to insure flow capacities which existed on April 1, 1983.
 - (11) Lake drawdown projects (except those related to the breaching of a dam or a reservoir or an appurtenant work to such dam or reservoir) undertaken in response to written orders or recommendation letters issued by the Department of Environmental Management, Office of Dam Safety (DEM). In no event shall a drawdown continue longer than three years without a new or extended order of conditions being obtained. Water levels that existed immediately prior to such drawdowns shall be restored no later than the expiration date of the order of conditions or any new or extended order of conditions, and a new notice of intent need not be filed for such restoration.
 - (12) The exploration, development, construction, expansion, maintenance, operation and replacement of public water supply wells or wellfields (including necessary associated roads, ways, structures and underground and overhead utility lines).
 - (13) The closure of landfills.
 - (14) Assessment, monitoring, containment, mitigation and remediation of, or other response to, a release or threat of release of oil and/or hazardous material solely to reduce contamination to a level lower than that which is needed to achieve "no significant risk" as defined in 310 CMR 40.0006.
- D. The Commission may issue an order of conditions for projects which will improve the natural capacity of a resource area(s) to protect the interests identified. No such project may be permitted which will have any adverse effect on specified wildlife habitat sites of rare or state-listed vertebrate or invertebrate species. Such projects include, but are not limited to, the removal of aquatic nuisance vegetation to retard pond and lake eutrophication and the thinning or planting of vegetation to improve habitat value.

§ 365-3.6. Title 5 Sanitary Code requirements.

A. Title 5.

- (1) Subsurface sewage disposal systems are to be constructed in compliance with the requirements of 310 CMR 15.00 or the more stringent Town of Sturbridge Board of Health requirements. Approval for compliance with Title 5 will be deferred to the local Board of Health.
- (2) Impacts from the construction of said systems are not deferred and must be brought before the Commission. Impacts from construction shall be minimized by the placement of erosion and sedimentation controls during excavation and soil transfer, by limiting the placement of fill, by confining the removal of vegetation to that necessary for the footprint of the system and by taking other measures deemed necessary by the Commission.

B. Percolation (perc) testing.

- (1) The Conservation Commission Agent shall sign off on all perc test applications that are submitted to the Board of Health. The plan attached to said application shall show any wetland or resource areas on site or within 200 feet of the proposed perc location(s). The proximity of the test pit location to the resource area shall be identified on the plan. The plan should include the proposed access to the perc site and approximate linear distance from the access drive to the resource area. Potential impacts to soils or vegetation must be noted. Time and day of the scheduled perc test must be noted. A contact name and phone number or address must be included. The perc site must be staked in the field (colorful indicators are appreciated). It is understood that this plan will not be considered a formal wetland delineation, nor will it be considered an approved site plan by the Commission. It is a field indicator, which the Commission can use to prevent impacts to resource areas prior to any formal Commission review process. The Commission understands the need for the perc process to precede the design and permit application process. The SCC still has the responsibility to prevent adverse impact to resources, regardless of whether a future permit will be filed.
- (2) As needed, a Commission representative will visit each site as quickly as possible to verify the details of the plan submitted. For sites for which access comes within 50 feet of a resource area, a Wetland Protection Act permit will be required. (A minimum of a two-week notice is required to schedule a site visit.) Plans for sites which must cross a resource area to access a perc location must be filed as a request for determination with the Commission. (The applicant should plan to follow the four- to six-week standard public hearing permit time schedule.) Sites where the perc location is more than 100 feet from a resource, and where the access location is more than 50 feet from any resource, may proceed with the perc test even if a representative of the Commission has been unable to get to the site prior to the scheduled test.
- (3) Applicants should be aware that if wetland soils or vegetation is disturbed on a site because a submitted plan incorrectly described the site, the Commission will consider this a self-imposed hardship on the part of the applicant and issue an immediate cease and desist order to the property owner and contractor. All work on site will stop and no further work of any kind will be allowed until full restoration and remediation is realized in the resource area and buffer, regardless of future plans for the site. This remediation process will take a year or more as vegetation and soils do not quickly recover from disturbance and damage.
- (4) Accordingly, it would be in the best interest of applicants to keep clear of wetlands and resource areas in planning perc locations. If it is necessary to impact resource areas, plans should clearly and accurately reflect this.

§ 365-3.7. Stormwater standards.

- A. Minimum stormwater standards to be implemented for the Town of Sturbridge Conservation Commission

purposes shall include the following, where appropriate: Sediment forebays are required in all stormwater basins (i.e., detention basins, infiltration basins, etc.); sediment traps; oil and grease traps, and hoods in all catch basins; check dams; stabilized construction entrances through the use of trap rock or other similar products; multi-chamber catch basins; all systems shall provide for slow release of stormwater and runoff into receiving waters or drainage systems.

- (1) To facilitate the percolation of runoff through the soil to groundwater and to help reduce stormwater runoff and reduce pollutant migration, infiltration basins and pervious surfaces shall be utilized, wherever possible.
- (2) Vegetative features that maintain and improve natural site hydrology shall be implemented where possible. These include but are not limited to grassed swales, vegetated filter strips/buffers or rain gardens and detention basins.

B. Federal Phase II stormwater requirements.

- (1) All single projects disturbing an area equal to or greater than one acre, whether the work is contiguous or not, shall comply with Federal Phase II stormwater requirements. For stormwater considerations, developments, whether subdivisions or not, on lands subdivided after January 1, 2002, shall be considered a single project. Developments or projects, whether subdivisions or not, owned in common by an individual, a corporation or a group of individuals with a common interest, with adjacent or bordering lot lines, shall be considered a single project. This includes multiple ANR lots.
- (2) Stormwater controls shall be implemented for all projects to meet Phase II standards during the course of construction as well as for post-construction. To prevent erosion from leaving the site, best management practice measures shall include trap rock at all entrances and exits from the property until said entrances are permanently stabilized.

C. 80% total suspended solids (TSS) removal for new construction. 80% TSS removal is to be considered the absolute minimum. Understanding that removal rate decreases with the age of the system, the expected target for initial removal for new projects shall be in excess of 90% TSS removal. Stormwater maintenance plans must be submitted to and approved by the DPW Director before the SCC will accept them. DPW approval shall be indicated by signature and date from the DPW Director.

D. 80% TSS removal for previously developed sites. For redevelopment of previously developed sites, applicants must take every measure available to reach the highest possible TSS removal for the entire site. Applicants must document and present scientific evidence why the site cannot meet a minimum of 80% removal before a waiver from these regulations will be granted.

§ 365-3.8. Application of herbicides, pesticides, fertilizers or salt.

A. The Commission prohibits the use of pesticides, fertilizers and herbicides within the 100-foot buffer and prohibits the use of salts, quick-release pesticides, quick-release fertilizers and quick-release herbicides within the 200-foot buffer.

B. The only exemptions to these regulations are the application of herbicides within the buffer zone to a resource area, and application of salt in areas for the express interest of public safety where no other measures are adequate or practicable. The herbicide exemption applies only if the work is performed in accordance with such plans as are required by the Department of Food and Agriculture pursuant to 333 CMR 11.00 and is applied by a Massachusetts state-licensed applicator. Rights-of-way management shall apply only if the person proposing such activity has requested and obtained a determination of the boundaries of the buffer zone and areas subject to protection and has submitted that determination as part of the vegetation management plan. The salt exemption must be brought before the Commission using an RDA application prior to seasonal needs. Such exemptions are allowed for public utilities for work on structures or facilities used in the service of the public. Notification of aquatic or terrestrial herbicide treatment, to the Commission,

the local Board of Selectmen and local Board of Health is required at least 30 days in advance of the treatment.

§ 365-3.9. Consultant services.

- A. Upon receipt of any permit application (wetland bylaw permit, tree removal permit application, notice of intent, notice of resource area delineation or request for determination), or at any time during the hearing process, the Conservation Commission is authorized to require the applicant to pay for the reasonable costs and expenses of any consultant(s) deemed necessary by the Commission to review the application. These costs and expenses shall be paid directly to the Town of Sturbridge by the applicant, to be deposited in an agency account by the Town Treasurer. The Commission or its representative shall then authorize payment to the consultant after submittal and acceptance of documentation of said review. The exercise of discretion by the Conservation Commission in making a determination that outside consultant expertise is required shall be based on its reasonable finding that additional information or verification acquirable only through outside consultants would be necessary for the making of an objective decision. The specific consultant services may include, but are not limited to, performing or verifying area survey and delineation; analyzing wildlife habitat evaluations, hydrogeologic and drainage analysis; and researching environmental or land use law.
- B. For all subdivision projects and commercial/industrial projects, the Commission may require a peer review as a matter of course for all delineations, proposed infrastructure, drainage calculations, proposed mitigation areas, construction sequence and associated work.
- C. The Conservation Commission or its Agent will solicit three quotes by qualified consultants. The Commission, or, if appointed, its Agent, will choose a consultant to independently review the submitted material and make recommendations for revisions to ensure the application complies with all applicable state and local laws administered by the Conservation Commission.

§ 365-3.10. Security requirements.

As part of any permit issued under these regulations, in addition to any security required by any other municipal or state board, agency or official, the Conservation Commission may require that the performance and observance of the conditions impose hereunder be secured wholly or in part by one or more of the methods described below:

- A. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of both the Commission and the Town of Sturbridge DPW Director. This bond may be held in common with another Town board or agency for which the same restoration work is being bonded. Written, signed agreement that both boards will sign off prior to release of funds will be required.
- B. By a conservation restriction, easement or other covenant approved by both the Commission and the Department of Environmental Management, where applicable, which is enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of Sturbridge whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.
- C. If a lot covenant is used in place of a bond, the minimum allowed will be 150% of the market value of the designated lots deemed equivalent to the current cost of restoration as stated by the Town DPW Director. This is to account for possible downward fluctuation in market value during the course of the project.

§ 365-3.11. Self-imposed hardships.

- A. A self-imposed hardship is a circumstance brought on by decisions made by the landowner, such as:
 - (1) Failure to consider wetlands when subdividing land.
 - (2) Selling off upland access which results in a project that cannot meet performance standards.

- (3) Purchasing land knowing that all upland access to the property interior had previously been subdivided off.
- (4) Disregarding impacts to the resource area.
- B. The applicant or landowner is advised to prevent situations where they may create their own hardship by not carefully considering all likely impacts to areas subject to the Wetland Protection Act or the Sturbridge Wetlands Bylaw and Regulations.
- C. Projects may not be segmented in such a way that would limit the ability of the Conservation Commission to review all options and alternatives and take into consideration the resource area impacts.
- D. The applicant must disclose full development plans, even if such plans are not required as part of the notice of intent process.
- E. In determining whether a self-imposed hardship has been created, the SCC shall take into account whether alternatives exist/existed, including any lots currently or formerly owned by an applicant, and any other land which can be reasonably obtained.
- F. No special consideration will be given for not being aware of the requirements of the Wetlands Protection Act, 310 CMR 10.00, the Town of Sturbridge Wetlands Bylaw, the Town of Sturbridge Conservation Commission Regulations or Policies or any part thereof.
- G. No special consideration will be given for self-imposed hardships. No special consideration will be given for not being aware of the requirements of the Wetlands Protection Act, 310 CMR 10.00, the Town of Sturbridge Wetlands Bylaw, the Town of Sturbridge Conservation Commission Regulations or Policies or any part thereof. No special consideration will be given for those who seek and obtain Planning Board subdivision approval and partially develop parcels, lots or projects of any type prior to delineating and determining resource area boundaries and the 200-foot buffer zone to same.

§ 365-4.1. Actions by Conservation Commission.

- A. Any action by the Conservation Commission is to be taken by a majority of the members present at a meeting. A meeting must be attended by a quorum of Commissioners. A quorum is defined as a majority of the members then in office. The Town of Sturbridge Commission has five appointed members; three must be present. A majority of Commissioners in office must vote in favor of a project for it to be approved. The previously held standard for Conservation Commission approval was that a vote of a majority of the Commissioners present would approve a project.
- B. Where an order or notification shall be signed by a majority of the Conservation 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, provided they met pursuant to the Open Meeting Law when voting on the matter. The administrative clerk, Agent, a member of the Conservation Commission or an individual designated by the Conservation Commission may receive requests or notices, conduct site visits on behalf of the Commission and act on administrative matters.
- C. Orders of conditions and determinations of applicability shall be signed by a majority of the Conservation Commission. Copies shall be sent by the Conservation Commission to the DEP, the applicant or their legal representative and the property owner. Delivery of the copy to the person making the request shall be by hand delivery or certified mail, return receipt requested. Said permit shall be valid for three years from the date of issuance. Orders of conditions and determinations of applicability issued for utility company right-of-way management shall be valid throughout the effective duration of the vegetation management plan. Wetlands Bylaw permits and tree removal permits are valid for one year unless otherwise specified by the Commission at date of approval and issuance. Amended orders of conditions do not extend the expiration date of the original final order. Extensions of orders of conditions may be granted for up to three years at the discretion of the Commission. Determinations cannot be extended.
- D. Continuation of public hearings.
- (1) At the discretion of the Commission, public hearings may be continued as follows:
 - (a) For the purpose of the applicant obtaining and presenting additional information.
 - (b) If the applicant does not request a continuation in advance of the hearing, or is not present to request a continuation at the public hearing, the hearing may be closed and a decision rendered based on the information available to the Commission at that time.
 - (2) The date, time and place certain of said continued hearing shall be stated at the public hearing and notice posted on the Commission office board and the Town Clerk's office board at least 48 hours prior to the continuation date.

§ 365-4.2. Time periods.

All time periods of 10 days or less shall be computed using business days only. In the case of a determination or order, such period shall commence on the first day after the date of issuance and shall end at the close of business on the 10th business day thereafter. All other time periods specified in MGL c. 131, § 40 and 310 CMR 10.00 and the Town of Sturbridge Wetlands Bylaws 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.

§ 365-4.3. Grandfathering.

- A. Any projects possessing a valid order of conditions, or other permit, issued under the Massachusetts Wetlands

Protection Act at the time of adoption of these regulations shall not be subject to re-review under these regulations. Any revisions to the projects after adoption of these regulations that require an amended or extended permit will be subject to review under these regulations.

B. Effective dates of regulations.

- (1) Inlands Wetlands Protection Act ("Hatch Act"): 1965.
- (2) Wetlands Protection Act (MGL c. 131, § 40): 1972.
- (3) Wetlands Protection Act Regulations: April 1, 1983.
- (4) Agricultural: May 21, 1993.
- (5) Endangered Species Act: June 30, 1995.
- (6) Bordering vegetated wetland protection: April 23, 1993.
- (7) Areas of critical environmental concerns: April 23, 1993.
- (8) Rivers Protection Act: August 7, 1996.
- (9) Town of Sturbridge Wetlands Bylaw: October 6, 1996.
- (10) Rivers Protection Act Regulations: October 6, 1997.
- (11) Town of Sturbridge Wetlands Bylaw Regulations: adopted November 22, 2002; Revision 1 adopted February 14, 2004.

§ 365-4.4. Public hearing notification requirements.

- A. Public hearing notification is required for all Wetlands Protection Act filings. See Article VII of these regulations for complete application requirements.
- B. The applicant is responsible for the publication of a legal notice of the public hearing review of the application, including time and place, in a newspaper of general circulation in the Town, not less than five days prior to the meeting.
- C. The Commission shall also require that the applicant mail a letter, giving notice to the abutter(s) within 200 feet of the project, proof of which shall be submitted to the Conservation Commission at the opening of the public hearing. The notice mailed shall be the standard notification to abutters form available online from the Town of Sturbridge website, the DEP website or through the Commission office. Proof of mailing shall be in the form of a certificate of mailing or certified letter return receipt (green card) from the USPS.

§ 365-4.5. Requests for determination of applicability.

- A. A request for a determination of applicability is filed when the Commission needs to determine whether or not a given area, or planned work in said area, is subject to the Wetlands Protection Act or Sturbridge Wetlands Bylaw. In order for the Commission to make a site visit for an accurate determination, applicant must submit sufficient information for the Commission to find and view the area.
- B. For work within riverfront areas, an applicant may submit a request for determination of applicability to identify the scope of alternatives to be evaluated, including sufficient information to enable the Conservation Commission to determine the applicable scope. Actual project work within the 200-foot riverfront resource area requires the filing of a notice of intent.
- C. If the area or work is in or near an area subject to protection under the Wetlands Protection Act, the applicant may submit a request for determination of applicability. If the area or work (proposed) is outside of the

Wetlands Protection Act jurisdiction, then bylaw permits are recommended and may be required.

§ 365-4.6. Determination of applicability.

Within 21 days of receiving a complete request for a determination of applicability, the Conservation Commission shall open a public hearing (or obtain written permission from the applicant for a time extension) with the purpose of reviewing the application, conducting a site visit to confirm the information submitted and issuing a determination of applicability. The Commission shall issue a determination within 21 days of the close of the public hearing or obtain permission at the public hearing or in writing from the applicant or applicant's representative for a defined time extension to issue said determination.

§ 365-4.7. Notices of intent.

- A. Any person who proposes to do work that will remove, fill, dredge, build upon, degrade, discharge into or otherwise alter any area subject to protection shall file a notice of intent and other application materials in accordance with the submittal requirements set forth in the instructions for completing notice of intent in the NOI application packet. Two copies of the completed notice of intent, with supporting plans and documents, and including digital versions, shall be sent by certified mail or hand delivered to the Conservation Commission, and one copy of the same shall be sent concurrently to the DEP. Copies must also be sent to NHESP (Natural Heritage and Endangered Species Program) when work is being proposed within areas designated as potential habitat for rare and endangered species by NHESP.
- B. The following provisions shall apply to any notice of intent whenever filed. The Commission may require that supporting plans and calculations be prepared and stamped by a Massachusetts registered professional engineer (PE) when, in its judgment, the complexity of the proposed work warrants this professional certification. The Commission may also require the preparation of supporting materials by other professionals, including, but not limited to, registered landscape architect, registered land surveyor, environmental scientist, geologist or hydrologist, when, in its judgment, the complexity of the proposed work warrants the relevant specialized expertise.

§ 365-4.8. Orders of conditions regulating work and orders of resource area delineation.

- A. Orders of condition.
 - (1) The Conservation Commission shall issue an order of conditions within 21 days of the close of the public hearing, unless written or verbal permission for an extension is given by the applicant, the applicant's representative or the landowner during the public hearing.
 - (a) Findings. For work in a resource area or buffer zone, consult the "presumption" of significance for each resource area and identify applicable interests of the Wetlands Protection Act and Wetlands Bylaw that apply.
 - (b) For each order of conditions, the Commission must issue a decision that approves or denies under both the Wetlands Protection Act and the Sturbridge Wetlands Bylaw. The Commission may approve the order under the Wetlands Protection Act and deny under the Sturbridge Wetlands Bylaw.
 - (2) The Commission must first make a decision on whether the proposed plan can be approved under the Wetlands Protection Act.
 - (a) The Commission may:
 - [1] Approve with general conditions, and attach special conditions under the Wetlands Protection Act and Sturbridge Wetlands Bylaw;

- [2] Deny under the Wetlands Protection Act if the proposed work does not meet the performance standards, citing which performance standards have not been met;
 - [3] Deny under the Wetlands Protection Act if there is a lack of information necessary for making a decision per 310 CMR 10.05(6)(c), citing what information is lacking and necessary for the Commission to make a decision.
- (b) The Commission must determine the resource area impacts being proposed, the permitted alteration based on WPA performance standards, proposed and permitted replacement.
 - (c) The Commission must make a decision as to whether or not the proposed plan can be conditioned to meet the standards set forth in the municipal ordinance.
 - (d) If denied under both the Wetlands Protection Act and the Sturbridge bylaw, the applicant appeals to DEP for a superseding order of conditions under the Wetlands Act, and appeals to the Worcester County Superior Court for the bylaw.
 - (e) If the Commission approves the plan under the Wetlands Protection Act, but denies under the Sturbridge Wetlands Bylaw, the applicant appeals only to Worcester County Superior Court.
- (3) An order of conditions or notification of non-significance shall be valid for three years from the date of its issuance except where otherwise specified. No order shall be deemed expired when an appeal is pending.
- B. Orders of resource area delineation. The Commission must determine whether the boundaries described in the referenced plans were accurately drawn for bordering vegetated wetlands and any other resource areas.
 - C. Recording documents with the Registry of Deeds. It is the responsibility of the applicant to record orders of condition, orders of resource area delineation, and certificates of compliance with the Worcester Registry of Deeds, and provide the proof of recording back to the Sturbridge Commission.

§ 365-4.9. Combined permit applications.

- A. Combined application to the Conservation Commission for work regulated under the WPA and local Wetlands Bylaw may take the form of a request for determination of applicability (WPA Form 1) or a notice of intent (WPA Form 3).
- B. Permits may be combined for both the local bylaw and WPA using either a determination of applicability (WPA Form 2) or an order of conditions (WPA Form 5) as appropriate for the project.

§ 365-4.10. Site visit requirements and timing of delineations and resource verification.

- A. Site visit requirements.
 - (1) After permit applications are received, the Commission (or an agent or a representative) will conduct a visit to the site before the scheduled public hearing. The applicant and/or landowner is required to prepare the site for this visit by clearly flagging or marking the following areas:
 - (a) The boundary of the resource area.
 - (b) The corner and angle points of proposed buildings, wetland crossing or other relevant aspects of the proposed project.
 - (c) The limits of disturbance/erosion control line.
 - (d) The twenty-five-foot, fifty-foot, 100-foot and 200-foot buffer zone lines.

- (2) Failure to have the site properly marked for a site visit may delay any decision by the Commission, or may be considered grounds to deny the project. An applicant may request a time extension for the Commission to conduct additional site visits. The reasonable time extension must take into account the volunteer status of the Commissioners, and the Commission's conservation-related work load, at the time of the public hearing in question.
- (3) After receiving a permit from the Commission and prior to the start of any work, the erosion control shall be installed on the site as agreed to as submitted and approved by the Commission. The Commission shall be given seven calendar days' notice to inspect the erosion control and request changes. After that time period, the applicant may start work and the inspection and possible requests for changes in the erosion control will be made at the Commission's earliest convenience.
- (4) Prior to any work commencing on site, a DEP sign showing DEP File #300-XXX must be installed at the entrance to the site and be clearly visible from the public way, but not placed on a living tree. Per DEP regulations, this sign must be no smaller than 24 inches by 24 inches, and no larger than 36 inches by 36 inches. For a letter permit issued through the SCC, this sign should read "SCC ## - ##".
- (5) For phased projects, the applicant shall hold pre-construction briefings with the Commission and/or its representative prior to each major phase of work, i.e., erosion control installation, tree clearing, grading, roadway construction, etc.

B. Timing of delineations and resource verification.

- (1) Timing of submittal of proposed plans shall allow for seasonally appropriate resource area delineations and verification of resource areas such as stream status, vernal pool viability or mean annual high water mark for perennial streams. Failure to submit applications with seasonal verification constraints at appropriate times of the year may result in a request by the Commission to continue the public hearing until the appropriate time of year for the project specific review, in a permit which requires a minimum of a 200-foot protective buffer around the resource in question, or in a denial of the proposed project.
- (2) In the case of challenges to the presumption of vernal pool habitat, the Conservation Commission may require that the determination be postponed until the appropriate time period consistent with the evidence being presented. The Commission will either require its own site visits to confirm the evidence or rely on a neutral, third-party qualified consultant at the applicant's expense.
- (3) In the case where precise field verification is necessary to confirm a proposed delineation, the Conservation Commission may require that the delineation be postponed until an appropriate time period where weather conditions allow verification of evidence being presented. The Commission will either require its own site visits as necessary to confirm the evidence, or rely on a neutral third-party qualified wetlands consultant at the applicant's expense.

§ 365-4.11. Extensions or expiration of orders of conditions and determinations of applicability.

- A. The Commission may extend an order of conditions for one or more periods of up to three years each. The request for an extension shall be made to the issuing authority at least 30 days prior to expiration of the order. The extension permit shall be signed by a majority of the Commission.
- B. Extension permits will only be granted for those projects which meet current state and local regulations. Extensions will not be allowed for projects which do not meet regulations, unless the project is also amended and modified to come in compliance with said regulations. Any review by the Commission for an extension to an approved project will be based on the regulations in effect at the current time.
- C. 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, 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 the order was issued, has become available and indicates that the order is not adequate to protect the interests identified;
 - (3) Where incomplete work is causing damage to the interests;
 - (4) Where work has been done in violation of the order, MGL c. 131, § 40, 310 CMR 10.00, the Town of Sturbridge Wetlands Bylaw or these regulations.
- D. The extension permit for orders of conditions shall be recorded in the Worcester Land Court or the Worcester Registry of Deeds, whichever is appropriate. Proof of recording shall be sent to the Commission prior to the start of any further work. If work is undertaken without the applicant so recording the extension permit, the Commission may issue a cease and desist order, or may itself record the extension permit.

§ 365-4.12. Certificates of compliance.

- A. Upon completion of the work described in a final order of conditions, the applicant shall request in writing the issuance of a certificate of compliance stating that the work has been satisfactorily completed.
- B. In order to review a request for certificate of compliance, the Commission will need the following information:
 - (1) Completed request for certificate of compliance form.
 - (2) Proof of substantial compliance with the plan approved by SCC:
 - (a) A written statement from an appropriate registered professional, certifying substantial compliance with the approved plan and the order of conditions; or
 - (b) An "as built" plan, also signed and stamped by the above-named professional, showing all features in their "as built" location.
- C. Upon receipt of a complete request, the Commission or its Agent will conduct a site visit verifying compliance with the plan and stability of the site. The Commission has a period of 21 days within which to hold a review of the request for a certificate of compliance during public meeting. A certificate of compliance shall be issued within 21 days of receipt of the request and shall certify that the activity or portions thereof described in the order of conditions and plans have been completed in substantial compliance with the order. The certificate of compliance shall indicate any ongoing condition required by the order of conditions. The certificate of compliance shall be signed by a majority of the Commission.
- D. If the issuing authority determines, after review and inspection, that the work has not been done in compliance with the order, it may refuse to issue a certificate of compliance. Notification of denial shall be issued within 21 days of receipt of a request for a certificate of compliance, it shall be in writing and it shall specify the reasons for denial.
- E. The Commission will decline to issue a certificate of compliance until the project site is fully stabilized and any replication or restoration areas are deemed successful by the Commission. The certificate of compliance shall specify any ongoing conditions.
- F. 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 the work regulated by the order.
- G. The certificate of compliance shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate. Proof of recording shall be sent to the Commission.

§ 365-4.13. Waivers.

- A. The Commission shall have the power to issue a waiver to an applicant requesting to perform activities as described in § 365-1.1 of this Town of Sturbridge Wetlands Bylaw Regulation after said applicant files a notice of intent with the Commission and the Commission conducts a public hearing. Such waiver shall be set forth by the issuance of an order of conditions by the Commission.
- B. In order for the Commission to issue a waiver, the Commission must find, based on clear and convincing evidence set forth by the applicant, that a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the applicant. Such a finding would be based upon a review of circumstances relating to soil conditions, hydrological conditions and topography of such land, as well as a conviction that such a decision could be granted without detriment to the values or purposes protected by the Wetlands Bylaw Regulations.
- C. A waiver (as stated above) to the fifty-foot "no build" and the twenty-five-foot "no disturb" buffer, may also be granted to applicants under the following circumstances: the area is previously disturbed and the proposed project will improve the protection to the resource area; or the applicant can prove with documented evidence that there are no other substantially equivalent alternatives available. The applicant must show that measures will be incorporated into the project to ensure that there will be no negative impact to the resource area and must provide additional layers of protection equivalent to the value of the resource buffer being altered.
- D. Single-family homes, existing prior to the adoption of these regulations, on small, lakefront lots, may, on a case-by-case basis, be granted a partial waiver from the twenty-five-foot and fifty-foot buffer requirements. Granting of a waiver will be based on the minimum criteria noted in § 365-1.1.

§ 365-4.14. Emergencies.

Emergency projects necessary for the protection of the health and safety of the public are not bound by the permit and application process of this bylaw regulation. Notice of an emergency situation, oral or written, must be provided to the Conservation Commission, its Agent or any single Commissioner prior to commencement of any work being performed or within 24 hours after said work has begun. The Conservation Commission, its Agent or any single Commissioner must certify the work as an emergency project, and can act at the immediate onset of the emergency. The emergency certification must then be ratified by a majority of the Conservation Commission at the next regular meeting.

- A. Work must be performed (or ordered to be performed) by an agency of the Commonwealth or the Town of Sturbridge.
- B. Work will be performed only for the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency.
- C. Protective measures such as erosion controls or stormwater management required by the Conservation Commission must be in compliance with regulations.
- D. A permit application must be filed with the Commission within 21 days of the commencement of the emergency project.
- E. The Commission may, at its discretion, conduct a site visit to view the work being performed and to confirm that the information in the notice is correct.

§ 365-4.15. Appeals to DEP and Massachusetts Superior Court.

- A. Regarding state regulations. Those aggrieved by the Commission's actions based on the Wetlands Protection Act or the Riverfront Protection Act may appeal to DEP and request that DEP issue a superseding determination of applicability or order of conditions. This appeal must be made within 10 business days of

the issuance of the order.

- B. Regarding local bylaw regulations. Those aggrieved by the Commission's actions based on the Sturbridge Wetlands Bylaws may contest the Commission's decision through Massachusetts Superior Court. This appeal must be made within 60 calendar days of the issuance of the order.
- C. The following persons may request an appeal from the DEP or Superior Court:
 - (1) The applicant.
 - (2) The owner, if not the applicant.
 - (3) Any person aggrieved by an order.
 - (4) Any owner of land abutting the land on which the work is to be done.
 - (5) Any 10 residents of the city or town where the land is located.
 - (6) The Conservation Commission
 - (7) The Department of Environmental Protection.

§ 365-4.16. Enforcement and cease and desist orders.

- A. Orders.
 - (1) Enforcement orders or cease and desist orders are issued when it is found that an activity is in violation of the Massachusetts Wetlands Protection Act or its regulations, or the Town of Sturbridge Wetlands Bylaw or regulations or a final order by the SCC.
 - (2) Such orders may be issued by the Sturbridge Conservation Agent, or any of the sitting Commissioners, or directly by the DEP or the Division of Law Enforcement of the Department of Fisheries, Wildlife and Environmental Law Enforcement (DFWELE).
- B. Violations.
 - (1) Violations include, but are not limited to:
 - (a) Conducting activities within a buffer zone or a resource area without a permit;
 - (b) Conducting work which has an adverse impact on a resource area;
 - (2) For permitted projects, violations can include:
 - (a) Failure to comply with a final order of conditions;
 - (b) Failure to complete work described in a final order of conditions;
 - (c) Failure to obtain a final order of conditions or extension permit.
- C. A final order of conditions may be enforced by the Conservation Commission, its Agent or any individual Commissioner, or designee authorized by the Commission (the Board of Health Agent, the Building Inspector or the Police Department), or the DEP. The members, officers, employees and agents of the Conservation Commission and the DEP may enter upon privately owned land for the purpose of performing their duties under MGL c. 131, § 40, 310 CMR 10.08(2) and the Town of Sturbridge Wetlands Bylaws. Entry onto private property by Town officials or their agents may only take place with the owner's consent or pursuant to an administrative search warrant.
- D. Enforcement orders shall be signed by a majority of the Commission, unless deemed an emergency. An

emergency allows a single Commissioner or the Agent to take immediate action. Consultation with other Commissioners is encouraged. Said order shall then be ratified by a majority of the Commission at the next scheduled meeting or be considered invalid.

- E. Owners of land on which violations occur will receive written notice of the violation, what measures are to be taken and the day and time on which the owner or the owner's representative is to meet with the Commission. These meetings will usually be held during the next scheduled public meeting. However, in the case of serious impact or threat of immediate serious impact to a resource area, the Commission may schedule the meeting at the earliest possible date. Determination of serious impact will be at the discretion of a majority of the Commission. Failure to attend the meeting scheduled or to notify the Commission and arrange an alternative acceptable time will result in a cease and desist order being issued at the stated meeting time and date. Failure to respond to the cease and desist order will result in the issuing of an enforcement order. Said enforcement order will not be waived until the property and the violation are completely mitigated and restored, and approved by the Conservation Commission.
- F. Any person who violates the provisions of the Sturbridge Wetlands Bylaw, rules and regulations thereunder, or permits issued thereunder, shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw, rules and regulations, and permit violated shall constitute a separate offense.
 - (1) Activities deemed to be violations of wetland/conservation laws, bylaws or regulations, requiring the Commission to initiate enforcement actions, will have penalties imposed.
 - (2) Fines may be issued to both homeowners and contractors. The SCC has the right to fine any contractor for work done without a permit, or for any other violation of the WPA or Sturbridge Wetlands Bylaw, the same as a homeowner.
 - (3) Fines shall be issued and collected using noncriminal disposition. Failure to respond may result in additional enforcement actions.
- G. The SCC also has the right to consider all circumstances surrounding a violation, and may, at its discretion, choose to suspend some or all of fines imposed for any violation.
- H. The Commission may also, at its discretion, elevate the offense to the Massachusetts Department of Environmental Protection, which could result in criminal charges depending upon the severity of the action.

§ 365-4.17. Fees.

The following fees pertain to local bylaw review and are in addition to those required under the Wetlands Protection Act; amounts will be set by the Conservation Commission. Additional fees for other applications or requests may be imposed and set by the Sturbridge Conservation Commission.

- A. Requests for determination. A local filing fee, made payable to the Town of Sturbridge as a separate check, shall accompany all requests for determinations.
- B. Resource area delineations. A local filing fee shall accompany all state permit filings where resource area boundary confirmation or work occurs within the 100-foot buffer zone. If a resource area delineation has not been made and approved by the Commission within the three years prior to the submittal of an application, delineation will automatically become part of the project application. Delineations are valid for three years or for the life of the active permit. A local fee, made payable to the Town of Sturbridge, as a separate check, shall be paid by the applicant, whether the delineation is filed as a notice of intent, a request for determination, or a request for resource area delineation.
- C. Notices of intent. A local fee made payable to the Town of Sturbridge, submitted on a separate check from any NOI filing fees, shall accompany all NOI filings.

- D. Certificate of compliance. A local filing fee made payable to the Town of Sturbridge as a separate check shall accompany all requests for certificates of compliance.
- E. Replication, mitigation monitoring. A local fee to cover the Town's cost for monitoring replication or mitigation areas over the five years normally required to monitor these areas, made payable to the Town of Sturbridge, submitted on a separate check, shall accompany all proposals for which replication or mitigation is proposed.
- F. Site visits. The Commission shall not impose additional fees for site visits unless more than one public-hearing-related site visit is required due specifically to an applicant's failure to properly mark the site or prepare the plan in accordance with § 365-4.10 of these regulations. In this circumstance, to cover the Town's cost and to account for the inconvenience imposed on the Commission and staff, a fee shall be submitted for each site visit necessary due to an applicant's negligence in preparing the field adequately. Multiple site visits necessitated by project complexity or the Commission's discretion to revisit the site will not be charged an additional site visit fee. Failure to submit the fee will result in denial due to incomplete project application.
- G. Waivers. The Conservation Commission may waive the local filing fee for an application or request filed by a government agency, and may waive the filing fee for a request for determination of applicability filed by a person with no financial connection to the subject property. Said request for waiver shall be made at the time of submittal of the application.
- H. General permit.
 - (1) Applications will not be considered complete unless all local and state fees are paid at the time of application submittal. The Conservation Commission shall notify the applicant, in writing, when the correct filing fee has not been paid to the Town and the filing is therefore incomplete. Said notification shall specify the correct fee amount. The fee will be based on the original project design as proposed in the notice of intent, the request for determination or the request for resource area delineation and based on any changes or amendments made during the public hearing process which increase the size of the project. Rebates will not be given for projects which decrease in size during the public hearing, due to an applicant's failure to consider alternatives and reasonable use prior to the initial filing.
 - (2) In lieu of paying any disputed amount of the filing fee, the applicant may file a request for determination of applicability with sufficient information to enable the Conservation Commission to determine the extent of the area, or the type and extent of the activity, subject to protection under MGL c. 131, § 40. When a request for determination of applicability is filed by an applicant to resolve a dispute over the filing fee, all proceedings under the permit filed with the SCC shall be stayed until all appeal periods for the determination have elapsed or, if the determination is appealed, until all proceedings before the DEP or Superior Court have been completed. A final determination of applicability as to the area, or the type and extent of the activity, subject to protection shall be binding on all parties and shall be used in calculating the fee.

§ 365-4.18. Denial or permits or orders.

- A. The Conservation Commission is empowered to deny a permit:
 - (1) For failure to meet the requirements and performance standards of the Wetlands Protection Act and Regulations, 310 CMR 10.00, and Local Wetlands Bylaw and Regulations;
 - (2) For failure to submit necessary information and plans requested by the Conservation Commission;
 - (3) When the Conservation Commission determines that it is not possible to conduct the requested activity without unacceptable wetlands alterations.
- B. An order of conditions denial shall include:

- (1) Identification of missing requested information, as well as why it is important for the review;
 - (2) Specific reasons regarding why the project cannot be conditioned to protect the resource areas.
- C. Denials must be specific to either or both state and local bylaws and regulations.

§ 365-4.19. Requests for reclassification of streams.

- A. Intermittent stream. Generally, a body of running water which does not flow throughout the year has a watershed less than one square mile and is shown on the USGS topographic map as intermittent. If a stream is indicated on the USGS topographic map as perennial, the Conservation Commission may only consider finding a stream intermittent when an applicant has filed a request for determination of applicability and provided documentation meeting the provisions of 310 CMR 10.58(2)(a)1.d. A determination or finding of the stream as intermittent is only valid for three years (the life of the determination). Occasionally a body of running water, which does not flow throughout the year, is perennial (dryness may be due to drought, impoundment or other unusual or unnatural circumstances).
- B. Perennial streams/ivers. See § 365-5.5 for a complete and detailed definition and description of river or perennial stream.
- C. Stream reclassification requirements.
- (1) The SCC reserves the right to reconsider and overturn a reclassification before the three years has expired if newly available scientific data and evidence is obtained showing the stream to be perennial. This Commission discretion may occur at any time new evidence becomes available; such a finding invalidates a previously issued determination of applicability.
 - (2) In addition to the information required under the above-noted sections of the Wetlands Protection Act, the following additional evidence must be submitted by applicants requesting a reclassification of a stream as shown on current USGS topographical maps:
 - (a) Watershed (i.e., drainage basin) size at the point of the stream for which reclassification is being requested. (A watershed greater than one square mile shall be a strong indicator of a perennial stream or river. A watershed greater than 1/2 square mile with a stratified drift component of 75% or greater shall be a strong indicator of a perennial stream or river.)
 - (b) Rainfall data from at least three, triangulating, climatological data sources for the site.
 - (c) Current State of Massachusetts declared drought conditions for the specific area in question.
 - (d) Flowing water. Flowing water at the site in question shall be a strong indicator of perennial status. Lack of flowing water during unusually dry conditions (as determined by the Commission based on available rainfall data and observation of below-normal water level conditions) shall prohibit reclassification of a stream from perennial to intermittent until normal hydrological conditions exist. Proof of a dry streambed must be present for four consecutive days at a minimum of 24 hours' separation each (i.e., a minimum of 96 consecutive hours). Proof must be documented with field notes and dated, signed photographs. Any information provided must be provided by a credible and competent source (as determined by the Conservation Commission). A credible source is typically classified as a professional in the field with an associated master's degree or a bachelor's degree and three to five years of documented field experience.
 - (e) Impoundments created by beavers or man or evidence of withdrawal of water of any kind upstream from the point in question shall be cause to deny a change from perennial to intermittent unless and until the change has been corrected and normal flow conditions have resumed. In the instance of beaver activity, the applicant should note that beavers typically only build dams in response to running water, thus indicating a stream's perennial nature.

- (f) Soil type underlying the stream or watercourse channel.

§ 365-4.20. Resource area delineations and verification of replication areas.

Delineations, outside of those included in NOI filings, must use the ANRAD form. Both state and local filing fees apply. For delineations included in an NOI filing, local filing fees may apply. (See § 365-4.17.)

§ 365-4.21. Reports due.

- A. Failure to submit reports on time required in an order of conditions or other permit shall be cause for the Commission to issue a cease and desist order until all reports and site data have been submitted to the Commission office. Continued failure to submit said reports shall be deemed sufficient cause to revoke the permit issued due to failure on the applicant's or landowner's part to provide adequate assurance that the construction site is creating no potential or actual adverse impact to the resource area.
- B. All reports submitted by a third-party environmental reviewer shall include:
 - (1) The date a request for compliance is made.
 - (2) The response from the contractor.
 - (3) The date on which the contractor complied with the request.
 - (4) A site plan or locus.

§ 365-4.22. Revocation of permits.

Failure to comply with conditions in any permit issued by the Commission shall be cause to revoke the permit.

ARTICLE V

Resource Areas, Values, Presumptions of Significance and General Performance Standards**§ 365-5.0. General performance standards.**

- A. The following general performance standards shall apply for all resource areas:
- (1) No project shall lead to a violation of Massachusetts Water Quality Standards, on both numeric and narrative criteria.
 - (2) No project may have adverse impacts on habitat for rare or endangered species or on areas of critical environmental concern.
 - (3) No project will be allowed which will have an adverse impact on the interests noted for each resource area.
 - (4) Maximum allowable alterations are at the discretion of the Commission.
 - (5) Values other than those identified in this section may be determined to be significant to a resource area on a case-by-case basis. Should the Commission determine that additional values are significant based on best professional judgment, a written statement with detailed reasons for the determination shall be submitted to the applicant. An applicant has the right to challenge the additional presumed values based on a preponderance of scientific evidence.
 - (6) Failure to contain and control sedimentation and erosion on site and out of resource areas and restricted buffers may result in a cease and desist order at the discretion of the Sturbridge Conservation Commission. All work on site will be stopped until erosion control barriers are corrected and sediments are removed from resource areas, restricted buffer areas or impacted off-site areas.
- B. Additional performance standards may apply and are listed in the specific resource area sections below.

§ 365-5.1. Banks.

- A. Preamble. Banks are likely to be significant to public or private water supply, to groundwater supply, to flood control, to storm damage prevention, to the prevention of pollution, to the protection of fisheries and wildlife habitat. In addition to the interest protected by the Wetlands Protection Act, these bylaw regulations also serve to protect water quality, prevent water pollution and prevent erosion and sedimentation, protect rare species habitat and recreational values. Refer to 310 CMR 10.54(1) of the MA Wetlands Protection Act Regulations.
- B. Definition, critical characteristics and boundary. A "bank" is the portion of the land surface which normally abuts and confines a water body. It occurs between a water body and a vegetated bordering wetland and adjacent floodplain; or, in the absence of these, it occurs between a water body and an upland. A bank may be partially or totally vegetated, or it may be comprised of exposed soil, gravel or stone. The physical characteristics of a bank, as well as its location, are critical to the protection of the interests identified. 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 flow level.
- C. Presumption. Please refer to MA Wetlands Regulations in 310 CMR 10.54, Bank, Subsection (3), Presumption.
- D. General performance standards.
- (1) Any proposed work on a bank shall not impair the following:
 - (a) The physical stability of the bank;
 - (b) The water-carrying capacity of the existing channel within the bank;

- (c) Groundwater and surface water quality;
 - (d) The capacity of the bank to provide breeding habitat, escape cover and food for fisheries;
 - (e) The capacity of the bank to provide important wildlife habitat functions.
- (2) Where a proposed activity will remove, fill, dredge, build upon, degrade, discharge into or otherwise alter a bank, the Commission shall presume that such area is significant to the interests identified. This presumption 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 rebutted, the Commission shall make a written determination to this effect, setting forth its grounds.

§ 365-5.2. Vegetated wetlands (wet meadows, marshes, swamps and bogs, both bordering and isolated).

A. Preamble.

- (1) Vegetated wetlands are likely to be significant to: public or private water supply, groundwater supply, flood control, storm damage prevention, pollution prevention, fisheries and wildlife habitat. In addition to the interests protected by the Wetlands Protection Act, these bylaw regulations also serve to protect water quality, prevention of erosion and sedimentation control, rare species habitat and recreational values. Refer to 310 CMR 10.55(1) of the MA Wetlands Protection Act Regulations.
- (2) The plants and soils of vegetated wetlands remove or retain sediments, nutrients (such as nitrogen and phosphorous) and toxic substances (such as heavy metal compounds) that occur in run-off and floodwaters. Some nutrients and toxic substances are retained 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 impacts of nutrients and toxins until the cold weather period, when such impacts are less likely to reduce water quality.

B. Definition. Refer to MA Wetlands Protection Act Regulations, 310 CMR 10.55, Bordering Vegetated Wetlands (Wet Meadows, Marshes, Swamps and Bogs), Subsection (2), Definition, Critical Characteristics and Boundary. In addition to wetlands meeting the definition of vegetated wetlands under the Wetlands Protection Act, these regulations also serve to protect seasonal wetlands and isolated wetlands.

C. Presumption.

- (1) Where a proposed activity will remove, fill, dredge, build upon, degrade, discharge into or otherwise alter a vegetated wetland, the issuing authority shall presume that such area is significant to the interests identified.
- (2) This presumption may be overcome upon a clear showing that the vegetated 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 issuing authority shall make a written determination to this effect, setting forth its grounds.

D. General performance standards.

- (1) Please refer to MA Wetlands Protection Act Regulations, 310 CMR 10.55, Bordering Vegetated Wetlands (Wet Meadows, Marshes, Swamps and Bogs), Subsection (4), General Performance Standards.
- (2) In addition to being required to conform to the general performance standards listed in the Wetlands Protection Act, these regulations also require compliance with the following additional general performance standards:
 - (a) Wetland replication is to be considered as an absolute last resort in situations where all potential

alternatives have been explored and no other feasible options exist. Recent UMass Amherst studies have shown that replication has only been successful in 35% to 40% of the cases reviewed over the past 15 years.

- (b) Work which results in the loss of up to 5,000 square feet of vegetated wetland may be allowed at the discretion of the Commission under extreme conditions on a case-by-case basis when no other alternatives are possible. Such work would require 2:1 wetland replication, and any additional specific conditions the Commission deems necessary to ensure that the replication area will function in a manner similar to the area lost. Wetland replication regulations are detailed in Article VIII of these regulations.
- (c) Alterations or loss of wetlands will not be permitted in situations where the owner or applicant has created their own hardship.
- (d) No project may be permitted which will have any adverse effect on specified habitat sites of rare or state-listed species, as identified by procedures established under 310 CMR 10.59, Estimated Habitat for Rare Wildlife.
- (e) Any proposed work shall not destroy or otherwise impair any portion of a vegetated wetland that is within an area of critical environmental concern designated by the Secretary of Environmental Affairs.

§ 365-5.3. Land under water bodies and waterways (under any creek, river, stream, pond or lake).

A. Preamble.

- (1) Land under water bodies and waterways is likely to be significant to: public and private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, protection of fisheries, wildlife habitat. In addition to those interests protected by the Wetlands Protection Act, these bylaw regulations also serve to protect water quality, prevent water pollution, protect rare species habitat, erosion and sedimentation control and recreational values. 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.
- (2) Please refer to MA Wetlands Protection Act Regulations, 310 CMR 10.56, Land Under Water Bodies and Waterways (Under any Creek, River, Stream, Pond or Lake), Subsection (1), Preamble.

B. Definition. Refer to MA Wetlands Protection Act Regulations, 310 CMR 10.56, Land Under Water Bodies and Waterways (Under any Creek, River, Stream, Pond or Lake), Subsection (2), Definition, Critical Characteristics and Boundaries. In addition to water bodies (and waterways) meeting the definition of water bodies and waterways under the Wetlands Protection Act, these regulations also serve to protect vernal pools and ponds (regardless of size).

C. Presumption. Where a project involves removing, filling, dredging or altering of land under water bodies and waterways, the issuing authority shall presume that such area is significant to the interests specified in Subsection A above. The presumption 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 issuing authority shall make a written determination to this effect, setting forth the grounds for such decision.

D. General performance standards.

- (1) Refer to MA Wetlands Protection Act Regulations, 310 CMR 10.56, Land Under Water Bodies and Waterways (Under any Creek, River, Stream, Pond or Lake), Subsection (4), General Performance Standards.

- (2) Any proposed work within land under water and waterways shall not impair the following:
 - (a) The water-carrying capacity within the defined channel, which is provided by said land in conjunction with the banks;
 - (b) Ground- and surface water quality;
 - (c) The capacity of said land to provide breeding habitat, escape cover and food for fisheries;
 - (d) The capacity of said land to provide important wildlife habitat functions.

§ 365-5.4. Land subject to flooding (bordering and isolated areas).

A. Preamble. Bordering land subject to flooding is an area which floods from a rise in a bordering waterway or water body. Such areas are likely to be significant to flood control, storm damage prevention. In addition to the interest protected by the Wetlands Protection Act, these bylaw regulations also find such areas are significant to public and private water supply, groundwater supply, water quality protection, water pollution control, prevention of pollution, wildlife habitat, rare species habitat and erosion and sedimentation control and recreational values.

- (1) Bordering land subject to flooding: Refer to MA Wetlands Protection Act Regulations, 310 CMR 10.57, Land Subject to Flooding (Bordering and Isolated Areas), Subsection (1)(a), Preamble: Bordering Land Subject to Flooding.
 - (a) Bordering land subject to flooding is an area which floods from a rise in a bordering waterway or water body. Such areas are likely to be significant to flood control, storm damage prevention, public and private water supply, groundwater supply, water quality protection, water pollution control, prevention of pollution, wildlife habitat and erosion and sedimentation control.
 - (b) Bordering land subject to flooding provides a temporary storage area for floodwater which has overtopped the bank of the main channel of a creek, river or stream or the basin of a pond or lake. During periods of peak run-off, floodwaters are both retained (i.e., slowly released through evaporation and percolation) and detained (slowly released through surface discharge) by bordering land subject to flooding. Over time, incremental filling of these areas causes increases in the extent and level of flooding by eliminating flood storage volume or by restricting flows, thereby causing increases in damage to public and private properties.
 - (c) Certain portions of bordering land subject to flooding are also likely to be significant to the protection of wildlife habitat. These include: 1) all areas on the ten-year floodplain or within 100 feet of the bank or bordering vegetated wetland (whichever is further from the water body or waterway, so long as such area is contained within the 100-year floodplain), and 2) all vernal pool habitat on the 100-year floodplain, except for those portions of 1) and 2) which have been so extensively altered by human activity that their important wildlife habitat functions have been effectively eliminated [such "altered" areas include paved and graveled areas, golf courses, cemeteries, playgrounds, landfills, fairgrounds, quarries, gravel pits, buildings, lawns, gardens, roadways (including median strips, areas enclosed within highway interchanges, shoulders and embankments), railroad tracks (including ballast and embankments) and similar areas lawfully existing on November 1, 1987 and maintained as such since that time].
 - (d) The hydrologic regime, plant community composition and structure, topography, soil composition and proximity to water bodies and bordering vegetated wetlands of these portions of bordering land subject to flooding provide important food, shelter, migratory and overwintering areas, and breeding areas for wildlife. Nutrients from floodwaters, as well as the inundation of floodplain soil, create important wildlife habitat characteristics, such as richness and diversity of soil and vegetation. A great many species require or prefer habitat which is as close as possible to water

and/or has moist conditions, characteristics generally present on lower floodplains. Similarly, lower floodplains, because of their proximity to water and vegetated wetlands, can provide important shelter for wildlife which needs to migrate between such areas, or between such areas and uplands. The "edge" where floodplain habitat borders vegetated wetlands or water bodies is frequently very high in wildlife richness and diversity. Similar "edges" may be found elsewhere the lower floodplain, where differences in topography and frequency of flooding have created varied soil and plant community composition and structure.

- (e) Finally, vernal pool habitat is found at various locations throughout the 100-year floodplain. The pool itself generally formed by meander scars, or sloughs left after the main water channel has changed course. These pools are essential breeding sites for certain amphibians which require isolated areas that are generally flooded for at least two continuous months in the spring and/or summer and are free from fish predators. Most of these amphibians remain near the breeding pool during the remainder of their lifecycle. Many reptiles, birds and mammals also feed here.
- (2) Isolated land subject to flooding. Refer to MA Wetlands Protection Act Regulations, 310 CMR 10.57, Land Subject to Flooding (Bordering and Isolated Areas), Subsection (1)(b), Preamble: Isolated Land Subject to Flooding. In addition to the interest protected by the Wetlands Protection Act, these bylaw regulations also serve to protect water quality, rare species habitat and recreational values.
- (a) Isolated land subject to flooding is an isolated depression or a closed basin which serves as a ponding area for run-off or high groundwater which has risen above the ground surface. Such areas are likely to be significant to flood control, storm damage prevention, public and private water supply, groundwater supply, water quality protection, water pollution control, prevention of pollution, wildlife habitat and erosion and sedimentation control. In addition, where such areas are underlain by pervious material, they are likely to be significant to public or private water supply and to groundwater supply. Where such areas are underlain by pervious material covered by a mat of organic peat and muck, they are also likely to be significant to the prevention of pollution. Finally, where such areas are vernal pool habitat, they are significant to the protection of wildlife habitat.
 - (b) Isolated land subject to flooding provides a temporary storage area where run-off and high groundwater pond and slowly evaporate or percolate into the substrate. Filling causes lateral displacement of the ponded water onto contiguous properties, which may in turn result in damage to said properties.
 - (c) Isolated land subject to flooding, where it is underlain by pervious material, provides a point of exchange between ground- and surface waters. Contaminants introduced into said area, such as septic system discharges and road salts, find easy access into the groundwater and neighboring wells. Where these conditions occur and a mat of organic peat or muck covers the substrate of the area, said mat serves to detain and remove contaminants which might otherwise enter the groundwater and neighboring wells.
 - (d) Isolated land subject to flooding, where it is vernal pool habitat, is an essential breeding site for certain amphibians which require isolated areas that are generally flooded for at least two continuous months in the spring and/or summer and are free from fish predators. Most of these amphibians remain near the breeding pool during the remainder of their lifecycle. Many reptiles, birds and mammals also feed here.

B. Definition, critical characteristics and boundaries.

- (1) Bordering land subject to flooding.
 - (a) Bordering land subject to flooding is an area with low, flat topography adjacent to and inundated by floodwaters rising from creeks, rivers, streams, ponds or lakes. It extends from the banks of

these waterways and water bodies.

- (b) Refer to MA Wetlands Protection Act Regulations, 310 CMR 10.57, Land Subject to Flooding (Bordering and Isolated Areas), Subsection (2), Definitions, Critical Characteristics and Boundaries.

(2) Isolated land subject to flooding.

- (a) Isolated land subject to flooding is an isolated depression or closed basin without an inlet or an outlet. It is an area which at least once a year confines standing water. Isolated land subject to flooding may be underlain by pervious material, which in turn may be covered by a mat of organic peat or muck.
- (b) Refer to MA Wetlands Protection Act Regulations, 310 CMR 10.57, Land Subject to Flooding (Bordering and Isolated Areas), Subsection (2)(b), Definitions, Critical Characteristics and Boundaries: Isolated Land Subject to Flooding. There is no minimum requirement for volume of isolated land subject to flooding under the Sturbridge Wetlands Bylaw Regulations.

C. Presumption.

- (1) Refer to MA Wetlands Protection Act Regulations, 310 CMR 10.57(3), Presumption.
- (2) Where a project will remove, fill, dredge, build upon, degrade, discharge into or otherwise alter land subject to flooding (both bordering and isolated areas), the Commission shall presume that such an area is significant to the respective interests specified above.

D. General performance standards.

- (1) Bordering land subject to flooding. Refer to MA Wetlands Protection Act Regulations, 310 CMR 10.57, Land Subject to Flooding (Bordering and Isolated Areas), Subsection (4)(a), General Performance Standards: Bordering Land Subject to Flooding. In addition to the general performance standards listed in the Wetlands Protection Act, these regulations also require compliance with the following additional 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 floodwaters 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 floodwater 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, stream or creek. The minimum storage requirement will be at the discretion of the Conservation Commission, as it may require compensatory flood storage of greater volume.
 - (b) Work within bordering land subject to flooding, including that work required to provide the above-specified compensatory storage, shall not restrict flows so as to cause an increase in flood stage or velocity.
 - (c) Work in those portions of bordering land subject to flooding found to be significant to the protection of wildlife habitat shall not impair its capacity to provide important wildlife habitat functions, including altering vernal pool habitat.

(2) Isolated land subject to flooding.

- (a) Refer to MA Wetlands Protection Act Regulations, 310 CMR 10.57, Land Subject to Flooding (Bordering and Isolated Areas), Subsection (4)(b), General Performance Standards: Isolated Land Subject to Flooding. In addition to the general performance standards listed in the Wetlands Protection Act, these regulations also require compliance with the following additional general performance standards:
- (b) A proposed project in isolated land subject to flooding shall not result in the following:
 - [1] Flood damage due to filling which causes lateral displacement of water that would otherwise be confined within said area;
 - [2] An adverse effect on public and 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 the groundwater, where the area is underlain by pervious material which in turn is covered by a mat of organic peat and muck;
 - [4] An impairment of its capacity to provide wildlife habitat where said area is vernal pool habitat.

§ 365-5.5. Riverfront area.

A. Preamble.

- (1) Riverfront areas are likely to be significant to: public or private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, the protection of fisheries, protection of wildlife habitat and protection of land containing shellfish. In addition to the interests protected by the Wetlands Protection Act, these bylaw regulations also serve to protect rare species habitat, water quality control, water pollution control, and erosion and sedimentation control and recreational values. Refer to MA Wetlands Protection Act Regulations, 310 CMR 10.58(1), Riverfront Area.
- (2) Land adjacent to rivers and streams can protect the natural integrity of these water bodies. The presence of natural vegetation within riverfront areas is critical to sustaining rivers as ecosystems and providing these public values.
- (3) The riverfront area can prevent degradation of water quality by filtering sediments, toxic substances (such as heavy metals) and nutrients (such as phosphorus and nitrogen) from stormwater, nonpoint pollution sources and the river itself. Sediments are trapped by vegetation before reaching the river. Nutrients and toxic substances may be detained in plant root systems or broken down by soil bacteria. Riverfront areas can trap and remove disease-causing bacteria that otherwise would reach rivers and coastal estuaries, where they can contaminate shellfish beds and prohibit safe human consumption. Natural vegetation within the riverfront area also maintains water quality for fish and wildlife.
- (4) Where rivers serve as water supplies or provide induced recharge to wells, the riverfront area can be important to the maintenance of drinking water quality and quantity. Land along rivers in its natural state with a high infiltration capacity increases the yield of a water supply well. When riverfront areas lack the capacity to filter pollutants, contaminants can reach human populations served by wells near rivers or by direct river intakes. The capacity of riverfront areas to filter pollutants is equally critical to surface water supplies, reducing or eliminating the need for additional treatment. In the watershed, mature vegetation within riverfront areas provides shade to moderate water temperatures and slows algal growth, which can produce odors and taste problems in drinking water.
- (5) Within riverfront areas, surface water interaction with groundwater significantly influences the stream ecosystem. The dynamic relationship between surface and groundwater within the "hyporheic zone,"

located below the stream channel, sustains communities of aquatic organisms which regulate the flux of nutrients, biomass and the productivity of organisms, including fish within the stream itself. The hyporheic zone extends to greater distances horizontally from the channel in large, higher order streams with alluvial floodplains, but the interaction within this zone is important in smaller streams as well. By providing recharge and retaining natural flood storage, as well as by slowing surface water runoff, riverfront areas can mitigate flooding and damage from storms. The root systems of riverfront vegetation keep soil porous, increasing infiltration capacity. Vegetation also removes excess water through evaporation and transpiration. This removal of water from the soil allows for more infiltration when flooding occurs. Increases in storage of floodwaters can decrease peak discharges and reduce storm damage. Vegetated riverfronts also dissipate the energy of storm flows, reducing damage to public and private property.

- (6) Riverfront areas are critical to maintaining thriving fisheries. Maintaining vegetation along rivers promotes fish cover, increases food and oxygen availability, decreases sedimentation and provides spawning habitat. Maintenance of water temperatures and depths is critical to many important fish species. Where groundwater recharges surface water flows, loss of recharge as a result of impervious surfaces within the riverfront area may aggravate low-flow conditions and increase water temperatures. In some cases, summer stream flows are maintained almost exclusively from groundwater recharge. Small streams are most readily impacted by removal of trees and other vegetation along the shore.
- (7) Riverfront areas are important wildlife habitat, providing food, shelter, breeding, migratory and overwintering areas. Even some predominantly upland species use and may be seasonally dependent on riverfront areas. Riverfront areas promote biological diversity by providing habitats for an unusually wide variety of upland and wetland species, including bald eagles, osprey and kingfishers. Large dead trees provide nesting sites for bird species that typically use the same nest from year to year. Sandy areas along rivers may serve as nesting sites for turtles and water snakes. Riverfront areas provide food for species such as wood turtles which feed and nest in uplands but use rivers as resting and overwintering areas.

- B. Definitions. Refer to MA Wetlands Protection Act Regulations, 310 CMR 10.58, Riverfront Area, Subsection (2), Definitions, Critical Characteristics and Boundaries. For the purposes of this bylaw, perennial and intermittent streams shall be protected rivers. Certain designated intermittent streams within Sturbridge have been identified by the Conservation Commission as needing additional protection based on their contribution to the watershed ecosystem. These waterways are identified on the Enhanced Protection of Intermittent Streams Map that is available for viewing in the Conservation Department.

RIVER — Any natural flowing body of water that empties to any lake, pond or other river.

RIVERFRONT AREA — The area of land between a river's mean annual high water line and a parallel line located 200 feet away, measured horizontally outward from the river's mean annual high water line. The riverfront area may include or overlap other resource areas or their buffer zones. The riverfront area does not have a buffer zone.

- C. Presumption.

- (1) Where a proposed activity involves work within the riverfront area, the Commission shall presume that the area is significant to the protection of private or public water supply, groundwater, flood control, prevent storm damage, prevent pollution, land containing shellfish, wildlife and/or rare species habitat, water quality, water pollution control, erosion and sedimentation and fisheries.
- (2) The presumption is rebuttable and may be overcome by a clear showing that the riverfront area does not play a role in the protection of each one of these interests.
- (3) Where the applicant provides information that the riverfront area at the site of the activity does not play a role in the protection of a single interest, the Commission may determine that the presumption for that

interest has been rebutted and the presumption of significance is partially overcome. If the Commission concludes that the presumption has been overcome as to the protection of all interests, the Commission shall make a written determination to this effect.

- (4) The applicant must overcome, beyond reasonable doubt, each and every presumption of significance in order to conduct work within the 200-foot riverfront resource area.

D. General performance standards. Refer to MA Wetlands Protection Act Regulations, 310 CMR 10.58, Riverfront Area, Subsection (4), General Performance Standard, in addition to the following standards:

- (1) No project may be permitted within the riverfront area which will have any adverse effect on specified habitat sites of rare or state- or federally listed species, or which will have any adverse effect on vernal pool habitat, whether certified or identified by the Commission prior to or during the public hearing.
- (2) Practicable alternative. There must be no practicable and substantially equivalent economic alternative to the proposed project with less adverse effects on the interests identified.
- (3) When an applicant proposes restoration on-site of degraded riverfront area, alteration may be allowed at a ratio in square feet of at least 2:1 of restored area to area of alteration not conforming to the performance standards. Restoration shall include:
 - (a) Removal of all debris, but retaining any noninvasive trees or other mature noninvasive vegetation;
 - (b) Grading to a topography which reduces runoff and increases infiltration;
 - (c) Coverage by topsoil at a depth consistent with natural conditions at the site; and
 - (d) Seeding and planting with an erosion control seed mixture, followed by plantings of herbaceous and woody species appropriate to the site.
- (4) When an applicant proposes mitigation either on-site or in the riverfront area within the same general area of the river basin, alteration may be allowed at a ratio in square feet of at least 2:1 of mitigation area to area of alteration for previously disturbed sites.
- (5) The following may be allowed in the riverfront area and requires the filing of a notice of intent and prior review and approval of the Commission:
 - (a) Fencing, stonewalls or stacks of cordwood, provided they will not constitute a barrier to wildlife movement;
 - (b) Vista pruning, provided the activity is located more than 100 feet from the mean annual high water line within a riverfront area or from bordering vegetated wetland, whichever is farther;
 - (c) Plantings of native species of trees, shrubs or groundcover, but excluding turf lawns;
 - (d) The conversion of lawn to uses accessory to existing single-family houses in existence on August 7, 1996, such as decks, sheds, patios and pools, provided the activity is located more than 50 feet from the mean annual high-water line within the riverfront area or from bordering vegetated wetland, whichever is farther, and erosion and sedimentation controls are implemented during construction;
 - (e) The conversion of impervious to vegetated surfaces, provided erosion and sedimentation controls are implemented during construction;
 - (f) The repair or upgrade of existing septic systems in compliance with Sturbridge Board of Health regulations.

* Redevelopment and Grandfathered Activities standards not listed [see 310 CMR 10.58(5) and 365:45]

(6)].

§ 365-5.6. Vernal pools, certified, potential and identified.

A. Definitions.

- (1) The term "vernal pool" shall include, in addition to that already defined under the Wetlands Protection Act, MGL c. 131, § 40, and Regulations, 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways. Vernal pools hold water for a minimum of two continuous months during the spring and/or summer. An isolated wetland may be determined to be a vernal pool even though it has less than 200 cubic feet of water, is free of adult predatory fish populations and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries, Natural Heritage and Endangered Species Program.
- (2) The presumption of essential habitat value may be overcome by the presentation of credible evidence which in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the bylaw regulations.
- (3) The adjacent upland resource area for vernal pools shall extend 200 feet from the boundary of the vernal pool.

B. Presumption of vernal pool habitat.

- (1) Where a proposed activity involves work within 200 feet of any certified vernal pool, the Commission shall presume that the area is significant to protect: groundwater, water quality, wildlife habitat and/or rare species habitat.
- (2) All potential vernal pools as noted by NHESP shall be considered identified vernal pools. Burden of proof to the contrary is the responsibility of the applicant.
- (3) The bylaw/regulation presumes vernal pool habitat exists if a wetland's physical characteristics conform with those defined in Subsection A above.
- (4) This presumptive definition for vernal pools is based on systematic field observations by NHESP, "the Vernal Pool Association" and SCC staff, showing that virtually all basins that possess the above characteristics cited in Subsection A actually host breeding vernal pool species. The presumption of vernal pool habitat may be overcome, however, with the presentation of credible evidence, which in the judgment of the Conservation Commission demonstrates that the wetland does not provide, or cannot provide, vernal pool habitat functions.

C. Demonstrating that a ponding area is not a vernal pool. For the purposes of overcoming the presumption of vernal pool habitat, the Commission will consider:

- (1) Evidence that the ponding area does not hold water for at least two continuous months in most years. As a rule of thumb, the term "most years" shall mean three out of five consecutive years.
- (2) Evidence that vernal pool species do not breed or have not bred in the ponding area. The Conservation Commission shall provide explicit guidelines for this evidence.
- (3) Evidence that the ponding area could not be a viable breeding site for vernal pool species due to incompatible physical, chemical, biological or other persistent conditions at the site in most years. Such evidence could include, without limitation, several months of pH and dissolved oxygen measurements yielding values incompatible with amphibian or reptile breeding.

D. Timing of evidence collection.

- (1) Many of the indicators of vernal pool habitat are seasonal. For example, certain salamander egg clusters are only found between late March and late May. Wood frog chorusing only occurs between late March and May, and then only at night. Consequently, failure to find evidence of breeding must be tied explicitly to those periods during which the evidence is most likely to be available.
 - (2) Accordingly, in the case of challenges to the presumption of vernal pool habitat, the Conservation Commission may require that the determination be postponed until the appropriate time period consistent with the evidence being presented. The Commission may also require its own site visits as necessary to confirm the evidence.
 - (3) Should the Commission or the NHESP identify or certify a vernal pool (or habitat for rare wildlife) after a public hearing has been closed and an order or other permit issued, the Commission may reopen the public hearing and issue additional conditions to protect said areas. The public hearing may only be reopened after notification has been made to the applicant, the owner, DEP and all abutters within 200 feet. A legal advertisement must be posted in the local newspaper at least five days prior to the public hearing. Notice must be posted on the Town Clerk's board at least 48 hours in advance of the public hearing.
- E. General performance standards. Any work with in the 200-foot buffer zone to a vernal pool shall not cause a significant adverse impact to any function of a vernal pool. It shall not result in a measurable decrease in extant wildlife populations or biological community composition, structure and species richness of the site or in the vicinity, exclusive of the present or future state of adjacent or nearby property, or impair, damage or reduce in value for wildlife purposes identified specific habitat features. The Commission shall take into account indirect effects, including but not limited to effects of nearby human activities, on a case-by-case basis.

§ 365-5.7. Estimated habitats of rare wildlife.

- A. If a project is within estimated habitat, which is indicated on the most recent Estimated Habitat Map of State-Listed Rare Wetlands Wildlife published by the Natural Heritage and Endangered Species Program, a fully completed copy of the notice of intent for such project shall be sent to the Program via the U.S. Postal Service by express or priority mail (or otherwise sent in a manner that guarantees delivery within two days). Such copy shall be sent no later than the date of the filing of the notice of intent with the issuing authority. Proof of timely mailing or other delivery to the Program of the copy of such notice of intent shall be included in the notice of intent, which is submitted to the Commission and sent to the DEP's regional office.
- B. If a proposed project is found by the Commission to alter a resource area which is part of the habitat of a state-listed species, such project shall not be permitted to have any short- or long-term adverse effects on the habitat of the local population of that species. A determination of whether or not a proposed project will have such an adverse effect shall be made by the Commission based on the written opinion of the Program.
- C. General performance standards. Work within areas identified as habitat for rare and endangered species shall not result in a measurable decrease in extant wildlife populations or biological community compositions, structure and species richness of the site or in the vicinity, exclusive of the present or future state of adjacent or nearby property, or impair, damage or reduce in value for wildlife purposes identified specific habitat features. The Commission shall take into account indirect effects, including but not limited to effects of nearby human activities, on a case-by-case basis.

§ 365-5.8. Wildlife habitat evaluations.

- A. An evaluation of whether a proposed project will have an adverse effect on wildlife habitat beyond permissible thresholds shall be performed by an individual with at least a master's degree in wildlife biology or ecological science from an accredited college or university, or other competent professional with at least two years' experience in wildlife habitat evaluation.

B. Wildlife habitat characteristics of inland resource areas.

- (1) Banks. The topography, soil structure and plant community composition and structure of banks can provide the following important wildlife habitat functions:
 - (a) Food, shelter and migratory and breeding areas for wildlife;
 - (b) Overwintering areas for mammals and reptiles.
- (2) Land under water bodies or waterways. The plant community and soil composition and structure, hydrologic regime, topography and water quality of land under water bodies or waterways can provide the following important wildlife habitat functions:
 - (a) Food, shelter and breeding areas for wildlife;
 - (b) Overwintering areas for mammals, reptiles and amphibians.
- (3) Vernal pool habitat. The topography, soil structure, plant community composition and structure and hydrologic regime of vernal pool habitat can provide the following important wildlife habitat functions:
 - (a) Food, shelter, migratory and breeding areas and overwintering areas for amphibians;
 - (b) Food for other wildlife.
- (4) Lower floodplains. The hydrologic regime, plant community and soil composition and structure, topography and proximity to water bodies and waterways of lower floodplains can provide the following important wildlife habitat functions:
 - (a) Food, shelter, migratory and overwintering areas for wildlife;
 - (b) Breeding areas for birds, mammals and reptiles.
- (5) Riverfront area. The topography, soil structure, plant community composition and structure and hydrologic regime can provide the following important wildlife habitat functions:
 - (a) Food, shelter, overwintering and breeding areas for wildlife, including turtle nesting areas, nesting sites for birds which typically reuse specific nesting sites, cavity trees and isolated depressions that function as vernal pools;
 - (b) Migratory areas along the riparian corridor, including the movement of wildlife unimpeded by barriers within the riverfront area.

C. The Commission shall give special attention to inclusion of those topographical and ecological features that it deems important for maintaining the wildlife habitat value of the resource. The potential presence of rare or endangered species and their specific sensitivity to adjacent upland resource activity shall be considered in determining adjacent upland resource restrictions. Evidence of the presence of such species or evidence of likely habitat shall be considered by the Conservation Commission. Prior designation of rare or endangered species habitat by the Division of Fisheries and Wildlife Natural Heritage Program is not necessary. The Commission may consult with the Division of Fisheries and Wildlife Natural Heritage Program or other authorities as it deems necessary for guidance and recommendations.

- (1) Wildlife studies have shown that direct impacts from work, filling, grading, vegetation removal, construction of barriers to movement, etc., in resource areas can severely harm wildlife populations. For example, low stone walls bisecting a resource area can prevent amphibians that live in upland areas from reaching breeding pools, marshes and streams; or removal of large snags (dead trees) can virtually eliminate nesting by barred owls, pileated woodpeckers, mink, etc. Accordingly, the Commission shall prohibit the placement of fences or other barriers to wildlife movement within and between resource

areas and the destruction of specific habitat features.

- (2) Examples of protected habitat features include (but are not limited to):
 - (a) Large cavity trees.
 - (b) Snags (standing dead or dying trees).
 - (c) Turtle nesting areas.
 - (d) Existing nest trees for birds that reuse nests.
 - (e) Beaver dams, dens and lodges.
 - (f) Mink or otter dens.
 - (g) Vernal pools.
 - (h) Vertical sandy banks.
 - (i) Migration corridors that provide connectivity between wildlife habitats (i.e., continuous vegetated pathways).
 - (j) Sphagnum hummocks and pools suitable to serve as nesting habitat for salamanders
- (3) Indirect impacts, the effects of human activities near wildlife habitat, can have equally harmful effects. Therefore, the Commission shall take into account indirect effects on a project-by-project basis. For example, no work within resource areas shall be permitted within 100 feet of existing beaver, mink or otter dens, or within 200 feet of existing osprey or great blue heron nests.
- (4) The Commission will evaluate the likely cumulative impact of work within resource areas. For wildlife habitat purposes, a "significant cumulative adverse impact" is defined as an impact that would under reasonable assumptions result in a measurable decrease in the extant wildlife populations or biological structure, composition or richness on the site or in the vicinity, taking into account the projected impacts of future projects that could be proposed in the vicinity with similar, comparable or other significant impacts and disturbance. For example, any approved fence must have an eight-inch gap between its bottom and the surface upon which it rests.

ARTICLE VI
Additional Regulations

§ 365-6.1. Projects on slopes 8% or greater.

For projects occurring on slopes of 8% or greater, the wetland buffer zone shall extend to 500 feet from the edge of wetlands to provide needed additional protection. Per the Town of Sturbridge Zoning Bylaw, § 300-4.1E, "No soil removal or grade alterations on slopes in excess of 8% shall be permitted within 500 feet of any area subject to protection under the Massachusetts Wetlands Protection Act without prior Conservation Commission reviewing and issuing of an order of conditions."

§ 365-6.2. Tree cutting.

(See also § 365-3.4B regarding letter permits.)

- A. Trees and other vegetation provide the following benefits to resource areas and to homeowners: they stabilize banks and soils and help provide erosion control to resource areas; they provide shade and help to absorb sound and heat from buildings and paved areas; they stabilize the thermal properties of nearby water resources; they provide natural buffers along waterways and enhance water quality by trapping and filtering pollutants; they slow runoff, which helps groundwater recharge, filter nonpoint source pollution and reduces flooding, erosion and stream sedimentation; they protect fish and wildlife habitat; they revitalize threatened and degraded resource areas; they provide habitat for many species of wildlife and provide many other functions. As such, the Commission strongly encourages retaining trees and vegetation in their natural state within the 200-foot buffer to any resource area. Trees should be retained along and around the resource area as much as possible.
- B. Should trees or vegetation need to be altered or removed, the following guidelines shall apply:
- (1) No disturbance of trees or other vegetation is allowed within the first 25 feet to any resource area. A tree removal permit application may be filed for the removal of a tree if it is hazardous, dead or documentation can be provided that the tree is diseased or in poor health. The Commission may allow the removal of a healthy tree, but requires mitigation in the form of replacement in such situations.
 - (2) For the proposed cutting of trees or more than 10% of the vegetation within the 100-foot buffer zone, a request for determination must be filed. Likewise, the cutting of trees or more than 10% of the vegetation within the 100- to 200-foot buffer will require the filing of a bylaw permit application. Should a permit be issued, the following best management practices shall be required:
 - (a) No stumps shall be removed within the first 50 feet to a resource area. Stumps may be ground below the surface and loamed and seeded.
 - (b) Plans for removal of trees or vegetation on slopes must also contain plans to replace the erosion control values being lost. Tree or vegetation removal will only be allowed if there is not an increased risk of erosion to resource areas.
 - (c) Tree removal within the first 50 feet of any resource area will only be allowed if there is not a significant change to the canopy.
 - (3) Tree cutting, or any other work, within areas designated as estimated habitat for rare and endangered species by the Natural Heritage and Endangered Species Program must be permitted through NHESP as well as through the Commission.

§ 365-6.3. Docks.

Any person placing a float, raft or mooring into any body of water within Sturbridge must apply for and obtain a

permit as follows:

- A. Any floats, docks or rafts secured to the bottom of the lake either through piles or other permanent measures must obtain a permit from the Department of Environmental Protection, Worcester, MA. Additional permitting must be obtained from the Army Corps of Engineers, if the project includes any filling or dredging at any level. This includes adding stone or removing bottom soils.
- B. Any temporary or seasonal floats, rafts, docks or moorings must be permitted through the Board of Selectmen as Harbor Master under the Massachusetts Public Waterfront Act (MGL c. 91, § 10A).
- C. All docks, floats, moorings or rafts which require excavation of any type for installation of footings or other means of securing the structure must be brought before the Commission for permitting using the permit application appropriate to the scope of work involved.

ARTICLE VII
Application Requirements

§ 365-7.1. Application completion.

- A. An application will be considered complete and a public hearing scheduled when the following have been submitted:
- (1) Two copies of the notice of intent or request for determination or other permit application filed and all plans and supporting documents to the Conservation Commission office.
 - (2) Electronic version of all plans and documents.
 - (3) One copy of the following:
 - (a) Filing fee calculation worksheet.
 - (b) Notice of intent fee transmittal form.
 - (c) Affidavit of service.
 - (d) Finance Department release form.
 - (4) Where applicable, one copy of the check for state share of filing fee, check or money order for Town share of filing fee and check or money order for Town bylaw filing fee, payable to the Town of Sturbridge.
- B. The Conservation Agent or Administrator will determine the completeness of the application based upon the application checklist available on-line and whether all required documentation has been provided. The public hearing will not be scheduled and the twenty-one-day requirement to open a public hearing will not begin until a complete application has been submitted. The applicant will be notified if the application is incomplete and provided with a list of the additional information that is required in order for the application to be accepted as complete. For minor projects, the Administrator or Agent may schedule a public hearing even if the application is not complete, with the understanding that the additional information will be submitted prior to the start of the public hearing.
- C. PLEASE NOTE: The applicant should keep one complete copy of all plans and documents.

§ 365-7.2. Necessary and supporting information for application.

The following information must be included as part of the application, plans and supporting documents prior to the start of the public hearing:

- A. Completed application forms:
- (1) DEP file number and comments (supplied by the DEP).
 - (2) Site plan, two paper copies plus electronic version.
 - (3) Plans must meet the following requirements (See also § 365-7.6.):
 - (a) Must be to scale, dated, signed and stamped by a certified engineer.
 - (b) Must include original and revision dates, and identifying plan numbers.
 - (c) Must be clearly marked with resource area delineation showing flag or stake numbers.
 - (d) Must show restoration and mitigation areas.

- (e) Must show both pre-construction and final.
 - (4) Drainage calculations with supporting information, if applicable.
 - (5) Copy of relevant section of the USGS topographic map showing the project site.
 - (6) Title V compliance must be documented, septic system and reserve locations must be shown.
 - (7) Affidavit of service.
 - (8) Proof of notice to appropriate state boards.
 - (9) Proof of notification to abutters at least seven days prior to public hearing.
 - (10) Signed, dated copy of form used to notify abutters.
 - (11) Town share of application fee, photocopy of state fee check and filing fee transmittal sheet.
 - (12) Finance Department sign-off sheet notifying the Conservation Commission that the property taxes are paid to date.
- B. Upon receipt of complete application, the Conservation Agent or Administrator will provide the applicant with a legal advertisement. It is the responsibility of the applicant to post the legal advertisement in the Southbridge News seven business days prior to said hearing. The applicant is responsible for the cost associated with the posting of the legal advertisement.

§ 365-7.3. Notification to abutters.

Notification to abutters must be conducted as follows. The applicant is responsible for the following tasks:

- A. Obtaining a certified abutters list for conservation purposes from the Assessor's office.
- B. Preparing a notification to abutters form and mailing said notification to each abutter on the certified abutters list.
- C. Providing certificates of mailing or certified mail green cards to the Commission at the time the public hearing is opened.

§ 365-7.4. Filing with DEP Wetlands Division.

- A. A copy of the notice of intent, plans and supporting documents must be sent to the DEP Wetlands Division:
 MassDEP - CERO
 Wetlands and Waterways
 8 New Bond Street
 Worcester, MA 01606
- B. Copies of the checks payable to the Town of Sturbridge and the Commonwealth of Massachusetts shall be provided in the project application.

§ 365-7.5. Filing with DEP - Lock Box.

The following shall be filed with the DEP - Lock Box (P.O. Box 4062, Boston, MA 02211):

- A. One copy of the notice of intent fee transmittal form
- B. A check made payable to the Commonwealth of Massachusetts.

§ 365-7.6. Minimum requirements for submitted plans and drawings.

Plans and drawings submitted to the Conservation Committee shall meet the following minimum requirements:

- A. The drawings shall be of a size and scale suitable to show in readable detail all the elements of the project and all resource areas within 200 feet of said project. In no event shall a drawing be less than 8 1/2 inches by 11 inches.
- B. Scale shall be one inch equals 20 feet or as appropriate for the project as determined by the Agent.
- C. The following items shall be clearly shown on the drawings:
 - (1) The boundary of all wetland resource areas;
 - (2) The twenty-five-foot, fifty-foot, 100-foot and 200-foot buffer zones around wetland resource areas;
 - (3) All proposed or ongoing work activities within the wetland area or buffer zone. Both the project location and the limits of work shall be clearly defined;
 - (4) Natural conditions, including but not limited to vegetation, soils, slopes and other natural resources on site, such as stone walls, within 200 feet of the limits of disturbance, whether on the lot or not;
 - (5) Topography;
 - (6) Existing conditions, including, but not limited to, buildings, tree line, stormwater system;
 - (7) Proposed conditions, including, but not limited to, buildings, site drainage and building drainage;
 - (8) Location of water supply and wells, as well as distance to nearest septic system;
 - (9) All utilities labeled on the plan; this shall include utility poles;
 - (10) All structures within 200 feet of the associated resource area(s);
 - (11) Planting plans.
- D. All pertinent distances shall be dimensioned. The Commission will not rely on scaling. If any distances are omitted or unclear, the applicant will be required to provide the dimensions and amend the drawings.
- E. All distances shall be exact. The following tolerances will be assumed unless noted otherwise on the drawings:
 - (1) Foot dimensions - plus or minus three inches.
 - (2) Inch dimensions - plus or minus one quarter of an inch.
 - (3) For compound distances, the smallest tolerance applies.
 - (4) Approximate distances - plus or minus two feet.

For example, a dimension marked "(50')" will be assumed to be 50 feet +/- 3 inches. A dimension marked "(50' 6'")" will be assumed to be 50 feet six inches +/- 1/4 inch. A dimension marked "(50' +/-)" shall be assumed to be within 48 feet to 52 feet. The most stringent dimension shall be used for Commission purposes.
- F. All drawings shall be signed and dated by a certified engineer, who shall be responsible for the accuracy of the drawing.
- G. The Commission reserves the right to require revised drawings if significant changes are required either as a result of error or of changes in the scope of the project.

H. In the event of questions or conflicts between verbal information and the drawing, the drawing shall govern.
If you have any questions you may call the Conservation Department Office at 508-347-2506, or email the Commission at conservation@Town.sturbridge.ma.us.

ARTICLE VIII
Replication Requirements

§ 365-8.0. Findings and general requirements.

From 310 CMR 10.00 and the Massachusetts Audubon Guide to Understanding and Administering the Massachusetts Wetlands Protection Act, adapted for the Town of Sturbridge Wetlands Bylaw Regulations.

- A. The Executive Office of Environmental Affairs has declared a "No Net Loss of Wetlands Policy" as part of the decision-making strategy for the State of Massachusetts. The Sturbridge Conservation Commission and DEP have determined that, based on the low rate of success in replicating wetlands and to conform to the "No Net Loss of Wetlands Policy," resource area alteration will only be allowed under the following circumstances:
- (1) When overwhelming evidence indicates there are no other practicable alternatives.
 - (2) When alteration of a resource area serves overriding public interests.
 - (3) When unavoidable impacts are minimized to the greatest extent possible.
 - (4) When compensation is provided at a minimum ratio of 2:1.
 - (5) When there will be no alteration to estimated wildlife habitat or vernal pools, whether certified or identified.
- B. It should be understood by all applicants that a third-party consultant will be required to verify both the proposed replication plan prior to approval and the success of the final replication area prior to issuance of a certificate of compliance.
- C. All replication and mitigation areas will be monitored for a minimum of five years or until such time that the Agent or other qualified party certifies that the replication area is properly functioning as a wetland. As a general rule, certificates of compliance will not be issued for any part of any project which required replication or mitigation until after the five-year monitoring has been completed.

§ 365-8.1. General performance standards.

- A. Proposed replication plans, including associated construction work plans, shall be approved by the Sturbridge Conservation Commission.
- B. All replication work shall be supervised or conducted by a professional wetlands scientist with experience in wetland replication. Said specialist shall be retained to monitor the project until the replication area conditions are confirmed successful by the Commission. Success is defined as a planting where at least 80% of the vegetation has successfully taken.
- C. A certificate of compliance will only be issued after monitoring shows that the replication area has succeeded for a minimum period of five years.
- D. The proposed replication project must meet or exceed the following standards:
- (1) The surface of the replacement area to be created shall be, at the absolute minimum, twice that of the area that will be impacted;
 - (2) The groundwater and surface elevation of the replacement area shall be approximately equal to that of the impacted area, and documented in the replication plan;
 - (3) The overall horizontal configuration and location of the replacement area with respect to the bank shall be similar to that of the impacted area;

- (4) The replacement area shall have an unrestricted hydraulic connection to the same water body or waterway associated with the impacted area;
 - (5) The replacement area shall be located within the same general area of the water body or reach of the waterway as the impacted area;
 - (6) The replacement area shall be established with indigenous wetland plant species within five growing seasons, and, prior to vegetative reestablishment, any exposed soil in the replacement area shall be temporarily stabilized to prevent erosion in accordance with currently accepted standard methods;
 - (7) The replication area should be required to be created (whenever possible) prior to the destruction of the wetland being altered, or, if soils and wetlands plants are being transferred, the wetland replication should take place prior to the start of the remaining work on the site (i.e., if a driveway to a private home is being installed, and a wetland will be filled for this purpose, the wetland should be replicated prior to the construction of the driveway access, etc.);
 - (8) The replacement area shall be provided in a manner which is consistent with all other general performance standards for each resource area in Part III of 310 CMR 10.00;
 - (9) The seasonal elevation of groundwater must be verified in wetland replication areas once the proposed replication areas have been excavated to base grade;
 - (10) No filling of any wetland area may begin until preparation of its compensatory resource area has been completed, is ready to receive soils from the altered area and all wetlands soils have been removed from the fill area;
 - (11) Monitoring reports are due to the Commission on at least June 1 and November 1 of each year of monitoring. Such reports shall include a wetlands scientist's assessment of progress and recommendations for enhancement, if any;
 - (12) Replication areas which have not shown signs that they will likely succeed within three years shall be required to be re-engineered and re-constructed.
- E. A bond of an amount deemed by the SCC to be sufficient to cover the cost of re-design and construction may be required by the CC. This money shall be held by the Town Treasurer until such time that the CC determines the replication is successful, at which time the CC shall release the funds. In the event that replication continues to be unsuccessful, the CC may use these funds towards further replication efforts.

§ 365-8.2. Riverfront resource area restoration and mitigation.

- A. In addition to the guidelines for resource area restoration and mitigation outlined in Article V of these regulations, the Commission may allow/require on-site restoration of riverfront areas in exchange for approving additional development within already disturbed areas. Redevelopment of disturbed areas must occur further from the river than existing disturbance. Mitigation, such as preservation of additional riverfront land or improvement of an existing adverse impact on-site or within the watershed, may also be approved by the Commission.
- B. Within the riverfront resource area, the following conditions shall always be a part of any permit:
 - (1) 2:1 mitigation must be given and must not be within existing undisturbed riverfront resource area; no further disturbance of riverfront resource area will be allowed on the parcel in consideration.
 - (2) The parcel in consideration shall be considered to include any subdivided lots, or any parcel out of which the lots were created, including any adjacent parcels with common ownership, or any land which can reasonably be obtained.

ARTICLE IX
Forestry

§ 365-9.1. Forest cutting plans.

- A. The Conservation Commission shall review all forest cutting plans (FCP) for timber harvests within the Town. Plans shall be reviewed for locations of wetland and stream crossings, log landing zones, haul routes and any other aspect of the FCP that may have an impact on wetland resource areas, Sturbridge buffer zones, natural resources, wildlife habitat and biodiversity of our community. Forest cutting plans shall be submitted to the Conservation Commission and the Board of Selectmen as required in Chapter 132 of the Massachusetts General Laws, the Forest Cutting Practices Act and the Regulations. The Conservation Agent or a designated member of the Conservation Commission shall review the plan within 10 days of receipt of the FCP (or when a site visit is possible), and advise the Conservation Commission of any concerns, and after a review by the Commission, communicate those concerns to the applicant and State Service Forester. After reviewing the response from the Service Forester, the Conservation Commission will then issue a recommendation for approval or denial to the BOS.
- B. As part of the approval process, the Conservation Commission shall protect and preserve stone walls, cellar holes, unique trees, unusually large tree specimens, wildlife habitat trees and vernal pool habitat. Vernal pools, potential vernal pools and areas exhibiting characteristics that would indicate they may serve as vernal pool habitat shall be protected with 100-foot reduced harvest buffer zone.
- C. The Sturbridge Conservation Commission strongly recommends the landowner seek the professional assistance of a state-licensed forester. A licensed forester has the expertise to evaluate a woodlot and prepare a plan that will meet both the goals of the landowner and manage standing timber for a sustainable harvest and a healthy forest. A forester can help you with selecting a licensed logger, and ensure that you get a competitive price for your timber. A forester can also help you with strategies to preserve your land and take advantage of certain tax benefits available to reduce your taxes on forested land. You may also want to consult the State Service Forester and your Conservation Commission.

§ 365-9.2. Performance standards.

- A. All timber harvests over 10 acres must have a state-approved forest cutting plan (FCP). The Town of Sturbridge also requires notification for selective harvesting of timber harvest of four acres or more, or for clear-cutting of more than two acres. Refer to Chapter 161, Forest Harvesting, of the Town bylaws.
- B. Any timber harvest conducted without an approved FCP must conform to the Massachusetts Wetlands Protection Act, the Town of Sturbridge Wetlands Bylaw and their respective regulations. The landowner must file a notice of intent or a request for determination of applicability with the Conservation Commission. Note: Exemptions for work in wetland resource areas and buffer zones allowed under the Forest Cutting Practices Act and a valid FCP are not allowed under the Wetlands Protection Act.
- C. Timber harvests shall conform to all required best management practices (BMP) found in the newest version of the DCR Best Management Practices Manual. The harvest shall also conform to guidelines found in the BMP Manual as appropriate for the particular situation.
- D. Harvesting shall only be done when the ground is dry, frozen or otherwise stable.
- E. A FCP may not be used when a change of use of the land is planned. For instance, a FCP cannot be used to clear a lot for a single-family home.
- F. All bridges and temporary wetland crossings shall be removed at the completion of the timber harvest. Any permanent bridge structures will require a valid order of conditions issued under the local wetland bylaw and WPA regulations. Corduroy may remain in place where appropriate.

- G. Landings and roads shall be left in a stable condition at the completion of the timber harvest. All ruts shall be repaired, filled, smoothed and flattened, whether in wetlands, buffer zones or upland areas of the harvest. Seeding as appropriate to stabilize soils.
- H. If invasive plants are found during the logging operation, the logger may be required to take corrective action to control or eradicate the invasive plants.
- I. Slash and snags may be left in the harvest area to serve as habitat and to allow return of nutrients to the forest ecosystem.

ARTICLE X
Post-Hearing Requirements

§ 365-10.0. Appeal period.

- A. After a permit is issued by the Commission: 1) There is a ten-day appeal period when the applicant or abutters can appeal the decision of the Commission to the State DEP in cases where hearings relate to the Wetlands Protection Act or other state regulations. 2) There is a sixty-day appeal period when an applicant or abutters can appeal a decision of the Commission under the Sturbridge Wetlands Bylaws to Superior Court, in cases of hearings where hearings relate to the Town of Sturbridge Wetlands Bylaw. In most cases, both sets of regulations will apply.
- B. For more information on Wetlands Protection Act appeals, please see 310 CMR 10.05(7), Requests for Actions by the Department (Appeals).

§ 365-10.1. Post-hearing start-up requirements.

- A. Sedimentation and erosion control.
- (1) Sedimentation and erosion controls shall be installed in such a manner that no sediment or erosion enters any resource area or leaves the property in any way. During heavy rainstorms, uncontrolled erosion and sedimentation often travel off properties and down roadways into catch basins and nearby wetlands unchecked, creating impacts to Town infrastructure and pollution of nearby resource areas. As such, erosion control will be required for all areas where the potential for down-gradient impact exists.
 - (2) Failure to contain and control sedimentation and erosion on-site and out of resource areas and restricted buffers will result in a cease and desist order. All work on-site will be stopped until erosion control barriers are corrected and sediments removed from resource areas, restricted buffer areas or impacted off-site areas.
- B. Requirements to be met prior to start of work. Requirements which must be met prior to the start of work shall include but not be limited to the following:
- (1) Record the order of conditions at the Worcester County Registry of Deeds and furnish the Conservation Department with proof of recording.
 - (2) Post the DEP file number on a sign in a location clearly visible from the road, showing DEP File #300-XXX. Per DEP regulations, this sign must be no smaller than 24 inches by 24 inches, and no larger than 36 inches by 36 inches. For a letter permit issued through the SCC, this sign would read "SCC ## - ##".
 - (3) Install the erosion controls as indicated on the plan.
 - (4) Contact the Conservation Department for a pre-construction meeting to:
 - (a) Review order of conditions.
 - (b) Verify erosion controls are installed properly.
 - (c) Ensure all pre-start conditions have been met or addressed.
 - (d) Confirm all contractors understand the order of conditions.
 - (e) Obtain contact information for all responsible parties.

