

TOWN OF SOUTHBOROUGH

WETLANDS REGULATIONS

Approved by the Southborough Conservation Commission
On January 3, 2002

Revised on December 1, 2005 to include Enforcement Definitions
Revised on May 14, 2009 to include Filing Fee Schedule

1 INTRODUCTION AND PURPOSE

1.1 AUTHORITY

These wetlands regulations (the “Regulations”) are promulgated by the Southborough Conservation Commission (the “Commission”) pursuant to authority granted to it under Section 170 of the Town of Southborough Administrative Code (the “Wetlands By-law”).

1.2 PURPOSE

The purpose of the Wetlands By-law is to protect the wetland water related resources and the adjoining land areas in the Town of Southborough by controlling activities deemed by the Commission to have a significant or cumulative effect upon wetland values: public or private water supply, flood control, groundwater supply, storm damage prevention, erosion and sedimentation control, wildlife habitat, water pollution control, fisheries and fresh water shellfish, and recreation (collectively, the wetland values protected by this by-law).

1.3 JURISDICTION (APPLICABILITY)

Except as permitted by the Commission or as provided in this chapter, no person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas or within twenty (20) feet of their borders: any freshwater wetland, bordering vegetated wetland, marsh, wet meadow, bog or swamp, any bank, beach, lake, river, pond, stream or land under said waters, any vernal pool, any land subject to flooding or inundation by groundwater, surface water or storm flowage (collectively, “the resource areas”). Any proposed work which falls within one hundred (100) feet (the “buffer zone”) of the previously mentioned resource areas must be approved by the Commission.

1.4 REVISION

The Regulations may be revised from time to time by the Commission after public notice and hearing as required by the Wetlands By-law.

2 GENERAL PROVISIONS

All general provisions in 310 CMR 10.53 General Provisions as amended shall apply in the Regulations. In addition, the following shall apply:

2.1 **EXCEPTIONS**

- a. The application and permit required by the By-law shall not be required for maintaining, repairing, replacing, but not enlarging, a lawfully located single family residential structure or appurtenance thereto, unless said filing is otherwise required by State or Federal law.
- b. The application and permit required by this chapter shall not be required for maintaining, repairing or replacing, but not substantially changing or enlarging an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, municipal sewage, telephone, telegraph or other telecommunication services, provided that written notice had been given to the Commission prior to commencement of the work and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
- c. The application and permit required by this chapter shall not be required for work performed for normal maintenance or improvement of land in agricultural use, provided that written notice has been given to the Commission prior to commencement of the work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
- d. The application and permit required by this chapter shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that:
 1. The work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof.
 2. Advance notice, oral or written, has been given to the Commission prior to commencement of work, or within 24 hours after commencement.
 3. The Commission or its agent certifies the work as an emergency project.
 4. The work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency, and
 5. Within twenty-one (21) days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided in this chapter.
 6. Upon failure to meet these requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

2.2 **ACTIVITIES WITHIN AREAS SUBJECT TO PROTECTION UNDER THE WETLANDS BY-LAW.**

The general performance standards for Banks, Land Under Water Bodies, Bordering Land Subject to Flooding and Isolated Land Subject to Flooding shall be as stated in 310 CMR 10.00 as amended. The general performance standards for Bordering Vegetated Wetland (BVW) shall be as stated in 310 CMR 10.55 as amended except where an alteration of BVW is proposed. The Commission will consider projects requiring the permanent alteration of up to three thousand five hundred (3,500) square feet of BVW as permitted by 310 CMR 10.55 (4)(b) as amended only if the applicant demonstrates:

- 1) no practicable alternative is available;
- 2) project scope and design minimize the amount of resource area destroyed;
- 3) in the judgment of the Commission such work will not lead to degradation of additional BVW; and
- 4) replication area is provided in a ratio of 2:1 for the BVW destroyed.

2.3 LIMITED PROJECT WETLAND CROSSINGS

Section 310 CMR 10.53 (3) indicates that the Commission has discretionary authority to issue permits for limited projects. In addition, DEP policy 88-2, which is an interpretation of 310 CMR 10.53 (3) (e) on limited project wetland crossings for access roadways and driveways indicates that the Commission “may require the applicant to evaluate the reasonableness of any previously or currently available alternatives including the realignment or reconfiguration of the project”. In order to assist in the evaluation of alternatives, the applicant shall submit an alternative concept plan for each wetland crossing proposed in a limited project. The alternative concept plan must show a potential use of the property under a configuration which eliminates each potential crossing. For example, if an applicant proposes a limited project with two wetland crossings, three plans should be submitted, one showing the proposed project with two crossings, and alternatives showing the project with one crossing and no crossings. A concept plan requires only existing topography, wetlands, roadways, lot lines, and wetland impact areas. The requirements of Section 4 herein shall not apply to concept plans; however, the Commission, in its discretion, may require the applicant to submit additional information regarding an alternative concept plan where the circumstances of the project so warrant.

2.4 EROSION AND SEDIMENT CONTROL

2.4.1 PREAMBLE.

Sedimentation, runoff and erosion as a result of land development have long been acknowledged as the largest identifiable sources of pollution and degradation of our wetlands. The intent of this section is to describe appropriate standards and measures applicable to all projects involving land disturbance.

2.4.2 PRESUMPTION.

Where a proposed activity involves the removal of vegetative cover, or significant disturbance of the surface, sedimentation, runoff and erosion are presumed to occur. This presumption may be overcome by providing evidence to the Commission that site conditions (e.g. soil and slope) will prevent sediment from leaving the disturbed area. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect.

2.4.3 GENERAL PERFORMANCE STANDARDS.

Where the presumption of Section .2 is not overcome, the project shall meet the following performance standards. Any proposed alteration shall not expose or cause soil to be exposed so that uncontrolled erosion occurs. Evidence of this condition may include the formation of gullies, the cutting back of existing banks by stormwater flow or the presence of visible sediment in the runoff. Erosion shall be mitigated by a combination of the following means as appropriate to the specified site:

- a. Limited erosion by minimizing the amount of exposed ground and the length of time it is exposed.
- b. Reduce the steepness and length of slopes on the site.
- c. Divert flows away from disturbed areas during construction in an approved manner.
- d. Protect exposed surfaces through vegetative or other stabilizing cover.
- e. Decrease the velocity of runoff through acceptable construction practices, e.g. check dams, slope breaks, berms and improved (i.e., vegetation, rip-rap) drainage surfaces.
- f. Trap sediment in basins and behind barriers (e.g., staked haybales and/or silt fencing). Silt fencing is to be embedded into the ground to prevent sediment from passing under them.
- g. Maintain and adjust erosion and sediment control measures continuously during construction.

3. **WETLAND REPLICATION.**

3.1 **PERFORMANCE STANDARDS FOR WETLAND REPLICATION.**

Where a replication of BVW is proposed, the applicant shall submit complete replication plans and a replication report with the Application for Permit. In addition, the following requirements shall apply:

- a. The replication plan and report shall include, at a minimum, topography, location and size of BVW to be altered, the location and size of the replication area, a description of the BVW to be altered, and a description and detailed methodology of the replication work. Due to the difficulty in getting replication successfully established, the Commission expects that replication will be provided at a 2 to 1 ratio;
- b. The replication area shall be created concurrently with the BVW to be altered;
- c. A wetlands specialist with at least two years of experience in wetlands replication shall supervise the replication work;
- d. Written reports shall be submitted by the applicant at the end of each growing season stating the condition of erosion controls and documenting the condition of growth of the replicated area;
- e. An as-built report and an as-built plan of the replication area, both certified by the wetlands specialist, shall be submitted and shall provide the date the BVW was excavated, the soil data and depth of such BVW, the dates of planting and, if applicable, replanting of replication areas along with the percentage of cover of individual species; and
- f. No certificate of compliance shall be issued for the Permit authorizing the replication work until all conditions of this section have been complied with and at least two full growing seasons have elapsed since the replication work began. In its discretion, the Commission may issue a certificate of compliance prior to the completion of two (2) full growing seasons upon receipt of a bond or other security in an amount not to exceed the cost of the replication and upon such terms as are acceptable to the Commission.

3.2 ACTIVITIES WITHIN THE BUFFER ZONE

3.2.1 PREAMBLE.

Projects undertaken within 100 feet of a resource area have a high likelihood of altering that area, either during construction or from routine operation of the completed project. In the experience of the Commission, projects in that part of the buffer zone closest to the wetland almost inevitably cause degradation of the resource area. The intent of this section is to explain activities that are and are not acceptable adjacent to resource areas.

3.2.2 PRESUMPTION.

Within a buffer zone all activities that involve removal of vegetation (except routine lawn and garden maintenance), grading, filling, excavation, erection of permanent structures, application of inorganic fertilizers (excluding lime and other soil treatments approved by the Commission) or application of pesticides whose labels indicate they are toxic to aquatic organisms, is presumed to alter the adjacent resource areas. This presumption may be overcome by meeting the general performance standards set forth below.

3.2.3 GENERAL PERFORMANCE STANDARDS.

No foundation, building, road, sidewalk or other permanent structure shall be placed within twenty (20) feet of any resource area. Furthermore, no grading, filling, excavation, removal of vegetation or other construction activity shall be allowed within twenty (20) feet of said resource areas. Notwithstanding the above, the Commission may allow work closer to resource areas if needed:

- (a) to provide access to an area where an alteration of BVW has been allowed;
- (b) if the work qualifies as a limited project (310 CMR 10.53.3 as amended); or
- (c) for storm water structures.

In other projects the Commission may allow work within 20 ft. of a resource area if the applicant demonstrates:

- (1) alternatives have been considered and in the judgment of the Commission no practical alternative is available;
- (2) project scope and design minimize work in close proximity to resource areas;
- (3) site conditions (including but not limited to slope, soil type and hydrology) will allow prevention of wetland damage from such work; and
- (4) such work will not lead to encroachment on the resource area after completion of the project.

For projects involving steep slopes, highly erodable soils, extensive disturbed areas or hydrologic conditions likely to promote significant erosion, the Commission may require a wider undisturbed buffer to ensure protection of wetland resource areas. Furthermore, the presumption of wetland resource alteration from fertilizers and pesticides may be overcome by providing qualified technical data to the Commission indicating that the chemical products will not alter, degrade or pollute wetland resource areas.

4 PLANS AND ENGINEERING INFORMATION

4.1 GENERAL.

Plans shall describe the proposed activity and its effect on the environment. All plans, drawings, sketches and calculations shall be legible and dated and signed by the persons responsible for their preparation. Plans and drawings involving the practice of surveying or engineering shall be stamped and signed by a professional surveyor or engineer. Plans shall be consistent with those submitted to other Town boards and departments.

4.2 PLAN REQUIREMENTS FOR A REQUEST FOR DETERMINATION OF APPLICABILITY.

Unless otherwise authorized by the Commission, plans submitted for a Request for Determination of Applicability shall include the following information at a minimum:

- a. A project locus map copied from a U.S. Geological Survey quadrangle sheet or a Town of Southborough map showing the location of the proposed activity.
- b. Names and locations of adjacent roadways.
- c. Property lines with distances.
- d. On all drawings the title designating the project location, the name of the person preparing the drawings, the date prepared and any revision dates.
- e. Delineation of all known resource areas and the buffer zones as defined and in 310 CMR 10.00 as amended and in the Regulations. Delineation of the border of the Southborough Wetland By-law 20 ft. no work zone.
- f. Location of all present and proposed structures and paved areas and the distance of these structures and/or paved areas from the resource and/or the 20 ft. no-work zone.
- g. Existing and proposed contours of the entire site and affected adjacent areas. Generally, two (2) foot contours should be shown. Contours should refer to the National Geodetic Vertical Datum of 1929 and any amendments thereof.

4.3 PLAN REQUIREMENTS FOR AN APPLICATION FOR PERMIT.

Unless otherwise authorized by the Commission, plans submitted for an application for permit shall include the following information at a minimum:

- a. A project locus map copied from a U.S. Geological Survey quadrangle sheet or Town of Southborough map showing the location of the proposed project.
- b. Names and locations of adjacent roadways.
- c. Property lines including distances.
- d. On all drawings the title designating the project location, the name of the person preparing the drawings, the date prepared and any revision dates.
- e. Delineation of all known resource areas and the buffer zones as defined in 310 CMR 10.00 as amended and in the Regulations. Delineation of the border of the Southborough Wetland By-law 20 ft. no work zone.
- f. Location of all present and proposed structures and paved areas and the distance of those structures and/or paved areas from the resource and/or the 20 ft. no-work zone.
- g. Existing and proposed contours of the entire site and affected adjacent areas. Generally, two (2) foot contours should be shown. Contours should refer to the National Geodetic Vertical Datum of 1929 and any amendments thereof.
- h. Location of existing and proposed storm water management facilities and associated engineering data.

- i. Location of proposed BVW areas to be filled and associated replication areas. Cross sections showing slopes, bank and bottom treatment of each resource area to be altered. Location of cross sections must be specified.
- j. Locations and elevations of cellars or floors and subsurface sewage disposal systems, including leaching facilities and reserve leaching areas.
- k. Location of all existing and proposed wells. Location of underground utilities and underground wells.
- l. Soil characteristics of the site. Hydric soils. Core samples
- m. Erosion and sediment control plans.
- n. Layout and site plans shall be drawn at commonly acceptable scales, but in no case in a scale greater than one (1) inch = forty (40) feet, with detail and profile drawings drawn to appropriate scales.
- o. For plans involving construction of areas in excess of one acre, methods for stabilizing cleared areas of the site during extended shutdown due to weather, economic conditions or any other cause should be provided.
- p. The sequence of construction for proposed erosion and sediment controls, clearing and grubbing, excavation, installation of improvements, grading, and stabilization.
- q. For projects requiring hydraulic/hydrologic calculations, plans showing sub-catchment areas, cover, soil types, drainage paths and design points with labelling which corresponds to the calculations should be provided. Analysis of the 1 (or 2), 10, 25 and 100-year frequency storms for pre-development and post-development conditions should be provided as appropriate, including a concise summary of peak rates of flow at design points as well as flood elevations and duration.

4.4 **OTHER INFORMATION.**

The requirements stated above are not definitive or exclusive. Some may be omitted in a particular case and an applicant may be required to submit additional information deemed necessary to determine compliance with the Wetlands By-law and the Regulations. Applicants and their consultants are encouraged to contact the Commission to ascertain information requirements for specific projects.

5 **HEARINGS AND FEES**

5.1 **HEARING.**

The following shall apply to all hearings held pursuant to the Wetlands By-law:

- A. The Commission shall schedule a public hearing upon any application or request for determination, with written notice given at the expense of the applicant five (5) working days prior to the hearing in a newspaper of general circulation in Southborough.
- B. The Commission shall commence the public hearing within twenty-one (21) days from receipt of a completed application or request for determination unless an extension is authorized, in writing, by the applicant.
- C. The Commission shall issue its Permit or determination, in writing, within twenty-one (21) days of the close of the public hearing unless an extension is authorized, in writing, by the applicant.

D. The Commission may combine its hearing under the Wetlands Protection Act with the hearing under the Wetlands By-law.

5.2 CONSULTANT FEE.

A consultant fee shall be paid by the applicant/owner in an amount equal to the actual costs to be incurred to retain independent engineering services, environmental services or other services deemed necessary by the Commission to review the Application for Permit, grant or deny the Permit and impose appropriate conditions. The consultant fee shall be payable when the Commission appoints an independent consultant. Failure to pay the consultant fee when due shall constitute sufficient cause to deny the Permit.

5.3 FEES.

At the time of filing an Application for Permit or a Request for Determination, the applicant shall pay a municipal filing fee as specified according to the fee schedule listed below. This fee is in addition to that required by the Wetlands Protection Act (M.G.L. Ch. 131, §40, as amended). This fee is not refundable. Failure to pay the filing fee when due shall cause the Application for Permit or Request for Determination to be deemed incomplete. The Commission may waive the filing fee for a permit application or Request for Determination submitted by a Town, County, State or Federal agency.

APPLICATION TYPE:	FEE:
Request for Determination	
Commercial:	\$100.00
Residential Subdivision:	\$100.00
Basic Residential or Multifamily:	\$25.00
(If a Notice of Intent is required, the fee paid will be applied to the NOI fee)	
Notice of Intent, Abbreviated Notice of Resource Area Delineation, Abbreviated Notice of Intent	
Commercial:	Equal to full WPA filing fee
Residential Subdivision:	Equal to full WPA filing fee
Basic Residential or Multifamily:	Equal to full WPA filing fee
Application Filed After Enforcement Order:	Double the municipal fee
Amended Order of Conditions:	75% of initial fee
Request for Certificate of Compliance	
Commercial:	\$250.00
Residential Subdivision:	\$125.00
Basic Residential or Multifamily:	\$25.00
If Order of Conditions has Expired:	Add an additional \$50.00
Extension Permit Request:	\$75.00

Request for True Attest Copy of Order of Conditions,	
Certificate of Compliance or Amended Order of Conditions:	\$25.00 each
Partial Certificate of Compliance	
Commercial:	\$125.00
Residential Subdivision:	\$75.00
Basic Residential or Multifamily:	\$25.00

6 PROCEDURES

6.1 TIME PERIODS.

In computing any period of time specified in the Wetlands By-law or the Regulations, the day of the act or event after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed by the Wetlands By-law or the Regulations is less than ten (10) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. “Legal holiday” includes any day appointed as a holiday by the President or the Congress of the United States or designated by the laws of the Commonwealth of Massachusetts.

6.2 ACTIONS BY CONSERVATION COMMISSIONS.

Where the wetlands By-law states that a particular action is to be taken by the Commission, that action is to be taken by more than half the members present at a meeting of at least a quorum. A quorum is defined as a majority of the members then in office.

6.3 DETERMINATION OF APPLICABILITY.

Any person who desires a determination as to whether the Wetlands By-law applies to an area, or work to be performed on such area, may submit a written request for Determination of Applicability to the Commission. The correct application form to use is Form #1 (see attached). The Commission will issue its decision in a Determination of Applicability using Form #2 (see attached). The applicant must also give written notice of the filing of a Request for Determination of Applicability to all direct abutters and other parties as provided in Section 170 6A of the Wetlands By-law. A Request for Determination of Applicability shall be deemed filed pursuant to the Wetlands By-law if it includes correct filing fees, eight (8) plans and other information as required by the Regulations and is either hand delivered or sent by certified mail to the Commission office.

6.4 APPLICATION FOR PERMIT.

An application for Permit shall be deemed filed pursuant to the Wetlands By-law if it includes eight (8) plans and other information as required by the Regulations and is either hand delivered or sent certified mail to the Commission office. The correct application form for an Application for Permit is Form #3 (see attached). The Commission will issue

its decision in the form of an Order of Conditions using Form #4 (see attached). The applicant must also give written notice of the filing of an Application for Permit to all direct abutters and other parties as provided in Section 170 6-A of the Wetlands By-law.

6.5 DENIALS.

The Commission is empowered to deny a Permit for failure to meet the requirements of the Wetlands By-law; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements of the Regulations; for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by the Wetlands By-law; or for situations where no conditions may be imposed which are adequate to protect those values.

6.6 BURDEN OF GOING FORWARD.

The applicant shall have the burden of going forward by providing credible evidence from a competent source in support of all matters asserted by the applicant in accordance with his or her burden of proof set forth in Section 6.7.

6.7 BURDEN OF PROOF.

The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the Application for Permit will not have an unacceptable significant or cumulative effect upon the wetland values protected by the Wetlands By-law. Failure to provide such evidence to the Commission shall be sufficient cause for the Commission to: 1) deny a Permit; 2) grant a Permit with conditions; or 3) request permission to continue the hearing in order that the applicant or others may present additional evidence.

6.8 WAIVERS.

The Commission may in any particular case, where such action is in the public interest and not inconsistent with the intent and purpose of the Wetlands By-law, waive strict compliance with those portions of the Regulations which are not required by the Wetlands By-law. Any person seeking a waiver pursuant to this section shall make such request in writing; specifically identify those portions of the Regulations for which a waiver is sought, and all reasons in support of the request for the waiver.

6.9 TIME LIMITS AND EXTENSIONS.

A Permit shall expire three (3) years from the date of issuance. Notwithstanding the above, the Commission, in its discretion, may issue a permit expiring five (5) years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one (1) year period, provided that a request for a renewal is received, in writing, by the Commission prior to expiration.

6.10 REVOCATION OR MODIFICATION OF PERMIT.

For good cause the Commission may revoke or modify a Permit issued under the Wetlands By-law after notice to the holder of the Permit and notice to the public, abutters and town boards pursuant to Section 170 8-D of the Wetlands By-law and a public hearing.

7 ENFORCEMENT

7.1 When the Conservation Commission determines that an activity is in violation of the By-law or a permit issued under the By-law, the Commission may

- a. issue an Administrative Order, and/or
- b. hold an Administrative Hearing to consider whether the landowner should be fined for the violation.

7.2 Violations include, but are not limited to:

- a. failure to comply with a Permit, such as failure to observe a particular condition or time period specified in the Permit;
- b. failure to complete work described in a Permit, when such failure causes damage to the interests identified in the By-law; or
- c. failure to obtain a valid Permit prior to conducting an activity subject to regulation under the By-law.

7.3 In the appropriate case, the Commission may issue an Enforcement Order under the Wetlands Protection Act, M.G.L. Chapter 131, section 40, in lieu of or in addition to an Administrative Order.

7.4 An Administrative Order issued by the Conservation Commission shall be signed by a majority of the Commission. In a situation requiring immediate action, an Administrative Order may be signed by a single member or agent of the Commission, if said Order is ratified by a majority of the members at the next scheduled meeting of the Commission.

7.5 If a fine or an adjustment of fine for a violation is contemplated, the Commission shall hold an Administrative Hearing to discuss the violation and to give the landowner or the landowner's representative an opportunity to respond to the evidence and circumstances. The landowner must be given at least 48 hours notice in writing of the date, time, and place of an Administrative Hearing, by certified mail or hand delivery. If a majority of the Commission present at the Hearing finds by preponderance of the evidence that a violation has occurred, the landowner shall be punished by a fine of not more than five hundred dollars (\$500.00) per violation. The amount of the fine per violation will be determined by the Commission at the Administrative Hearing. In determining the appropriate fine per violation at the Administrative Hearing, the Commission will consider the evidence presented and provide a statement of reasons why the fine amount has been imposed.

7.6 The Commission hereby establishes guidelines for calculating the appropriate amount of the fine levied by the Commission, if warranted, after an Administrative Hearing. Each day of the violation constitutes a separate violation under the By-law.

Violations without a Permit or a valid Order of Conditions:

- a. Any action which removes, fills, dredges, builds upon, degrades, discharges into, or otherwise alters (collectively 'alteration of') the following resource areas: any

- freshwater wetlands; bordering vegetated wetlands; marshes; wet meadows; bogs or swamps; any banks; beaches; lakes; rivers; ponds; streams or land under said waters; any vernal pools; any lands subject to flooding or inundation by groundwater or surface water or storm flowage (collectively, “the resource areas”); or other wetlands as defined in the By-law: at the discretion of the Commission, an amount up to and including \$500.00 per violation as provided under the By-law. Restoration of the area to its pre-existing condition may, at the discretion of the Commission, be required under a Restoration Administrative Order.
- b. Alteration of twenty (20) foot No Disturbance area not including the areas above: at the discretion of the Commission, an amount up to and including \$250.00 per violation. Restoration of the area to its pre-existing condition may, at the discretion of the Commission, be required under a Restoration Administrative Order.
 - c. Alteration of 100-foot buffer zone not including the areas above: at the discretion of the Commission, an amount up to and including \$100.00 per violation. Restoration of the area to its pre-existing condition may, at the discretion of the Commission, be required under a Restoration Administrative Order.
 - d. Cutting, harming or removing of trees of 2” caliper or more anywhere in the buffer zone: at the discretion of the Commission, an amount up to and including \$300.00 per tree. Replacement with equivalent caliper may, at the discretion of the Commission, be required under a Restoration Administrative Order.

Violations which occur on a project with a Permit or for which a valid Order of Conditions exists:

- e. Alteration of the following resource areas: any freshwater wetlands; bordering vegetated wetlands; marshes; wet meadows; bogs or swamps; any banks; beaches; lakes; rivers; ponds; streams or land under said waters; any vernal pools; any lands subject to flooding or inundation by groundwater or surface water or storm flowage (collectively, “the resource areas”); or other wetlands as defined in the By-law: at the discretion of the Commission, an amount up to and including \$500.00 per violation. Restoration of the area to its pre-existing condition may, at the discretion of the Commission, be required under a Restoration Administrative Order.
- f. Alteration of twenty (20) foot No Disturbance area not including the areas above: at the discretion of the Commission, an amount up to and including \$250.00 per violation. Restoration of the area to its pre-existing condition may, at the discretion of the Commission, be required under a Restoration Administrative Order.
- g. Alteration of 100-foot buffer zone not including the areas above: at the discretion of the Commission, an amount up to and including \$100.00 per violation.

Restoration of the area to its pre-existing condition may, at the discretion of the Commission, be required under a Restoration Administrative Order.

- h. Cutting, harming or removing of trees of 2” caliper or more anywhere in the buffer zone: at the discretion of the Commission, an amount up to and including \$300.00 per tree. Replacement with equivalent caliper may, at the discretion of the Commission, be required under a Restoration Administrative Order.

7.7 The notice of a fine or fines and explanation thereof, including the date or approximate date of the violation from which daily violations are counted, will be sent in writing to the responsible landowner(s) by certified mail or hand delivery. The fine or fines are payable to The Town of Southborough within twenty-one days of the date of issuance of the notice.

7.8 The Town Collector may record in the Registry of Deeds a conservation lien for non-payment of accumulated fines. The lien shall be against all property in the Town of Southborough held by the landowner at the time of the violation which is contiguous to the area of the violation. The Commission shall hold an Administrative Hearing, to which the landowner is given written notice as described above, in order to decide the amount of the lien which may not exceed the amount of accumulated fines to date.

7.9 A landowner can apply in writing for a continuance of the Administrative Hearing stating in full the reason for the request. The Commission may grant a continuance for compelling and/or environmentally sound reasons.

7.10 The Administrative Order or an Enforcement Order issued under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, will constitute a warning that an Administrative Hearing and possible fine may result.

7.11 The Commission reserves the right to adjust the fine in response to new information or new circumstances at an Administrative Hearing to which the landowner will be given notice as above. A written notice of the adjustment of fine shall be sent to the landowner by certified mail or hand delivered.

7.12 The Commission may accept a written plan with timetable for full restoration of the violation and may then withhold sending the notice of fine(s) for a specified time period. If satisfactory restoration is not made in a timely manner, the notice of fines is retroactive.

7.13 Unless otherwise stated in the By-law or in the rules and regulations promulgated under the By-law, the definitions, procedures, and performance standards of the Wetlands Protection Act, M.G.L. Chapter 131, section 40 and associated Regulations, 310 CMR 10.00 as promulgated April 1, 1983, and amended November 1, 1987, shall apply.

8 SPECIAL CONDITIONS.

As part of a Permit the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the following methods:

8.1 SECURITY.

The Commission may require a bond or deposit prior to commencement of work in an amount to be determined by the Commission or its agent. Such bond or deposit shall be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the Permit.

8.2 CONSERVATION RESTRICTIONS.

The Commission may require a conservation restriction, easement or other covenant enforceable in a court of law executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Southborough, whereby the conditions of the Permit shall be performed and observed before any lot may be conveyed other than by mortgage deed.

8.3 DEED REFERENCES.

There shall be a deed reference that there are Wetland Resources on the property and that no activity (e.g. dredging, altering or filling) shall take place without first contacting the Commission. A copy of the deed reference shall accompany the written request for a Certificate of Compliance.

9 CERTIFICATES OF COMPLIANCE.

Within twenty-one (21) days of the receipt of a written request by the applicant or the owner of the property for a Certificate of Compliance, the Commission shall grant such request if the activity or portions thereof described in the Application for Permit and plans complies with the Permit. The deed reference required by Section 7.3 of the Regulations shall accompany the written request. The Certificate of Compliance shall be signed by a majority of the members of the Commission present at a meeting of at least a quorum.

9.1 SITE INSPECTIONS.

Prior to the issuance of a Certificate of Compliance, a site inspection shall be made by the Commission. If the Commission determines, after inspection, that the work has not been done in compliance with the Permit, it may refuse to issue a certificate of compliance. Such refusal shall be issued within twenty-one (21) days of receipt of a request for a Certificate of Compliance, shall be in writing and shall specify the reasons for denial.

9.2 LETTER OF PARTIAL COMPLIANCE.

If a project has been completed with all the grading done in accordance with the plans stamped by a registered professional engineer, landscape architect or land surveyor the Commission, upon a written request from the applicant, may at its discretion issue a Letter of Partial Compliance allowing papers to be passed while waiting for the ground to be stabilized by an adequate vegetative cover. Only then will a Certificate of Compliance be issued.

9.3 CONTINUING CONDITIONS.

If the Permit contains conditions which continue past the completion of the work, such as maintenance or monitoring, the Certificate of Compliance shall specify which, if any, of

such conditions shall continue. The Certificate of Compliance shall also specify to what portions of the work it applies, if it does not apply to all the work regulated by the Permit.

9.4 **RECORDING.**

All permits, Certificates of Compliance, and Renewals of Permits shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate, by the Commission at the expense of the applicant. No certificate of Compliance, Permit or Renewal of Permit shall be issued until the Commission has received the recording fee.

10 **EMERGENCIES.**

No Permit or Application for Permit shall initially be required for emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, provided the following conditions are met:

- a. Advance notice, either oral or written, has been given to the Commission prior to commencement of the work or within twenty-four (24) hours after commencement;
- b. The Commission or its agent certifies the work as an emergency project;
- c. The work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency;
- d. Within twenty-one (21) days of commencement of an emergency project an Application for Permit is filed with the Commission for the emergency work.

The time limitation for performance of emergency work shall not exceed thirty (30) days, unless written approval of the Commission is obtained. Failure to meet these and any other requirements of the Commission may result in revocation or modification of the emergency project approval.

11 **SEVERABILITY.**

The invalidity of any section or provision of the Regulations shall not invalidate any other section or provision thereof, nor shall it invalidate any Permit or determination which previously has been issued.

12 **EFFECTIVE DATE.**

Upon passage the Regulations shall immediately take effect with respect to Request for Determination of Applicability and activities falling within Category 1 or Category 2 uses as defined in 310 CMR 10.03 (7)(c) as amended.

With respect to activities falling within Categories 3, 4, and 5 as defined in 310 CMR 10.03 (7) (c) the Regulations shall take effect immediately.

No Permit shall be required for work allowed by Orders of Conditions issued under the Wetlands Protection Act prior to the effective date of the Regulations or work encompassed within a Notice of Intent filed prior to the effective date of the Regulations. No Permit shall be required for work performed and based upon a negative Determination of Applicability of the Wetlands Protection Act provided such negative determination was issued prior to the effective date of the Regulations and activities are completed within three (3) years of the negative determination.