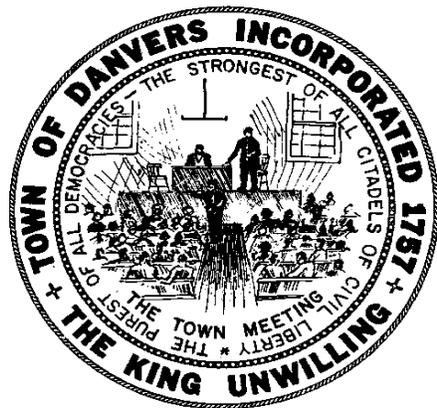


# Town of Danvers Wetlands Bylaw and Wetlands Bylaw Regulations



**\$10.00**

Department of Planning and Human Services  
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Danvers, MA 01923  
(978) 777-0001 x3095

# **Town of Danvers Wetlands Bylaw**

## CHAPTER XXVI

### WETLANDS PROTECTION BY-LAW

**Section 1: Purpose.** The purpose of this by-law is to protect the wetlands, water bodies, adjoining land areas and related resources by controlling activities deemed to have a significant effect upon their values, including but not limited to the following: Public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution, fisheries, shellfish, wildlife habitat, recreation, agriculture, aquaculture and historic values (collectively, the interests protected by this by-law).

**Section 2: Jurisdiction.** Except as permitted by the Conservation Commission or as provided in this by-law, no person shall remove, fill, dredge, alter or build upon or within 100 feet of any freshwater wetland, coastal wetland, marsh, meadow, bog or swamp; upon or within 100 feet of any bank, beach, or flat; upon or within any river, lake, pond, stream, or estuary; upon any land within 100 feet of any river, lake, pond, stream or estuary; upon or within any land under said waters; upon any land subject to flooding or inundation by groundwater, surface water, tidal action, or coastal storm flowage.

**Section 3: Exceptions.** The permit and application required by this by-law shall not be required for maintaining, repairing, or replacing an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, sanitary sewer, storm drainage, public roadway, telephone, telegraph or other telecommunication services, provided that the structure or facility is not substantially changed or enlarged, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

The permit and application required by this by-law shall not apply to 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 Federal Government, the Commonwealth, or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement, provided that the Conservation Commission certifies the work as an emergency project, and provided that the work is performed only for the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency. Within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided in this by-law.

Other than stated in this section, the exemptions provided in the Wetlands Protection Act, M.G.L. c. 131, sec. 40, shall not apply.

**Section 4: Application for Permits.** Written application for a permit to perform work regulated by this by-law (hereinafter "application") shall be filed with the Conservation Commission. The application shall include such plans as are necessary to describe proposed activities and their effects on the environment. No work shall commence except upon receipt and in compliance with a permit issued pursuant to this by-law.

The application and plans shall contain data as required by this by-law and regulations adopted by the Commission.

The Commission may accept as the application and plans under this by-law the Notice of Intent and plans filed under the Wetlands Protection Act, G.L. c. 131, section 40.

Any person desiring to know whether proposed work or an area is subject to this by-law may in writing request a determination of applicability (hereinafter "request for determination") from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission.

**Section 5: Notice and Hearings:** Any person filing an application or a request for determination with the Commission shall at the same time give written notice thereof, by certified mail or hand delivery, to all abutters according to the most recent records of the assessors, including those across a traveled way, across a body of water, and within 300 feet of the parcel which is the subject of the application or request. The notice shall include a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters free of charge. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any application or request for determination, with written notice given at the expense of the applicant at least five working days, not including Saturdays or Sundays, prior to the hearing, in a newspaper of general circulation in the Town.

The Commission shall commence the public hearing on any application or request for determination within 21 days.

The Commission shall issue its permit or other action, or determination, in writing within 21 days of the close of the public hearing thereon.

The Commission may combine its hearing under this by-law with the hearing conducted under the Wetlands Protection Act, G.L. C. 131, Section 40, and may combine the public notices thereof.

For reasons announced by the Commission at the hearing, the Commission shall have authority to continue the hearing to a date certain announced at the hearing, either for receipt of additional information offered by the applicant or others, or for information

required of the applicant, deemed necessary by the Commission in its discretion. In the event the applicant objects to a continuance, the hearing shall be closed, and the Commission shall take action on such information as is available.

**Section 6: Coordination With Other Boards.** Any person filing a permit application or a request for determination with the Commission shall provide a copy thereof at the same time, by certified mail or hand delivery, to the Department of Public Works, Engineering Office, Planning Board, Board of Appeals, Board of Health, and Building Inspector. The Commission shall not take final action until such boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account, but which shall not be binding on the Commission. The applicant shall have the right to receive any such comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

**Section 7: Permits, Determinations, and Conditions.** If the Commission after a public hearing determines that the area which is the subject of the application is likely to be significant to the interests protected by this by-law, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the work requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those interests, and all work shall be done in accordance with those conditions.

If, upon consideration of an application the area is deemed not likely to be significant to the interests protected by this by-law, the Commission shall so inform the applicant that the work does not require a permit.

In acting on a request for determination, the Commission shall reference the data and plans relied on and may impose conditions on its determination on which the determination is contingent.

Permits and determinations shall expire three years from the date of issuance. Any permit may be renewed once for an additional one year period, provided that a request for an extension is received in writing by the Commission prior to expiration. Said request shall include the expected completion date and the reasons for the requested extension.

For good cause, after notice to the permittee and holding a public meeting, the Commission may revoke or modify a permit issued under this by-law.

**Section 8: Regulations.** After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this by-law including filing fees. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this by-law.

Public notice shall be given at least three (3) weeks prior to such hearing by publication in a newspaper of general circulation in the Town and by posting with the Town Clerk.

At a minimum these regulations shall define key terms in this by-law not inconsistent with this by-law.

**Section 9: Definitions.** The following definitions shall apply in the implementation of this by-law.

The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town by-laws, administrative agencies, public or quasi-public corporations or bodies, Town of Danvers, and any other legal entity, its legal representatives, agents, or assigns.

The term "alter" shall include, without limitation, the following actions when undertaken in resource areas subject to this by-law:

- a) Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- b) Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- c) Drainage or other disturbance of water level or water table;
- d) Dumping, discharging or filling with any material which may degrade water quality;
- e) Placing of fill or removal of material which would change elevation;
- f) Driving of piles, erection of buildings or structures of any kind;
- g) Placing of obstructions or objects in water or waterways;
- h) Destruction of or injury to plant life including cutting of trees or their branches or roots;
- i) Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water;
- j) Any activities, changes or other work which pollute any body of water or groundwater.

**Section 10: Security.** As a part of a permit issued under this by-law, in addition to any security required by any other town or state board, agency or official, 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 methods described below:

- a) By a proper bond or deposit of money or negotiable securities sufficient in the opinion of the Commission to secure faithful and satisfactory performance of the work required by the Permit.

- b) By a covenant, or other enforceable undertaking, executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Danvers and members of the public, whereby the permit conditions shall be performed and observed before the property on which the work is to be performed may be conveyed, other than by mortgage deed. Such covenant shall be recorded with the Essex South District Registry of Deeds or with the land registry section of such registry if the land is registered land. A mortgagee who acquired title to the mortgaged premises by foreclosure or otherwise, may sell the same, subject to covenant. Nothing herein shall be deemed to prohibit conveyance by a single deed, subject to the permit and all its conditions, and the subject covenant, of the entire parcel of land of which the area that is the subject of the permit is part, as described by the deed or deeds established ownership of the area subject to the permit at the time the permit is issued. If this form of security is used, the permittee shall deliver to the Commission, prior to issuance of the permit, certified copies of said deed or deeds.

**Section 11: Enforcement.** The Commission, its agents, officers and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under this by-law and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.

The Commission shall have authority to enforce this by-law, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil criminal court actions.

Upon request of the Commission, the Town Manager shall direct the Town Counsel to take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.

Town Boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of this by-law, regulations thereunder, or permits issued thereunder, shall be punished by a fine of not more than \$100. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the by-law, regulations, or permit violated shall constitute a separate offense..

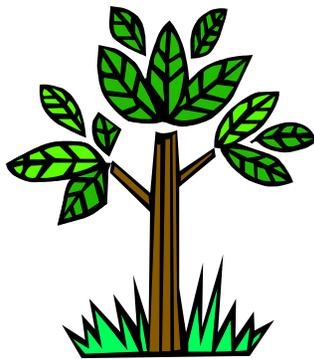
**Section 12: Burden of Proof.** The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not harm the interests protected by this by-law. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not harm the interests protected by this by-law shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

**Section 13: Relation to the Wetlands Protection Act.** This by-law is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, G.L. c. 131, Section 40, and regulations thereunder.

**Section 14: Severability.** The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof, nor shall it invalidate any permit which previously has been issued.

**Section 15: Effective Date.** This by-law shall take effect on February 29, 1988, and shall apply to any project for which a Notice of Intent is filed under the Massachusetts Wetland Protection Act (G.L. Chapter 131, Section 40) on or after that date. This by-law shall not apply to any project for which a Notice of Intent has been filed under said Wetlands Protection Act prior to February 29, 1988. AUTH; ARTICLE 10, TM 2/29/88).

# Town of Danvers Wetlands Bylaw Regulations



*Date: 1/6/1999*

*Rev. 2/16/2000 Part VII 7.01(1)*

*Rev. 2/20/2002 Part I 1.05(9)*

*Rev. 3/5/2003 Part XIII 13.01*

# **TOWN OF DANVERS**

## **WETLANDS BY-LAW REGULATIONS**

Reviewed: January 6, 1999; Rev: 2/ 16/2000 (Part VII-7.01 (1)); Rev: 2/20/ 2002 (Part I-1.05 (9)) Rev. 3/5/03 {Part XIII-13.01}

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Dated: January 6, 1999

Revised: February 16, 2002 {Part VII-7.01 (1)}

Revised February 20, 2002 {Part I-1.05 (9)}

Revised March 5, 2003 {Part 13.01}

# **PART I. GENERAL PROVISIONS**

## **1.01 Introduction and Purpose**

### **(1) Authority**

These regulations are promulgated by the Town of Danvers Conservation Commission (hereinafter “Commission”) pursuant to the authority granted by the Town of Danvers Wetlands Protection By-Law (hereinafter “the By-Law”), Article 39 of the Articles of Amendment to the Massachusetts Constitution (the “Home Rule” Amendment) and all other power and authority hereto enabling. These regulations shall be effective as of the date of their formal adoption by the Danvers Conservation Commission, which date is January 6, 1999.

### **(2) Purpose**

The purpose of this By-Law is to protect the wetlands, water bodies, adjoining land areas and related resources by controlling activities deemed to have a significant effect upon their values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution, fisheries, shellfish, wildlife habitat, recreation, agriculture, aquaculture and historic values (collectively, the interests protected by the By-Law).

The purpose of these regulations is to define and clarify that process by establishing standard definition, standard plan format and uniform procedures by which the Commission may carry out its responsibilities under the By-Law.

## **1.02 Statement of Jurisdiction**

### **(1) Areas Subject to Protection under the By-Law**

The following areas are subject to protection under the By-Law:

- (a) Any bank,
  - beach,
  - flat,
  - freshwater wetland,
  - coastal wetland,
  - marsh,
  - meadow,
  - bog,
  - or swamp;

- (b) Any lake,
  - pond,
  - river,
  - stream,
  - or estuary;

- (c) Any land under any of the water bodies set forth in Section 1.02 (1(b)) above;
- (d) Any land within 100 feet of any of the areas set forth in Section 1.02 (1)(a) and (1) (b) above;
- (e) Any land subject to flooding or inundation by any of the following:
  - groundwater,
  - surface water,
  - tidal action,
  - or coastal storm flowage.

## **(2) Activities Subject to Regulation under the By-Law**

- (a) Any activity proposed or undertaken which will constitute removing, filling, dredging, altering or building upon any area specified in Section 1.02 (1) is subject to regulation under the By-Law and requires the filing of an Application for Permit.
- (b) Except as permitted by the Commission or as provided herein, no person shall remove, fill, dredge, alter or build upon or within 100 feet of any freshwater wetland, coastal wetland, marsh, meadow, bog or swamp; upon or within 100 feet of any bank, beach, or flat; upon or within any river, lake, pond, stream, or estuary; upon any land within 100 feet of any river, lake, pond, stream or estuary; upon or within any land under said waters; or subject to flooding or inundation by ground water or surface water, tidal action or coastal storm flowage.
- (c) If the applicant wishes to have the Commission determine whether an activity or an area may be subject to regulation under the bylaw, he or she may do so by way of a Request for Determination pursuant to section 1.05 (3) of these regulations. The application to be used for such a determination is entitled "Request for a Determination of Applicability", pursuant to M. G. L. c. 131, s40.

## **1.03 General Provisions Concerning Burden of Proof**

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not harm the interests protected by the By-Law and these regulations. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not harm the interests protected by the By-Law and these regulations shall be sufficient cause for the Commission to deny a permit or to grant a permit with conditions.

## **1.04 Definitions**

The following definitions shall apply in the interpretation and implementation of this By-Law. To the extent not defined herein or in the By-Law, words used in the By-Law or in these regulations shall have the definitions contained in the Massachusetts Wetlands Protection Act (M.G.L., Ch.131, S40) and the Rules and Regulations promulgated thereunder.

## **ABUTTER**

Shall mean those property owners whose land abuts the subject land described in a plan subject to Commission review including those across a traveled way, across a body of water and within 300 feet of the parcel, which is the subject of the Commission's review.

## **ACTION**

Shall be any form of construction, reconstruction or expansion of any building, structure, road or other ways, alteration or any changing of the physical, chemical, vegetative or biological characteristics of an area of land or water.

## **AGRICULTURE**

Normal maintenance of land in agricultural use means the following activities:

1. all tilling and harvesting practices customarily employed in the raising of crops to enhance existing conditions;
2. the pasturing of animals, including the construction and maintenance of such fences and protective structures as may be required which is incidental thereto and represents a customary and necessary use in raising such animals;
3. the use of fertilizers, pesticides, herbicides and other such materials, subject to all state and federal laws and regulations governing their use;
4. the maintenance of field ditches, subsurface drains, grass waterways, access roads and similar projects to prevent erosion, provide more effective use of rainfall and improve equipment operation and efficiency, all in order to improve conditions for the growing of crops;
5. the raising of animals including, but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals or the use of land in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals;
6. the raising of fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs;
7. the selective cutting and removal of trees when carried out in the following manner:
  - a. every reasonable effort shall be made to avoid or minimize access through areas subject to protection under the By-Law
  - b. a written notice describing the proposed cutting and removal of trees shall be submitted to the Commission 21 days prior to the commencement of operations
  - c. there shall occur no filling, excavation or other change in the existing topography

## **ALTER**

The term "alter" shall include, without limitation, the following actions, when undertaken in resource areas subject to this By-Law:

- a. removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- b. changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- c. drainage or other disturbance of water level or water table;
- d. dumping, discharging or filling with any material which may degrade water quality;
- e. placing of fill or removal of material which would change elevation;
- f. driving of piles, erection of buildings or structures of any kind;
- g. placing of obstructions or objects in water or waterways;
- h. destruction of or injury to plant life including cutting of trees or their branches or roots; (with the exception of those activities allowed in agricultural use);
- i. changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water;
- j. any activities, changes or other work which pollute any body of water or groundwater.

## **APPLICANT**

Shall mean any person or persons on whose behalf, action is requested of the Commission.

## **APPLICATION**

The written application filed by any person requesting a permit or a determination of any area subject to protection under this By-Law

## **AQUACULTURE**

- (a) Means land used primarily in the growing of aquatic organisms under controlled conditions, including one or more of the following uses: raising, breeding or producing a specified type of aquatic organism including but not limited to finfish, shellfish, amphibians, reptiles, seaweed(s) and edible freshwater plants.
- (b) Additionally, land in aquacultural use means the following activities when done in connection with the production of aquatic organisms as defined above: draining, flooding,

heating, cooling, removing, filling, grading, compacting, raking, tilling, fertilizing, seeding, harvesting, filtering, rafting, culverting, or applying chemicals in conformance with all state and federal laws, provided, however, that such activities are clearly intended for aqua cultural use and that best available measures are utilized to ensure that there will be no adverse effect on wetlands outside the area in aqua cultural use.

## **AREA SUBJECT TO PROTECTION**

Any area specified in Section 1.02 of these regulations.

## **BANK (COASTAL)**

A bank means the seaward face or side of any elevated landform, which lies at the landward edge of a coastal beach, land subject to tidal action or other wetland.

## **BANK (INLAND)**

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 flood plain, or, in the absence of these, it occurs between a water body and an upland.

## **BEACH (COASTAL)**

A coastal beach means unconsolidated sediments subject to wave, tidal and storm action, which forms the gently sloping shore of a body of salt water and includes tidal flats.

## **BEST AVAILABLE MEASURES**

The most effective currently accepted engineering practices or technology available for a particular purpose.

## **BEST PRACTICAL MEASURES**

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

## **BORDERING**

Touching at any point.

## **BOUNDARY**

Boundary of an area subject to protection under the By-Law. A description of the boundary of each area is found in the appropriate section of these regulations.

## **BROOK**

A body of running water, and the land under the water which include, but is not limited to brooks, creeks and rivers which move in a definite channel in the ground due to a hydraulic

gradient and which flows within, into or out of an area subject to protection under the By-Law. A portion of a stream may flow through a culvert/pipe or beneath a bridge. Such a body of running water which does not flow throughout the year is intermittent.

### **BURDEN OF PROOF**

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not harm the interests protected by this By-Law. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not harm the interests protected by this By-Law shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

### **BY-LAW**

Chapter XXVI of the Danvers By-Laws entitled "Wetlands Protection By-Law".

### **CERTIFICATE OF COMPLIANCE**

A document issued by the Commission indicating that the proposed work or a portion thereof has been completed in accordance with the permit.

### **COASTAL ENGINEERING STRUCTURE**

Any bulkhead, revetment, seawall, rip rap, groin, jetty, artificial seaweed, plastic sheeting or other structure intended to prevent or alleviate storm or flood damage, tidal action, wave action, littoral flow or to otherwise control the flow of water.

### **COASTAL WETLAND**

Any bank, beach, estuary, marsh, swamp, meadow, flat or other lowland subject to tidal action or coastal storm flowage.

### **CONDITION**

Any requirement set forth in writing by the Commission for the purpose of permitting, regulating or prohibiting any activity that alters an area subject to protection under the By-Law and these regulations.

### **CONSERVATION COMMISSION OR COMMISSION**

That body of members lawfully appointed pursuant to M.G.L., c40 S. 8c.

### **CREEK**

See BROOK.

**DATE OF ISSUANCE**

The date of a written confirmation of any action by the Commission, as evidenced by the postmark, or the date of hand delivery to the applicant or the applicant’s representative.

**DEPARTMENT**

Massachusetts Department of Environmental Protection (D.E.P.) or any successor agency.

**DETERMINATION OF APPLICABILITY**

A document issued by the Commission indicating whether a site or the work proposed thereon is subject to the jurisdiction of the By-Law and these regulations.

**DETERMINATION OF SIGNIFICANCE**

A document issued by the Commission indicating that the area on which the proposed work is to be done, or which the proposed work will alter, is significant to one or more of the interests identified in the By-Law and these regulations

**DREDGE**

To deepen, widen or excavate, either temporarily or permanently

**EMERGENCY**

An unforeseen set of circumstances creating a substantial and imminent risk of harm to persons or property.

**EROSION CONTROL**

The prevention of the detachment or movement of soil, rock fragments or plants, by water, wind, ice and/or gravity.

**ESTUARY**

Any area where fresh and salt-water mix and tidal effects are evident; or any partially enclosed coastal body of water where the tide meets the current of any stream or river.

**EXTENSION PERMIT**

A document issued by the Commission granting an extension of time within which the authorized activity shall be completed.

**FILL**

To deposit any material either temporarily or permanently; any material so used.

## **FISHERIES**

The nutrient sources and habitat in which all species of fresh and saltwater finfish and shellfish live all or part of their life cycle.

## **FLAT (TIDAL)**

Tidal flat means any nearly level part of the coast, which usually extends from the mean low water line landward.

## **FLOOD CONTROL**

Prevention or reduction of flooding or inundation by groundwater, surface water, tidal action or coastal storm flowage.

## **FLOOD PLAIN**

An area which floods from a waterway or water body, during any event up to and including the 100-year storm event.

## **FLOODING**

Inundation by ground water, surface water, tidal action or coastal storm flowage.

## **FRESHWATER WETLANDS**

A wet meadow, freshwater marsh, swamp, bog, pond, lake, creek or stream; an area of low topography or of characteristic soils where ground water, flowing water, standing surface water or ice provides a significant part of the supporting substrata for a plant community for at least five (5) months of the year; emergent and submergent plant communities in inland waters, and that portion of any bank which touches any inland waters.

## **GROUNDWATER**

Water below, or seeping from, the earth's surface in the zone of saturation.

## **INTERESTS IDENTIFIED IN THE BY-LAW**

Those interests specified in Section 1 of the By-Law

## **ISSUING AUTHORITY**

Danvers Conservation Commission

## **LAKE**

A body of running water, and the land under the water which include, but is not limited to brooks, creeks and rivers which move in a definite channel in the ground due to a hydraulic

gradient and which flows within, into or out of an area subject to protection under the By-Law. A portion of a stream may flow through a culvert/pipe or beneath a bridge. Such a body of running water which does not flow throughout the year is intermittent.

## **LAND**

Any area including wetlands, drainage ways and any areas not permanently covered by water.

## **LAND CONTAINING SHELLFISH**

Land containing shellfish means land under the ocean, tidal flats and salt marshes.

## **LAND IN AGRICULTURAL USE**

See agriculture of these definitions.

## **LAND SUBJECT TO COASTAL STORM FLOWAGE**

Land subject to any inundation caused by coastal storms up to and including that caused by the 100 year storm, surge of record or storm of record, whichever is greater.

## **LAND SUBJECT TO FLOODING**

An area with low, flat topography subject to inundation from floodwaters that may rise from creeks, rivers, streams, ponds or lakes.

## **LAND SUBJECT TO TIDAL ACTION**

Land subject to the periodic rise and fall of a coastal water body, including spring tides.

## **LAND UNDER WATER BODIES AND WATERWAYS**

The bottom of, or land under the surface of any estuary, creek, river, stream, pond, lake, or other water bodies. Said land may be composed of organic muck or peat, fine sediments, rocks or bedrock.

## **MAJORITY**

More than half of the members of the Commission then in office.

## **MARSH (FRESHWATER)**

The term "marshes", as used in this section, shall mean areas where a vegetational community exists in standing or running water during the growing season and where a significant part of the vegetational community is composed of, but not limited to nor necessarily including all of the following plants or groups of plants: arums (araceae), bladder worts (Utricularia), bur reeds (Sparganiaceae), button bush (Cephalanthus occidentalis), cattails (Typha), duck weeds (Lemnaceae), eelgrass (Vallisneria), frog bits (Hydrocharitaceae), horsetails (Equisetaceae), hydrophilic grasses (Gramineae), leatherleaf (Chamaedaphne calyculata), pickerel weeds

(Pontederiaceae), pipeworts (Eriocaulon), pond weeds (Potamogeton), rushes (Juncaceae), sedges (Cyperaceae), smartweeds (Polygonum), sweet gale (Myrica gale), water milfoil (Halcragaceae), water lilies (Nymphaeaceae), water starworts (Callitrichaceae), water willow (Decodon verticillatus).

### **MARSH (SALTWATER)**

A coastal wetland that extends landward up to the highest high tide line, that is, the highest spring tide of the year, and is characterized by plants that are well adapted to or prefer living in saline soils.

### **MEADOW OR WET MEADOW**

The term "wet meadow" shall mean an area where ground water is at the surface for a significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges and rushes made up of, but not limited to, nor necessarily including, all of the following plants or groups of plants: blue flag (Iris), vervain (Verbena), thoroughwort (Eupatorium), dock (Rumex), false loosestrife (Ludwigia), hydrophilic grasses (Gramincae), loosestrife (Lythrum), marsh fern (Dryopteris thelypteris), rushes (Juncaceae), sedges (Cyperaceae), sensitive fern (Onoclea sensibilis) and smartweed (Polygonum) and Jewelweed (Impatiens).

### **M.E.P.A.**

Massachusetts Environmental Policy Act, M.G.L. c. 30, s. 62-62H, and the regulations promulgated pursuant thereto, 301 CMR 10.00, et. seq.

### **NOTICE OF INTENT**

A written notice filed by any person intending to remove, fill, dredge or alter an area subject to protection under the Massachusetts Wetlands Protection Act, M.G.L., ch. 131, s.40.

### **ORDER OF CONDITIONS**

The document issued by the Commission pursuant to M.G.L. ch. 131, s, 40, containing conditions which regulate or prohibit an activity in an area subject to protection.

### **PERMIT**

The document issued by the Commission containing conditions which regulate or prohibit an activity pursuant to the By-Law and these regulations.

### **PERSON AGGRIEVED**

A 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 defined by the By-Law and these regulations. Said person must specify in writing sufficient facts as to how they may be affected by said act or failure to act.

## **PLANS**

Such data, 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 applicability of the By-Law and these regulations or to determine the impact of the proposed work upon the interests identified in the By-Law and these regulations.

## **POLLUTION**

Contamination of land, surface water and or groundwater with materials not normally present in these areas, or, contamination due to elevated levels of naturally occurring materials.

## **POND**

See LAKE.

## **PREVENTION OF POLLUTION**

The prevention or reduction of contamination, or the degradation of an area, or change in the physical, chemical, thermal or biological characteristics of land, surface or groundwater.

## **PRIVATE WATER SUPPLY**

Any source or volume of surface or ground water demonstrated to be in private use or shown to have potential for private use.

## **PROTECTION OF FISHERIES**

Protection of the capacity of an area subject to protection under the By-Law so as to prevent or reduce contamination or damage to fish and to areas that serve as their habitat and nutrient source. Fish includes all species of fresh and salt water finfish and shellfish.

## **PROTECTION OF LAND CONTAINING SHELLFISH**

Protection of the capacity of an area to prevent or reduce contamination or damage to shellfish and to areas that serve as their habitat and nutrient source.

## **PROTECTION OF WILDLIFE**

The protection of the ability of any resource area to provide food, breeding, habitat, or escape cover for any species falling within the definition of wildlife set forth in these regulations.

## **PROTECTION OF HISTORIC VALUES**

Protection of historic areas within areas subject to protection under the By-Law which are known or are determined in writing by the Commission to be likely to contain sites of archeological significance, including but not limited to, middens, burial sites, or historic and prehistoric structures and artifacts.

## **PUBLIC WATER SUPPLY**

Any source or volume of surface or ground water demonstrated to be in public use or to have the potential for public use.

## **QUORUM**

Majority of the members of the Commission then in office.

## **RECREATION**

Activities of individuals done for relaxation carried out in resource areas of the By-Law and these regulations, which include but are not limited to swimming, picnicking, bathing, fishing and boating.

## **REMOVE**

To take away any type of material.

## **REQUEST FOR DETERMINATION OF APPLICABILITY**

A written request by any person to the Commission asking whether the proposed work and/or area is subject to the By-Law or these regulations.

## **RESOURCE AREA**

Except as permitted by the Commission or as provided by the By-Law and these regulations, no person shall remove, fill, dredge, alter or build upon or within 100 feet of any freshwater wetland, coastal wetland, marsh, meadow, bog or swamp; upon or within 100 feet of any bank, beach, or flat; upon or within any river, lake, pond, stream or estuary; upon or within any land under said waters; upon any land subject to flooding or inundation by groundwater, surface water, tidal action, or coastal storm flowage.

## **RIVER**

See BROOK.

## **SHELLFISH**

Means the following species: bay scallop, blue mussel, ocean quahog, oyster, quahog, razor clam, sea clam, sea scallop and soft shell clam.

## **SIGNIFICANT**

Plays a role in the provision or protection of an interest identified in the By-Law and these regulations.

## **SPRING TIDE**

Means those tides which occur with the new and full moons and which are perceptibly higher and lower than other tides.

## **STORM DAMAGE PREVENTION**

Methods or provisions undertaken, to limit to the greatest extent possible, damage caused by adverse weather conditions such as wind, rain, storm or other conditions. Said damage may include, but shall not be limited to erosion, flooding, destruction or injury to vegetation, disbursement of sediment, silts, debris or objectionable material or destruction of buildings or property.

## **STREAM**

See BROOK.

## **VARIANCE**

An authorization from the Commission for a deviation from the terms of the By-Law and these regulations as described in Section 5.01.

## **VERNAL POOL**

Confined basin depressions which are essential breeding habitat for a variety of amphibian species such as wood frog (*Rana sylvatica*) and the spotted salamander (*Ambystoma maculatum*).

## **WILDLIFE**

Any non-domesticated mammal, bird, reptile, amphibian, fish, mollusk, arthropod or other invertebrate, other than a species of Class Insecta which has been determined by the Commonwealth of Massachusetts or any agency thereof to be a pest whose protection under the provisions of the By-Law would be a risk to man.

## **WILDLIFE HABITAT**

Those areas subject to the By-Law and these regulations which, due to their plant community, composition and structure, hydrologic regime or other characteristics, provide important food, shelter, migratory, travel or over wintering areas, or breeding areas for wild life.

## **ZONE OF SATURATION**

The subsurface zone in which all open spaces are filled with water. This is the area of groundwater as defined in the By-Law and these regulations.

## **1.05 Procedures**

### **(1) General Information**

- (a) All time periods specified in the By-Law and these regulations shall be computed on the basis of calendar days, unless the last day falls on a Saturday, Sunday or legal holiday, in which case the last day shall be the next business day following.
- (b) Where the By-Law states that a particular action (except receipt of a request or application) 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.
- (c) Where the By-Law states that a permit or determination shall be issued by the Commission, that action is to be taken by a majority of the members then in office. Those members need not convene as a body in order to sign said permit or determination provided they met pursuant to the open meeting law, G.L. c.39, Section 23A-23C, when voting on the matter.
- (d) Said requests and applications shall be submitted to the Town of Danvers, Planning Department, during normal business hours.

### **(2) Determinations of Applicability**

#### **(a) Requests for Determination of Applicability**

Any person who desires a determination as to whether the By-Law applies to land or to any proposed work may submit to the Commission a Request for a Determination of Applicability. The Commission may require additional information be submitted to aid in the evaluation.

If the person making a request is not the owner or his agent, the request shall include certification that the legal property owner(s) has been notified of the request.

#### **(b) Determination of Applicability**

Within twenty one (21) days after receipt of the Request, the Commission shall hold a public hearing. Public Notice of the time and place of the hearing shall be given by the Commission at the expense of the person making the request. The Notice shall be published in a newspaper of general circulation in the town of Danvers not less than five (5) days prior to the Hearing. Notice shall also be given in accordance with the open meeting law, M.G.L. c.39, S23B, and shall be given to abutters in accordance with the By-Law. The determination shall be voted on and signed by a majority of the Commission. Copies of the determination shall be sent by the Commission to the person making the request and to the owner within twenty-one (21) days of the close of the public hearing.

The determination shall be valid for three years from date of issuance.

In acting on a request the Commission shall reference the plans submitted and may impose conditions on its determination.

### **(3) Applications for Permits**

- (a) Any person who proposes to do work that will remove, fill, alter, or dredge any Area Subject to Protection under the By-Law shall submit an Application for Permit and other application materials in accordance with the By-Law and these regulations.
- (b) Upon receipt of the application materials referred to in sub-section (4) (a) above, the Commission shall issue a file number. The designation of a file number shall not imply that the plans and supporting documents have been judged adequate for the issuance of a Permit but only that copies of the minimum submittal requirements have been submitted.
- (c) In the event that only a portion of a proposed project or activity lies within an Area Subject to Protection Under the Act and the remainder of the project or activity lies outside those areas, all aspects of the project must be described in the detail called for by the By-Law and these regulations.

### **(4) Public Hearings by the Commission**

- (a) A public hearing shall be held by the Commission within twenty one (21) days of receipt of a submittal in accordance with the By-Law and its regulations and shall be advertised in accordance with the By-Law and the requirements of the open meeting law, M.G.L., c 39 s23B.
- (b) Public hearings may be continued as follows: For reasons announced by the Commission at the hearing, the Commission shall have authority to continue the hearing to a date certain announced at the hearing, either for receipt of additional information offered by the applicant or others, or for information required of the applicant, deemed necessary by the Commission in its discretion. In the event the applicant objects to a continuance, the hearing shall be closed and the Commission shall take action on such information as is available.

### **(5) Permits Regulating the Work**

- (a) Within 21 days of the close of the public hearing or any continuance thereof, the Commission shall either: make a determination that the area on which the work is proposed to be done, or which the proposed work will remove, fill, dredge or alter, is not significant to any of the interests identified in the Act, and shall so notify the applicant; or make a determination that the area on which the work is proposed to be done, or which the proposed work will remove, fill, dredge or alter is significant to one or more of the interests identified in the By-Law and shall issue a Permit for the protection of said interest(s).
- (b) The Permit shall impose such conditions as are necessary for the protection of those areas found to be significant to one or more of the interests identified in the By-Law. The Permit shall prohibit any work or any portion thereof that cannot be conditioned to meet said standards.

- (c) If the Commission finds that the information submitted by the applicant is not sufficient to describe the site, the work or the effect of the work on the interests identified in the By-Law, it may issue a Permit prohibiting the work. The Permit shall specify the information which is lacking and why it is necessary.
- (d) A Permit shall be valid for three years from the date of its issuance.
- (e) The Permit shall be signed by a majority of the Commission and shall be mailed or hand delivered to the applicant or his agent or attorney.
- (f) A copy of the plans describing the work and the Permit shall be kept on file by the Commission and shall be available to the public at reasonable hours.
- (g) Prior to the commencement of any work permitted or required by the Permit, the Permit shall be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the permit shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed is to be done. In the case of registered land, the Permit shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. Certification of recording shall be sent to the Commission. If work is undertaken without the applicant first recording the Permit, the Commission may issue an Enforcement Order or may itself record the Permit.

#### **(6) Extension of Permits for Work**

- (a) The Commission may extend a Permit for one year. A request for an extension shall be made to the Commission at least thirty days prior to the expiration of the Permit.
- (b) The Commission may deny the request for an extension and require the filing of a new Application for Permit for the remaining work in the following circumstances: 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; where new information, not available at the time the Permit was issued, has become available and indicates that the Permit is not adequate to protect the interests identified in the By-Law; where incomplete work is causing damage to the interests identified in the By-Law; or, where work has been done in violation of the Permit or these regulations.
- (c) If issued by the Commission, the Extension Permit shall be signed by a Majority of the Commission.
- (d) The Extension Permit shall be recorded in the Land Court or the Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the Commission. If work is undertaken without the applicant so recording the Extension Permit, the Commission may issue an Enforcement Order or may itself record the Extension Permit.
- (e) 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 shall also specify to what portions of the work it applies, if it does not apply to all the work regulated by the Permit.

## **(7) Certificate of Compliance**

- (a) Upon written request by the applicant, a Certificate of Compliance shall be issued by the Commission within twenty one (21) days of receipt thereof and shall certify that the activity or portions thereof described in the Application and plans have been completed in compliance with the Permit. The Certificate of Compliance shall be signed by a majority of the Commission.
- (b) Prior to the issuance of a Certificate of Compliance, a site inspection shall be made by the Commission or its administrator. The applicant or the applicants' agent shall be present for the site inspection.
- (c) If the Commission determines, after review and inspection, that the work has not been done in compliance with the Permit, it may refuse to issue a Certificate of Compliance. Such refusal shall be issued 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.
- (d) If a project has been completed in accordance with plans stamped by a registered professional engineer, architect, landscape architect or land surveyor, a written statement by such professional person certifying substantial compliance with the plans and setting forth what deviation, if any, exists from the plans approved in the Permit shall accompany the request for a Certificate of Compliance.
- (e) The Certificate of Compliance shall be signed by a majority of the Commission and shall be mailed or hand delivered to the applicant or his agent or attorney.
- (f) A copy of the plans describing the work and the Permit shall be kept on file by the Commission and shall be available to the public at reasonable hours.
- (g) The Certificate of Compliance shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the Commission. Upon failure of the applicant to so record, the Commission may do so.

## **(8) Revocations, Modifications or Amendments**

- (a) The Commission may revoke, modify or amend a permit issued under the By-Law and these regulations if any of the following circumstances occur:
  - (1) the applicant and/or his successors fail(s) to comply with the terms of the permit;
  - (2) new information relating to the project is obtained which indicates that previous information presented to the Commission was inaccurate;
  - (3) the changes occurred after completion of the Commission's review.
- (b) For minor project changes, the applicant may request, and/or the Commission may grant, a modification to an existing Permit if the proposed change is considered minor or insignificant by the Commission. If the Commission issues a decision that requires a plan revision, a copy of that revision shall be sent to the Commission and accepted as a modification.

- (c) With respect to all proposed changes other than those deemed minor by the Commission, the Commission may require such additional documentation as it deems necessary, and shall reopen the public hearing. Alternatively, the Commission may require the Applicant to submit a new application.
- (d) No request for a Modification or Amendment will be granted unless the wetland is either re-flagged, or the original approved flagging is re-established in the field. The Commission may require a new filing or the reopening of the public hearing if the wetland delineation has changed from the original submittal.

## **(9) Appeal**

Any final decision of the Commission may be appealed within thirty (30) days of its issuance pursuant to M.G.L. c.231A or c.249.

### **1.06 Emergencies**

The permit and application required by this By-Law shall not apply to 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 Federal government, the Commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement, provided that the Commission certifies the work as an emergency project, and provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency. Within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided in this By-Law.

### **1.07 Exceptions**

The permit and application required by this By-Law shall not be required for maintaining, repairing, or replacing an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, sanitary sewer, storm drainage, public roadway, telephone, telegraph or other telecommunication services, provided that the structure or facility is not substantially changed or enlarged, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

### **1.08 Severability**

- (1) The invalidity of any section or provision of the By-Law or of these regulations shall not invalidate any permit which previously has been issued.
- (2) If any Court of the Commonwealth shall invalidate any provision of the By-Law, the Commission shall present to the Town Meeting after such invalidation, amendments to the By-Law which are designed to comply with any Court decision invalidating such provision.

- (3) If any Court of the Commonwealth shall invalidate any of these regulations, the Commission shall promulgate additional regulations after such invalidation, which are designed to comply with any Court decision invalidating such regulation.

## **PART II. VARIANCES**

### **2.01 Variances**

- (1) The Commission may, in its discretion, grant variances from the operation of one or more of these regulations pursuant to this Section. Such variances are intended to be granted only in rare and unusual cases, and shall be granted only in accordance with the provisions of this section.
- (2) A variance may be granted only for the following reasons and upon the following conditions:
  - (a) The Commission may grant a variance from these regulations upon a clear and convincing showing by the applicant that any proposed work, or its natural and consequential impacts and effects, will not have any adverse effect upon any of the interests protected in the By-Law. It shall be the responsibility of the applicant to provide the Commission with any and all information which the Commission may, in writing, request in order to enable the Commission to ascertain such adverse effects, and the failure of the applicant to furnish any information which has been so requested shall result in the denial of a request for a variance pursuant to this subsection.
  - (b) The Commission may grant a variance from these regulations when it is necessary to avoid so restricting the use of the property as to constitute an unconstitutional taking without compensation. If an application for a variance pursuant to the subsection is received by the Commission, the Commission may request an opinion from Town Counsel as to whether the application of these regulations to a particular case will result in such a taking without compensation.

## **PART III. SUGGESTED FILING GUIDELINES**

### **3.01 Purpose:**

The Commission recognizes the fact that environmental review is necessarily a site-specific process. The attached information is, therefore, intended as a guideline in the broadest sense. The Commission intends that consultants have maximum flexibility in design and freedom to employ innovative techniques to minimize adverse environmental impacts of various projects. Pre-application conferences and site visits, especially for large, complex or unusual projects are encouraged. This conference can minimize delay in the permitting process, post-application, re-design and maximize efficiency in the project review.

### 3.02 General Instructions

These guidelines are intended to supplement the regulations and requirements for wetlands filings made under Massachusetts Wetlands Protection Act, G.L. Chapter 141, Section 40, in the Town of Danvers.

- (1) No application will be accepted as complete unless all information requested is clearly and properly submitted. An application is minimally understood to consist of:
  - (a) The proper written application form requesting action by the Commission.
  - (b) A narrative description of the proposed work.
  - (c) A plan of the project.
  - (d) The applicant's check appropriate to the filing.
  
- (2) When in the Commission's judgement it is necessary to proper administration of the By-Law, and these regulations, an applicant may be required to submit such additional information as the Commission shall specify.
  
- (3) A written list of all other required permits, variances or approvals and copies thereof should accompany the application. If any of these documents have not been received by the applicant at the time of the filing, a schedule anticipating their receipt shall be submitted and is subject to the Commission's approval.
  
- (4) For projects involving the application of: pesticides, herbicides, de-icers, dust controllers or fertilizers, the applicant must supply trade names, constituents, application rates and frequencies.
  
- (5) For projects entailing construction of any sort, a written statement describing construction methodology is required. The description should include the type of machinery to be used, access to the work site, proposed project timetables, etc. Unless the work described requires mechanical assistance from heavy equipment, none is permitted.
  
- (6) The Commission may, at its discretion, regulate the type of equipment to be used within a wetland project.
  
- (7) Where the proposed work involves excavation or filling, the following aspects must be reported:
  - (a) Describe the location of the work, the depth of the digging and the type of material to be removed.
  
  - (b) If excavation includes stumps and/or boulder removal, describe proposed method of disposal of these elements.
  
  - (c) filling is proposed, the location of this work, the volume and type of material must be specified.

- (d) The method of stabilization of any of the above work and the contemplated vegetative cover must be described.
- (8) For septic systems, the Commission may regulate construction details and location under the By-Law so as to protect wetland resource values.
- (9) The application shall be accompanied by a list containing the names and addresses of the record property owners, and a list of abutters, as determined from the most recent local tax list (unless the applicant shall have more recent knowledge of such abutters). These lists shall be part of the submission for a Request for Determination of Applicability as well as a Permit.

## **PART IV – PLANS**

### **4.01 General**

- (1) All applications shall include ten (10) copies of plans. Technical data should be submitted to describe the plans and shall be in a narrative form with calculations submitted as necessary to substantiate the designs proposed.
- (2) The applicant, upon submission of an Application, shall comply with the requirements of the By-Law and these regulations and provide the following:
- (3) All drawings shall include a title box designating the name of the project, location and names of the person(s) preparing the drawings, the scale, the date originally prepared and any revision dates. Drawings shall be stamped and signed by a Registered Professional Engineer or Registered Land Surveyor of the Commonwealth of Massachusetts. For certain projects, including but not limited to additions to existing structures, the Commission may accept plans not drawn by a surveyor or civil engineer when these plans utilize a stamped plan as a basemap. In this case, the basemap shall also be submitted as reference.
- (4) All plans depicting proposed drainage systems must be stamped by a Massachusetts Registered Professional Civil Engineer or Hydrologist.
- (5) An 8 1/2" x 11" photocopy of the USGS topographic quadrangle, showing the location of the proposed activity and the outline of the area in which the activity is located.
- (6) Detailed, narrative reports shall accompany the Application.
- (7) Source material for any plan submitted will be referenced on the plan.

### **4.02 Site Plans**

- (1) In order to demonstrate full compliance with this By-Law and these regulations, the applicant has the burden of proof to completely describe the site, the work and its effect on resource areas and the interests they protect.

- (2) The applicant is obligated to demonstrate that the work subject to regulation under this By-Law and Regulations can be performed in a manner that meets all applicable performance standards and results in no negative impact on the resource areas.
- (3) Applicants are urged to retain the services of qualified, experienced, professional consultants when filing an Application. Submission of incomplete or inadequate information or a failure to meet the burden of proof may result in extensive delays and continuations in the review and approval procedure. Failure to supply adequate and credible documentation describing the impact of the project on resource areas may result in the issuance of a decision prohibiting the work.

#### (4) Existing Conditions Site Plans

- (a) The following standards and design specifications are intended to provide the Commission with the minimum amount of data needed to determine the impact of the project on resource areas and their functions and values. The Commission may from time to time adopt and publish additional guidelines and minimum technical standards for plans, calculations and environmental impact reports submitted with an application. The Commission may find it necessary to request additional site-specific information to adequately determine the effect of the work on resource areas.
  1. Property boundaries and abutters from the most recent information on record at the Assessor's office.
  2. For any project other than alterations to or associated with those for a single residential lot, the drainage basin(s) in which the site is located shall be delineated on the plan. Sub-watersheds should be shown. Watershed Protection District Boundaries, if applicable. Adjacent impacted areas should also be shown.
  3. Existing contours at two-foot intervals and the source for any datum used to establish these contours. Contours beyond the site may be required when necessary to assess impacts.
  4. All existing natural and man-made features including tree lines, rock outcrops, stone walls, fence lines, cart roads, foot paths, overhead and underground utilities and drainage structures.
  5. All surface water courses, ponds, springs, wells and aquifer recharge areas are considered potential water supplies. Any proposed alteration of these resources shall be accompanied by registered engineering data demonstrating that the alteration will not compromise the public interest. The location of all surface water supplies, wells, and septic systems on the property and on abutting properties within 100 feet of the proposed work shall be shown on the plan.
  6. Elevations and delineation's of all natural and man-made drainage structures, waterways and resource areas as defined by vegetation and/or soils and hydrology.

7. 100 year flood elevations of all natural and man-made waterways and water bodies determined from the FEMA Flood Insurance Rate Maps and Flood Boundary and Floodway Maps. Where the floodplain of the wetlands and water bodies have not been mapped by FEMA or have been observed to be different than those mapped by FEMA, hydrologic calculations may be required, prepared by a registered, professional engineer to determine the boundary seasonal high water, mean annual high water and the 10 and 100-year floodplain. Watershed modeling, hydrograph routing and backwater analysis shall be performed using nationally recognized modeling techniques and those acceptable to the Town's Engineering Department.
8. Drainage calculations, including pre and post conditions, shall be submitted.
9. Site plan shall be submitted at a scale of not more than 1" = 40'. Additional plans with greater or lesser detail may also be required if such plans would provide valuable information to the Commission in its review.
10. Protection of historic areas will not constitute sole grounds for denial. However, these values will be considered and the applicant may be required to discuss the impact of the project upon such areas. The Commission may impose restrictions to lessen the impact of the project on these other inherent wetlands.

#### (5) Developed Conditions Site Plans

- a. The following items are set out as a minimum standard and are not intended to be a complete and final presentation as to what a plan should show. The applicant may submit or be required to submit by the Commission any further information which will assist in the review and which is deemed necessary to determine the proposed effect on the interests protected by this Bylaw and its regulations.
  1. All proposed man-made features including roads, driveways, rights of way, easements, restrictions, limits of construction, parking areas, structures, building, overhead and underground utilities shall be indicated. Any existing hiking, cross-country ski, foot or bicycle trails or paths should also be shown.
  2. Location and elevation of lowest habitable floor of all structures.
  3. Plans shall describe the proposed activity and its effects on the environment. Due regard shall be shown for all natural features such as large trees, water courses and bodies, wetlands, wildlife habitat and similar community assets.
  4. Location and date of any soil borings and deep test holes and groundwater level determination. Include samplings and percolation tests.
  5. Subsurface sewage disposal systems shall be indicated.
  6. Proposed grading and changes in elevation shown with two-foot contours and spot grades shall be shown.

7. All surface and subsurface drainage structures including the location, cross-section, slope and surface treatment of all drainage channels and the inverts, slope, pipe materials, catch basins, manholes and end treatment of all storm drains discharging within 100 feet of any resource area.
8. Wherever possible, all catch basins from which water directly enters a resource area shall contain oil/grease traps. Where conditions make this impossible, a statement about those conditions shall be supplied. A plan for maintenance and disposal of trapped hydrocarbons shall be provided.
9. The location and detail of all temporary erosion control devices, diversions, terraces, silt fences, hay bale barriers and sedimentation basins.
10. The location and nature of all proposed alterations to resource areas and their buffer zones.

## **PART V. PERFORMANCE STANDARDS AND SUPPLEMENTAL DOCUMENTATION**

### **5.01 Flood Control**

- (1) Engineering calculations shall be submitted to fully support the design of compensating flood storage areas for alterations that affect land subject to flooding. The calculations shall detail the existing incremental flood storage volumes and proposed incremental flood storage volumes up to 100-year flood elevation. There shall be no net loss of flood storage volume at any elevation. There shall be no increase in the rate of runoff as a result of any project.

### **5.02 Wildlife Habitat**

- (1) Applicants shall include a description of wildlife habitat characteristics observed on the subject property. This includes wildlife habitat in wetlands and the upland portion of the buffer zone. Valuable upland habitat shall, to the fullest extent possible, not be used to locate wetland replacement areas.

Where alterations exceed the maximum allowable thresholds described in the state regulations for bank, land under a water body or bordering land subject to flooding, or where the alteration of a habitat of rare species is involved, or where a vernal pool would be altered, a habitat study shall be performed by a qualified wildlife biologist. The study and the design of a compensating wetland/wildlife habitat shall be performed in accordance with DEP regulations and policies and this Bylaw and its regulations. Projects resulting in the loss of critical habitat, or causing negative impacts on critical habitat, of rare, threatened, endangered species or species of special concern shall not be permitted.

### **5.03 Stormwater Management**

- (1) Where new point source discharges are proposed within 100 feet of a resource area, either open channels or closed subsurface systems, a comprehensive stormwater management

system shall be designed that will not degrade value and function of the receiving or downstream water courses, wetlands, surface and ground water supplies. Such stormwater management systems shall employ Best Management Practices. Existing wetlands shall not be used for the storage or treatment of stormwater.

- (2) The design of the stormwater management system shall be based on a comparative analysis of both the quantity and quality of existing and developed hydrologic conditions. The baseline hydrologic conditions of the resource areas shall be used to determine the design criteria for the proposed stormwater management system. The analysis shall include the calculation of peak flow rates, time of peak flow, volume of runoff and quality of runoff.
- (3) The hydrologic analysis shall be based on a reasonable estimate of developed conditions within the entire watershed tributary to the new point source discharge. Calculations and watershed modeling shall be performed using a hydrograph analysis approved the Town's Engineering Department. Calculations shall be made that show the impact of the proposed alterations for the mean annual 10 and 100-year storms.
- (4) Mitigation of impacts for alterations of the quantity and quality of runoff water shall be required to meet appropriate performance standards for new point-source discharges. Applicants are encouraged to use the most feasible and best available stormwater runoff control strategies to reduce project impacts. Detention basins, infiltration basins, leaching catch basins, drainage dry wells, upland discharge of storm flows, and the use of other innovative and creative runoff control strategies are recommended.
- (5) Detention or retention basins shall be designed to meet the following standards:
  - (a) The applicant shall be responsible for securing by way of a covenant, easement, deed restriction or other legal instrument a perpetual mechanism or fund for the maintenance or repair of the basin by the heirs and assigns of the property on which the basin is located.
  - (b) The detention basin outlet works shall, to the fullest extent possible, be designed to be maintenance free, self-cleaning, and to deter acts of vandalism.
  - (c) The detention basin inlet and outlet shall be designed to avoid scour and erosion of the basin bottom and discharge channel.
  - (d) Storage capacities shall be based on the volume of active storage above the maximum seasonal ground water level. Test pits will normally be required to determine the maximum groundwater level.

#### **5.04 Erosion Control**

All plans shall show appropriate erosion control measures. A narrative erosion control plan and construction schedules shall be provided for all areas that will be altered within 100 feet of a resource area. Specifications shall be provided for both temporary and permanent ground covers. The erosion control plan shall describe all methods to control erosion and siltation on site, temporarily and permanently. Proposed location of any fill material which will be stored on site must be shown. Temporary erosion control measures will generally consist of double-staked

hay bales and trenched silt fence. Erosion and silt from the permitted activities shall not cause an adverse impact on any resource areas or their protected interests.

### **5.05 Wetland Replacement or Restoration**

- (1) A complete wetland replacement or restoration plan shall be submitted prior to the close of a public hearing. Such a plan shall meet all state and local performance standards and take all site-specific and Commission-directed issues into consideration. The plan shall be prepared by a qualified wetland specialist. The plan will include a description of the qualifications of the individual(s) who prepared the plan. The individual (s) who prepared the plan or approved designee will be on site during construction of the replacement area. All wetland replacement standards shall apply to wetland restoration.
- (2) In situations where there are no feasible alternatives that provide for fewer impacts on the wetland resource values, the Commission may allow the loss, alteration or temporary surface disturbance of up to a cumulative total of five thousand (5,000) square feet of freshwater wetlands when said areas are replaced or restored in accordance with the State regulations and the following:
  - a. Wetland replacement must be at least equal in size to the wetland that is altered. Replaced wetlands shall be made contiguous with existing wetlands.
  - b. Replacement areas must be constructed prior to other construction activity on site. The Commission will consider certain cases where this is not appropriate. Prior to construction, a sequencing schedule for construction activities shall be submitted to the Commission. This schedule shall specify dates for project commencement and dates for each anticipated procedure included in the wetland replacement plan.
  - c. An encroachment limit line shall be identified, using flagging and/or staking at the site for wetland areas that will be altered, and upland areas where wetland replacement will occur. Identify the wetland replacement area by using flagging and/or staking. This is designed to give construction workers and the Commission a clear and undisputed description of the work area during construction and through the upcoming growing seasons.
  - d. Wetland soils from the filled wetland shall be excavated and used for the replaced wetland when these soils are suitable for such a purpose.
  - e. Prior to any plantings, grades must be certified by a qualified wetland specialist or licensed land surveyor as designated by the Commission. Said certification and an as-built plan shall be submitted to the Commission for its approval.
  - f. No wetland replacement area will be certified to be in compliance unless it has survived for at least two calendar years. If after two years, the replacement area has not been vegetated to the satisfaction of the Commission, the applicant shall be required to vegetate the area with nursery stock and/or transplanting from indigenous wetland species. The revegetation shall take place under the supervision of a qualified wetlands specialist and the Commission and/or its administrator.

- g. Written monitoring reports of the existing and replicated/replacement resource areas shall be prepared by a qualified wetlands specialist. At a minimum, these reports shall be done every four (4) months, up until the issuance of a Certificate of Compliance. The reports shall be submitted to the Commission. These reports shall include, but are not limited to, the extent of vegetated cover, the kinds of plants, the water table depth and the status of erosion control measures.
- (3) The Commission may permit the construction and maintenance of a new roadway or driveway of minimum and practical width, where no alternative means of access from an existing public or private way to an upland area of the same owner is available. Replication of altered wetlands resources may be required by the Commission to minimize adverse impacts and to protect the interests identified in the Bylaw.
  - (4) Wetland alterations intended to make lands buildable, as by fulfilling septic system setback requirements, flood elevation requirements, or other minimum construction setback requirements, or to achieve minimum lot area requirements are prohibited. Wetland alterations required to access upland parcels will not be allowed if that landowner landlocked the parcel by selling upland access. The Commission may require the filing of a request for a waiver of certain Planning Board or Zoning Board requirements in order to minimize wetland impacts.

## **PART VI. PERFORMANCE GUARANTEE**

### **6.01 Performance Bond**

- (1) As part of a permit issued under this By-Law, in addition to any security required by any other town or state board, agency or official, 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 methods described below:
  - a. By a proper bond or deposit of money or negotiable securities sufficient in the opinion of the Commission to secure faithful and satisfactory performance of the work required by the Permit.
  - b. By a covenant, or other enforceable undertaking, executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Danvers and the members of the public, whereby the permit conditions shall be performed and observed before the property on which the work is to be performed may be conveyed, other than by mortgage deed. Such covenant shall be recorded with the Essex South District Registry of Deeds or with the land registry section of such registry if the land is registered land. A mortgagee who acquired title to the mortgaged premises by foreclosure or otherwise, may sell the same, subject to such covenant. Nothing herein shall be deemed to prohibit conveyance by a single deed, subject to the permit and all its conditions, and the subject covenant, of the entire parcel of land of which the area that is the subject of the permit is a part, as described by the deed or deeds established ownership of the area subject to the permit at the time the permit is issued. If this form of security is used, the permittee shall deliver to the Commission, prior to the issuance of the permit, certified copies of said deed or deeds.

### **6.02 Reduction of Bond or Surety**

- (1) The penal sum of any required bond, or the amount of any deposit held hereunder may, from time to time, be reduced by the Commission and the obligations of their parties thereto released by the Commission in whole or in part.

### **6.03 Release of Performance Guarantee**

- (1) Upon completion of site alterations required in the permit, security for the performance of which was given by bond, deposit or covenant or upon the complete performance of the covenants with respect to the site, the applicant may request and agree on the terms of release with the Commission.
- (2) If the Commission determines that said alterations have been completed in compliance with the conditions of the permit, it shall release the interest of the Town in such bond and return the bond or deposit to the person who furnished same, or release the covenant, if appropriate. If the Commission determines that said alterations have not been completed in compliance with the permit, it shall within 45 days, specify to the applicant, in writing, the details wherein said alterations fail to comply with the permit.

## **PART VII. NO-DISTURBANCE AND NO-BUILD ZONES**

### **7.01 No-Disturbance and No-Build Zones**

- (1) When proposing alterations of land within 100 feet of a wetland, the applicant must overcome a strong presumption of adverse impact on the adjacent wetlands and their functions and values. The Commission will require a 25-foot no-disturbance zone and a 35-foot no construct zone extending from all wetland resource areas except for riverfront area. No activity is allowed in the no-disturbance zone. Building construction of any kind is prohibited in the no-building zone. This includes, but is not limited to, home construction, porches, decks, additions and sheds.
- (2) The imposition of these additional zones is established since, in the considerable body of experience of the Commission, alteration of land immediately adjacent to a wetland invariably results in the alteration of the wetland itself. Such wetland alterations have been observed during construction such as siltation, overgrading or depositing construction debris. Such alterations have been observed after construction from improper land use such as unregulated filling, cutting of vegetation, extension of lawns or depositing of yard waste. Such alterations have been observed resulting in increased runoff, siltation and temperature or nutrient loading resulting from the change in land use immediately adjacent to the wetland. These subsequent alterations cannot be regulated without the imposition of the restricted zones detailed above. Since the Commission cannot allow unregulated alterations of wetlands, these restricted zones will be imposed on all projects.

## **PART VIII. AVAILABILITY OF REGULATIONS**

### **8.01 Availability**

- (1) Copies of these Regulations and the Bylaw shall be made available for purchase from the Danvers Conservation Commission for the price of \$10.00 payable to the Town of Danvers.

## **PART IX. POLICIES**

### **9.01 Policies**

- (1) These regulations may be supported by policy statements issued by the Commission. These policies will be made available to any individual upon reuse. Persons seeking permits under the Bylaw and Regulations should review the Policy statements available in the Conservation Office.

## **PART X. AMENDMENTS**

### **10.01 Amendments**

- (1) These regulations may be amended from time to time by a majority vote of the Commission. Prior to taking as vote on an amendment, the Commission shall have held a public hearing on the proposed changes.

## **PART XI. EFFECTIVE DATE**

### **11.01 Effective Date**

- (1) An advertised public hearing was held on these Regulations on December 10 & December 17, 1999. The Commission voted to adopt these Regulations on January 6, 1999, effective immediately. All other amendments shall be effective upon their adoption by the Commission following a public hearing and filing with the Town Clerk.

## **PART XII. ENFORCEMENT**

### **12.01 Enforcement**

- (1) The Commission may enforce these Regulations, Orders, Permits or Determinations issued thereunder, in any manner consistent with Section 11 of the By-Law and all other laws.

## **PART XIII. FILING FEE SCHEDULE**

### **Section 13.01 Filing Fee Schedule**

The payment of fees shall be due at the time of application submission. Fees under the bylaw are in addition to those required under the state Wetlands Protection Act (MGL Chapter 131, §40). Consulting fees and performance bonds are not included in these fees. The applicant's payment of fees does not imply project approval by the Commission. The applicant shall submit an explanation of how the fee under the bylaw was calculated. Fees are as shown below.

Request for Determination (RDA)\*      \$50

Notice of Intent/Abbreviated Notice of Intent (NOI/ANOI)\*\*

(Categories correspond to the fee schedule listed in the application for a NOI/ANOI under the state statute)

Category 1 - \$50

Category 2 - \$150

Category 3 - \$500

Category 4 - \$700

Category 5 - \$1.50/linear foot, no less than \$50, no more than \$1000

Category 6 - \$.80/linear foot, no less than \$50, no more than \$100 for a single-family home, or more than \$1000 for any other type of project

Abbreviated Notice of Resource Area Delineation (ANRAD)\*\*      \$1/linear foot (no limit)

Certificate of Compliance\*      \$50

Extension\*      \$100

Amendment\*\*      1<sup>st</sup> - \$50  
2<sup>nd</sup> - \$75  
3<sup>rd</sup> - \$100  
4<sup>th</sup> - \$125

Amendment After-the-Fact\*      \$500

Riverfront Area\*\*      150% of fees for RDA/NOI/ANOI

After the Fact/  
Late Fees\*\*      200% of fees

Emergency Certification      None

\*Flat fee      \*\* Variable fee