

I. GENERAL PROVISIONS

A. Authority

These Regulations are promulgated under authority of the Massachusetts Constitution Amendment Article XCVII (Article 97), Massachusetts General Laws c.40 §8C, the Home Rule Amendment Article LXXXIX (89), of the amendments of the Constitution of Massachusetts, 1966 as amended from time to time, and in accordance with the Hamilton Conservation Bylaw and shall be effective upon fulfillment of all legal requirements for their effectiveness.

B. Purpose

The purpose of the Hamilton Conservation Bylaw (hereafter referred to as the "Bylaw") is clearly stated in the Bylaw. Wetlands contribute to a number of public interests such as the prevention of pollution of surface water and groundwater, private and public water supply, wildlife habitat, protection of fisheries, and stormwater damage prevention, and are therefore protected by the Bylaw. The Bylaw identifies additional public interests not recognized by the Wetlands Protection Act. These are: "prevention of erosion and sedimentation", "wildlife" "recreation" and "aesthetics".

Any permit issued under the Bylaw and Regulations must therefore contribute to, and not be violative of, these public interests. These Regulations are promulgated to ensure fairness, to create a uniformity of process and to clarify and define the provisions of the Bylaw, administered by the Hamilton Conservation Commission, hereafter called the "Commission".

C. Jurisdiction

The areas subject to protection under the Bylaw differ from those protected by the Act in that additional areas are protected by this Bylaw. The additional areas subject to protection under the Bylaw include smaller ponds, vernal pools and certain freshwater wetlands that may not meet the definition of bordering vegetated wetland under the Act and including Associated Upland Resource Areas (AURA's) as defined below.

1. Vernal pools

Such areas are presumed to be significant to the 'wildlife' and 'wildlife habitat' interests of the Bylaw. This presumption of significance can exist in the absence of Certification by the MA Division of Fisheries and Wildlife and whether or not the vernal pool is located outside wetlands. The surrounding vegetation and trees are vital to a vernal pool, with the canopy and other plant life eventually providing the dead leaves that spark the energy transfer in the food chain. Bacteria and other organisms feed on the detritus and decomposing organisms add important nutrients to the water. Studies have shown that removal of vegetation or disturbance of these areas, which range from 750 to 1,200 feet from the vernal pool, can wipe out the vernal pool populations. The commission's jurisdiction is limited to the 100 foot AURA surrounding vernal pools. Such areas can be regulated by the Bylaw since these areas protect the public interests identified in the Bylaw. See Section II Definitions for more detail

2. Freshwater Wetland

Certain land may not meet the definition of a bordering vegetated wetland under the Act but still provide identified, important wetland functions and values. Such areas are significant to all of the interests of the Bylaw. Such areas are regulated by the Bylaw since these areas protect the public interests identified in the Bylaw. See Section II Definitions for more detail.

3. Associated Upland Resource Area

The Associated Upland Resource Area (“AURA” hereafter) means that area of land extending 100 feet horizontally outward from the boundary of any area specified in these Regulations in Article I or Article II, or in 310 CMR 10.02(1)(a-e) as amended. The area known as Riverfront and defined at 310 CMR 10.58(2) shall NOT have an AURA. The AURA is a RESOURCE AREA under the By Law. The AURA serves to protect the following interests established in the By Law: public and private water supply, groundwater supply, flood control, storm damage prevention, pollution prevention, protection of wildlife habitat, and preservation of aesthetics. Specifically, public and private water supply benefit from undisturbed, or minimally disturbed, vegetative cover. A wooded, undisturbed or minimally disturbed, AURA can provide permeable soils that contribute to groundwater recharge. Trees and other vegetation, if undisturbed or minimally disturbed, slow the rate of surface runoff providing flood control and reducing down-gradient storm damage. Vegetation in the AURA can also act to absorb pollutants and suspended solids furthering the decrease in rate of runoff and preventing pollution in general. A diverse, native vegetative cover, if left undisturbed or minimally disturbed, best provides protection of wildlife habitat. In this sense, the removal of invasive species with their replacement by native vegetation can be an improvement in an AURA. There shall be no use of genetically modified seeds, plants or micro-organisms within the AURA or within any Conservation Commission jurisdictional area.

PERFORMANCE STANDARD for work in the AURA.

Applicants proposing work in an AURA shall design their projects so that the AURA remains undisturbed or as minimally disturbed as possible. To that end Applicants shall:

- Characterize the existing AURA vegetation by type and location both in the Narrative in the Application and on all filed Plans.
- State the intent, location and total area, in exact square footage, of any proposed clearing of existing vegetation.
- All clearing proposed must be accompanied by a mitigation plan. Mitigation may include, but is not limited to, planting of native landscaping or wildflower meadows in preference to lawns, and removal or control of invasive species.
- Provide adequate erosion control.
- Describe the method of vegetation cutting and disposal of all debris.

D. Consideration of Alternatives

In the proceedings pursuant to any notice of intent filed with the Conservation Commission, the Commission may require the Applicant to demonstrate that the land development purpose of the project proposed cannot be reasonably met by a project design which can be expected to cause less disruption of wetlands resource area and /or AURA function than the design initially proposed by the Applicant.

E. Fee Schedule

1. Permit fees are payable at the time of application to the "Town of Hamilton".
2. Fees shall be charged by the Commission as on the attached schedule.

F. Waivers from Regulations

Waivers are not favored, and will not be granted, except in the most rare and unusual circumstances. All waiver requests must be in writing and no waiver request will be considered unless it is part of a complete Notice of Intent application. The waiver request will be denied unless the applicant shows that there is no alternative proposal which meets the requirements of these regulations, and the applicant must show that the granting of the waiver is consistent with the intent and purpose of the Bylaws and these Regulations. Applicants shall present documented evidence that site specific conditions of slope, vegetation, soil type, and water sources taken together with the applicant’s proposed plan are fully and entirely consistent with maintaining resource area quality and function. The Commission shall act on the request and shall provide to the applicant, either by certified mail or hand delivery, its written decision.

G. Officers and members

Officers

There shall be two (2) Officers of the Commission, entitled Co-Chairpersons, who shall be elected by a majority vote of the eligible Commission members. The election of officers shall occur at the first regularly posted and scheduled Commission meeting following the adjournment of the annual Town Meeting in May. The term of office shall commence on July 1 and end on June 30 of the succeeding year. In the event of a vacancy and as soon as is practicable, the eligible Commission members shall elect a new Co-Chairperson. The newly elected Co-Chairperson shall serve out the remainder of the unexpired term.

Members

Four Commission members who are serving in office at the time a vote is taken by the Commission shall constitute a quorum.

The members have such powers as are vested in them by any law or regulation, custom and practice.

Open Space Committee and Other Committees:

The Commission shall appoint members of the Open Space Committee (OSC). There shall be no more than 7 regular members of the Committee, who shall be residents of the Town, and who shall serve three year terms. Members may be re-appointed by the Commission for additional terms. The regular members of the OSC shall designate a Chairperson. The regular members of the OSC shall designate a Coordinator who may be a regular member. The Coordinator shall be a volunteer position. All Commission members shall be *ex officio* members of the OSC. The OSC shall post and hold regular meetings and shall make reports from time to time to the Commission and to other Town Agencies. There shall also be such other committees as the Commission may decide are necessary for the efficient execution of its duties.

Consultants

The Commission may, by vote at any meeting, appoint consultants or associate members to the Commission as allowed in the Bylaw and in MGL Ch.40 S.8C. Such consultants or associate members shall not have the right to vote, nor to represent themselves as official members of the Commission, but shall have the right to participate in meetings and activities of the Commission, as the Chair (or Vice-Chair) may designate upon the advice and consent of the Commission.

H. Cold Weather Delineations

Wetland boundary delineations shall be reviewed only between April 15 and November 1 of each year, unless the Commission grants a waiver due to low probability of error on a particular site, or reserves the right to adjust the boundary during the growing season. Such a waiver shall only be granted upon a written request and it shall be acted upon by the Commission at their first regularly scheduled meeting after receipt of such written request. This provision shall not apply to any project seeking approval for a Title V compliant septic system which shows no alteration closer to resource area than 50 feet.

II. DEFINITIONS

Massachusetts Constitution Amendments Article XCVII (97); Massachusetts General Laws, Chapter 40 Section 8C and Chapter 131, Section 40 (hereafter referred to as the "Act"), as well as 310 CMR 10.00 Wetlands Regulations are hereby incorporated by reference and made a part hereof, except as otherwise modified by the Hamilton Conservation Bylaw and the Regulations promulgated herein and any subsequent amendments. References to government bodies shall be taken as references to those government bodies or to their successors in the relevant governmental role (e.g. references to the USDA

Town of Hamilton Conservation Bylaw Regulations

Soil Conservation Service currently apply to the US Natural Resources Conservation Service, or to the Department of Environmental Quality Engineering apply to the Department of Environmental Protection. The definitions provided in the State regulations 310 CMR 10.04 shall apply to the Bylaw and Regulations except for those detailed below:

1. The term "alter" shall include without limitation, the following actions when undertaken in areas subject to the Bylaw:
 - 1.1. changing of pre-existing drainage characteristics, sedimentation patterns, flow patterns or flood retention characteristics;
 - 1.2. placement of fill, excavation or re-grading;
 - 1.3. destruction of vegetation, including cutting and removing of ground cover, shrubs or live or dead trees; without regard to whether such vegetation might be defined as invasive.
 - 1.4. changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water, including but not limited to the application of herbicides, pesticides, deicing agents, fertilizers, or oils for insect control;
 - 1.5. any activities, changes or work which pollute or cause displacement of any body of water or groundwater;
 - 1.6. any activities, changes or work which cause alteration of wildlife habitat.
2. The term "burden of proof" means the applicant shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application taking place anywhere within a resource area (including AURA) shall not have an unacceptable significant and/or cumulative effect upon the wetland values protected by this Bylaw. Failure to provide adequate evidence that the work proposed in the application shall not have an unacceptable significant and/or cumulative effect upon the wetland values protected by this Bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.
3. The term "freshwater wetland" under the Bylaw shall mean an isolated or previously disturbed area that meets the criteria of the currently applicable procedures under 310 CMR 10.00 or meets at least 2 of the following 3 criteria:
 - 3.1. the vegetative community consists of at least 50% wetland plant species (listed as OBL, FACW, FAC by US Fish and Wildlife Service)
 - 3.2. hydric soils as listed by the US Natural Resources Conservation Service are present
 - 3.3. hydrology or field indicators of hydrology according to the procedures of the 1987 Federal Method for Wetlands Delineation (US Environmental Protection Agency) are present
4. A "freshwater wetland" as described in these regulations that does not meet the definition of a bordering vegetated wetland under the Act must be a minimum of 1000 sq. ft. in surface area to be protected.
5. "Genetically modified seeds, plants or micro-organisms" are those organisms primarily used in agriculture which are created through the technique of artificial gene splicing.
6. one "growing season" is considered the entire period from approximately March 15 to October 15.
7. The terms "land subject to storm flowage" and "land...subject to inundation" can include vernal pools.
8. The term "permits" shall collectively refer to Orders of Conditions and/or Determinations of Applicability.
9. The term "pond" shall mean any open body of fresh water, either natural occurring or man-made, with a surface area observed or recorded within the last ten (10) years of at least 5,000 square feet, and which is never without standing water due to natural causes, except during periods of extended drought. For purposes of this definition, extended drought shall mean any period of four (4) or more months during which the average rainfall for each month is 50 % or less of the (10) year average for that same month. Basins or lagoons which are part of waste water treatment plants shall not be considered ponds, nor shall swimming pools or other impervious man-made retention basins.

10. The term "stream" shall mean a body of flowing water, including brooks and creeks, which moves in a channel in the ground due to a hydraulic gradient, and which flows within, into or out of an area subject to protection under the Act or Bylaw. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (i.e., which is intermittent) is also considered a stream unless it is up-gradient of all freshwater wetlands.
11. Vernal Pools - Vernal Pools are defined as follows:
 1. They are fresh water bodies,
 2. They contain NO predatory fish populations,
 3. They are confined depressions that may dry up during the summer,
 4. They hold water for a minimum of two (2) consecutive months, usually in spring to summer but may include autumn to winter,
 5. They must contain a minimum of two hundred (200) square feet in surface area as defined by the greatest limit of flooding observed or determined by field indicators of hydrology,
 - 6.1 They must contain evidence of endangered, rare, or threatened wildlife, "species of special concern" or obligate vernal pool breeders; OR
 - 6.2 They must contain evidence sufficient to meet the criteria listed by the Massachusetts Division of Fisheries and Wildlife's Natural Heritage and Endangered Species Program.
12. "Wetland Resource Areas", "Resource Areas" or "Wetlands" are those areas subject to protection under the Bylaw and Regulations, as stated in the Bylaw.

III. NO-DISTURBANCE AND NO-BUILD ZONES

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 no-disturbance zone extending from the edge of all wetland resource areas and a no-build zone extending from the no disturbance zone to a certain distance from the wetlands resource area as determined below. Building construction of any kind is prohibited in the no-building zone. The Commission will also require a 100 Foot No Disturb Zone constituting the entire AURA adjacent to any vernal pool. Building construction means any construction that requires a permit from the building department under the regulations and by laws of the Town in effect at the time of the filing of the project. This includes, but is not limited to, home construction, porches, decks, additions, and sheds. Driveways and fences may be allowed after a consideration of the interests sought to be protected by the By Law.

No construction activity or removal of vegetative cover is allowed in the no-disturbance zone, and, with the exception of contained, organic, composting areas, there shall be no dumping of leaves, grass clippings, trash or any kind of refuse, within the resource area or the no disturbance zone.

1. The no disturbance zone shall be bounded by the edge of the wetlands resource area and a line 25 feet away from the wetlands resource area and the no build zone shall extend from the no disturbance zone to a line 50 feet from the edge of the wetlands resource area for:
 - a. Residential lots actually occupied on December 31, 2007;
 - b. Residential lots for which a building permit for a residential structure has been issued not later than December 31, 2007;
 - c. For buildable lots for which a Request for Determination involving the construction of a residential structure or a Notice of Intent involving the construction of a residential structure has been filed not later than December 31, 2007. This provision, i.c. does not contemplate ANRAD filings.
2. In all other cases, the no disturbance zone shall be bounded by the edge of the wetlands resource area and a line 50 feet away from the wetlands resource area and the no build zone shall extend from the no disturbance zone to a line 75 feet from the edge of the wetlands resource area.

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 the 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 wetlands. 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 likely be imposed on all projects.

IV. DETERMINATION OF APPLICABILITY

A. General

Any person or persons who desire a Determination as to whether this Bylaw applies to an area, or work to be performed in an area, shall submit a written request to the Commission in accordance with Section 4 of the Bylaw.

B. Filing Procedures

Two copies of a Request for a Determination and accompanying plans, along with a check for the appropriate filing fee shall be filed either by regular mail, or by hand, with the Conservation Commission Office. Electronic filing via email is allowed and encouraged, as long as the required fee is submitted by hand or by mail to the Commission office. Only one copy needs to be transmitted electronically to be properly filed. If plans cannot be electronically transmitted then they shall be filed in hard copy format prior to the designated Commission meeting date. The Commission may, at its discretion, accept less detailed plans for a Determination than are generally required for a Notice of Intent. Plans submitted shall clearly and accurately show the present conditions and proposed work. Plans shall show the location of water bodies, and all resource areas and be signed/dated by the person who prepared them. The Coordinator shall prepare the required legal notice and arrange for its publication. The Coordinator shall designate the next available meeting date, given the statutory requirements of notice publication, as the meeting date at which the Request will be considered. The Applicant shall bear the costs of publication of legal notice. The Applicant shall be advised of the meeting date and receive a copy of the legal notice from the Commission office.

C. Public Meeting

The Commission shall hold a public meeting on the Request for Determination and shall issue a written determination within twenty-one days after receipt of the Request. Prior to making a determination, the Commission may require the submission of additional data deemed pertinent to the determination. The meeting may be continued and the determination issued after 21 days with the permission of the applicant.

V. NOTICE OF INTENT

A. General

Any person who desires review of a Notice of Intent shall file with the Commission plans and specifications as required under MGL Chapter 131, Section 40, and as further defined below. Applicants shall be required to follow these local regulations in their entirety without regard to whether they qualify for a "General Permit" for their project as that term is described in 310 CMR 10.00.

B. Filing Procedures

Eight copies of the Notice of Intent application, accompanying plans and appurtenant data, and the appropriate filing fee, payable to the "Town of Hamilton", shall be sent by regular mail, or hand delivered, to the Conservation Commission Office. Applicants may also file the Notice of Intent electronically via email in which case only one copy need be transmitted to the Commission office to be properly filed. Electronic transmissions of the Notice of Intent for filing purposes are encouraged as long as plans that cannot be electronically transmitted shall be filed in hard copy format in sufficient time to allow public viewing and comment prior to the designated Commission public hearing date and the appropriate fee is submitted by hand or by mail. A Notice of Intent that complies with the requirements of the Wetlands Protection Act ("WPA"), M.G.L. Ch 131 § 40, and the regulations issued pursuant to the WPA located at 310 CMR 10.00 *et. seq* shall be considered as in conformity with these by law regulations, except that the Applicant shall notify all abutters within 300 feet of the subject parcel of the filing of the Notice, the availability of the Notice for public inspection at the Commission office and the public hearing date. The Coordinator shall prepare the required legal notice for the public hearing and arrange for its publication. The Coordinator shall designate the next available meeting date, given the statutory requirements of notice publication, as the date at which the public hearing to consider the Notice shall be opened. The Applicant shall bear the costs of publication of legal notice. The Applicant shall be advised of the designated hearing date and receive a copy of the legal notice from the Commission office.

C. Incomplete Application

An application shall include, at a minimum, a properly executed Notice of Intent form issued by DEP and the items required in these Regulations. If the Commission determines that an application is incomplete or improper, it shall notify the applicant within 21 days of the date of receipt. The Commission may, at its discretion:

1. Return the entire application, in which case all required time periods for processing the application shall become invalid.
2. Require that additional information or materials be submitted within a specified period of time.

D. Public Hearing

The Commission shall hold a public hearing on the Notice of Intent and shall issue a written decision within twenty-one days after the close of the public hearing. Prior to the close of a public hearing all data deemed pertinent to the decision must be submitted and reviewed by the Commission. If additional data, or time to review data, is needed the Commission may vote to continue the public hearing to a time to be determined by the Commission.

VI. PLANS

All applications shall include eight copies of plans. Technical data should be submitted to describe the plans and shall be in narrative form with calculations submitted as necessary to substantiate the designs proposed.

A. Filing regulations: Plan requirements for small projects

These small project guidelines apply to small additions to a single family house within an AURA, minor landscaping projects near, but not in, wetlands areas and outside the no disturbance zone, small detached structures, and similar projects. Such projects may be reviewed by the Commission on the basis of a Request for Determination of Applicability form and an attached plan prepared by the owner. In general, more extensive projects require professionally prepared plans (see the following section on larger projects). Professional civil engineers registered to practice in Massachusetts are generally quite familiar with state and local wetlands regulations and can be very helpful in planning your project to avoid adverse environmental impacts.

A project is considered a small project only if it involves work within an AURA and no other resource area.

NARRATIVE REQUIRED ON FORM

The narrative must specifically identify all work to be done, the area affected by the work including any removal of trees or other vegetation, the steps that will be followed in doing the work, and the measures that will be taken to avoid affecting resource areas (such as a silt barrier of hay-bales or silt fence fabric) and to restore the work areas after the work as finished, such as loaming and planting grass.

It is often helpful, and may be required, to place a row of hay-bales down-slope from the work to serve as a limit of work and to catch as much as possible of the silt that will wash off excavated and bare earth areas associated with your work. To be effective, the hay-bales must be installed in a shallow trench the width of the bales and about four inches deep, the bales must be tightly butted end to end, and each hay-bale must be anchored firmly to the ground by two stakes, one near each end. Commercial fabric silt fence may be used, but it must be properly installed with the bottom appropriately anchored. A representative of the Commission may inspect the installation to make sure it is effective and order corrective action as he or she deems necessary.

PLAN REQUIRED

A detailed sketch map or plan shall be provided, an 8.5 x 11 inch sheet is preferred. It must be drawn carefully, preferably but not necessarily to scale, with:

A title giving the street address, owner's name, date prepared, map and lot number (from the Assessor's records), and type of project (e.g. "House addition", "New Shed")

Location of the proposed work, with measured distance to the nearest point of the non-AURA resource areas.

Location of the AURA

Any and all trees to be removed must be specifically marked on the plan, and also the trees themselves must be marked with flagging tape. The owner is responsible for ensuring that no trees not so marked are removed or damaged in the course of the work, on penalty of a fine of up to \$300.

Location of other structures within the AURA including:

- dwellings and other buildings,
- roadways and driveways
- street drains, culverts, and catch basins
- roof drains,
- septic systems
- underground utility services
- wells, whether or not currently used for drinking water

The narrative and plan are a legal obligation on applicant's part to do the work in the way specified.

Changes in the location, size or type of work are not permitted without the written approval of the Commission.

Following the plans and guidelines (including preserving all trees the plan does not specifically show as needing to be removed) or making sure the contractor follows the plans and guidelines is the APPLICANT'S responsibility and the structure may be required to be removed and/or the applicant may be fined up to \$300 for the applicant's failure or the contractor's failure to do so.

B. Plan Requirements for Larger Projects

Applicants with small projects such as minor additions to a single family house, or minor landscaping projects, should see the preceding section on small projects. All other projects, including repairs to existing septic systems, shall conform to these guidelines applicable to larger projects unless the Commission has found by majority vote that some other procedure satisfactorily protects the interests of the Bylaw. Nothing here should be taken to rule out innovative practices to promote the interests of the Act and By-law, but applicants will be expected to provide evidence and documentation to support any contention that some other method is superior to methods referenced here.

General Standards. All work shall be done so as to minimize eutrophication, erosion, sedimentation or any other significant negative impact on wetlands. Due consideration shall be given to the factors of soil types and their infiltration rates, slope, and degree of vegetative cover in determining possible impacts.

Designs should seek minimum practicable increase in peak runoff rate and volume of runoff.

Drainage should use infiltrative techniques such as leaching catch basins, retention basins and detention basins wherever practicable.

Driveways and parking areas should make maximum use of porous materials.

All projects involving the use of herbicides, de-icers, or fertilizers shall specify the trade name, components, application rates and frequencies. In order to protect resource areas, wildlife, and water quality Commission may regulate the above procedures in accordance with label requirements and current EPA or other official recommendations. The Commission may also require the substitution of other substances or procedures.

1. Filling out the Form and Supplementary Written Material

Written responses to the questions on the forms, and narratives explaining in detail how the proposed project protects the interests identified in the Act and the By-law receive close attention from the Commission. Though you may feel it is all clearly implied by the plans, these text materials are an important part of the record and you should not stint on using this opportunity to show the merit of your project.

Start with a background section briefly outlining the characteristics of the site: its topography, geologic origin, soil characteristics, and relation to regional drainage, current land use and vegetative cover, and describe **all** resource areas and their current condition.

For each resource area type show how your design minimizes the adverse impact on the specific interests mentioned in the Act and By-law (Public and private water supply, prevention of storm damage, surface and groundwater quality, etc.)

Supporting Documentation. Document the basis in the engineering or scientific literature for your statements, interpretations and proposed management practices, providing full bibliographic citations. If a publication is particularly important to your argument, provide a photocopy of it or of the relevant sections.

Erosion and sedimentation control plan. Provide a narrative of an adequate erosion and sedimentation control plan for sequencing the work to minimize impact, and consistent in all ways with current USDA Natural Resources Conservation Service guidelines, available from the Commission at Town Hall.

Mitigation and Replication plan. If wetlands replication or compensatory storage is planned, give a detailed plan including procedures and timetables for preparation, planting, and evaluation.

Sequencing. Sequences and timetables should be given. The Commission normally requires all mitigation, replication, easements, open space amenities and the like to be completed before any other construction is allowed. Any applicant requesting a different sequence shall show why such a procedure is necessary, and propose a method such as a performance bond by which the public interest in such mitigation, etc., may be protected.

Calculations. Stormwater maximum flow estimates and hydrographs shall be prepared by accepted standard methods sanctioned by 310 CMR 10.00, such as embodied in USDA Natural Resources Conservation Service Technical Reports 55 and 20. Applicant shall state the assumptions used in the analyses, and justify the appropriateness of the assumptions to the situation being modeled. Full details including vendor and version number shall be provided for all computer programs used. Document the sources of all input data, including maps and tables of areas for drainage catchments, land cover types, and soil types.

Long Term Maintenance Plan. Methods and timetables for long term maintenance of surface drainage channels, pipes, culverts and related structures shall be specified.

PLAN SPECIFICATIONS

Scale of main plan. Scale of the map should be suitable for detailed study and measurement of the proposed work, not more than 50 feet to the inch. Existing and proposed contours at an interval of not more than two feet should be shown. Each plan shall show both a numerical indication of scale and a graphical scale.

Supplementary plans. More than a single plan may be necessary to clearly and legibly represent all the relevant information. Supplementary maps particularly likely to be needed are: total watershed including the site and offsite areas draining into any part of the site, subwatersheds, soil and cover. Where the information on such supplementary plans can be presented legibly on a reduced-size plan at a scale of more than 50 feet per inch, such reduced plans may be submitted in lieu of full size plans, but the main plan must meet the stated scale requirement.

Specific Data Required On Plans. The following are minimum data requirements for all filings and drawings -- drawings failing to provide all applicable data from this list may cause your filing to be considered incomplete. Incomplete filings may be returned by the Commission and the 21 day period for scheduling of the public hearing will be considered not to have started. Additional site-specific data requirements may be imposed by the Commission if it finds they are needed to evaluate the impact of the proposed project on the interests mentioned in the Act and by-law, and these data requirements are in addition to those requested in the guidelines issued from time to time by the Department of Environmental Protection Wetlands Division.

Title Block. Title block at lower right of drawing giving purpose of survey, owner's name, street address if applicable, map and lot number, date of submission of plan

Revision Block. All drawings shall have a revision block with provision for dates and explanations for all change. Revision information shall be kept current and complete.

North point

Scale statement. The scale shall be shown both by a statement of scale and a graphical scale. If insets have a different scale than the main plan, this must be clearly indicated.

Identifying Information. Stamp and signature of Registered Professional Engineer responsible for the plan. When property line locations are material to the Commission's deliberations, they must be attested to by a Registered Land Surveyor (consult the Commission). When wetlands lines are shown, the name of the person making the delineation shall be included on the plan.

Notes. Notes shall be included giving the source of all information on the plan, including the names of any professionals contributing data to the plan (e.g. wetlands botanist). The vertical datum and benchmarks used shall be clearly stated.

Legend. A legend shall show the meaning of all line types and symbols used on the plan.

Locus map. The main plan shall contain a small inset locus map (this is in addition to any locus map that may be attached to the application).

Wetlands flag locations. Each wetlands flag shall be individually identified on the plan with a unique identifying number or other designation from a consistent numbering system applied over the whole project. The wetlands flag itself shall be marked in the field with a number matching the number on the map and the initials of the botanist. Wetlands flags shall be distinguishable by color or markings from all other flags used at the site.

Location of existing and proposed structures. Locations of all existing and proposed dwellings, other buildings, roadways, driveways, parking areas underground utilities, pipes, and sewage disposal facilities and other structures. Proposed paving material must be specified for driveways, roadways and parking areas. Approximate or provisional locations are not acceptable -- *a "footprint" on the plan is considered to be a commitment that no part of the final structure will be outside the line shown.*

Surface water. Locations of all water bodies and permanent and intermittent water courses shall be shown.

Stockpiling areas. Any areas to be used for stockpiling of fill or excavated materials within the AURA, or a statement that all stockpiling will be outside the AURA will be included on the plan.

Areas Subject to Flooding. Because jurisdiction under the Hamilton Conservation By-law in connection with areas subject to flooding exceeds the jurisdiction under the Act, estimated maximum extent of flooding in the 100 year statistical storm for both bordering and isolated areas subject to flooding shall be shown on the plan. Until such time as detailed FEMA flood profile information become available for the town of Hamilton, rough estimates of maximum extent of flooding based on maximum observed extent of flooding or informed judgment, rather than

calculation, may be accepted by the Commission, but at its discretion the Commission may require the preparation of flood estimates by the methods specified in the Wetlands Protection Act Regulations. Isolated areas subject to flooding which may serve as vernal pools must be specifically indicated.

Subsurface sewage disposal systems. Location, elevation, and type of all subsurface sewage disposal systems within 100 feet of the limit of work shall be shown.

Wells. All existing or proposed wells within 100 feet of the site shall be shown, and details of any actual or potential public water supply in the watershed shall be given.

Point Source Discharges. All point source discharges into the AURA shall be shown, with information on their sources, water quality characteristics, and estimated maximum flows. An artificial surface channel or swale entering the AURA shall be considered a point source for this purpose.

Drainage structures. Locations, dimensions, elevations of inverts and slopes of all proposed, and all relevant existing, drainage and flood control structures, ditches, swales, pipes and culverts

Easements. All existing and proposed rights of way, trails, easements, and restrictions shall be shown.

Grading Tolerances. The plan shall specify that the final grades will be within USDA Natural Resources Conservation Services grading specifications within two-tenths of a foot of the elevations shown on the plan. Where the final as-built survey shows this specification has been deviated from, the Commission shall require the applicant to re-grade.

Vegetation Types and Trees. Plans shall characterize the existing vegetative cover, including showing an indication of the tree line where there are wooded areas on the site. All trees exceeding 6 inches diameter at a height of 4.5 feet above the ground within the AURA shall be shown individually on the plan, including stem location and the line of maximum extent of crown coverage (“drip line”). Trees to be removed must be clearly marked on the plan, and flagged in the field. No trees other than those so marked may be removed without prior written consent of the Commission. Persons removing or damaging other trees will be subject to fine under the By-law.

No changes in plans without written authorization. No change may be made in a structure, location or elevation on a submitted plan without prior written approval of the Commission. The Commission may require a new filing and public review if the proposed change is found likely to represent a change.

Failure to adhere to the plan puts the applicant and any other persons responsible at risk of fines of up to \$300 under the Bylaw as well as additional penalties under the Act.

VII. PERFORMANCE STANDARDS AND SUPPLEMENTAL DOCUMENTATION

A. *Flood Control*

Engineering calculations shall be submitted to fully support the design of compensating flood storage areas for alterations that affect bordering land subject to flooding and isolated land subject to flooding. The calculations shall detail the existing incremental flood storage volumes and the 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 net increase in the rate of runoff as a result of any project.

B. *Wildlife Habitat*

1. Applicants shall include a description of valuable and/or unique wildlife habitat characteristics observed on the subject property. This includes wildlife habitat in all resource areas.
2. Where alterations exceed the maximum allowable thresholds described in the State regulations 310 CMR 10.00 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 habitat study and the design of a compensating wetland/wildlife habitat shall be performed in accordance with the DEQE Wetlands Program Policy 88-1 and Wetlands Wildlife Advisory #2 dated March 4, 1988, including any subsequent amendments to these

DEP policy guidelines. 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.

C. Stormwater Management

1. Where new point source discharges are proposed within AURA, 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 proposed 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 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 based on the techniques developed by the US Natural Resources Conservation Service. Calculations shall be made that show the impact of the proposed alterations for the mean annual, 10, and 100-year storms using the USDA Natural Resources Conservation Service Type III, 24-hour rainfall. Calculations based on the Rational Method will not be accepted.
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 works 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, determining coverage.
6. Wetland replacement areas:
 - a.) No wetland replacement area will be certified-to be in compliance unless it has survived for at least two calendar years.
 - b.) A combination of natural re-seeding, transplanting and new plantings should be used to re-establish a similar vegetative community and structural diversity.
 - c.) Replaced wetlands shall be monitored on an ongoing basis and written reports shall be submitted to the Conservation Commission at least twice each year.
 - d.) As-built plans of the replication area will be prepared by a Registered Engineer or Land Surveyor and submitted to the Commission within 30 days after finish grading.
 - e.) If the conditions of (a-d) above are not met within 2 growing seasons the applicant must take corrective steps at the approval of the Commission. These may include re-grading, planting additional vegetation, seeding or other steps as necessary.
7. The Commission may permit the construction and maintenance of a new roadway or driveway of minimum legal and practical width acceptable to Planning Board Dimensional standards, 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.

8. Any alteration of any Resource Areas (excepting **those** proposed within AURA and outside AURA no disturbance zone) 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. Resource Area alterations (excepting alterations proposed within AURA and outside AURA no disturbance zone) required to access Upland parcels will be not be allowed if that landowner landlocked the parcel by selling upland access, or by other contrivance. The Commission may require the filing of a request for a waiver of certain Planning Board requirements in order to minimize wetland impacts.

VIII. PUBLIC HEARINGS

Public hearings on applications filed pursuant to the Bylaw and Regulations may be conducted simultaneously with public hearings held pursuant to MGL Chapter 131, Section 40, as amended. If the Public Hearing is continued beyond one month, it must be re-advertised at the Applicant's expense.

IX. PERMITS AND DECISIONS

A. Decisions

As part of a permit issued pursuant to this Bylaw, the Conservation Commission shall impose such conditions as are necessary to protect the values of all resource areas under its jurisdiction. If the Commission deems that the interests stated in the Bylaw are not adequately protected under the terms of the applicant's proposal, the Commission may refuse to issue a permit. When the Commission votes to deny a permit, it shall issue a written decision. Permits approved pursuant to this Bylaw shall be issued separately from the Order of Conditions issued under the Wetlands Protection Act.

B. Extensions

Upon motion of the Applicant or the Commission, extensions of the term of the local permit shall be freely given as long as the Applicant is acting in good faith and as long as the state Order of Conditions remains in effect and is unexpired.

C. Revocations, Modifications, Amendments

1. The Commission may revoke, modify or amend a permit issued under Bylaw and Regulations if any of the following circumstances occur:
 - a) The applicant and/or his successors fail(s) to comply with the terms of the permit;
 - b) New information relating to the project is obtained which indicates that previous information presented to Commission was inaccurate.
2. The applicant may request, and/or the Commission may grant, a modification to an existing Order 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.
3. The applicant may request, and/or the Commission may grant, an amendment to an existing Order if that change can adequately be addressed by amending the existing Order. An amendment requires a reopening of the public hearing.

D. CERTIFICATE OF COMPLIANCE

Upon completion of the project, the applicant shall request in writing from the Commission a Certificate of Compliance. The Applicant shall be informed of the date the meeting will be held at which the Request for a Certificate shall be considered. The applicant or his representative may be required to attend the scheduled meeting to answer any questions the Commission may have. A site walk will also be required. If the Applicant is

requested to attend and either the Applicant or his representative fails to appear, a denial of the request may result. If the Commission determines that the requirements of the Permit have not been met, the request for a Certificate of Compliance will be denied. The written reasons for the denial shall be forwarded to the applicant within 21 days of the vote of the Commission on the request. The Commission will consider and issue partial Certificates of Compliance only in rare and unusual circumstances, and only after the showing of specific site characteristics and documented evidence showing that the interests of the WPA and the By law are more protected by the issuance of a partial certificate as opposed to allowing for the entire project to finish culminating in the issuance of a full Certificate. The Certificate issued under the Wetlands Protection Act may also serve as the Certificate of Compliance for a Permit. Notwithstanding the foregoing, in the case of a single Order of Conditions covering more than one residential dwelling, partial Certificates may be issued if the section of the project that is being reviewed would, if it were considered a separate and independent project, qualify for a full Certificate.

X. PRE-CONSTRUCTION REQUIREMENTS & CONSULTANT FEES PURSUANT TO M.G.L. Ch. 44 §53G

Prior to commencement of site alteration, the applicant shall provide to the Commission receipted proof that the permit has been recorded in the chain of title of the subject property at the Registry of Deeds or Land Court.

Prior to commencement of site alteration, the required bond must be posted.

Prior to commencement of site alteration, the applicant shall display at the entrance of the site a sign identifying the permit for the work. If the DEP number is posted as required by an Order of Conditions, it will be sufficient. Otherwise the local permit number must be shown on a sign at least 2' x 2' and no larger than 3' x 3', giving the Conservation Bylaw file number assigned to the project as follows:

"HAMILTON CONSERVATION BYLAW FILE NO. __"

PURPOSE: As provided by M.G.L. Ch 44 §53G the Hamilton Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services. Such services shall be deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of the Wetlands Protection Act (M.G.L. Ch. 131 § 40) the Hamilton non-zoning wetlands by law, at Chapter XVII of the General By Laws entitled "Conservation", Conservation Commission Act (M.G.L. Ch 40 § 8C), or any other state or municipal statute, by law or regulation, as they may be amended or enacted from time to time. The Conservation Commission may also impose fees for other consultant services, related to application review, or permit conditioning or monitoring, under any of the above referenced laws or regulations.

SPECIAL ACCOUNT: Funds received pursuant to these rules shall be deposited with the Town Treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriation as provided in M.G.L. Ch 44 §53G. Expenditures from this account shall be made only in connection with a specific project or projects for which a consultant fee has been collected from the applicant. Expenditures of accrued interest may also be made for these purposes.

CONSULTANT SERVICES: Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydro-geologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. Services may also include on-site monitoring during construction, or other services related to the project deemed necessary by the Commission.

NOTICE: The Conservation Commission shall give written Notice to the Applicant of the selection of an outside consultant. Such Notice shall state the identity of the consultant, the amount of the fee to be charged to the Applicant, and a request for payment of said fee in its entirety. Such Notice shall be deemed to have been given on the date, hereinafter called "Date of Notice", of mailing by certified mail, return receipt requested, or of delivery by hand to the Applicant. No such costs or expenses shall be incurred by the Applicant if the application is withdrawn within 5 business days of the Date of Notice.

PAYMENT OF FEE: The fee must be received prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the Applicant to pay the consultant fee specified by the Commission within ten (10) business days of the Date of Notice, or refusal of payment, shall be cause for the Commission to deny the application based on lack of sufficient information to evaluate whether the project meets applicable performance standards in 310 CMR 10.00 and the Conservation By Law or its regulations. An appeal to the Board of Selectman (see section immediately below for Appeal of Fee process)_stops the clock on the above deadline, the countdown resumes on the first business day after the appeal is denied or upheld. The Commission shall specify in its denial the nature of the information lacking which its outside consultant party would provide, e.g. the questions it needs answered.

APPEAL OF FEE: The Applicant may appeal the selection of the outside consultant to the Board of Selectmen, which may only disqualify the outside consultant selected on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an appropriate educational degree or three or more years of practice in the field at issue or a related field. Such appeal must be in writing and received by the Board of Selectmen, with a copy to the Conservation Commission, within the 10 business day period described in the paragraph entitled “NOTICE” above. The time limits for action on the substantive application before the Conservation Commission shall be extended by the duration of the administrative appeal.

RETURN OF UNSPENT FEES: When the Commission’s review of a project is completed, and an Order of Conditions issued, any balance in the special account attributable to that project shall be returned within 30 days. The balance, including interest, shall be repaid to the Applicant or the Applicant’s successor in interest. For purposes of this section of the regulations, any person or entity claiming to be an Applicant’s successor in interest shall provide the Commission with appropriate documentation. A final report of said account shall be made available to the Applicant or the Applicant’s successor in interest.

XI. PERFORMANCE GUARANTEE

A. Bonds or Surety

The Commission may require the applicant to file a performance bond or a deposit of money in an amount determined by the Commission to be sufficient to cover the cost of all or any part of the site alterations specified in the Permit and/or shown on the plans approved by the Commission. Bond amounts will be set so that funds will be adequate to comply with the Order of Conditions, repair damage to wetlands and to permanently stabilize the work site and all soils.

B. Covenant

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

C. Reduction of Bond or Surety

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.

D. Release of Performance Guarantee

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 terms of release with the Commission.

If the Commission determines that said alterations have been completed in compliance with the conditions of the permits, it shall release the interest of the Town in such bond and return the bond or the 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.

XII. AMENDMENTS

These Regulations may be amended from time to time by a majority vote of the Conservation Commission. Prior to taking a vote on amendment, the Conservation Commission shall have held a public hearing on the proposed change(s).

XIII. POLICIES

These Regulations may be supported by policy statements issued by the Commission. These Policies will be made available to any individual upon request. Persons seeking permits under the Bylaw and Regulations should review the Policy Statements available in the Conservation Office.

XIV. EFFECTIVE DATE

Regulations pursuant to By Law Chapter 17 were originally promulgated in April 1995. An advertised public hearing was held on amending the Regulations on February 16, 2005 and continued to February 23, 2005. The Commission voted to adopt these regulations, in their entirety on February 23, 2005. These regulations shall be effective upon filing with the Town Clerk, the Clerk's time stamp is affixed on Page 1 of these regulations.

XV. SEVERABILITY

If any provision of these Regulations or the application thereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or the application of any part of these Regulations not specifically held invalid, nor shall it invalidate any Order, Permit, or Determination which previously had been issued, and to this end the provisions of these Regulations are declared to be severable.

XVI. ENFORCEMENT

The Commission may enforce these Regulations, or an Order, Permit, or Determination issued thereunder, in any manner consistent with Section 10 of the Bylaw and all other laws.

appendix

SCHEDULE OF FEES

Applicants are responsible for paying all fees required under the Wetlands Protection Act in addition to the fees listed below. Fees assist in defraying costs incurred by the Conservation Department in the administration and enforcement of the by law.

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|---|--|
| Request for Determination of Applicability | \$125.00 |
| Notice of Intent | (a) \$175.00 for projects described under Category 1, 310 CMR 10.03(7) (c) 1 OR (b) \$500.00 for all other projects except as noted below |
| Request to Amend Order of Conditions | \$50.00 |
| Request for an Extension of an Order of Conditions | \$50.00 |
| Request for a Certificate of Compliance | |
| If the original Order of Conditions has not expired | no charge |
| If the original Order of Conditions has expired OR | |
| An extension has been issued by the Commission | \$50.00 |
| Request for emergency certification | \$50.00 |

Fees are payable to “Town of Hamilton”

Enforcement and Fines:

Any violation of the by law may be subject to fines, pursuant to the language in the by law, as determined by the Commission on a case by case basis.

After the publication of legal notice, and after the opening and closing a public hearing, the fee schedule above was adopted by Hamilton Conservation Commission on August 17, 2011.