



**Article: 10**

**Warrant Article Title:**

BYLAW AMENDMENT / WETLANDS PROTECTION

**Warrant Article Text:**

To see if the Town will vote to amend Title V, Article 8 of the Town Bylaws ("Wetlands Protection") to update the penalties for violation, adjust the fee schedule, and make certain clerical changes to increase the Bylaw's effectiveness and clarity; or take any action related thereto.

**Requested By:**

the Conservation Commission

**Report Excerpt:**

Vote and comment to Town Meeting - Favorable Action (5-0)

The Board supports the request of the Conservation Commission to update several areas of the Town's Wetlands Protection Bylaw. The proposed changes include transferring the list of fees and fee structure from the Town's bylaws to the Conservation Commission's wetland regulations and other administrative changes. The Board notes that the Conservation Commission recommended the proposed changes after consultation with the Massachusetts Department of Environmental Protection.

After consideration, the Board unanimously voted favorable action on this article.

**Vote Language:**

That the Town does and hereby amend Title V, Article 8 of the Town's Bylaws so that the Section reads:

ARTICLE 8  
WETLANDS PROTECTION  
(ART. 77, ATM – 05/15/00)  
(ART. 10, ATM - \_\_/\_\_/26)

**SECTION 1. PURPOSE**

The purpose of this Wetlands Protection Bylaw is to protect the wetlands, water resources, and adjoining land areas in Arlington by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area **interests and** values, including but not limited to, the following: public or private water supply, groundwater supply, flood control, erosion control and sedimentation control, storm damage prevention, other water damage prevention, prevention of pollution, protection of surrounding land and other homes or buildings, ~~wildlife protection~~ **wildlife species and individuals**, plant or wildlife habitat, aquatic species and their habitats, **mitigating the negative impacts of climate change, resilience to the impacts of climate change**, and the natural character or recreational **values functions** of the wetland resources (collectively, the "resource area **interests and** values protected by this Bylaw"). This Bylaw is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional **interests and** values, with additional standards and procedures stricter than those of the Wetlands Protection Act (G.L. c. 131, § 40) and Regulations thereunder (310 CMR 10.00).

**SECTION 2. DEFINITIONS**

The following definitions shall apply in the interpretation and implementation of this Bylaw:

- A. "Abutter"** shall mean the owner of any land within 100 feet if the property line of the land where the activity is proposed, as determined by the most recent assessors' records including any land located directly across a street, river, stream or pond, or municipal boundary that is within 100 feet of the property

line of the land where the activity is proposed. For activities proposed within Land under Water Bodies or within a public right-of-way, an “abutter” shall mean the owner of any land within 100 feet of the project’s limits of work.

**B. “Alter” shall mean to change the conditions of any area subject to protection by this Bylaw and shall include but not be limited to one or more of the following actions upon the resource areas protected by this Bylaw:**

- 1. fill, removal, excavation or dredging of soil, sand, gravel or aggregate material of any kind;**
- 2. changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood storage retention areas;**
- 3. drainage, disturbing or lowering of the water level or water table**
- 4. the dumping, discharging or filling with any material which could degrade the water quality;**
- 5. driving of pilings, erection of buildings or structures of any kind;**
- 6. placing of any object or obstruction whether or not it interferes with the flow of water;**
- 7. destruction, extensive trimming (defined as 20% or more of limbs or growth), or removal of natural or planted plant life, vegetation, or trees;**
- 8. changing of water temperature, biochemical oxygen demand, nutrient concentration, chemical concentration, or other characteristics of the receiving water;**
- 9. any activities, changes or work which pollutes any stream or body of water, whether located in or out of the Town of Arlington;**
- 10. application of pesticides and herbicides;**
- 11. any activity, change or work with adversely effects groundwater or drinking water supply;**
- 12. any activity, change or work which adversely impacts the ability of the resource area to be resilient to climate change impacts; or**

- 13.** any incremental activity that has or may have an adverse cumulative effect on the interests and values protected by the Bylaw.
- C.** “Applicant”: shall mean a person filing a Request for Determination of Applicability, Notice of Intent, or other application with the Commission.
- D.** “Bank” shall be defined as the portion of the land surface which normally abuts and confines a water body, often between the mean annual low flow level and the first observable break in the slope or the mean annual flood level, whichever is lower;
- E.** “Bordering” shall be defined to include any land within either of the following or the greater thereof:
- 1.** 100 feet horizontally lateral from the edge of any marsh, freshwater wetland, vernal pool, wet meadow, bog, swamp, river, stream, creek, pond, reservoir, or lake; or
  - 2.** Within the maximum lateral extent of the water elevation of the statistical 100-year frequency storm.
- F.** “Bordering Land Subject to Flooding” shall mean the land within the estimated or observed maximum lateral extent of flood water which will theoretically result or has resulted from the statistical 1%-annual-chance flood; said boundary shall be determined by reference to the most recently available flood profile data prepared for the Town of Arlington within which the work is proposed under the Federal Emergency Management Agency’s Natural Flood Insurance Program (“NFIP”). Said boundary, so determined, shall be presumed accurate. This presumption may be overcome only by credible evidence from a registered professional engineer or other professional competent in such matters.

Notwithstanding the foregoing, where NFIP profile data is unavailable or is determined by the Commission to be outdated, inaccurate, or not reflecting the current conditions, the boundary of Bordering Land Subject to Flooding shall be the maximum lateral extent of floodwater which has been

observed or recorded, or other evidence presented and considered by the Commission.

- G.** “Cumulative Effect” shall mean an effect that is significant when considered in combination with other activities that have occurred, are going on simultaneously, or that are likely to occur, whether such other activities have occurred or are contemplated as a separate phase of the same project, such as the build-out of a subdivision or an industrial park, or unrelated but reasonably foreseeable actions, including other development projects that are currently under construction, under review or that may be expected to come forward.
- H.** “Groundwater” shall mean all subsurface water contained in natural geologic formations or artificial fill including soil water in the zone of aeration. Activities within 100 feet of resource areas shall not significantly alter the existing quality or elevation of naturally occurring groundwater.
- I.** “Isolated Land Subject to Flooding” shall mean an isolated depression or closed basin without an inlet or an outlet. It is an area which at least once a year confines standing water to an average depth of at least six inches and has a surface area of 1,000 square feet or greater. Isolated Land Subject to Flooding may be underlain by pervious material, which in turn may be covered by a mat of peat or muck.
- J.** “Permit” shall mean the document issued by the Conservation Commission pursuant to this Bylaw which allows work in accordance with conditions set by the Commission in the resource areas protected by this Bylaw.
- K.** “Person” shall include any individual, group of individuals, associations, partnerships, corporations, business organizations, trust, estate, Commonwealth of Massachusetts when subject to Town Bylaws, any public or quasi-public corporation or body when subject to Town Bylaws or any other legal entity, including the Town of Arlington or its legal representative, agents or assigns.
- L.** “River” shall mean any natural flowing body of water that empties to any ocean, lake, pond, reservoir, stream, or other

river.

M. "Riverfront Area" shall mean the area of land between a river's or perennial stream's mean annual high-water line and a parallel line measured 200 feet horizontally landward of the mean annual high-water line.

N. "Wildlife Habitat" shall mean the area being used by or necessary to provide breeding or nesting habitat, shelter, food, and water for any animal species.

Additional Definitions: The Conservation Commission may in its rules and regulations provide such other definitions, or terms used in this Bylaw, as it deems useful in order to administer or carry out its obligations under this Bylaw. Except as otherwise provided in this Bylaw or in regulations of the Commission, the definitions of terms in this Bylaw shall be set forth in the Wetlands Protection Act (G.L. c. 131, §40) and Regulations (3.10 CMR 10.00).

## SECTION 2 3. JURISDICTION

Except as permitted by the Conservation Commission or as provided in this Bylaw, no person shall remove, fill, dredge, discharge into, build upon, degrade or otherwise alter any marsh, freshwater wetland, vernal pool, wet meadow, bog, swamp, river, stream, creek, pond, reservoir, or lake, or any bank to said waters, or any land under said waters, or any land bordering thereon or riverfront area as hereinafter defined, or any land subject to flooding or inundation (collectively, "the resource areas protected by this Bylaw" or "resource areas")

## SECTION 3 4. EXEMPTIONS

The application procedure and permit required by this Bylaw shall not apply to emergency projects necessary for the protection of health and safety of the public provided that: the work is to be performed by or has been ordered to be performed by an agency of the commonwealth or a political subdivision thereof; advanced

oral or written notice has been given to the Commission prior to commencement of work or within 24 hours after commencement of said work; the Commission or its agent certifies the work as an emergency project; the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; the work not be undertaken for a period of more than 30 days; and within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by the Bylaw.

Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures, and/or take enforcement action.

#### SECTION ~~4~~5. APPLICATION FOR AND ISSUANCE OF ADMINISTRATIVE REVIEW, DETERMINATION OF APPLICATION, OR PERMIT

Each Request for Determination of Applicability, Notice of Intent or other appropriate application shall be submitted in writing on the application form and in a manner specified by the Commission and accompanied by a filing fee to be determined in accordance with the fee schedule in ~~Section 15 of this Bylaw, payable to the "Town of Arlington"~~ **schedule specified within the Arlington Regulations for Wetlands Protection**. The application shall include such information and plans as are deemed necessary by the Commission to describe the proposed activities and their effect on the resource areas and resource area **interests and** values protected by this Bylaw. No activity shall commence without receiving and complying with a permit or determination of applicability or other decision issued by the Commission pursuant to this Bylaw.

Upon submitting any such application to the Commission, the

applicant grants the Conservation Commission and its agent(s), permission to enter upon land, at reasonable times, on which the proposed work is to be done without liability of any kind for the purpose of performing any duties in connection with this Bylaw. If the applicant is not the owner of said land, the applicant shall obtain and furnish to the Commission such permission in writing from the owner(s) of said land.

Such Notice of Intent or Request for Determination of Applicability or other appropriate application may be submitted before any or all permits, variances and approvals required by the Zoning Bylaw or by the Board of Survey or by the Regulations of the Arlington Redevelopment Board thereunder have been obtained.

The Commission may combine the permit or determination of applicability or other action on an application issued under this Bylaw with an Order of Conditions or Determination of Applicability or other action issued by the Commission under the Wetlands Protection Act.

#### **A. ADMINISTRATIVE REVIEW**

Projects that are simple, small in scale, minor, or routine, or involve very little activity or alteration of Resource Areas protected by the Bylaw, and are not likely to have a significant or cumulative effect on the interests and values protected by the Bylaw may be reviewed and approved by the Conservation Agent rather than the full Commission. If a project meets the criteria for Administrative Review as specified in the Arlington Regulations for Wetlands Protection, the Applicant may apply for Administrative Review. The Administrative Review process is defined in the Arlington Regulations for Wetlands Protection, and work may be approved or denied under this process by the Conservation Agent. If the Conservation Agent has any doubt that a project meets the criteria, the Applicant shall be required to file a Request for Determination of Applicability or a Notice of Intent.

A. **B.** DETERMINATION OF APPLICABILITY

Upon written request of any person (known as a "Request for Determination of Applicability"), the Conservation Commission shall hold a public hearing within 21 days to make a determination as to whether this Bylaw is applicable to any land or work thereon which is the subject of such request, and within 21 days of the close of said hearing shall issue a written determination (known as a "Determination of Applicability").

Where such person making a request for determination of applicability is other than the owner of the subject land, notice of any such request for determination shall be sent to the owner(s) of said land by the person making such request; such person shall certify in writing to the Commission that the landowner(s) has received such notification.

A Determination of Applicability shall be valid for three years from date of issuance and may not be extended or renewed.

B. **C.** NOTICE OF INTENT & PERMIT

No person shall remove, fill dredge, build upon, degrade or otherwise alter any of the resource areas protected by this Bylaw without first filing, ~~by certified mail~~ a written Notice of Intent to do so, and, without receiving and complying with a Permit issued by the Commission, unless the Commission has determined that this Bylaw does not apply to such work. The Notice of Intent shall include such information and site plans and location plans as may be necessary in the full discretion of the Commission to fully describe and ascertain such proposed activity and its ~~effect~~ **effect** on the resource areas and resource area **interests and** values protected by this Bylaw.

Within 21 days of receiving a Notice of Intent, the Commission shall hold a public hearing on said application.

If the Commission after a public hearing determines that the area(s) on which the proposed work which is subject of the application is likely to individually significantly harm or cumulatively effect the resource area **interests and** values protected by this Bylaw, the Commission shall, within 21 days of the close of the hearing, issue or deny a permit for such work. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those **interests and** values, and all activities shall be done in accordance with those conditions. The conditions may include a condition that certain land or portions thereof not be built upon or altered, filled or dredged, and that streams not be diverted, dammed or otherwise disturbed. The Commission may deny a permit for failure to meet the requirements of this Bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards or other requirements in regulations or policies of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area **interests and** values of this Bylaw; or where no conditions are adequate to protect said **interests and** values.

To prevent resource area loss, the Commission shall require applicants to avoid resource area alteration wherever feasible; shall minimize resource area alteration; and, where alteration is unavoidable, shall require full mitigation.

The Commission may authorize or require replication of resource area as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

Riverfront area as defined herein and land bordering on any

marsh, freshwater wetland, vernal pool, wet meadow, bog, swamp, river, stream, creek, pond, reservoir, or lake (hereinafter "bordering land") are presumed to be important to the protection of these resources because activities undertaken in close proximity to these resource areas have a high likelihood of adverse impact upon the resources, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat.

The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover within the 200-foot riverfront area or bordering land.

In the review of activities proposed in riverfront area or bordering land, no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this Bylaw or regulations hereunder, has proven by a preponderance of the evidence that (1) there is no practicable alternative to the proposed work or project with less adverse effects, and that (2) such activity, including proposed mitigation measures, will have no significant adverse impact on the resource areas or resource area **interests and** values protected by this Bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial purpose), logistics, existing technology, costs of the alternatives, and overall project costs.

A permit shall expire three (3) years from the date of issuance. ~~A permit may be renewed~~ **The Conservation**

**Commission may extend a permit no more than once for a period of up to an additional three years provided that a from the date of issuance. a The request for a renewal an extension shall be made** is received in writing by **to** the Commission not less than 30 days prior to expiration **of the permit. Permits may be extended only by vote of the Commission at a public hearing. Should said public hearing be continued past the date of the expiration of the permit, the expiration date shall be stayed to the date on which the Commission votes whether to extend the permit.** The Commission may deny the request for an extension and require a new Notice of Intent **the filing of a new application for permit for the remaining work** in the following circumstances:

1. where no work has begun on the project, **except where such failure is due to an unavoidable delay, such as appeals and or in the obtaining of other necessary permits;**
2. 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 resource area **interests and** values protected by **identified in** this Bylaw;
3. where incomplete work is causing damage to the resource area **interests and** values protected by **identified in** the Bylaw; or,
4. where work has been done in violation of the permit, **this Bylaw, or its regulations; or**
5. **where resource areas have changed.**

**If issued by the Conservation Commission, the extension permit shall be signed by a majority of the Conservation Commission.**

**The extension permit shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate. If work is**

**undertaken without the applicant recording the extension permit, the Conservation Commission may issue an enforcement order.**

The Commission may impose additional or more stringent conditions as a result of a hearing conducted by it pursuant to the provisions of this Bylaw than it may impose pursuant to the General Laws, Chapter 131, Section 40 (known as the Wetlands Protection Act).

The Commission may require from an applicant filing a ~~Notice of Intent~~ **an application** pursuant to this Bylaw additional materials or data than is required pursuant to an application filed under General Laws, Chapter 131, Section 40.

For good cause the Commission may revoke or modify a permit issued under this chapter after public notice and public hearing and notice to the permit holder. Good cause shall include, but not be limited to, failure of an applicant to comply with the conditions of a permit.

## **SECTION 5-6. PUBLIC HEARING**

(ART. 57, ATM – 06/19/02)

Notice of the time and place of a public hearing on any appropriate application specified in this Bylaw shall be given by and at the expense of the applicant, not less than five days prior to such hearing, by publication in a newspaper of general circulation in Arlington, and by delivering or mailing a notice thereof to the applicant **property owner if different from the applicant**, to the ~~Town Manager, Select Board, Town Clerk, Planning Department, Town Counsel, Department of Public Works, Town Engineer, Zoning Board of Appeals, Board of Health, Building Inspector, Redevelopment Board~~ **abutters**, and to such other persons as the Conservation Commission may determine **specify in its regulations** (i.e. ~~abutters~~).

The Conservation Commission may hold concurrent hearings

under this Bylaw and the Wetlands Protection Act (M.G.L. c. 131, s.40).

## ~~SECTION 6~~ 7. APPLICANT'S OBLIGATION

The applicant shall have the burden of proving by a preponderance of the credible evidence from a competent source that the work proposed in the ~~Request for Determination of Applicability or Notice of Intent~~ **application** will not have a significant or cumulative effect upon the resource area **interests and** values protected by this Bylaw.

Failure to provide to the Commission adequate evidence or information for it to determine that the proposed work does not cause harm to the **interests and** values ~~sought to be~~ protected by this Bylaw shall be sufficient cause for the Conservation Commission to deny such permit or to grant such permit with such conditions as it deems reasonably necessary or desirable to carry out the purposes of this Bylaw, or to postpone or continue the hearing to another date certain to enable the applicant and others to present additional evidence, upon such terms and conditions as seems to the Commission to be just.

Due consideration may be given to any hardship demonstrated at the hearing, other than financial, on the part of the applicant by reason of denial or continuance of the hearing.

The Conservation Commission may require that plans, calculations, or other information prepared as part of a Request for Determination of Applicability or Notice of Intent be prepared by a qualified professional when, in the Commission's judgment, the complexity of the proposed activity so warrants.

## ~~SECTION 7~~ 8. REQUIREMENTS RUN WITH LAND

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the

provisions of this Bylaw or in violation of any order issued under this Bylaw shall forthwith comply with any such order to restore such land to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three years following the recording of the deed or the date of the death by which such real estate was acquired by such person. The Town Manager and the Select Board shall, upon request of the Conservation Commission, instruct Town Counsel to take such legal action as may be necessary to restrain a violation of this Bylaw, and enforce the orders of the Conservation Commission hereunder, and the Town Counsel shall forthwith comply with such instructions.

## ~~SECTION 8~~ 9. RULES AND REGULATIONS OF THE COMMISSION

The Conservation Commission shall promulgate after due notice and public hearing Rules and Regulations to effectuate the purposes of this Bylaw. **These Rules and Regulations shall be referred to as the Arlington Regulations for Wetlands Protection.** However, failure by the Commission to promulgate such rules and regulations or a legal declaration of their **full or partial** invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.

## ~~SECTION 9.~~ ~~DEDINITIONS~~

~~The following definitions shall apply in the interpretation and implementation of this Bylaw:~~

- ~~A. "Abutter" shall mean the owner of any land within 100 feet if the property line of the land where the activity is proposed, as determined by the most recent assessors' records including any land located directly across a street, river, stream or pond, or municipal boundary~~
- ~~B. "Alter" shall mean to change the conditions of any area subject~~

~~to protection by this Bylaw and shall include but not be limited to one or more of the following actions upon the resource areas protected by this Bylaw:~~

- ~~1. fill, removal, excavation or dredging of soil, sand, gravel or aggregate material of any kind;~~
  - ~~2. changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns and flood storage retention areas;~~
  - ~~3. drainage, disturbance or lowering of the water level or water table; the dumping, discharging or filling with any material which could degrade the water quality;~~
  - ~~4. driving of pilings, erection of buildings or structures of any kind;~~
  - ~~5. placing of any object or obstruction whether or not it interferes with the flow of water;~~
  - ~~6. destruction, extensive trimming, or removal of natural or planted plant life, vegetation, or trees; changing of water temperature, biochemical oxygen demand and other natural characteristics of the receiving water;~~
  - ~~7. any activities, changes or work which pollutes any stream or body of water, whether located in or out of the Town of Arlington;~~
  - ~~8. application of pesticides and herbicides; or~~
  - ~~9. any activity, change or work with adversely effects groundwater or drinking water supply.~~
- ~~C. "Applicant": shall mean a person filing a Request for Determination of Applicability or Notice of Intent. "Banks" shall be defined as the portion of the land surface which normally abuts and confines a water body, often between the mean annual low flow level and the first observable break in the slope or the mean annual flood level, whichever is lower;~~
- ~~D. "Bordering" shall be defined to include any land within either of the following or the greater thereof:~~
- ~~1. 100 feet horizontally lateral from the edge of any marsh, freshwater wetland, vernal pool, wet meadow, bog, swamp, river, stream, creek, pond, reservoir, or lake; or~~

pond, reservoir, or lake; or

2. within the maximum lateral extent of the water elevation of the statistical 100 year frequency storm.

E. ~~“Cumulative Effect” shall mean an effect that is significant when considered in combination with other activities that have occurred, are going on simultaneously, or that are likely to occur, whether such other activities have occurred or are contemplated as a separate phase of the same project, such as the build-out of a subdivision or an industrial park, or unrelated but reasonably foreseeable actions, including other development projects that are currently under construction, under review or that may be expected to come forward.~~

F. ~~“Groundwater” shall mean all subsurface water contained in natural geologic formations or artificial fill including soil water in the zone of aeration. Activities within 100 feet of resource areas shall not significantly alter the existing quality or elevation of naturally occurring groundwater.~~

G. ~~“Land subject to flooding or inundation” shall mean the land within the estimated maximum lateral extent of flood water which will theoretically result from the statistical 100-year frequency storm; said boundary shall be that determined by reference to the most recently available flood profile data prepared for Arlington within which the work is proposed under the Natural Flood Insurance Program (“NFIP”). Where NFIP data are unavailable or outdated, the boundary of said land shall be based on the maximum lateral extent of flood water which has been observed or recorded, or other evidence presented and considered by the Commission. Said land shall also include isolated areas which frequently or seasonably hold standing water; such areas may or may not be characterized by wetland vegetation or soil characteristics.~~

H. ~~“Marsh”, “freshwater wetland”, “swamp”, “wet meadow”, “bog” shall mean that as defined in General Laws Chapter 131, Section 40 or Regulations thereunder (310 CMR 10.00).~~

I. ~~“Permit” shall mean the document issued by the Conservation Commission pursuant to this Bylaw which allows work in accordance with conditions set by the Commission in the~~

~~resource areas protected by this Bylaw.~~

~~J. "Person" shall include any individual, group of individuals, associations, partnerships, corporations, business organizations, trust, estate, Commonwealth of Massachusetts when subject to Town Bylaws, any public or quasi-public corporation or body when subject to Town Bylaws or any other legal entity, including the Town of Arlington or its legal representative, agents or assigns.~~

~~K. "River" shall mean any natural flowing body of water that empties to any ocean, lake, pond, reservoir, or other river.~~

~~L. "Riverfront Area" shall mean the area of land between a river's mean annual high water line and a parallel line measured 200 feet horizontally landward of the mean annual high water line.~~

~~M. "Wildlife Habitat" shall mean the area necessary to provide breeding or nesting habitat, shelter, food and water for any animal species.~~

~~Additional Definitions: The Conservation Commission may in its rules and regulations provide such other definitions, or terms used in this Bylaw, as it deems useful in order to administer or carry out its obligations under this Bylaw. Except as otherwise provided in this Bylaw or in regulations of the Commission, the definitions of terms in this Bylaw shall be set forth in the Wetlands Protection Act (G.L. c. 131, §40) and Regulations (3.10 CMR 10.00).~~

## SECTION 10. BONDS AND COVENANTS

The Conservation Commission may, as part of a permit allowing work, require, in addition to any security required by any other town or state Board, Commission, agency or officer, that the performance and observance of the conditions imposed hereunder be secured by one, or in part by one and in part by the other of the methods described in the following clauses A and B:

A. By a proper bond or deposit of money or negotiable securities, sufficient in the opinion of the Conservation Commission to secure performance of the conditions and observance of the

safeguards of such permit.

B. By a covenant, executed and duly recorded by the owner of record, running with the land, whereby the conditions and safeguards included in such permit shall be performed before any lot may be conveyed other than by mortgage deed.

## SECTION 11. BOND TO SECURE CORRECTIONS OF FLOODING CONDITIONS (ART. 16, ATM – 04/24/02)

The Conservation Commission shall ~~shall~~ **may** require that any developer proposing to build a structure exceeding 6,000 sq. ft. in area, which structure lies within 200 yards ~~yards~~ **feet** of an existing stream ~~and/or~~ **100 feet of an existing** wetland be required to post a proper bond, deposit of money or negotiable securities in lieu thereof, sufficient in the opinion of the Commission to secure performance of such measures determined by the Commission as necessary to correct any flooding condition on the site of the proposed development that existed prior to the construction of same or is likely to result as a consequence of the construction. The Commission shall ~~insure~~ **ensure** that the bond shall be in effect for a minimum of five years.

## SECTION 12 **ENFORCEMENT AND** PENALTIES FOR VIOLATIONS/~~ENFORCEMENT~~

**Whoever violates any provision of this Bylaw, its regulations, or permits or orders issued thereunder may be penalized, with fines recoverable, by indictment in superior court or on complaint before a district court. The District Court may impose fines for any violation of these provisions which shall be \$300 for each offense. Each day on which any violation exists shall be deemed to be a separate offense.**

**The provisions of this Bylaw, its regulations, and permits or orders issued thereunder, may also be enforced by the Conservation Agent, Conservation Administrator, or any Police Officer of the Town, through the noncriminal**

## disposition provisions of M.G.L. c. 40, §21D.

~~Whoever violates any provision of this Bylaw shall be punished by a fine of not more than \$300.00. Each day or portion thereof of continuing violation shall constitute a separate offense. This Bylaw may be enforced by any Town Police Officer or other office having police powers.~~

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

~~In the alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure set forth in MGL C. 40, Sec. 21D.~~

### SECTION 13. JUDICIAL REVIEW

**A decision of the Conservation Commission shall be reviewable in the superior court in accordance with G.L. Ch. 249, § 4.** ~~Any request for judicial review of the Commission's decision on any Permit or Request for Determination of Applicability pursuant to this Bylaw must be filed within sixty days from the issuance of or decision to not issue the Permit or Determination. Failure to do so shall constitute a waiver of such judicial review.~~

### SECTION 14. SEVERABILITY

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any Permit which has previously become final.

### SECTION 15. RELATION TO WETLANDS PROTECTION ACT

This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes,

independent of the Wetlands Protection Act, General Laws c. 131 Section 40, and regulations thereunder.

## SECTION 16. FEES SCHEDULE

**Any applicant shall pay the Application fee specified in the Arlington Regulations for Wetlands Protection.**

### A. Rules:

1. Permit fees are payable at the time of application and are nonrefundable.
2. Permit fees shall be calculated by this department—per **the Conservation Commission according to the schedule below in the Regulations.**
3. Town, County, State, and Federal projects are exempt from fees.
4. **All permit fees are tripled if work is started without permit.** Failure to comply with the law after official notification shall result in fees twice those normally assessed.
5. These fees are in addition to any required under the Wetlands Protection Act, M.G.L. c. 131, s. 40, or its regulations.
6. **An application may be rejected or denied for failure to pay the application fee.**

### B. Fees: ~~(ART. 57, ATM — 06/19/02) (ART. 57, ATM — 06/19/02)~~

1. ~~Minor project (house addition, tennis court, swimming pool, utility work, etc.) \$100.~~
2. ~~Maintenance activity; work in, on or affecting any body of water, wetland or floodplain \$100.~~
3. ~~Single-family dwelling \$400.~~
4. ~~Subdivisions (road and utilities only) \$400 + \$2/ft. of roadway sideline within 100' of resource areas or within land subject to flooding.~~
5. ~~Multiple dwelling structures \$400 + \$100 per~~

unit all or part of which lies within 100 ft. of wetlands or within land subject to flooding.

6. ~~Commercial and Industrial Projects \$500. + \$.50/sq. ft. wetland disturbed \$.02/sq. ft. land subject to flooding or 100 ft. buffer disturbed.~~
7. ~~Extensions of Permits~~
  - a. ~~Single family dwelling or minor project \$100.~~
  - b. ~~Other. \$150.~~
8. ~~Refiling of previously denied projects within 3 years original fee or \$1,000, whichever is less.~~
9. ~~Request for Determination \$75.~~
10. ~~Fees for Request for Amendments a fee of \$300 or 50% of the original filing fee, whichever is less, will be submitted at the same time as a request for amendment/Changes is presented to the Conservation Commission.~~

#### **A. Consultant Fees**

1. Consultant Fee Upon receipt of **an application**/Notice of Intent, Abbreviated Notice of Resource Area Delineation, or Request for Determination of Applicability, or any point during the hearing process, the Commission is authorized **pursuant to M.G.L. c. 44, § 53G** to require an applicant to pay a **reasonable** fee to the Conservation Commission for the ~~reasonable costs and expenses borne by the Commission for~~ **employment of an outside consultant for** consultant services deemed necessary by the Commission to come to a final decision on the application. The fee is called the "consultant fee."

The specific consultant services may include, but are not limited to, performing or verifying the accuracy of a resource area survey and delineation, **stormwater**

**management**, **A**analysis of resource area **interests** **and** values, wildlife habitat evaluations, hydrogeologic and drainage analysis, and environmental or land use law.

The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. Failure by the applicant to pay the Consultant Fee specified by the Commission within five (5) business days of the request for payment shall be cause for the Commission to deny issuance of a permit or other requested action.

The applicant shall pay the fee to be put into a revolving fund, which may be drawn upon by the Commission for specific consultant services approved by the Commission at one of its public meetings. The consultant shall be chosen by, and report only to, the Commission or its designee.

The exercise of discretion by the Commission in making its determination to require payment of a consultant fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision.

The Commission shall return any unused portion of the consultant fee to the applicant unless the Commission decides at a public meeting that other action is necessary.

Any applicant aggrieved by the imposition of, or size of, the consultant fee, or any act related thereto, may appeal according to the provision of the Massachusetts General Laws.

~~The maximum consultant fee charged to reimburse the Commission for reasonable costs and expenses shall be according to one of the following schedules whichever is greater:~~

<del>Project Cost</del>	<del>Maximum Fee</del>
<del>UP TO \$100,000</del>	<del>\$ 3,000</del>
<del>\$100,001 -- \$500,000</del>	<del>\$ 4,500</del>
<del>\$500,001 -- \$1,000,000</del>	<del>\$10,000</del>
<del>\$1,000,001 -- \$1,500,000</del>	<del>\$15,000</del>
<del>\$1,500,001 -- \$2,000,000</del>	<del>\$20,000</del>

~~Each additional \$500,000 project cost increment over \$2,000,000 may be charged at an additional \$4,500 maximum fee per increment.~~

~~The project cost means the estimated, entire cost of the project, including, but not limited to, project design, building construction, site preparation, landscaping, and all site improvements.~~

<del>Project Site Size</del>	<del>Maximum Fee</del>
<del>Up to 1 acre</del>	<del>\$3,000</del>
<del>1 to 2 acres</del>	<del>\$4,500</del>
<del>2 to 10 acres</del>	<del>\$10,000</del>
<del>10 acres and above</del>	<del>\$10,000 plus \$2,000 per acre for each acre above 10 acres</del>

~~The project shall not be segmented to avoid being subject to the consultant fee. The applicant shall submit estimated project costs at the Commission's request, but the lack of such estimated project costs shall not avoid the payment of the consultant fee.~~

## **SECTION 17. VARIANCE WAIVER**

(ART. 5, STM – 05/14/03) (ART. 31, ATM – 05/05/04)

Upon written request by an applicant, the Commission may waive specifically identified procedures, design specifications, performance standards, or other requirements set forth in this Bylaw or its regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with the Bylaw or said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the relief is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation. Due consideration shall be given to any demonstrated hardship on the applicant in having to comply with the Bylaw or Regulations, as presented at the public hearing, provided such hardship is not self-imposed.

~~The Commission may vary any provisions of this bylaw or regulations promulgated thereunder relating to providing compensatory storage for flood storage volume that will be lost as a result of a proposed project within a flood plain when strict adherence thereto would constitute a substantial hardship on the applicant. The Commission may not issue a variance when to do so would derogate in a substantial way from the overall purpose of this bylaw. Notwithstanding the foregoing, the Commission may not issue any variance the effect of which would be to advance or in any way facilitate the building of any above-ground structures, except for minor recreational improvements (such as bleachers, lighting, and scoreboards). The effective date of this section shall be as provided in Section 32 of Chapter 40 of the General Laws.~~

[Select Board Report](#)