



**RULES & REGULATIONS  
AVON CONSERVATION COMMISSION  
DRAFT 05/26/2020**

On **date.....**; the following members of the Avon Conservation Commission voted to accept these Rules and Regulations as they apply to the Massachusetts Wetlands Protection Act and the Wetlands Protection Bylaw, Avon General Code 239:

**Kevin P. Mooney, Chairman, Edward Mekjan, Christopher Canducci and John Costa**

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**ARTICLE I - PARLIAMENTARY PROCEDURE** - The Conservation Commission shall be governed by Robert's Rules of Order Revised in all questions of parliamentary procedure not provided for by special rules or orders herein.

**ARTICLE II - COMMISSION MEETINGS** – The Commission shall meet at least once per month. The regular meetings shall be held normally during the second week of the month unless a holiday delays to the next week. If a second meeting is needed in any month it shall be in the fourth week unless the regular meeting was pushed due to a holiday, in that case the fourth week shall be used. All meeting shall be held in the Avon Town Hall, or as otherwise voted by the commission, convening at 7:00 PM.

**ARTICLE III – QUORUM** - A quorum shall consist of a majority of its members (3 of 5, irrespective of whether all 5 slots are filled by Town Council ratification). If at any time a meeting is called to order, or if during a meeting, less than a quorum is present, the Chair shall declare a recess of not more than 10 minutes, after which time, if a quorum is not present, the meeting shall be adjourned. Any member may call for a roll call on the question of the presence of a quorum. An Associate Member cannot be considered when determining a quorum. If a quorum cannot be made in person, the missing members may teleconference or video conference into the meeting/hearing.

Under special circumstances where physical distancing is required the public meeting/hearing shall be by video conferencing where the public can access the meeting/hearing remotely. The Commission will meet in the Mary McDermott Room of Town Hall and will allow access through the door directly from the parking lot. At these meetings the date and time may be changed due to all to the video conferencing equipment. The Commission will post note of how to access the meeting remotely and shall also post on the Town social media account.

**ARTICLE IV - PUBLIC POSTINGS** - By law, public notices of all Commission meetings, except in emergencies, must be posted with the Town Clerk a minimum of 48 hours before any meeting. The Town Clerk will ensure that the notice is posted on the Town Hall bulletin board. Meeting notice forms emanate from the Town Clerk's office and will include the name of the Commission and the date, time, and place of the meeting.

**ARTICLE V – MINUTES** - A written record of each Commission meeting is required by law and becomes part of the public record. Minutes must contain the date, time and place of the meeting, members present or absent, all formal votes of the Commission, a reasonable summary of discussion, and the revision dates of any plans or forms submitted by applicants. Minutes must be formally accepted by the commission. Minutes of all Commission meetings must be placed on file in the office of the Town Clerk where they will be available for public inspection upon request

**ARTICLE VI - THE CHAIRMAN - POWERS AND DUTIES** - The Chairman shall take the Chair at the hour appointed for the Commission to meet and shall immediately call the members to order. In the absence of the Chairman, the Vice Chairman shall assume the role of the Chairman pro tem. The Secretary or Agent will designate a presiding Chair by seniority in the event both the Chairman and Vice Chairman are absent. The Chairman shall preserve decorum and order, may speak to points of order in preference to other members, shall decide all questions of order, subject to an appeal to the Commission, regularly seconded and no other business shall be in order until the question on the appeal has been decided. The Chairman shall recognize members, applicants, and citizens in an order which best serve the interests of the Commission. Those interests are:

- Promoting conservation,
- Administering the State Wetlands Protection Act, MGLc.131 s.40,
- Administering the Town Wetlands Protection Bylaw,
- Protecting the water resources of the town,

The Chairman may at any time declare a recess for not more than ten minutes, and such action shall not be subject to appeal, nor shall any motions apply thereto.

**ARTICLE VII - ELECTION OF OFFICERS** - A majority of members ratified to serve on the Commission shall be required to elect a Chairman and Vice Chairman on an annual basis, during the first meeting in July of any year.

**ARTICLE VIII –VOTING** - All questions shall be stated and put by the Chairman. The results of viva voce and/or raised hand votes shall be declared by the Chairman. Where the result of a viva voce vote is in doubt, the Chairman may, and on demand of any member shall, call for a raised hand vote.

**ARTICLE IX - VOTE REQUIREMENTS** - All action taken by the Commission requiring a vote will be by a simple majority (majority of members present and voting) except as otherwise provided by Massachusetts General Laws, Home Rule Charter, By-Law, or as set forth herein.

In the event of a tie vote in any proposal, the proposal shall be considered lost.

A motion to elect a Chairman or Vice Chairman shall require a vote.

A motion to conduct separate hearings under the State Wetlands Protection Act, M.G.L. c.131 s. 40, and the town Wetlands Protection Bylaw, shall require a vote.

A motion to close a public hearing shall require a vote.

A motion to decide a Request for Determination shall require a vote.

A motion to issue special Orders of Conditions for a permit to perform work per the State Wetlands Protection Act shall require a vote.

A motion to require an applicant to pay the fee of a consultant per the Town Wetlands Protection Bylaw shall require a vote.

A motion to determine whether an applicant's presentation under the Town Wetlands Protection Bylaw has satisfactorily demonstrated that proposed activities, either individually or cumulatively, are not likely to have a significant adverse effect upon the functions and characteristics of a resource area shall require a vote.

A motion to determine whether an isolated wetland subject to flooding is capable of satisfying the definition of a vernal pool per the Town Wetlands Protection Bylaw shall require a vote.

A motion to issue Orders of Conditions for a permit to perform work per the Town Wetlands Protection Bylaw separate from those issued per the State Wetlands Protection Act, or to deny a permit to perform work per the Town Wetlands Protection Bylaw, shall require a vote.

A motion to require an applicant to provide a performance guarantee per the Town Wetlands Protection Bylaw shall require a vote.

A motion to initiate civil and criminal enforcement actions per the Town Wetlands Protection Bylaw shall require a vote.

A motion to amend, modify or suspend these rules and regulations shall require a vote. Such a vote shall require a majority of the full membership of the Commission (i.e. 3 of 5, irrespective of whether all 5 slots are filled by Town Council ratification).

**ARTICLE X – HEARINGS** – A public hearing shall be held by the Commission within twenty one (21) days of receipt of a submittal in accordance with the By-Law and its regulations and shall be advertised in accordance with the By-Law and the requirements of the open meeting law, M.G.L., Ch. 39 S. 23B. The applicant can waive these requirements. Hearing dates are listed on the conservation webpage.

The appendix has sample advertisement that must run in the local newspapers at least five (5) days prior to the hearing. The applicant shall submit a tear sheet of the advertisement with the publication source and date of advertisement.

All applications shall require advertisement, if a MBZA is approved for a project. This information shall be included in the advertisement, indicating that a MBZA has been approved and a hearing at the next meeting will confirm the approval.

The format for hearings under the State Wetlands Protection Act and under the Town Wetlands Protection Bylaw shall include Presentation by Applicant & Questions and discussion by Commission and Public.

Public hearings may be continued as follows: For reasons announced by the Commission at the hearing, the Commission shall have authority to continue the hearing to a date certain announced at the hearing, either for receipt of additional information offered by the applicant or others, or for information required of the applicant, deemed necessary by the Commission in its discretion. A continuance may be granted to allow for a site inspection if it is determined that further field review is needed to address the application.

Continuance must be acceptable to the applicant and the continuance shall be scheduled with sufficient time for the information to be gathered and processed. In the event the applicant objects to a continuance, the hearing shall be closed and the Commission shall take action on such information as is available.

**ARTICLE XI - CONFLICTS OF INTEREST** - No member shall vote on any matter where the member's private or family interest will conflict with the public's interest as set out in the State Conflict of Interest Law, MGL Ch. 268A. If a potential conflict exists with a Commission member, they shall announce at the start of the hearing that they shall recuse themselves from the hearing and the vote.

**ARTICLE XII - OPEN MEETING LAW** - All meetings of the Commission shall be conducted in accordance with the State Open Meeting Laws, MGL Ch. 39 S.23, MGL Ch. 30A, S.18-25B and 940 CMR 29.

**ARTICLE XII – DEFINITION OF KEY FOR THE TOWN OF AVON WETLANDS PROTECTION BYLAW AND THE CONSERVATION COMMISSION RULES AND REGULATIONS**

**ABUTTER:** means the same as owner of land abutting the activity.

**ACT:** means the Wetlands Protection Act, M.G.L. c. 131, § 40.

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

**ALTER** - Test pits for the purpose of preparing an application to the Commission are excluded from the definition of "Alter" set forth in the Town Wetlands Protection Bylaw. Normal landscaping maintenance activities are excluded from the definition of "alter" set forth in the Town Wetlands Protection Bylaw. Cutting of any woody plant greater than 1" at breast height, cutting any herbaceous plant greater than 1' height at maturity, and spreading pesticide, herbicide, or lawn fertilizer closer than 50' to a wetland shall not be considered normal landscaping maintenance. Changing the elevation of any area greater than 10 square feet by more than 1 foot shall be considered to satisfy the definition of "Alter" set forth in the Town

**AQUIFER RECHARGE AREAS:** Areas composed of permeable stratified sand and gravel and certain wetlands that collect precipitation or surface water and then carry it to aquifers.

**BANK** shall mean and shall include the land area which normally abuts and confines a water body, the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

**BEACH:** a naturally occurring beach with an unvegetated bank.

**BEST AVAILABLE MEASURES MEANS:** the most up-to-date technology or the best designs, measures, or engineering practices that have been developed and that are commercially available. Best available shall not be defined by economics.

**BEST PRACTICAL MEASURES:** state of the art technologies, designs, measures, or engineering practices that are in general use.

**BORDERING:** means touching.

**BORDERING VEGETATED WETLANDS (BVW)** (a) Bordering Vegetated Wetlands are freshwater wetlands which border on creeks, rivers, streams, ponds and lakes. The types of freshwater wetlands are wet meadows, marshes, swamps and bogs. Bordering Vegetated Wetlands are areas where the soils are saturated and/or inundated in such a manner that they support a predominance of wetland indicator plants. The ground and surface water regime and the vegetational community which occur in each type of freshwater wetland are specified in M.G.L. c. 131, § 40. (b) The physical characteristics of Bordering Vegetated Wetlands, as described in 310 CMR

10.55(2) (a), are critical to the protection of the interests specified in 310 CMR 10.55(1) (c). The boundary of Bordering Vegetated Wetlands is the line within which 50% or more of the vegetational community consists of wetland indicator plants and saturated or inundated conditions exist. Wetland indicator plants shall include but not necessarily be limited to those plant species identified in the Act. Wetland indicator plants are also those classified in the indicator categories of Facultative, Facultative+, Facultative Wetland-, Facultative Wetland, Facultative Wetland+, or Obligate Wetland in the National List of Plant Species That Occur in Wetlands: Massachusetts (Fish & Wildlife Service, U.S. Department of the Interior, 1988) or plants exhibiting physiological or morphological adaptations to life in saturated or inundated conditions.

1. Areas containing a predominance of wetland indicator plants are presumed to indicate the presence of saturated or inundated conditions. Therefore, the boundary as determined by 50% or more wetland indicator plants shall be presumed accurate when:

- a. all dominant species have an indicator status of obligate, facultative wetland+, facultative wetland, or facultative wetland- and the slope is distinct or abrupt between the upland plant community and the wetland plant community;
- b. the area where the work will occur is clearly limited to the buffer zone; or
- c. the issuing authority determines that sole reliance on wetland indicator plants will yield an accurate delineation.

2. When the boundary is not presumed accurate as described in 310 CMR 10.55(2) (c)1.a. through c. or to overcome the presumption, credible evidence shall be submitted by a competent source demonstrating that the boundary of Bordering Vegetated Wetlands is the line within which 50% or more of the vegetational community consists of wetland indicator plants and saturated or inundated conditions exist. The issuing authority must evaluate vegetation and indicators of saturated or inundated conditions if submitted by a credible source, or may require credible evidence of saturated or inundated conditions when determining the boundary. Indicators of saturated or inundated conditions sufficient to support wetland indicator plants shall include one or more of the following:

- a. groundwater, including the capillary fringe, within a major portion of the root zone;
- b. observation of prolonged or frequent flowing or standing surface water;
- c. characteristics of hydric soils.

3. Where an area has been disturbed (*e.g.* by cutting, filling, or cultivation), the boundary is the line within which there are indicators of saturated or inundated conditions sufficient to support a predominance of wetland indicator plants, a predominance of wetland indicator plants, or credible evidence from a competent source that the area supported or would support under undisturbed conditions a predominance of wetland indicator plants prior to the disturbance..

**BOUNDARY:** the boundary of an Area Subject to Protection under the By-Law. A description of the boundary of each area is found in the appropriate Article of these Rules and Regulations.

**BREEDING AREAS:** mean areas used by wildlife for courtship, mating, nesting or other reproductive activity, and rearing of young.

**BUFFER ZONE:** Land within one hundred (100) feet horizontally landward from the perimeter or outer border of any Resource Area.

**CERTIFICATE OF COMPLIANCE:** a written determination in recordable form by the Commission that work, or a portion thereof, has been completed in accordance with the issued Order of Conditions.

**CMR:** means the Codes of Massachusetts regulations.

**CONDITIONS:** those requirements set forth in an Order of Conditions issued by the Commission for the purpose of permitting, regulating, or prohibiting any activity having an impact or cumulative effect upon a Resource Area.

**CREEK:** the same as stream.

**DATE OF ISSUANCE:** the date any document issued by the Commission (including, but not limited to, an Order of Conditions, a Determination of Applicability, or an Enforcement Order) is mailed, as evidenced by a postmark, or the date it is hand delivered and received to an applicant or the applicants agent.

**DATE OF RECEIPT:** the date of actual delivery to an office, home address or usual place of business by mail or hand delivery.

**DEP OR DEPARTMENT:** the Massachusetts Department of Environmental Protection.

**DETERMINATION OF APPLICABILITY OR DETERMINATION:** a written finding, following a public hearing by the Commission, as to whether a site or the work proposed thereon is subject to the jurisdiction of the By-Law. A finding will be one of the following:

(a) Positive Determination: a written finding that the area on which the proposed work is to be done or the activity thereon will cause a significant impact to one or more of the interests protected by the By-Law.

(b) Negative Determination: a written finding that the area on which proposed work is to be done, or the activity thereon will not cause a significant impact to any of the interests protected by the By-Law.

(c) Negative Determination with Conditions: a written finding that the work proposed on the area allowed under the Conditions prescribed by the Commission will not cause a significant impact to any of the interests protected by the By-Law.

**DIRECT CASE:** the evidence that a party seeks to introduce in support of its position, as well as any legal argument the party wishes to provide. The Direct Case may include, but is not limited to, statements under oath



by lay witnesses and expert witnesses, technical reports, studies, memoranda, maps, plans, and other information that a party seeks to have the Presiding Officer review as part of the adjudicatory proceeding.

**Dredge** means to deepen, widen or excavate, either temporarily or permanently.

**DISTURBED AREA** – An area may be determined by the Commission to be a Disturbed Area where natural vegetation has been removed or otherwise legally modified and the soil has been removed, altered or legally modified such as in a mining or gravel removal operation.

Modifications made to an area prior to July 18, 1972 (Enactment of Wetlands Protection Act) or after July 18, 1972 with a permit from the Conservation Commission are considered legally modified. Areas that have not been legally modified shall not be considered Disturbed Area for the purposes of the Town of Avon Wetlands Bylaw and Wetland Bylaw Regulations.

Modified areas can include, but are not limited to areas such as parking lots, established lawn areas, non-native landscaped areas, patios and areas with active agricultural uses. Modified areas do not include areas where brush has been removed or limbs trimmed without any other modifications to the soil or the site.

The burden of proof is on the applicant to show, by a preponderance of evidence that the area meets the Commission’s definition of Disturbed Area

For the purposes of the Town of Avon Wetlands Bylaw and Wetland Bylaw Regulations a Disturbed Area considered legally modified will cease to be a legally modified Disturbed Area after three years of non-use or abandonment and will be considered non-disturbed area.

**ENVIRONMENTALLY SENSITIVE SITE DESIGN:** means design that incorporates low impact development techniques to prevent the generation of Stormwater and non-point source pollution by reducing impervious surfaces, disconnecting Stormwater sheet flow paths and treating Stormwater at its source, maximizing open space, minimizing disturbance, protecting natural features and processes, and/or enhancing wildlife habitat.

**EXTENSION PERMIT:** means a written extension of time within which the authorized work shall be completed.

**FILING:** any filing made under the Massachusetts Wetlands Protection Act or the By-Law to the Commission, including, but not limited to, a Request for a Determination of Applicability, Notice of Intent, Abbreviated Notice of Intent, or Abbreviated Notice of Resource Area Delineation.

**FILL:** means to deposit any material so as to raise an elevation, either temporarily or permanently.

**FLOOD CONTROL:** prevention or reduction of flooding and flood damage.

**FLOODPLAIN** - Any floodplain which satisfies the definitions of floodplain as set out in Mass DEP regulations 310 CMR 10.00. The resource area of a floodplain is limited to the area of the floodplain and does not include land within 100' of the floodplain.

**FRESHWATER WETLANDS/VEGETATED WETLANDS (STATE OR DEP):** any area of at least 2000 square feet where surface and/or groundwater, or ice at or near the surface of the ground, supports a plant community dominated (at least 50%) by wetland species and/or exhibits other evidence of hydrology. Freshwater wetlands are further described under §3.02 hereof (bogs, swamp, forested wetland) and are otherwise defined in M.G.L. Ch. 131 §40(7).

**FRESHWATER WETLANDS (AVON CONSERVATION BY-LAWS):** for the By-Laws shall be any area, no matter the size or water inundation, which supports a plant community including wetland plant species. Bogs, marshes, wet meadow, swamps and vernal pools are all freshwater wetlands. For the purposes of this by-law, freshwater wetlands do not need to border water bodies in order to be regulated.

**GROUNDWATER SUPPLY:** means water below the earth's surface in the zone of saturation. Historic Mill Complex means the mill complexes in, but not limited to, Holyoke, Taunton, Fitchburg, Haverhill, Methuen, and Medford in existence prior to 1946 and situated landward of the waterside facade of a retaining wall, building, sluiceway, or other structure existing on August 7, 1996. An historic mill also means any historic mill included on the Massachusetts Register of Historic Places. An historic mill complex includes only the footprint of the area that is or was occupied by interrelated buildings (manufacturing buildings, housing, utilities, parking areas, and driveways) constructed before and existing after 1946, used for any type of manufacturing or mechanical processing and including associated structures to provide water for processing, to generate water power, or for water transportation.

**ILLICIT DISCHARGE:** means a discharge that is not entirely comprised of Stormwater. Notwithstanding the foregoing, an illicit discharge does not include discharges from the following activities or facilities: firefighting, water line flushing, landscape irrigation, uncontaminated ground water, potable water sources, foundation drains, air conditioning condensation, footing drains, individual resident car washing, flows from riparian habitats and wetlands, dechlorinated water from swimming pools, water used for street washing and water used to clean residential buildings without detergents.

**IMPORTANT WILDLIFE HABITAT FUNCTIONS:** mean important food, shelter, migratory or overwintering areas, or breeding areas for wildlife.

**INTEREST IDENTIFIED IN THE WETLANDS PROTECTION ACT:** means public or private water supply, ground water supply, flood control, storm damage prevention, prevention of pollution, protection of fisheries, and protection of wildlife habitat. Issuing Authority means a conservation commission, mayor, the selectmen or the Department, whichever is applicable.

**INFORMATION AND PLANS -** Plans shall be scaled 40 feet/inch, or larger (e.g. 20'/in), indicating the location and extent of a resource area. Plans shall have initial and revision dates, and be plainly labeled to indicate the location and nature of proposed activities. Plans for new construction (i.e. not additions) shall include topographic contours of at least 2' intervals. This definition does not preclude the Commission from requiring other information such as drainage calculations, replication schedules, etc.

**INTERESTS PROTECTED BY THE BY-LAW:** those interests specified in Section 1 of the By-Law.

**LAKE:** any open body of fresh water with a surface area of 10 acres or more, including, but not limited to, great ponds.

**LAND UNDER WATER BODIES AND WATERWAYS:** the bottom of or land under the surface of any creek, river, stream, pond, or lake.

**LANDOWNER:** the owner of record of land or an interest in land that is subject of a Reviewable Decision.

**LOT:** means an area of land under one owner; with definite boundaries.

**LOW IMPACT DEVELOPMENT TECHNIQUES:** mean innovative Stormwater management systems that are modeled after natural hydrologic features. Low impact development techniques manage rainfall at the source using uniformly distributed decentralized micro-scale controls. Low impact development techniques use small cost-effective landscape features located at the lot level.

**MAINTENANCE OF A STORMWATER MANAGEMENT SYSTEM:** means the work to keep a Stormwater management system functional and in good repair so that it may continue to operate as originally designed. Maintenance of a Stormwater management system does not include work that:

- (a) reduces the capacity of the system to treat Stormwater, provide recharge or attenuate peak flow;
- (b) increases the total and peak volume of the Stormwater managed by the system;
- (c) directs additional Stormwater discharges to the system; or
- (d) results in reduced use of above ground Stormwater best management practices. Major or Complex - means an appeal of a Reviewable Decision issued for work in a resource area that will be so designated due to the complexity or novelty of the issues, the magnitude of the project, the potential for environmental harm or benefit, significant public interest or public financing or other relevant consideration, as determined by the Commissioner or a Presiding Officer.

**MAJORITY:** more than half of the members of the Conservation Commission then in office.

**MASSACHUSETTS WETLANDS PROTECTION ACT:** M.G.L. Ch. 131 § 40 and the regulations promulgated thereunder (codified at 310 CMR 10.00).

**MEAN ANNUAL BOUNDARY:** with respect to vernal pools, the highest observed water surface elevation (for example, evidence of water stained tree trunks).

**MIGRATORY AREAS:** mean those areas used by wildlife moving from one habitat to another, whether seasonally or otherwise.

**MITIGATION:** means rectifying an adverse impact by repairing, rehabilitating or restoring the affected resource area or compensating for an adverse impact by enhancing or providing replacement resource areas.

**NOTICE OF INTENT:** written notice filed under the Massachusetts Wetlands Protection Act and/or the By-Law by an applicant intending to remove, fill, dredge, or otherwise alter a Resource Area.

**ORDER:** an Order of Conditions issued pursuant to the Massachusetts Wetlands Protection Act or the By-Law.

**ORDER OF CONDITIONS:** the document issued in recordable form by the Commission containing conditions which regulate or prohibit an activity under the Massachusetts Wetlands Protection Act or the By-Law.

**OWNER OF LAND ABUTTING THE ACTIVITY:** the owner of land sharing a common boundary or corner with the site of the proposed activity in any direction, including land located directly across a street, way, creek, river, stream, brook, canal, lake, or pond.

**PERSON:** shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof to the extent subject to Town Bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representative, agents, or assigns.

**PLANS:** such data, maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the Commission to describe the site, all areas subject to jurisdiction under the Massachusetts Wetlands Protection Act or the By-Law, and/or to determine the impact of the proposed work upon the interests identified in the Massachusetts Wetlands Protection Act or the interests protected by the By-Law.

**POND:** means any open body of fresh water with a surface area observed or recorded within the last 10 years of at least 5,000 square feet. Ponds may be either naturally occurring or man-made by impoundment, excavation, or otherwise. Ponds shall contain standing water except for periods of extended drought. For purposes of this definition, extended drought shall mean any period of four or more months during which the average rainfall for each month is 50% or less of the ten year average for that same month.

Notwithstanding the above, the following man-made bodies of open water shall not be considered ponds:

- (a) basins or lagoons which are part of wastewater treatment plants;
- (b) swimming pools or other impervious man-made basins; or
- (c) individual gravel pits or quarries excavated from upland areas unless inactive for 5 or more consecutive years.

**PREVENTION OF POLLUTION:** the prevention or reduction of contamination of soils and/or surface water or groundwater.

**PRIVATE WATER SUPPLY:** any source or volume of surface or groundwater demonstrated to be in any private use or shown to have potential for private use.

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

**PROTECTION OF FISHERIES:** to prevent or reduce contamination or damage to fish and to protect their habitat and nutrient sources.

**PROTECTION OF WILDLIFE:** (1) the protection of any plant or animal species listed as endangered, threatened or of special concern, or on the Watch List by the Massachusetts Natural Heritage Program; listed as Federally Endangered or Federally Threatened by the U.S. Fish and Wildlife Service; deemed locally threatened in writing by the Commission; and (2) the protection of the ability of any Resource Area to provide food, breeding habitat, or escape cover and species falling within the definition of wildlife as set forth in these Rules and Regulations.

**PUBLIC WATER SUPPLY:** any source or volume of surface or groundwater demonstrated to be in public use or approved for water supply pursuant to M.G.L. Ch. 111 §160 by the Division of Water Supply of the DEP or shown to have a potential for public use.

**RARE SPECIES:** mean those vertebrate and invertebrate animal species officially listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife under 321 CMR 10.60.

**REQUEST FOR DETERMINATION OF APPLICABILITY:** a written request on the proper form made by any person, to the Commission for a determination as to whether a site or work thereon is subject to the By-Law.

**REDEVELOPMENT:** means replacement, rehabilitation, or expansion of existing structures, improvement of existing roads or reuse of degraded or previously developed areas for purposes of 310 CMR 10.58, governing work in the riverfront area. For purpose of the Stormwater Management Standards as provided in 310 CMR 10.05(6)(k) through (q), redevelopment is defined to include the following projects:

- (a) maintenance and improvement of existing roadways including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems and repaving;
- (b) development, rehabilitation, expansion and phased projects on previously developed sites provided the redevelopment results in no net increase in impervious area; and
- (c) remedial projects specifically designed to provide improved Stormwater management such as projects to separate storm drains and sanitary sewers and Stormwater retrofit projects. Remove means to take away any type of material, thereby changing an elevation, either temporarily or permanently.

**RESOURCE AREA:** those areas defined in the Massachusetts Wetlands Protection Act or listed under Section II Jurisdiction of the Wetlands Bylaw. It is used synonymously with Area Subject to Protection Under the By-Law.

**RIVER:** a natural flowing body of water that empties into any lake, pond, ocean or other river and which flows throughout the year. River is further defined in the Rivers Protection Act (Acts of 1996, Ch. 258).

**RIVERFRONT AREA:** is defined in the Rivers Protection Act (Acts of 1996, Ch. 258).

**SIGNIFICANT ADVERSE EFFECT -** Any activity, which is determined by a vote of the commission to be likely to result in a significant adverse effect of the functions and characteristics of a resource area.

**STORM DAMAGE PREVENTION:** the prevention of damage caused by water from storms, including, but not limited to, erosion and sedimentation, damage to vegetation, property, or buildings, or damage caused by flooding, waterborne debris or waterborne ice.

**STORMWATER BEST MANAGEMENT PRACTICE:** means a structural or nonstructural technique for managing Stormwater to prevent or reduce non-point source pollutants from entering surface waters or ground waters. A structural Stormwater best management practice includes a basin, discharge outlet, swale, rain garden, filter or other Stormwater treatment practice or measure either alone or in combination including without limitation any overflow pipe, conduit, weir control structure that:

(a) is not naturally occurring;

(b) is not designed as a wetland replication area; and

(c) has been designed, constructed, and installed for the purpose of conveying, collecting, storing, discharging, recharging or treating Stormwater. Nonstructural Stormwater best management practices include source control and pollution prevention measures.

**STORMWATER MANAGEMENT SYSTEM:** means a system for conveying, collecting, storing, discharging, recharging or treating Stormwater on-site including Stormwater best management practices and any pipes and outlets intended to transport and discharge Stormwater to the ground water, surface water or a municipal separate storm sewer system.

**STREAM:** means a body of running water, including brooks and creeks, which moves in a definite channel in the ground due to a hydraulic gradient, and which flows within, into or out of an Area Subject to Protection Under M.G.L. c. 131, § 40. 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 a stream except for that portion upgradient of all bogs, swamps, wet meadows and marshes.

**SURFACE WATERS:** means all waters other than ground water within the jurisdiction of the Commonwealth including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, and coastal waters.

**VERNAL POOL:** - Any isolated wetland subject to flooding which is determined by a vote of the commission to be capable of satisfying the definition of a vernal pool as set forth in the Mass DEP Regulations 310, CMR 10.00, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. Note that, as set forth in such definition, the 100 feet from the mean annual boundary of the depression is included in the definition of vernal pool.

**VISTA PRUNING:** means the selective thinning of tree branches or understory shrubs to establish a specific "window" to improve visibility. Vista pruning does not include the cutting of trees which would reduce the leaf canopy to less than 90% of the existing crown cover and does not include the mowing or removal of understory brush.

**WATERS OF THE COMMONWEALTH:** means all waters within the jurisdiction of the Commonwealth, including without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters and ground waters.

**WILDLIFE:** means all mammals, birds, reptiles and amphibians and, for the purposes of 310 CMR 10.37 and 10.59, all vertebrate and invertebrate animal species which are officially listed by the Massachusetts Division of Fisheries and Wildlife under 321 CMR 8.00 as endangered, threatened, or of special concern. Wildlife Habitat is defined in M.G.L. c. 131, § 40, Para. 14.

**ARTICLE XIV - RULES FOR HIRING OUTSIDE CONSULTANTS UNDER MGL CH. 44 § 53G**

1. As provided by GL Ch. 44 § 53G, the Avon Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services 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 (GL Ch. 131 § 40), the Avon non-zoning wetlands bylaw, Conservation Commission Act (GL Ch. 40 § 8C), or any other state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time.

2. The Avon Conservation Commission may impose reasonable fees for the employment of outside consultants to act as the Conservation Agent, engaged by the Conservation Commission to act as agent for the life of a project, whose duties will include all above referenced tasks, field inspections, filed reporting and other duties as deemed required by the Commission.

3. Funds received by the Conservation Commission 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 GL Ch. 44 §53G. Expenditures from this account shall be made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant.

4. Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. The consultant shall be chosen by, and report only to, the Commission and/or its Agent(s).

5. The Conservation Commission shall give written notice to the applicant of the selection of an outside consultant, which 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 it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given. The fee must be received in its entirety 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.

a. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to determine that the application is administratively incomplete (except in the case of an appeal). The Commission shall state such in a letter to the applicant, copied to the DEP. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee. OR

b. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to deny the permit application.

6. The applicant may appeal the selection of the outside consultant to the Town Council, who may disqualify the outside consultant selected only 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 educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the Town Council and a copy received by the Conservation Commission, so as to be received within ten (10) days of the date consultant fees were requested by the Conservation Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

**ARTICLE XV – BUFFER ZONE PROTECTIONS** - Preamble: The Town of Avon considers 100 feet from a defined/delineated resource area as the buffer zone and consequently an additional protected resource. Floodplains, lands within 100 feet of other resource areas and within 200 feet of rivers and perennial streams, and the resources areas, are presumed significant to the protection of functions and characteristics of these areas because activities undertaken in close proximity have a high likelihood of adverse impact upon them, 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. Any person in Avon that proposes a project that is within the 100 foot buffer zone resource area is required to submit a Notice of Intent or other applicable application such as a Request for Determination of Applicability to the Avon Conservation Commission. If at all possible, an applicant may site all construction activities including grading beyond the 100 buffer zone resource area and not have to go through a public hearing and a possible permitting process.

Currently as established by precedent, the Avon Conservation Commission has instituted a 25 foot no disturb buffer zone from the defined/delineated resource area. These proposed regulations will codify this requirement. Extensive work in this zone, particularly clearing of natural vegetation and soil disturbance is likely to alter the physical characteristics of resource areas by changing their soil composition, topography, hydrology, temperature,



and the amount of light received. Soil and water chemistry within resource areas may be adversely affected by work in the buffer zone. As a result of the buffer zone alterations, biological conditions in adjacent resource areas may include changes in plant community composition and structure, invertebrate and vertebrate biomass and species composition, and nutrient cycling. The affects from work in the buffer zone will most likely result in the disruption and erosion of soil, loss of shading, reduction in nutrient inputs, and changes in litter and soil composition that filters runoff, serving to attenuate pollutants and sustain wildlife habitat within resource areas. For these stated reasons, the Commission is codifying the requirement not to disturb the 0-25 foot buffer zone from the defined/delineated resource area.

These regulations will also characterize and provide regulatory guidance as to the type of projects that would most likely be acceptable to the Commission in the 25-50 foot buffer zone from the defined/delineated resource area as well as the 50-100 foot buffer zone from the defined/delineated resource area. In order to be consistent with the amendments to the Massachusetts Wetland Protection Act found in 310 CMR 10.00 relative to a simplified review process, as well as protect the 50 foot buffer zone resource area where the functions and characteristics of the resource area are most critical, the Commission strongly encourages work in the 50-100 foot buffer zone resource area, if work in the buffer zone is necessary at all.

The Commission has in place regulatory criteria and a process for reviewing minor buffer zone projects that are less than 1,000 square feet of disturbance and avoid the 0-25 foot buffer zone resource area, if not previously disturbed. The intent of this regulatory amendment is to dovetail the minor buffer zone historical reviews with a new evaluation process that looks at these three buffer zones: 1) 0-25 foot buffer zone resource area; 2) 25-50 foot buffer zone resource area; and 3) 50-100 foot outer buffer zone resource area.

#### A. 0 TO 25 FOOT BUFFER ZONE RESOURCE AREA

1. An applicant shall demonstrate that no work/disturbance including grading activities is proposed within the 0-25 foot buffer zone resource area. Any applicant proposing a project within the 0-25 foot buffer zone resource area will have an irrefutable presumption of significant adverse impact to the functions and characteristics of the resource area, unless otherwise determined by the Commission under the minor buffer zone activity criteria set forth in Article XIV of these regulations, or as approved by the Commission by the variance procedures set forth in Article XVII of these regulations.

#### B. 25 TO 50 FOOT BUFFER ZONE RESOURCE AREA

1. Any applicant proposing a project within the 25-50 foot buffer zone resource area shall indicate that there are no structures including but not limited to, concrete, stone, or other impervious foundations and/or slabs for construction purposes that for all intents and purposes would significantly increase runoff. Alteration in the 25-50 foot buffer zone resource area is limited to grading, tree clearing, Stormwater management system components, lawns, gardens, and other low impact uses as determined by the Commission or as otherwise approved by the Commission by the variance procedures set forth in Article XVII of these regulations. Footings for building structures, such as a deck, as opposed to slabs or foundations, shall be used when technically feasible. The Commission may condition the applicant to use Best Management Practices (BMP's) for Stormwater management. Stormwater management systems or individual components including drainage piping, and construction of detention/retention ponds shall be allowed by the Commission based on an alternative analysis and review of design and space limitations as indicated in the final approved plans.

2. Areas Disturbed Prior to June 29, 2006: When there is a pre-existing disturbance (disturbed as part of a previously recorded Certificate of Compliance or was disturbed prior to the enactment of the Wetlands Protection Act and the Avon Wetlands Protection Bylaw), and the work proposed is entirely within this previously disturbed area, an applicant may propose impervious surfaces or other uses such as pools, buildings, porches, and sheds within the 25-50 foot buffer zone resource area. The Commission shall evaluate the proposed uses based on the demonstration by the applicant that the functions and characteristics of the resource area will not be adversely impacted.

#### C. 50 TO 100 FOOT BUFFER ZONE RESOURCE AREA

Alterations including structures are allowed in the 50-100 foot buffer zone resource area. The Commission may require additional mitigation offsets when the slope within the buffer zone is steeper than 10%. Additionally, mitigation offsets may be required by the Commission when the applicant proposes part of the 50 to 100 foot buffer zone resource area is proposed to be impervious surface. Mitigation offsets may include but is not limited to plantings, conversion of impervious to pervious surfaces, and other practices.

#### **ARTICLE XVI – VARIANCE PROCEDURE**

1. The Commission may grant a variance from these regulations upon a showing by the applicant that any proposed work, or its natural and consequential impacts and effects, will not have any adverse effect upon any of the interests protected in the Town of Avon Wetlands Protection Bylaw. It shall be the responsibility of the applicant to provide the Commission in writing with any and all information, which the Commission may request, in order to enable the Commission to ascertain such adverse effects. The failure of the applicant to furnish any information, which has been requested, shall result in the denial of a request for a variance pursuant to the applicable subsection of this regulation.

2. The Commission may grant a variance from these regulations when it is necessary to avoid so restricting the use of the property as to constitute an unconstitutional taking without compensation. If the Commission receives an application for a variance pursuant to an applicable subsection of the regulation, the Commission may request an opinion from the Town Counsel as to whether the application of these regulations to a particular project will result in such a taking without compensation.

3. Variance process: To request a variance, the applicant shall submit a variance request in writing at the time of the application for the Notice of Intent or Request for Determination of Applicability. The request shall explain why the variance is needed and shall describe in detail how the project can be completed without significant adverse impacts on the functions and characteristics of the resource area. Such detail must include, but is not limited to, an alternatives analysis.

4. Minor Buffer Zone Activity (MBZA) - The Commission shall presume that activity proposed to occur is:

1. Exclusively within a previously disturbed buffer zone; and
2. On a lot with a previously recorded Certificate of Compliance or was disturbed prior to the enactment of the Wetlands Protection Act and the Avon Wetlands Protection Bylaw; and
3. The alteration is less than 1,000 Square Feet or 5% of the buffer zone on the lot, whichever is less; and

4. At a minimum, a 25 foot wide area is preserved between the activity and the resource area boundary; and
5. Stormwater is managed in accordance with current DEP standards; and
6. The buffer zone does not contain estimated wildlife habitat which is indicated on the most recent Estimated Habitat Map of State listed Rare Wetlands Wildlife; and
7. Erosion and sedimentation controls are provided at the limit of work to protect the resource areas;

Constitute minor buffer zone activities and is eligible for a Negative Determination of applicability with conditions.

The Commission may determine that this presumption should not apply based on unusual circumstances such as steep slopes, the potential for negative impacts over time or that the proposed project would require oversight through continuing conditions. The Commission may waive any or all of the above requirements if they find that there is an emergency situation in which the filing of a Request for Determination or a Notice of Intent is not warranted. In order for the site to be declared an emergency, a vote of the Commission shall be required.

In order for a property owner to apply for an MBZA they must meet all of the above requirements plus provide a plan of the activity, a detailed project narrative and photographs of the project area. The distance between the proposed project and the wetlands must be noted on the plan and may require delineation if requested by the Commission, or their Agent. Additional items detailed on the MBZA form or requested by the Commission, or their Agent, may be required. The applicant is required to provide by a preponderance of the evidence that their proposed MBZA will not result in a negative impact to the wetlands.

The minor nature of these projects will not require the Commission to hold an advertised public hearing on the matter. The Agent shall review the application and may perform a site visit to confirm information provided in the plan, project narrative and photographs. The Agent may request additional information if they deem necessary. Upon review of the MBZA application, the Commission may issue a Negative Determination of Applicability (approval), with or without conditions, a Positive Determination of Applicability (denial) or require the applicant to provide further information. If a Positive Determination of Applicability is issued by the Commission, the applicant shall be required to file a Notice of Intent if they still wish to pursue the activity.

The work must conform to the plans submitted in the Request for Determination of Applicability or any conditions or modifications imposed by the Commission in the Determination. If the applicant fails to perform the work according to the approved plan or in conformance with the conditions of the Determination, the permit will be revoked and a Positive Determination of Applicability will be issued. Failure to conform to the plans and specifications shall constitute grounds for requiring a Notice of Intent and/or an Enforcement Action, including fines, by the Commission.

Upon completion of the project the applicant shall notify the Agent. The Agent shall inspect the work for and inform the Commission of the results.

5. Minor Buffer Zone Activity Septic System Repair or Replacement -- The applicant shall submit a written statement with a full RDA form to the Commission requesting consideration for MBZA designation. The document shall identify the reasons for the request and certify that the following conditions have been and will be adhered with throughout the project. The Commission shall presume that activity proposed to occur is:

1. To replace an existing septic system with a new septic system meeting the Title V standards on the same properties; and
2. Has or will be approved by the Avon Board of Health; and
3. The new system is situated farthest away from the resource area possible for the property; and
4. Any drainage problems that may be created from the installation of the replacement system are addressed in the application with mitigation measures to reduce potential flooding issues; and
5. Any Stormwater system is managed in accordance with current DEP standards; and
6. The buffer zone does not contain estimated wildlife habitat which is indicated on the most recent Estimated Habitat Map of State listed Rare Wetlands Wildlife; and
7. Erosion and sedimentation controls are provided at the limit of work to protect the resource areas; and
8. No stockpiling of materials will be allowed at the project site; and
9. All debris from vehicles that falls onto the roadways and public passages shall be cleaned up immediately; and
10. Roads and public passageways are swept and cleaned daily.

If the project constitutes minor buffer zone activities and is eligible for a Negative Determination of applicability with conditions.

In order for a property owner to apply for an MBZA they must meet all of the above requirements plus provide a plan of the activity, a detailed project narrative and photographs of the project area. The distance between the proposed project and the wetlands must be noted on the plan and may require delineation if requested by the Commission, or their Agent. Additional items detailed on the MBZA form or requested by the Commission, or their Agent, may be required. The applicant is required to provide by a preponderance of the evidence that their proposed MBZA will not result in a negative impact to the wetlands.

The minor nature of these projects will not require the Commission to hold an advertised public hearing on the matter. The Agent or at least one Commissioner shall review the application and may perform a site visit to confirm information provided in the plan, project narrative and photographs. The Commission may request additional information if they deem necessary. Upon review of the MBZA application, the Commission may issue a Negative Determination of Applicability (approval), with or without conditions, a Positive Determination of Applicability (denial) or require the applicant to provide further information. If a Positive Determination of Applicability is issued by the Commission, the applicant shall be required to file a Notice of Intent if they still wish to pursue the activity.

The work must conform to the plans submitted in the Request for Determination of Applicability or any conditions or modifications imposed by the Commission in the Determination. If the applicant fails to perform the work according to the approved plan or in conformance with the conditions of the Determination, the permit will be revoked and a Positive Determination of Applicability will be issued. Failure to conform to the plans and specifications shall constitute grounds for requiring a Notice of Intent and/or an Enforcement Action, including fines, by the Commission.

Upon completion of the project the applicant shall notify the Commission. The Agent or at least one Commissioner shall inspect the work for and inform the Commission of the results.

**ARTICLE XVII – SEPTIC SYSTEM EMERGENCY AND EXPEDITED REPAIR** -- In the unanticipated event that a septic system is located within the 25-50 foot buffer zone resource area or the 50-100 foot buffer zone resource area, emergency repair of the septic system shall be allowed if the applicant demonstrates to the Commission by a preponderance of evidence that an emergency condition exists. The applicant can proceed with approval from the Commission but must submit a full application for the next feasible Commission hearing date, a notice is to be placed stating that with Commission approval work was accomplished. All other requirements of the application are required to be met.

An expedited repair application can be made and used to move a repair forward. The expedited RDA request must indicate a request for expedited review and approval; and certify the acknowledgement of the standard conditions for all projects, submit plans in accordance with these regulations and modify the advertisement to indicate an expedited request and approval. An expedited review and approval can be approved prior to a hearing by at least one Commissioner and shall be scheduled for the next hearing date. This will allow normal septic repairs/replacement to move forward without delay.

**ARTICLE XVIII – TEST PITS AND BORINGS** – All test pits and borings for any purpose that are being placed within the natural resources buffer zone requires a Request for Determination Filing (RDA). A MBZA may be requested and approved if the filing is completed with the same manner of information as required in the MBZA submission.

**ARTICLE XIX – INSTRUCTIONS FOR FILING A PERMIT APPLICATION IN AVON** -Recent changes in the Massachusetts Wetland Protection Act Regulations (310 CMR 10.00) require the use of revised forms for the above permit application. In addition, under the Avon Wetlands Protection Bylaw, the following procedures and documentation are also required upon submission of permit applications. Please note that the Notice of Intent (NOI) is used for it requires the most data and information your application may require less depending of the proposed project.

PRE-FILING MEETING AND DISTRIBUTION Applicants are **STRONGLY ENCOURAGED** to contact the Commission prior to submitting a NOI. Failure to do so may compromise the applicant's interests and result in an unnecessary denial of a permit, extra cost and time.

A NOI is composed of a cover letter (Section 1) and the 16 other Sections described herein. A complete NOI filing is composed of a NOI and a Notice of Distribution. The applicant shall provide the Town with one (1) original application and plans to the Commission and shall, submit an electronic copy of all documents in pdf

format. The applicant shall deliver the completed, original Notice of Distribution, the original NOI to the Conservation Commission for processing. A public hearing shall be scheduled by the Conservation Commission within 21 days of receipt of the NOI and completed Notice of Distribution. All applications filed will be placed on the Commission's webpage at least one (1) week before the hearing for the public's review. All changes, addendums, documents and photographs submitted after the initial application shall be submitted ten calendar days prior to the meeting and placed on the webpage for public review.

Section 1 – COVER LETTER -- The Cover Letter shall contain the following information: (reference Exhibit 1 example):

- Application Type
- Applicant's Name
- Representative's Name
- Date Prepared

Section 2 - NOTICE OF INTENT

- Resource Area Impact Summary – A narrative description of the proposed impacts to each of the resource areas on the property. Impact may be measured and reported in square feet (SF).
- Application Form (BRP WPA Form 3, revised 2-08)
- State Filing Fee Calculation Worksheet
- Local Filing Fee Worksheet (Appendix E) – A separate check made payable to the Town of Avon.
- Copies of Checks to DEP and Town
- Stormwater Management Forms (if Applicable)

Section 3 - ABUTTER NOTIFICATION – Must be included in the application package submitted to the Commission. And shall consist of the above documents bound in the following order:

1. Notification to Abutters (Appendix E)
2. Affidavit of Service
3. Certified Abutters List from the Assessor's Office (do not recopy or rewrite the list)

The process of notifying the abutters to any proposed project requires that the applicant take the following steps:

Certified Abutters List - Obtain a Certified Abutters List from the Assessor's Office. Applicants are required to notify all abutting property owners within 300 feet of their property lines. The original certified copy must be submitted with the Notice of Intent Application.

Notification to Abutters - Appendix E - Complete the Notification to Abutters -. The Applicant may copy and fill out the Form modify it as depicted on the example attached as Exhibit 5. A copy of this notification must be sent either by Certified Mail, Return Receipt Requested (white receipts and green cards) or by hand delivery to each landowner on the Certified Abutters List.

Affidavit of Service–The Affidavit of Service is a required document under the Wetlands Protection Act. The Applicant may copy and fill out the Form or modify it as depicted on the example attached. The Affidavit evidences that the Applicant, in accordance with the law, has notified the abutters to the proposed project site.

Section 4 - DEP FIELD DATA FORMS - The Field Data Forms appear as Appendix G of the most recent revision of the Wetlands Delineation Manual published by DEP. Completed forms as well as a written report prepared by the wetlands delineator must be submitted with the Notice of Intent application.

A copy of the recorded Order of Resource Area Delineation (ORAD) may be substituted for the DEP Field Data Sheets if a determination has been issued by the Commission within the last three (3) years.

Section 5 - VERNAL POOL STATEMENT - An affirmation by the applicant regarding the presence, or absence, on the subject parcel, or abutter parcels, of any registered or potential vernal pools that is based on the most recent version of the DEP/Mass GIS Potential Vernal Pool Sites. This information is available at the MassGIS website ([www.massgis.ma.us](http://www.massgis.ma.us)).

*Please note that the next ten (10) sections (Section 6 through 15) shall be incorporated into one (1) document.*

Section 6 – PROJECT NARRATIVE -- The Project Narrative is a written statement of the existing site conditions and of all that the project entails. This includes, but is not limited to, a description of existing conditions, who is performing the work (contractor, pool company, tree service etc.), a detailed description of all of the activity within Conservation jurisdiction, how the activity will or will not affect the Functions and Characteristics of the resource area (see Section 7), what the project site will look like after completion, when the proposed activity will be done and what measures will be used to mitigate any impacts to the Functions and Characteristics of the resource area. As noted above, the Project Narrative shall be incorporated into the same document with the Functions and Characteristics Statement, the Erosion and Sedimentation Plan and, if required, the Mitigation Plan, the Alternatives Analysis and the Replication Plan and Protocol.

Section 7 - FUNCTIONS & CHARACTERISTICS STATEMENT -- The purpose of the Avon Wetland Protection bylaw is to regulate and control activities deemed to have a significant or cumulative effect on the functions and characteristics of floodplains and wetlands. In order to make this determination the Commission requires that the Applicant prepare a statement that describes whether the project will have an adverse effect on these functions and characteristics. It is the applicant's burden of proof to demonstrate that their proposed project/activity will not result in any significant individual or cumulative adverse effect to the functions and characteristics of resource areas, and that the functions and characteristics statement is the applicant's opportunity to do so. If the proposed project excludes one or more functions or characteristics, then a mitigation plan must be prepared and submitted as Section 8 of the Notice of Intent. The functions and characteristics to address include but are not limited to the following:

1. Public Water Supplies – Distance from proposed project to nearest public well.
2. Private Water Supplies – Distance to nearest private wells.
3. Groundwater – Depth to groundwater as well as impacts associated with construction (i.e. digging or blasting) and operations (water use, use of toxic or hazardous materials and Stormwater management).
4. Flood Control – Work within the 100-year flood plain must address compensatory storage.
5. Erosion and Sedimentation – This item must be addressed for both the construction and post construction conditions at the property.
6. Storm Damage Prevention – Address whether or not the project will have an adverse effect on the way that the wetland or flood plain will be able to minimize water and wind related impacts during large-scale storm events.
7. Water Quality - This item must be addressed for both the construction and post construction conditions at the property. This item will address the quality of the surface waters associated with the resource area being impacted by the project.
8. Water Pollution Control - This item must be addressed for both the construction and post construction conditions at the property.
9. Fisheries – Reserved for work taking place adjacent to ponds and perennial streams. The response must address both the construction and post construction conditions at the property.
10. Shellfish – Not Applicable in Avon
11. Wildlife Habitat - This item must be addressed for both the construction and post construction conditions at the property.
12. Rare Species Habitat (including rare plant species) - This item must be addressed for both the construction and post construction conditions at the property.
13. Agriculture – This item must be addressed for both the construction and post construction conditions at the property.
14. Aquaculture – To date there are no aquaculture operations in Avon
15. Recreation – This item must be addressed for both the construction and post construction conditions at the property and include both passive and active recreational uses.

Section 8 - MITIGATION PLAN -- This narrative shall be included in the NOI and will describe the application of the “avoid, minimize and mitigate calculus” during project planning. That is, Applicants must demonstrate that efforts have been made to avoid wetland impacts wherever possible, minimize the impacts when unavoidable, and mitigate these impacts by employing replication or restoration components in the proposed project plans.

When undisturbed areas within the Buffer Zone Resource Area are proposed for alteration, a separate narrative must be prepared describing the steps taken to mitigate for the impacts. This may include the use of plantings



approved by the Avon Conservation Commission, for wildlife habitat enhancement or other physical components that will compensate for the loss of resource area functions and characteristics.

Section 9 - EROSION & SEDIMENTATION CONTROL PLAN - This is a plan that describes the measures that will be taken to properly install and maintain the erosion control devices used during the project. The plan must also include the names and phone numbers of all individuals that will be responsible for erosion control as well as the requirement that the erosion control be inspected weekly and after significant rain events. The individual responsible for inspection and maintenance shall keep a log of the inspections and maintenance and be prepared to show it to Conservation Staff and Commissioners upon request. The text from the Erosion & Sedimentation Control plan will also appear in the plan set, preferably on the sheet that depicts the erosion control location and detail.

Please note that it is a requirement in Avon that the engineering detail used on the project plan must depict a siltation fence staked in the ground but not dug in, the lower flap of the siltation curtain is to be placed on the ground and an erosion roll or sock is to be placed on the flat and staked into place, at a minimum.

Section 10 - ALTERNATIVES ANALYSIS - The following project types shall require the submission of an Alternatives Analysis narrative:

1. Riverfront Resource Area
2. Alteration of Riparian Zone
3. Septic System Components within the 100-Foot Buffer Zone Resource Area
4. Wetland filling up to 5,000 square feet
5. Structures proposed within the fifty foot (50') Buffer Zone Resource Area
6. Variance Requests

The Alternatives Analysis shall comply with the requirements as presented in 310 CMR 10.58 (4).

Section 11 - REPLICATION PLAN & PROTOCOL - When wetland alteration is necessary, the Commission shall require that the Applicant replicate the altered wetland at a minimum 2:1 ratio (the replication area must be at least twice the square footage of the natural wetland area impacted). The plan submitted shall comply with the requirements as presented in the most recent revision of the DEP Wetland Replication Manual.

The replication plan, protocol and schedule shall also appear in the approved plan set along with cross Sections of altered an

Wetland Functions & Values shall be assessed and used in the evaluation of the existing wetland with respect to functions and values for the wetland and wildlife habitat. The Form shall be completed and included in this Section of the NOI if filling is proposed. It is the expectation of the Commission that Applicants will not only propose the replication of the wetland type impacted by the project, but also the functions & values of that resource area. This requirement does apply to Buffer Zone Resource Areas.

Section 12 - CONSTRUCTION SEQUENCE AND SCHEDULE - A written detailed sequence of activities proposed shall be depicted in the approved plan set and in the NOI application. The description should include the type of machinery to be used, access to the work site, proposed project timetables, etc. Unless the work described requires mechanical assistance from heavy equipment, none is permitted. The Commission may, at its discretion, regulate the type of equipment to be used within a wetland project.

Section 13 – EXCAVATION AND FILLING -- Where the proposed work involves excavation or filling, the following aspects must be reported:

- (1) Describe the location of the work, the depth of the digging and the type of material to be removed.
- (2) If excavation includes stumps and/or boulder removal, describe proposed method of disposal of these elements.
- (3) If filling is proposed, the location of this work, the volume and type of material must be specified.
- (4) The method of stabilization of any of the above work and the contemplated vegetative cover must be described.

Section 14 – DRAINAGE CALCULATION – If drainage calculations are required they must be submitted as a separate document from the NOI application. Two (2) copies must be submitted to the Conservation Commission, in addition to their submission to other town departments.

Section 15 – MAPS - A copy of the most recent revisions of the following maps must be submitted with the project locus depicted:

1. USGS Topographic Map
2. Natural Heritage Priority Habitats and Estimated Habitats Maps
3. FEMA Flood Plain Map

Section 16 – OTHER PERMITS< VARIANCES AND APPROVALS -- A written list of all other required permits, variances or approvals and copies thereof should accompany the application. If any of these documents have not been received by the applicant at the time of the filing, a schedule anticipating their receipt shall be submitted and is subject to the Commission's approval.

Section 17 – PLANS - See General Instructions for completing a Notice of Intent issued by DEP. In addition, the Avon Conservation Department requires the following:

All applications shall include one (1) original signed and stamped plan and the digital copy. Technical data should be submitted to describe the plans and shall be in a narrative form with calculations submitted as necessary to substantiate the designs proposed.

The applicant, upon submission of an Application, shall comply with the requirements of the By-Law and these regulations and provide the following:

All drawings shall include a title box designating the name of the project, location and names of the person(s) preparing the drawings, the scale, the date originally prepared and any revision dates.

Drawings shall be stamped and signed by a Registered Professional Engineer or Registered Land Surveyor of the Commonwealth of Massachusetts. For certain projects, including but not limited to additions to existing structures, the Commission may accept plans not drawn by a surveyor or civil engineer when these plans utilize a stamped plan as a base map. In this case, the base map shall also be submitted as reference.

All plans depicting proposed drainage systems must be stamped by a Massachusetts Registered Professional Civil Engineer or Hydrologist.

Detailed, narrative reports shall accompany the Application.

Source material for any plan submitted will be referenced on the plan.

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

The applicant is obligated to demonstrate that the work subject to regulation under this By-Law and Regulations can be performed in a manner that meets all applicable performance standards and results in no negative impact on the resource areas.

The following standards and design specifications are intended to provide the Commission with the minimum amount of data needed to determine the impact of the project on resource areas and their functions and values. The Commission may from time to time adopt and publish additional guidelines and minimum technical standards for plans, calculations and environmental impact reports submitted with an application. The Commission may find it necessary to request additional site-specific information to adequately determine the effect of the work on resource areas.

- Property boundaries and abutters from the most recent information on record at the Assessor's office.
- For any project other than alterations to or associated with those for a single residential lot, the drainage basin(s) in which the site is located shall be delineated on the plan. Sub-watersheds should be shown. Watershed Protection District Boundaries, if applicable. Adjacent impacted areas should also be shown.
- Existing contours at two-foot intervals and the source for any datum used to establish these contours. Contours beyond the site may be required when necessary to assess impacts.
- All existing natural and man-made features including tree lines, rock outcrops, stone walls, fence lines, cart roads, foot paths, overhead and underground utilities and drainage structures.
- All surface water courses, ponds, springs, wells and aquifer recharge areas are considered potential water supplies. Any proposed alteration of these resources shall be accompanied by registered engineering data demonstrating that the alteration will not compromise the public interest. The location of all surface water supplies, wells, and septic systems on the property and on abutting properties within 100 feet of the proposed work shall be shown on the plan.
- Elevations and delineation's of all natural and man-made drainage structures, waterways and resource areas as defined by vegetation and/or soils and hydrology.
- 100 year flood elevations of all natural and man-made waterways and water bodies determined from the FEMA Flood Insurance Rate Maps and Flood Boundary and Floodway Maps. Where the floodplain of the wetlands and water bodies have not been mapped by FEMA or have been observed to be different than those mapped by FEMA, hydrologic calculations may be required, prepared by a

registered, professional engineer to determine the boundary seasonal high water, mean annual high water and the 10 and 100-year floodplain. Watershed modeling, hydrography routing and backwater analysis shall be performed using nationally recognized modeling techniques and those acceptable to the Town's Engineering Department.

- Drainage calculations, including pre and post conditions, shall be submitted.
- Site plan shall be submitted at a scale of not more than 1" = 40'. Additional plans with greater or lesser detail may also be required if such plans would provide valuable information to the Commission in its review.
- Protection of historic areas will not constitute sole grounds for denial. However, these values will be considered and the applicant may be required to discuss the impact of the project upon such areas. The Commission may impose restrictions to lessen the impact of the project on these other inherent wetlands.
- All proposed man-made features including roads, driveways, rights of way, easements, restrictions, limits of construction, parking areas, structures, building, overhead and underground utilities shall be indicated. Any existing hiking, cross-country ski, foot or bicycle trails or paths should also be shown.
- Location and elevation of lowest habitable floor of all structures.
- Plans shall describe the proposed activity and its effects on the environment. Due regard shall be shown for all natural features such as large trees, water courses and bodies, wetlands, wildlife habitat and similar community assets.
- Location and date of any soil borings and deep test holes and groundwater level determination. Include samplings and percolation tests.
- Subsurface sewage disposal systems shall be indicated.
- Proposed grading and changes in elevation shown with two-foot contours and spot grades shall be shown.
- All surface and subsurface drainage structures including the location, cross-section, slope and surface treatment of all drainage channels and the inverts, slope, pipe materials, catch basins, manholes and end treatment of all storm drains discharging within 100 feet of any resource area.
- Wherever possible, all catch basins from which water directly enters a resource area shall contain oil/grease traps. Where conditions make this impossible, a statement about those conditions shall be supplied. A plan for maintenance and disposal of trapped hydrocarbons shall be provided.
- The location and detail of all temporary erosion control devices, diversions, terraces, Avon Standard silt fences & siltation roll and sedimentation basins.
- The location and nature of all proposed alterations to resource areas and their buffer zones.
- Index of sheets on cover page if submitting more than one sheet
- The North arrow must have a reference and shall be on all plan views
- Existing vegetation, including turf lawn areas, cultivated herbaceous and woody plant areas, un-cultivated field, scrub and woodland areas and woody plants larger than 1" dbh proposed to be removed.
- Proposed vegetation, including any changes to the existing vegetation and any mitigation

- Each Resource Area identified and labeled (including 25', 50' and 100' Buffer Zones and 100' and 200' Riparian Zones) For Wetlands and water each plan shall be highlighted in blue for water, green for wetlands limit, red 25' buffer limit, orange 50' buffer limit and yellow for the 100' limit.
- Cross Sections of impacted Bordering Vegetated Wetlands including ground water elevation information
- Cross Sections of proposed replication area(s)
- Planting list(s) with species recommended in the most recent revision of the Avon Best Development Practices Guidebook
- Construction Sequence and Schedule
- Size and depth of all proposed footings or foundations
- For commercial projects and residential projects with 4 or more units, develop a snow pile and removal for a 30" snowfall event. Piles shall not be located on or next to drainage structures, septic systems, wetlands resources. The plan shall be accompanied by calculations for the 30" event

Section 18 – PORTABLE DOCUMENT FORMAT (PDF) FILE - All NOI filings require the submission of a PDF file containing both the NOI application as well as the plan. The file shall be submitted with the rest of the application, or sent via e-mail attachment to the Conservation Commission on the same day as the permit application is submitted.

Section 19 – PHOTOGRAPHS – All applications shall have photographs of the proposed project site. The views shall include all approaches, wetland and other resource areas, and the proposed work area. Photographs are to be taken during the construction and at the end of construction; projects with mitigation or restoration of wetlands shall submit photographs for each site inspection. Either at the time of the request for Certificate of Compliance or at the end of work under a negative determination, submit to the Commission book with a set of 8" x 10" photographs showing all phases of the project and all views, a disk of all photographs is to accompany the submission. A brief description of the photographs and the project identification is to be placed on each photograph.

**ARTICLE XX – PERFORMANCE STANDARDS** – The following are the minimum standards for work performed under the Wetland Protection Bylaw and these regulations:

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

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

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

**Stormwater Management** Where new point source discharges are proposed within 100 feet of a resource area, either open channels or closed subsurface systems, a comprehensive stormwater management system shall be designed that will not degrade value and function of the receiving or downstream water courses, wetlands, surface and ground water supplies. Such stormwater management systems shall employ Best Management Practices. Existing wetlands shall not be used for the storage or treatment of stormwater.

The design of the stormwater management system shall be based on a comparative analysis of both the quantity and quality of existing and developed hydrologic conditions. The baseline hydrologic conditions of the resource areas shall be used to determine the design criteria for the proposed stormwater management system. The analysis shall include the calculation of peak flow rates, time of peak flow, volume of runoff and quality of runoff.

The hydrologic analysis shall be based on a reasonable estimate of developed conditions within the entire watershed tributary to the new point source discharge. Calculations and watershed modeling shall be performed using a hydrograph analysis approved by the Town's Engineering Department. Calculations shall be made that show the impact of the proposed alterations for the mean annual 10 and 100-year storms.

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.

Detention or retention basins shall be designed to meet the following standards:

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.

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.

The detention basin inlet and outlet shall be designed to avoid scour and erosion of the basin bottom and discharge channel.

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.

**Erosion Control** All plans shall show appropriate erosion control measures. A narrative erosion control plan and construction schedules shall be provided for all areas that will be altered within 100 feet of a resource area. Specifications shall be provided for both temporary and permanent ground covers. The erosion control plan shall describe all methods to control erosion and siltation on site, temporarily and permanently. Proposed location of any fill material which will be stored on site must be shown. Temporary erosion control measures will generally consist of double-staked hay bales and trenched silt fence. Erosion and silt from the permitted activities shall not cause an adverse impact on any resource areas or their protected interests.

**Wetland Replacement or Restoration** A complete wetland replacement or restoration plan shall be submitted prior to the close of a public hearing. Such a plan shall meet all state and local performance standards and take all site-specific and Commission-directed issues into consideration. The plan shall be prepared by a qualified wetland specialist. The plan will include a description of the qualifications of the individual(s) who prepared the plan. The individual(s) who prepared the plan or approved designee will be on site during construction of the replacement area. All wetland replacement standards shall apply to wetland restoration.

In situations where there are no feasible alternatives that provide for fewer impacts on the wetland resource values, the Commission may allow the loss, alteration or temporary surface disturbance of up to a cumulative total of five thousand (5,000) square feet of freshwater wetlands when said areas are replaced or restored in accordance with the State regulations and the following:

Wetland replacement must be at a minimum 2:1 ratio in size to the wetland that is altered. Replaced wetlands shall be made contiguous with existing wetlands.

Replacement areas must be constructed prior to other construction activity on site. The Commission will consider certain cases where this is not appropriate. Prior to construction, a sequencing schedule for construction activities shall be submitted to the Commission. This schedule shall specify dates for project commencement and dates for each anticipated procedure included in the wetland replacement plan.

An encroachment limit line shall be identified, using flagging and/or staking at the site for wetland areas that will be altered, and upland areas where wetland replacement will occur. Identify the wetland replacement area by using flagging and/or staking. This is designed to give construction workers and the Commission a clear and undisputed description of the work area during construction and through the upcoming growing seasons.

Wetland soils from the filled wetland shall be excavated and used for the replaced wetland when these soils are suitable for such a purpose.

Prior to any plantings, grades must be certified by a qualified wetland specialist or licensed land surveyor as designated by the Commission. Said certification and an as-built plan shall be submitted to the Commission for its approval.

No wetland replacement area will be certified to be in compliance unless it has survived for at least three (3) calendar years. If after three years, the replacement area has not been vegetated to the satisfaction of the Commission, the applicant shall vegetate the area with nursery stock and/or transplanting from indigenous wetland species. The revegetation shall take place under the supervision of a qualified wetlands specialist and the Commission and/or its administrator.

Written monitoring reports of the existing and replicated/replacement resource areas shall be prepared by a qualified wetlands specialist. At a minimum, these reports shall be done every four (4) months, up until the issuance of a Certificate of Compliance. The reports shall be submitted to the Commission. These reports shall include, but are not limited to, the extent of vegetated cover, the kinds of plants, the water table depth and the status of erosion control measures.

The Commission may permit the construction and maintenance of a new roadway or driveway of minimum and practical width, where no alternative means of access from an existing public or private way to an upland area of the same owner is available. Replication of altered wetlands resources may be required by the Commission to minimize adverse impacts and to protect the interests identified in the Bylaw.

Wetland alterations intended to make lands buildable, as by fulfilling septic system setback requirements, flood elevation requirements, or other minimum construction setback requirements, or to achieve minimum lot area requirements are prohibited. Wetland alterations required to access upland parcels will not be allowed if that landowner landlocked the parcel by selling upland access. The Commission may require the filing of a request for a waiver of certain Planning Board or Zoning Board requirements in order to minimize wetland impacts.

**ARTICLE XXI --PERFORMANCE GUARANTEE** -- As part of a permit issued under this By-Law, in addition to any security required by any other town or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

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

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

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



Upon completion of site alterations required in the permit, security for the performance of which was given by bond, deposit or covenant or upon the complete performance of the covenants with respect to the site, the applicant may request and agree on the terms of release with the Commission.

If the Commission determines that said alterations have been completed in compliance with the conditions of the permit, it shall release the interest of the Town in such bond and return the bond or deposit to the person who furnished same, or release the covenant, if appropriate. If the Commission determines that said alterations have not been completed in compliance with the permit, it shall within 45 days, specify to the applicant, in writing, the details wherein said alterations fail to comply with the permit.

**ARTICLE XXII -- 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 25-foot no-disturbance zone and a 35-foot no construct zone extending from all wetland resource areas except for riverfront area. No activity is allowed in the no-disturbance zone. Building construction of any kind is prohibited in the no-building zone. This includes, but is not limited to, home construction, porches, decks, additions and sheds.

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, over grading or depositing construction debris. Such alterations have been observed after construction from improper land use such as unregulated filling, cutting of vegetation, extension of lawns or depositing of yard waste. Such alterations have been observed resulting in increased runoff, siltation and temperature or nutrient loading resulting from the change in land use immediately adjacent to the wetland. These subsequent alterations cannot be regulated without the imposition of the restricted zones detailed above. Since the Commission cannot allow unregulated alterations of wetlands, these restricted zones will be imposed on all projects.

**ARTICLE XXIII – PERMITS REGULATING THE WORK** -- Within 21 days of the close of the public hearing or any continuance thereof, the Commission shall either: make a determination that the area on which the work is proposed to be done, or which the proposed work will remove, fill, dredge or alter, is not significant to any of the interests identified in the Act, and shall so notify the applicant; or make a determination that the area on which the work is proposed to be done, or which the proposed work will remove, fill, dredge or alter is significant to one or more of the interests identified in the By-Law and shall issue a Permit for the protection of said interest(s).

The Permit shall impose such conditions as are necessary for the protection of those areas found to be significant to one or more of the interests identified in the By-Law. The Permit shall prohibit any work or any portion thereof that cannot be conditioned to meet said standards.

If the Commission finds that the information submitted by the applicant is not sufficient to describe the site, the work or the effect of the work on the interests identified in the By-Law, it may issue a Permit prohibiting the work. The Permit shall specify the information which is lacking and why it is necessary.

A Permit shall be valid for three years from the date of its issuance.

The Permit shall be signed by a majority of the Commission and shall be mailed or hand delivered to the applicant or his agent or attorney.

A copy of the plans describing the work and the Permit shall be kept on file by the Commission and shall be available to the public at reasonable hours.

Prior to the commencement of any work permitted or required by the Permit, the Permit shall be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the permit shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed is to be done. In the case of registered land, the Permit shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. Certification of recording shall be sent to the Commission. If work is undertaken without the applicant first recording the Permit, the Commission may issue an Enforcement Order or may itself record the Permit.

**ARTICLE XXIV – EXTENSION OF PERMITS FOR WORK** -- The Commission may extend a Permit for one year. A request for an extension shall be made to the Commission at least thirty days prior to the expiration of the Permit.

The Commission may deny the request for an extension and require the filing of a new Application for Permit for the remaining work in the following circumstances: where no work has begun on the project, except where such failure is due to an unavoidable delay, such as appeals, in the obtaining of other necessary permits; where new information, not available at the time the Permit was issued, has become available and indicates that the Permit is not adequate to protect the interests identified in the By-Law; where incomplete work is causing damage to the interests identified in the By-Law; or, where work has been done in violation of the Permit or these regulations.

If issued by the Commission, the Extension Permit shall be signed by a Majority of the Commission.

The Extension Permit shall be recorded in the Land Court or the Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the Commission. If work is undertaken without the applicant so recording the Extension Permit, the Commission may issue an Enforcement Order or may itself record the Extension Permit.

If the Permit contains conditions which continue past the completion of the work, such as maintenance or monitoring, the Certificate of Compliance shall specify which, if any, of such conditions shall continue. The Certificate shall also specify to what portions of the work it applies, if it does not apply to all the work regulated by the Permit.

**ARTICLE XXV – CERTIFICATE OF COMPLIANCE** – Request for Certificate of Compliance (COC) shall be submitted to the Commission within six (6) months of completion of the project work. For projects with vegetative components that require a full growing season or will take a few years to complete the COC will be issued for the work completed and the final COC will be issued after the time limitation for the vegetative portion has been completed.

Upon written request by the applicant, a Certificate of Compliance shall be issued by the Commission within twenty one (21) days of receipt thereof and shall certify that the activity or portions thereof described in the Application and plans have been completed in compliance with the Permit. The Certificate of Compliance shall be signed by a majority of the Commission.

Prior to the issuance of a Certificate of Compliance, a site inspection shall be made by the Commission or its administrator. The applicant or the applicants' agent shall be present for the site inspection.

If the Commission determines, after review and inspection, that the work has not been done in compliance with the Permit, it may refuse to issue a Certificate of Compliance. Such refusal shall be issued within twenty one (21)

days of receipt of a request for a Certificate of Compliance, shall be in writing and shall specify the reasons for denial.

The hearing for the Certificate of compliance may be continued if additional information is needed from the applicant prior to the issuance, same procedures for continuing an application hearing apply.

If a project has been completed in accordance with plans stamped by a registered professional engineer, architect, landscape architect or land surveyor, a written statement by such professional person certifying substantial compliance with the plans and setting forth what deviation, if any, exists from the plans approved in the Permit shall accompany the request for a Certificate of Compliance.

The Certificate of Compliance shall be signed by a majority of the Commission and shall be mailed or hand delivered to the applicant or his agent or attorney.

A copy of the plans describing the work and the Permit shall be kept on file by the Commission and shall be available to the public at reasonable hours.

The Certificate of Compliance shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the Commission. Upon failure of the applicant to so record, the Commission may do so.

**ARTICLE XXVI – REVOCATIONS, MODIFICATIONS OR AMENDMENTS** -- The Commission may revoke, modify or amend a permit issued under the By-Law and these regulations if any of the following circumstances occur:

1. the applicant and/or his successors fail(s) to comply with the terms of the permit;
2. new information relating to the project is obtained which indicates that previous information presented to the Commission was inaccurate;
3. the changes occurred after completion of the Commission’s review.

For minor project changes, the applicant may request, and/or the Commission may grant, a modification to an existing Permit if the proposed change is considered minor or insignificant by the Commission. If the Commission issues a decision that requires a plan revision, a copy of that revision shall be sent to the Commission and accepted as a modification.

With respect to all proposed changes other than those deemed minor by the Commission, the Commission may require such additional documentation as it deems necessary, and shall reopen the public hearing. Alternatively, the Commission may require the Applicant to submit a new application.

No request for a Modification or Amendment will be granted unless the wetland is either re-flagged, or the original approved flagging is re-established in the field. The Commission may require a new filing or the reopening of the public hearing if the wetland delineation has changed from the original submittal.

**ARTICLE XXVII – APPEAL** -- Any final decision of the Commission may be appealed within thirty (30) days of its issuance pursuant to M.G.L. CH. 231A or Ch. 249.

**ARTICLE XXVIII – EMERGENCIES** -- The permit and application required by this By-Law shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Federal government, the Commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to

the Commission prior to commencement of work or within 24 hours after commencement, provided that the Commission certifies the work as an emergency project, and provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency. Within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided in this By-Law.

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

**ARTICLE XXX – SEVERABILITY** -- The invalidity of any Section or provision of the By-Law or of these regulations shall not invalidate any permit which previously has been issued.

If any Court of the Commonwealth shall invalidate any provision of the By-Law, the Commission shall present to the Town Meeting after such invalidation, amendments to the By-Law which are designed to comply with any Court decision invalidating such provision.

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

**ARTICLE XXXI – ADDITIONAL INFORMATION**

Any other supplementary information that the Applicant determines to be relevant to the Commission reaching a decision on the proposed project may be included in this Section of the application package. If you need further assistance, please contact the Conservation Commission at (508)588-0414 or via our web site <http://www.Avon-MA.gov/>.

APPENDIX A  
**Filing Fee Schedule**

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

Request for Determination (RDA)        \$50     Including MBZA request

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

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

**Category 1     Bylaw Fee \$65 for each**

- a.) work on single family lot; addition, pool, etc.;
- b.) site work without a house;
- c.) control vegetation;
- d.) resource improvement;
- e.) work on septic system separate from house;
- f.) monitoring well activities minus roadway;
- g.) new agricultural projects.

**Category 2     Bylaw Fee \$175 for each**

- a.) construction of single family house;
- b.) parking lot;
- c.) electric generating facility activities;
- d.) inland limited projects minus road crossings and agriculture;
- e.) crossing for driveway to single family house;
- f.) project source (storm drain) discharge;
- g.) control vegetation in development;
- h.) water level variations;
- i.) any other activity not in Category 1, 3, 4, 5 or 6;
- j.) water supply exploration.

**Category 3     Bylaw Fee \$675 for each**

- a.) site preparation (for development) beyond Notice of Intent scope;
- b.) building (for development) including site;
- c.) road construction not crossing or driveway;
- d.) hazardous cleanup;
- e.) water supply development.

**Category 4     Bylaw Fee \$850 for each**

- a.) crossing for development or commercial road;
- b.) landfills operation/closures;
- c.) sand and gravel operations;
- d.) railroad line construction;
- e.) bridge;
- f.) hazardous waste alterations to resource areas;
- g.) package treatment plant and discharge;
- h.) oil and/or hazardous material release response actions.

**Category 5 Bylaw Fee \$850**

a.) work on revetments, dikes, etc. (coastal or inland).

**Category 6 (Bylaw Fee is \$.85 per linear foot for each resource area): For each resource area delineation, the fee shall not exceed \$125 for activities associated with a single family house or \$1,200 for all other activities**

Abbreviated Notice of Resource Area Delineation (ANRAD) Bylaw Fee \$50/Acre or portion thereof

Certificate of Compliance	\$75
Extension	\$125
Amendment	1 <sup>st</sup> - \$75 2 <sup>nd</sup> - \$100 3 <sup>rd</sup> - \$125 4 <sup>th</sup> - \$150
Amendment After-the-Fact*	\$500
Riverfront Area**	150% of fees for RDA/NOI/ANOI
Late Fees After the Fact Submission	200% of fees
Late Fees for Certificate of compliance	\$250
Emergency Certification	None

Conservation Agent Fees shall be assessed during the hearing process and a negotiated cost shall be reached and agreed upon between the applicant and the Commission, once terms have been met the applicant shall submit a check to cover the inspection costs to the Commission, which the Commission shall draw down as funds are expended.

## APPENDIX B

### **Standard Procedures for the Maintenance and Cleaning of Culvert/Stream/Swale Cleaning**

*GOALS: To remove accumulated sediments from drainage culverts, nearby stream channels, and swales, thereby restoring the historic hydraulic capacities of those structures so that they can continue to prevent flooding, protect public health and property, and prevent pollution and sedimentation of wetland resource areas.*

1. The limits of work shall be no farther upstream or downstream than 25 feet from the end of the pipe or the face of the culvert.
2. The work undertaken at each location will be minimized to the extent possible while still achieving the goals of flood control and pollution prevention.
3. Work will be scheduled to avoid periods of high groundwater or high flow rates.
4. Silts and sediments may be removed either by hand, by mechanical equipment (backhoe, e.g.), or by a suction line.
5. Excavation of sediments shall be limited to the historic limits of the swale or channel. Over-excavation beyond the bottom of the pipe or culvert will not be allowed.
6. Where evidence of scour or erosion is apparent, stone rip-rap may be added to shore up the earth and prevent further erosion.
7. Where evidence of scour or erosion is apparent at the end of a drainage pipe, a flared-end section of similar material may be installed to dissipate energy and prevent erosion.
8. Where evidence of excessive sedimentation from storm drains is apparent, a sediment forebay (and possibly a check-dam) may be constructed to prevent sediments from reaching resource areas in the future. This area would be vegetated appropriately and/or reinforced with stone rip-rap, turf-reinforcing mats, or similar methods.
9. There shall be no increase in impervious area. There shall be no loss of wetland resource area or degradation of resource area values. Swales and stream channels shall not be paved. Natural stream banks shall not be replaced with man-made structures.
10. Vegetation removal will only be done where the vegetation interferes with the performance or maintenance of the drainage structure. Plant and tree roots will be left in place for erosion control and bank stabilization unless they would otherwise be removed along with sediments.

APPENDIX C

Please run the following legal notice in **the Brockton Enterprise** for one (1) day on

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Please confirm receipt by return email. Thanks!

Avon Conservation Commission  
Avon Town Hall 65 East Main Street,  
Avon, MA 02322

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**TOWN OF AVON  
MASSACHUSETTS**

**CONSERVATION COMMISSION**

Notice of Public Hearing

Pursuant to Mass General Laws, Chapter 131, Section 40, Massachusetts Wetlands Protection Act, the Avon Conservation Commission will hold a public hearing on **Thursday,** \_\_\_\_\_ at 7:00 P.M., in the Conservation Commission Conference Room of the Avon Town Hall, on \_\_\_\_\_ filed by \_\_\_\_\_ for \_\_\_\_\_ located at \_\_\_\_\_ . Portions of the proposed work lie within Wetland Resource Areas and buffer zones. The application is on file and is available for public inspection in the Conservation Commission Office during Town Hall operating hours.

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APPENDIX D

Please run the following legal notice in **the Brockton Enterprise** for one (1) day on

\_\_\_\_\_.

Please confirm receipt by return email. Thanks!

Avon Conservation Commission  
Avon Town Hall 65 East Main Street,  
Avon, MA 02322

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**TOWN OF AVON  
MASSACHUSETTS**

**CONSERVATION COMMISSION**

Notice of Public Hearing

Pursuant to Mass General Laws, Chapter 131, Section 40, Massachusetts Wetlands Protection Act, the Avon Conservation Commission will hold a public hearing on **Thursday,** \_\_\_\_\_ at 7:00 P.M., in the Conservation Commission Conference Room of the Avon Town Hall, on Request for Determination and a waiver for Minor Buffer Zone Activity filed by \_\_\_\_\_ of \_\_\_\_\_ for septic system repair or replacement located at \_\_\_\_\_, Avon, MA. Portions of the proposed work lie within Wetland Resource Areas and buffer zones. The application is on file and is available for public inspection in the Conservation Commission Office during Town Hall operating hours.

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APPENDIX E

**Notification to Abutters**

**Under the Wetlands Protection Act**

In accordance with the Massachusetts General Laws Chapter 131, Section 40, you are hereby notified of the following:

The name of the applicant is \_\_\_\_\_.

The applicant has filed an application with the Avon Conservation Commission for activity in an area jurisdictional to the Commission.

The location of the property is \_\_\_\_\_.

Description of the project:

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Copies of the application may be reviewed at the Avon Conservation Commission Avon Town Hall 65 East Main Street, Avon, MA 02322 between the hours of 89:00 am – 4:00 pm, Monday through Wednesday. 9:00 am – 7:30 pm Thursday and 9:00 am – 12:00 pm Friday.

Or copies of the application may be obtained by calling the applicant at \_\_\_\_\_ between the hours of \_\_\_\_\_ and \_\_\_\_\_.

Notice of the public hearing will be:

- sent to abutters;
- published in the Brockton Enterprise at least five business days before the hearing;

# Appendix F



## Town of Avon Conservation Commission

### Voluntary 21 Day Waiver Form

REGARDING: Circle one NOI, RDA, ANOI, ANRAD

Name of Applicant: \_\_\_\_\_

Project Location: \_\_\_\_\_

I hereby agree to waive the requirement that the Conservation Commission act within 21 days on the above-referenced application (check one)

\_\_\_\_\_ from the date of submittal

\_\_\_\_\_ from the most recent hearing

I understand that the next meeting of the Conservation Commission is scheduled for \_\_\_\_\_ and that the Commission will open the public hearing/meeting or resume the public hearing/meeting on that date.

I am the : \_\_\_\_\_ Applicant

\_\_\_\_\_ Applicant's Representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date