

Chapter 503

WETLANDS REGULATIONS

[HISTORY: Adopted by the Conservation Commission of the Town of Easton 12-8-1986, as amended through January 29, 2024.]

GENERAL REFERENCES

Wetlands Protection Bylaw — See Ch. 227.

§ 503-1

ARTICLE I

General Provisions and Procedures

§ 503-1. Authority, purpose, effective date.

- A. Authority. The Town of Easton Conservation Commission promulgates these regulations under the authority granted to it under the Town of Easton Wetlands Protection Bylaw, Chapter 227 of the Easton Town Code (hereinafter the "Bylaw"). These regulations complement the Bylaw and shall have the force of law upon their effective date, as such may be amended from time to time.

- B. Purpose. The purposes of these Rules and Regulations include:
 - (1) To provide administrative and permit review processes that facilitate the enforcement of all standards and procedures required under the Easton Wetland Protection Bylaw; and
 - (2) To establish the performance standards, definitions, and uniform procedures, as empowered by the Easton Wetland Protection Bylaw, that shall be used by the Conservation Commission in order to protect the wetlands, water resources, flood prone areas, and adjoining buffer areas under their jurisdiction.

- C. Interests and Values. The protected Bylaw wetland values are:
 - (1) Consistent with Massachusetts Wetland Protection Act, MGL. Chapter 131, Section 40 (hereinafter "the WPA") for public water supply; private water supply; ground water supply; flood control; storm damage prevention; prevention of pollution; protection of fisheries; protection of land containing shellfish; and wildlife habitat; and
 - (2) In addition to WPA, these are values under the Bylaw include, but are not limited to, groundwater quantity and quality; water quantity and quality in the numerous ponds, lakes, and reservoirs in the Town of Easton; erosion and sedimentation control; prevention of water pollution; shellfish; wildlife; recreation; aesthetics; agriculture and agriculture values; aquaculture; and historic values.

- D. Effective date.
 - (1) These regulations, as such may be amended from time to time, take effect when voted by the Conservation Commission and filed with the Town Clerk as provided in the Bylaw under § 227-8 of the Easton Town Code);
 - (2) The effective date of these regulations shall be December 8, 1986. In January 2024 the Commission reorganized, rewrote, and clarified many provisions of these regulations without any substantive changes to the regulations.

§ 503-2. Jurisdiction and exemption from regulation.

- A. Jurisdiction. See Appendix A: Summary of Jurisdiction
 - (1) Resource areas subject to protection under the Bylaw. The Bylaw protects all areas defined in the WPA, and protects additional areas, which are collectively known as the "resource areas subject to protection under the Bylaw" or "Bylaw resource areas" and shown in Appendix A. The resource areas subject to protection under the Bylaw are:
 - (a) Any bank or beach;
 - (b) Any vegetated wetlands (freshwater wetlands, including a wet meadow, bog, or swamp);
 - (c) Any vernal pool;
 - (d) Any reservoir, lake, or pond of any size;
 - (e) Any river, stream or creek, whether perennial or intermittent;

- (f) Any land under water bodies and waterways;
- (g) Any land subject to flooding or inundation by groundwater or surface water; and
- (h) Lands within 100 feet of any of the areas subject to protection under the Bylaws set forth in the aforesaid Subsection A(1)(a) through (g), also known as the "Bylaw one-hundred-foot buffer zone" or "buffer zone"; and
- (i) Lands within 200 feet of any river, stream, or creek, whether perennial or intermittent, also known as the "Bylaw riverfront area" or "riverfront area."

(2) Activities subject to regulation under the Bylaw. The Conservation Commission shall regulate the following activities or work within the Town of Easton.

- (a) Any activity proposed or undertaken that constitutes removing, filling, altering, dredging, or building upon any resource area subject to protection under the Bylaw, requires the filing of an application for permit with the Conservation Commission.
- (b) Any activity proposed or undertaken outside a resource area subject to protection under the Bylaw shall not be subject to regulation under the Bylaw unless, in the judgment of the Conservation Commission, said activity may result or has resulted in the removing, filling, altering, dredging, or building upon a resource area subject to protection under the Bylaw. If a person wishes to have the Conservation Commission determine whether an activity may be subject to regulation under the Bylaw, that person shall submit a Request for Determination of Applicability.
- (c) Nothing herein shall preclude the Conservation Commission from taking appropriate enforcement action against activities occurring outside the Town of Easton but which alter a resource area subject to protection under the Bylaw.

B. Exemptions. As provided in the Bylaw, § 227-3 of the Easton Town Code, Exemptions under this chapter shall include exemptions consistent with WPA and Regulations under 310 CMR 10.02(2), in addition to:

- (1) Expansion of agricultural activities onto lands not previously in agriculture use and within jurisdiction of the Conservation Commission does require a Permit for Work. Provided, however, nothing contained within this provision shall prohibit the Conservation Commission from exercising its full enforcement powers under the Bylaw and the WPA, should the Commission determine the activity is not normal maintenance or improvement of land in agricultural use.
- (2) The following activities or work within the Buffer Zone or Riverfront Area shall require a pre-construction review, including but not limited to an inspection by the Conservation Commission or its representative and may be administratively approved prior to commencement of work:
 - (a) Installation of fencing, provided it does not constitute a barrier to wildlife or flow of floodwaters; vista pruning proposal prepared by a licensed arborist or forester; hazard tree removal identified by a licensed arborist; or the removal of up to three trees provided an equal number of native species of trees or shrubs are replanted;
 - (b) Conversion of lawn to accessory uses such as:
 - 1. Repair, replacement or construction of decks or patios under 300 square feet, and installation of above-ground pools located greater than 50 feet from bank, vegetated wetland, and land subject to flooding and/or located greater than 100 feet from a vernal pool; and
 - 2. Construction or replacement of sheds under 200 square feet, provided it is located further from the wetland resource area than existing conditions;
 - (c) The installation of in-ground pools shall require a Permit for Work under this chapter.

- (d) The removal of trash, rubbish, junk, compost or other items dumped, placed or stockpiled within a wetland resource area and/or the installation of a visual barrier (such as posts and wetland markers) may be required prior to receiving an administrative approval.

§ 503-3. Burden of going forward and burden of proof.

- A. Burden of going forward. The project proponent shall have the burden of going forward with credible evidence from a competent source in support of all matters asserted pursuant to Subsection B below.
- B. Burden of proof. The Applicant shall have the burden of proving by a preponderance of the credible evidence that:
 - (1) That the area is not significant to the protection of any of the interests identified in the Bylaw; or
 - (2) Any proposed work and its natural and consequential cumulative impacts and effects shall have no adverse effect upon any of the Bylaw wetland values; and
 - (3) Shall contribute to the protection of the Bylaw wetland values by complying with the general performance standards established for each Bylaw resource area. Failure to meet the burden of proof shall be cause for the Conservation Commission to deny the application for a permit for work along with any work or activity proposed therein.
 - (4) Waiver. Comply with waiver § 503-21 and § 503-2.
 - (5) Waiver for Rare Species Habitat. Notwithstanding § 503-3B(4) above, where the project limit of work is within or abuts an estimated rare species habitat as designated on the most current map prepared by the Massachusetts Natural Heritage & Endangered Species Program (NHESP). The Commission may consider waiving the rare species performance standard when the following conditions are met in addition to the requirements in § 503-22. The Applicant for a waiver of a performance standard shall have the burden of demonstrating by clear and convincing evidence that:
 - (a) The MA Natural Heritage and Endangered Species Program (NHESP) has been consulted, and has issued a formal determination, prior to filing a request with the Commission; and
 - (b) The project has been designed in accordance with any formal determination of the NHESP to address the standards in the MA Endangered Species Act and its implementing regulations at 321 CMR 10.00; and
 - (c) At least 14 days prior to the public hearing, the Applicant must provide to the Commission the NHESP determination and accompanying comments. The Commission cannot close the hearing until the NHESP has been consulted and has submitted written comments.

§ 503-4. Definitions.

Application of definitions in Wetlands Protection Act, MGL c. 131, § 40. Except as otherwise provided in the Bylaw and in Appendix B, the definitions of terms in the Bylaw and the regulations shall be as set forth in the WPA and enabling regulations 310 C.M.R. Chapter 10.00.

§ 503-5. Computation of time periods. Consistent with WPA under 310 CMR 10.05.

§ 503-6. Actions by Conservation Commission. Consistent with WPA under 310 CMR 10.05.

§ 503-7. Permitting Procedures.

- A. Applicants proposing to conduct work in an area subject to protection under the bylaw shall use the MADEP wetland permit application forms and may concurrently file under the Act. In addition, applicants shall submit

the Town of Easton wetland permit application form in order to quantify impacts to the resource areas protected by the bylaw. All applications shall be filled out completely and accurately. Applications shall be submitted in general accord with the instructions provided by MADEP. The types of activities and appropriate permit applications are described below:

- (1) An Abbreviated Notice of Resource Area Delineation (ANRAD) shall be required to verify the accurate delineation of resource areas on the subject property. All resource areas shall be included in the application and illustrated on the submitted plan. WPA fees for an ANRAD shall be based upon the linear feet of delineation of each resource area.
- (2) A Request for Determination of Applicability (RDA) may be used for activities proposed within the Wetland Protection Zone if the project:
 - (a) is a request to see if activities are subject to protection under the bylaw; or
 - (b) the project meets the following criteria:
 1. a minimum 50-foot undisturbed vegetative buffer is maintained between the limit of work and the wetland resource area;
 2. storm water management is provided;
 3. is not within vernal pool habitat;
 4. is not within Priority Habitat area; and
 5. sediment control is installed and maintained until all areas achieve final stabilization (if loam and seed are used, the area shall be mown a minimum of twice).
 - (c) Projects for the maintenance or improvement of stormwater management systems provided that: (a) the system was designed, constructed, installed, or modified on or after November 18, 1996; and (b) if the system was constructed in a wetland resource area as defined by the wetland bylaw at ECB c 227-2, the system was designed, constructed, and installed in accordance with all applicable provisions in chapter 503.
 - (f) If the person making any request for a determination is not the owner of the land that is subject to such request, the request shall include a certification that the owner of the land and others that may have a property interest in the area subject to the request have been notified that a determination is being requested under the Bylaw.
- (3) A Permit for Work shall be required for all projects proposing work:
 - (a) within a wetland resource area;
 - (b) within a Priority Habitat area; or
 - (c) not meeting the conditions of RDA above.
 - (d) If only a portion of a proposed project or activity lies within a resource area subject to protection under the Bylaw and the remainder of the project or activity lies outside those Bylaw resource areas, all aspects of the project must be described in the detail as required by § 503-25 and § 503-27 of the Town Code. and any other of the general instructions provided on the appropriate Commission's forms; provided, also, that in such circumstances the application for a permit for work shall also contain a description and calculation of peak flow and estimated water quality characteristics of discharge from a point source (both closed and open channel) when the point of discharge falls within a resource area subject to protection under the Bylaw.
- (4) Request for a Certificate of Compliance (COC) shall be required to:

- (a) administratively close out a Permit for Work; or
- (b) demonstrate compliance with an Enforcement Order.

(5) Notice of Non-Significance

- B. **Abutters.** Notification to abutters is consistent to WPA except, abutters include owners of land directly opposite on any public or private way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water.
- C. **Determining a Complete Application.** A complete application means that the required information has been submitted for the Commission's review including the contents of the filing checklists, and the filing fees have been paid. It does not mean that the application contains all information necessary for the Commission to determine whether the project meets performance standards of the WPA or under this Bylaw or that the information is accurate or adequate, and the Commission reserves rights to request additional information. Incomplete application packages may be rejected, or the applicant may re-file the application package to include any previously missing information. Timeframes commence after application is complete.
- D. **Issuance of Bylaw File Number.** Upon receipt of the application materials, the Conservation Commission shall issue a file number. The designation of file number shall not imply that the plans and supporting documents have been judged adequate for the issuance of a permit for work, but only that copies of the minimum submittal requirements have been filed.
- E. **Public Hearings.** Public hearing procedure is consistent with WPA except:
 - (1) Without the consent of the applicant to a certain date 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 Conservation Commission as its discretion;
 - (2) Notice of the time and place of the public hearing shall be given by the Conservation Commission, at the expense of the person making the request, not less than five business days prior to such hearing, by publishing a notice, in accordance with the requirements of the Open Meeting Law, MGL c. 39, § 23B, in a newspaper of general circulation in Easton and by mailing or hand delivering a notice to the person making the request, the landowner, the Board of Health, the Planning and Zoning Board, the Board of Appeals, the Board of Selectmen, and Building Inspector;
 - (3) The person making the request shall also give notice to abutters in accordance with the Bylaw, § 227-5, Notice and hearing, Subsection A, of the Easton Town Code.
- F. **Issuance.**
 - (1) Order of Resource Area Delineation (ORAD). The Commission shall confirm the boundaries of the resource areas subject to protection under the Bylaw, as those boundaries may have been adjusted by the Commission based on direct observations and other information submitted during the public hearing process. The identity and boundary of the Bylaw Resource area(s) confirmed by this determination are limited to those shown on the Plan of Record or otherwise cited in the written finding of the Commission. Said boundary delineations shall be valid for a period of three years, unless new information, not available to the Commission during the hearing process, establishes that the boundaries are in error. Said new information shall include but not be limited to false or erroneous information presented by the person requesting such delineation.
 - (2) Determination of Applicability. Commission shall issue a Determination of Applicability consistent with WPA except, said determination shall be valid for a period of three years. The Commission may allow a longer term up to 5 years for agricultural activities, non-profits organizations with a mission consistent with the protection of wetland values found at § 503-1B, and multi-phase projects where construction is planned for greater 3 years. The Commission may extend the term of a

valid determination for up to 3 years, if the Applicant makes a written request(s) at a Commission meeting before the term expires and demonstrates that the applicant has been diligently pursuing the completion of the project.

(3) Permit for Work.

- (a) Make a determination that the resource area subject to protection under the Bylaw 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 Bylaw wetland values and shall so notify the applicant on the appropriate Commission's form titled "Notification of Non-Significance," and allow the work to go forward as proposed; or
- (b) Make a determination that the resource area subject to protection under the Bylaw 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 Bylaw wetland values and shall issue a Bylaw permit for work. The Commission shall condition said proposed work to protect the applicable Bylaw wetland values and shall issue the permit for work. In this permit for work, the Conservation Commission shall, at a minimum:
 - 1. Impose such conditions as are necessary for the protection of the Bylaw resource areas found to be significant to one or more of the Bylaw wetland values; and
 - 2. Prohibit any work or any portion thereof that cannot be conditioned to meet the standard of protection of the Bylaw wetland values; and
 - 3. Impose conditions upon the work or the portion thereof that will in the judgment of the Conservation Commission result in any alteration of a resource area subject to protection under the Bylaw; and
 - 4. Impose conditions setting limits of the quantity and quality of discharge from point sources (both open and closed channel) as necessary to protect the Bylaw wetland values.
- (c) Decision to deny the work. The Conservation Commission may issue a decision denying the proposed work where 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 Bylaw wetland values. The denied work decision shall specify the information that is lacking and why it is necessary. The Commission cannot condition the proposed work to protect the Bylaw wetland values.
- (d) The permit for work shall be valid for three years from the date of its issuance. The Commission may allow a longer term up to 5 years for agricultural activities, non-profits organizations with a mission consistent with the protection of wetland values found at § 503-1B, and multi-phase projects where construction is planned for greater 3 years.
- (e) The permit for work or denial of permit for work shall be signed by a majority of the members of the Conservation Commission and shall be mailed by certified mail or hand delivered to the applicant and his/her agent, representative, or attorney, as designated.
- (f) Recording of permit for work. Prior to the commencement of any work permitted or required by the permit for work, the permit shall be recorded in the Bristol County North Registry of Deeds or the Land Court. Certification of recording shall be sent to the Conservation Commission on the detachable sheet at the end of permit for work. If work is undertaken without the applicant first recording the permit for work, the Conservation Commission may issue an enforcement order or may itself record the permit at the expense of the landowner/applicant.
 - 1. In the case of recorded land, the permit for work shall also be noted in the Registry's Grantor Index under the name of the owner of land upon which the proposed work is to be done.

2. In the case of registered land, the permit for work 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.
 3. Certificates of Compliance and Partial Certificate of Compliance. Consistent with WPA except, such certificate shall be clearly titled a "Partial Certificate of Compliance."
- G. Amendments. Applicants may propose to amend an existing permit or final approved plan if the proposal is within the scope of the original project. To avoid untimely delays, it is advisable to meet with the Conservation Agent to determine the appropriateness of filing an amendment. If the Commission determines the proposal is not within the scope of the original project a new permit shall be required for the proposed work. Proposals for an amendment to a valid permit or the approved plans shall be submitted to the Conservation Office in writing at least two (2) weeks prior to the regularly scheduled public hearing. The proposed amendment shall be described in a legal notice posted at the applicant's expense. The applicant shall notify the abutters to the property of the amendment request. Work approved though the amendment shall not begin until the Amended permit has been recorded at the Registry of Deeds and the proof of recording has been submitted to the Conservation Commission.
- H. Extensions. Consistent with WPA except, the applicant has demonstrated they have been diligently pursuing the completion of the project, and the Commission may record the extension permit at the owner's expense.
- I. Notice Non-Significance. The Conservation Commission shall 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 either significant or not significant to any Bylaw wetland value and shall so notify the applicant on the appropriate Commission's form.
- J. Recording In Registry of Deeds or Land Court. The following permits and orders issued by the Commission shall be required to be recorded by the applicant or owner in the Bristol County Registry of Deeds or the Land Court, whichever is appropriate: Amended Permit for work, Permit for Work, Extension Permits, Certificate of Compliance, Partial Certificate of Compliance, Deed Restrictions or Conservation Easements. Proof of recording shall be submitted to the Conservation Office by the applicant or property owner.

§ 503-8. Emergency Certificates

- A. Emergency project of commonwealth or subdivision thereof. The Conservation Commission may approve work by the Commonwealth or political subdivision thereof in emergency situations, as described below, without the need to obtain a permit for work before the work takes place.
- (1) Request. Any person requesting permission to do an emergency project shall specify why the project is necessary for the protection of the health or safety of the citizens of the Commonwealth and what agency of the Commonwealth or subdivision thereof is to perform the project or has ordered the project to be performed.
 - (2) Commission review of request. The Conservation Commission or its agent shall inspect the site prior to certification.
 - (3) Commission decision.
 - (a) The agent, a member, or employee of the Commission may grant certification of emergency work; provided that the Commission shall ratify such decision at its next regularly scheduled meeting. The Conservation Commission shall issue an emergency certification only for the protection of public health or safety or for the protection of any interest specified in the Bylaw.
 - (b) The certification shall include a description of the work which is to be allowed and shall not include work beyond that necessary to abate the emergency.

(c) The time limitation for performance of emergency work shall not exceed 21 days.

§ 503-9. Enforcement.

- A. Recording notices of violation and enforcement orders. The Conservation Commission shall record a notice of violation or an enforcement order, issued under the Bylaw at § 227-11 of the Easton Town Code, with the appropriate Registry of Deeds when (1) the Commission has information that the property in violation of the Bylaw may change ownership; (2) when the owner of the property in violation or other responsible party has failed to respond to the notice of violation or enforcement order after 10 business days of receipt thereof; or (3) when the owner of the property in violation has failed to file a corrective Notice of Intent or Application for a Permit for Work, as applicable, within 30 days of receipt of the notice of violation or enforcement order.
- B. Penalty abatement. The Conservation Commission may abate a fine imposed under the Bylaw at § 227-11G of the Easton Town Code when complete restoration and substantial mitigation is provided as approved by the Commission as part of a permit for work. However, the Commission shall not waive or reduce the appropriate filing fee, as provided in § 503-23 of the Easton Town Code.

§ 503-10. Severability; compliance with Court decisions.

- A. Severability. The invalidity of any section or provision of the Bylaw or of these regulations shall not invalidate any other section or provisions thereof, nor shall it invalidate any determination or permit for work that the Conservation Commission previously issued.
- B. Compliance with Court decisions. If any Court of the Commonwealth shall invalidate any provisions of the Bylaw or of these regulations, the Conservation Commission shall promulgate additional regulations or present to the next Town Meeting after such invalidation, amendments to the Bylaw that are designed to comply with any Court decision invalidating such provisions of the Bylaw or regulations, as the case may be.

§ 503-11: Reserved

ARTICLE
II**Regulation of Resource Areas Subject to Protection Under the Bylaw (Bylaw Resource Areas)****§ 503-12. Vernal pools.**

A. Definition, critical characteristics, boundary, presumption of existence.

- (1) Definition, critical characteristics. A vernal pool is defined in the Bylaw at § 227-9 as any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways that holds water, at least in most years, for a minimum of two continuous months during the spring and/or summer; contains at least 200 cubic feet of water; is free of adult predatory fish populations; and provides essential breeding and rearing habitat functions for amphibians, reptiles, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.
- (2) Boundary. The boundary of the resource area for a Vernal Pool shall be 100 feet outward from the mean annual high-water line defining the depression, but shall not include a lawn, garden, landscaped area or developed area in existence and maintained since at the time of the effective date of this provision in this chapter.

B. Presumptions, findings.

- (1) Presumption that confined basin and adjacent land is a vernal pool. The Bylaw presumes that all areas meeting the definition of "vernal pool" perform essential wildlife habitat. These areas are essential breeding habitat, and provide other important wildlife habitat functions, during non-breeding season, for a variety of amphibian species including, but not limited to, the wood frog (*Rana sylvatica*), as well as the blue-spotted salamander (*Ambystoma laterale*) and marbled salamander (*Ambystoma opacum*). A vernal pool is highly likely to be significant to wildlife habitat, rare species habitat, groundwater supply, and flood control. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression, or the adjacent land, does not meet the physical criteria of the definition, or, if it meets such criteria, does not provide essential habitat and wetland functions. Any formal evaluation should be performed by an individual meeting the qualifications under the wildlife habitat section of the Wetlands Protection Act Regulations.

C. Performance standards.

- (1) Activity or work that will result in altering the vernal pool or land within the buffer zone of any vernal pool, shall be considered to be adverse to the interests protected by the Bylaw and these regulations and generally shall be prohibited by the Conservation Commission. The Commission may grant a waiver of this performance standard only as provided in § 503-22 of the Easton Town Code. Activities or Work contemplated hereunder shall include, but not be limited to, point-source stormwater discharges to Vernal Pools and their buffer zones.
- (2) Buffer zone. Land within 100 feet of a vernal pool boundary is likely to be significant to the protection and maintenance of the vernal pool and, therefore, to the protection of the Bylaw wetland values. The Commission shall not allow alteration in the entire buffer zone of a vernal pool unless the Commission grants a waiver to this performance standard of no alteration as further provided in § 503-21 of the Easton Town Code.

- (3) Where the Bylaw resource area of vernal pool is within an area of critical environmental concern, an additional 100 feet of jurisdictional area is added to the outer boundary of the buffer zone. The Commission generally shall not allow the application of new pavement or other impervious materials within the vernal pool or the buffer zone to the vernal pool as provided in § 503-22 of the Easton Town Code. The Commission may grant a waiver of this performance standard as provided in § 503-22 of the Easton Town Code.

§ 503-13. Reservoirs, lakes, ponds.

A. Definition, critical characteristics, boundary.

- (1) Reservoir: a naturally occurring lake or pond or other basin where water is collected and stored for future use.
- (2) Lake: A Lake means any open body of freshwater with a surface area of 10 acres or more. Any pond over 10 acres is usually called a "lake", but the term is synonymous with a pond.
- (3) Pond: A pond is any open body of fresh water, either naturally occurring or manmade by impoundment, excavation, or otherwise, which is never without standing water due to natural causes, except in periods of extended drought. Notwithstanding the above, the following man-made bodies of open water shall not be considered ponds:
 - (a) basins or lagoons that are part of wastewater treatment plants,
 - (b) swimming pools or other impervious man-made retention basins;
 - (c) man-made fish ponds; and
 - (d) individual gravel pits or quarries excavated from upland areas unless inactive for five or more consecutive years.

B. Presumption of significance, findings. The Conservation Commission shall presume that protection of the resource areas protected under the Bylaw, a reservoir, lake, and pond, are significant to the Bylaw wetland values. specified in § 503-1B of the Easton Town Code.

C. Performance standards.

- (1) The Commission shall apply the performance standards of bank and land under water bodies and waterways in assessing a proposed project that would alter either a perennial or intermittent stream
- (2) A reservoir, lake, and pond each have a one-hundred-foot buffer zone and may have a two-hundred-foot riverfront area under the Bylaw and these areas are classified as resource areas subject to protection under the Bylaw. Consequently, the Conservation Commission shall apply the performance standards of the riverfront area in assessing a proposed project that would alter a reservoir, lake, or pond.

§ 503-14. Rivers, streams (creeks).

A. Definition, critical characteristics, boundary.

- (1) River (perennial stream).

- (a) A river (perennial stream) is any natural or man-made flowing body of water that empties to any ocean, lake, pond, wetland, or other perennial stream and which flows throughout the year. A river is a perennial stream. A river or perennial stream is characterized by horizontal zonation, as opposed to the vertical stratification typically associated with lakes, ponds, and embayments.
 - 1. A river or stream shown as perennial on the current United States Geological Survey (USGS) is perennial.
 - 2. A river or stream shown as intermittent or not shown on the current USGS map that has a watershed size greater than or equal to one square mile is perennial.
 - 3. A stream shown as intermittent or not shown on the current USGS map or more recent map provided by the Department that has a watershed size less than one square mile is perennial if the stream has a watershed size of at least 0.50 square mile and has a predicted flow rate greater than or equal to 0.01 cubic feet per second at the 99% flow duration using the USGS Stream Stats method.
 - 4. When the USGS StreamStats method cannot be used because the stream does not have a mapped and digitized centerline and the stream has a watershed size of at least 0.50 square mile, and the surficial geology of the contributing drainage area to the stream at the project site contains 75% or more stratified drift, the issuing authority shall find such streams to be perennial. Stratified drift shall mean sand and gravel deposits that have been layered and sorted by glacial meltwater streams. Areal percentages of stratified drift may be determined using USGS surficial geologic maps, USGS Hydrological Atlases, Massachusetts Geographical Information System (MassGIS) surficial geology data layer, or other published or electronic surficial geological information from a credible source.
 - 5. Rivers include perennial streams that cease to flow during periods of extended drought. Rivers and streams that are perennial under natural conditions but are significantly affected by drawdown from withdrawals of water supply wells, direct withdrawals, impoundments, or other manmade flow reductions or diversions shall be considered perennial.
 - (b) Where a river (perennial stream) flows through a culvert of any length it does not lose its classification as a river.
- (2) Stream (creek, intermittent stream).
- (a) An intermittent stream is that segment of a flowing watercourse, natural or manmade, that regularly experiences naturally occurring sporadic flow interruptions such that it does not have a continuous sheet of surface water for five consecutive days or more annually. Intermittent streams exhibit a longitudinal gradient of hydrology, from:
 - 1. ephemeral channels that flow only in response to storms;
 - 2. intermittent sections that flow seasonally until the groundwater table falls below the channel and are dry the rest of the year; and
 - 3. interstitial reaches that flow seasonally and retain pools connected by subsurface flow during the summer.
 - (b) Where there is a question as to whether a stream is intermittent or perennial, the Commission shall find any stream is intermittent based upon a documented field observation that the stream is not flowing. A documented field observation shall be made by a competent source and shall be based upon an observation made at least once per day, over four days in any consecutive twelve-month period, during a non-drought

period on a stream not significantly affected by drawdown from withdrawals of water supply wells, direct withdrawals, impoundments, or other man-made flow reductions or diversions. Field observations shall be documented by field notes and by dated photographs or video. All field observations shall be submitted to the Conservation Commission with a statement signed under the penalties of perjury attesting to the authenticity and veracity of the field notes, photographs or video and other credible evidence. Department staff, conservation commissioners, and conservation commission staff are competent sources; issuing authorities may consider evidence from other sources that are determined to be competent.

(c) The Conservation Commission recognizes four types of intermittent streams:

1. Type I: a stream segment that originates at the headstream and is sometimes associated with forested seeps and small wetlands and include headwater (first- through third-order) streams, which are important both for aquatic biodiversity and for ecological function of lower stream reaches.
2. Type II: a stream segment that does not originate at the headstream in which continuous standing water disappears for at least five but not more than 30 consecutive days annually.
3. Type III: a stream segment that does not originate at the headstream in which continuous standing water disappears for more than 30 consecutive days annually.
4. Type IV: a stream segment, without regard to duration of continuous standing water, that connects two culvert pipes or otherwise functions as a man-made drainage channel within an already developed area.

B. Presumption of significance, findings. The Conservation Commission shall presume that protection of a river and a stream is significant to the Bylaw wetland values. specified in § 503-1B of the Easton Town Code.

(1) River (perennial stream).

- (a) A river (perennial stream) serves as public and private water supplies. In addition, a river is important for storm damage prevention, flood control, groundwater protection, wildlife habitat, and recreation values.
- (b) The surface water interaction with groundwater significantly influences the ecosystem of a river. The dynamic relationship between surface and groundwater within the "hyporheic zone" sustains communities of aquatic organisms which regulate the flux of nutrients, biomass and the productivity of organisms including fish within the stream itself. The hyporheic zone extends to greater distances horizontally from the channel in large, higher-order streams with alluvial floodplains, but the interaction within this zone is important in smaller streams as well.

(2) Intermittent stream (creek).

- (a) Intermittent streams are important for storm damage prevention, flood control, groundwater protection, wildlife habitat, and recreation values. During spring, summer, and fall these streams disperse snow melt and storm runoff across the landscape thereby preventing dangerous volumes and flows from spilling over roadways and property. This board dispersal also allows for larger volumes of water to infiltrate into the ground, recharging groundwater supplies.
- (b) Intermittent streams are an essential source of food and water for wildlife, and are often the only source of water in higher elevation areas of Town. The moist soils that border intermittent streams

are significantly richer in herbs and flowering/fruitlets plants, the base tropic level of food, than surrounding upland areas.

- (c) During all seasons, but especially in winter and spring, intermittent streams act as essential corridors for animal movement when food is scarce. Some animals, such as pickerel frogs and eastern spotted newts, rely heavily on intermittent streams for movement.
- (d) For the above reasons the upland areas surrounding intermittent streams are heavily utilized by wildlife for living space, breeding, feeding, migrating, dispersal, and security. Accordingly, the Bylaw protects intermittent streams of all forms and the adjacent upland resource within 200 feet of those streams (the riverfront area).

C. Performance standards.

- (1) The Commission shall apply the performance standards of bank and land under water bodies and waterways in assessing a proposed project that would alter either a perennial or intermittent stream.
- (2) A river and a stream each have a two-hundred foot riverfront area under the Bylaw and these areas are classified as resource areas subject to protection under the Bylaw. Consequently, the Conservation Commission shall apply the performance standards of the riverfront area in assessing a proposed project that would alter either a river or stream.

§ 503-15. Inland banks (beaches).

A. Preamble, definition, presumptions, and performance standards are consistent with Wetland Protection Act Regulations 310 CMR 10.54, except:

- (1) The upper boundary of a bank is the first observable break in the slope of the mean annual flood level or the mean annual flood level, whichever is higher. The lower boundary of a bank is the mean annual low flow level.
- (2) The Conservation Commission shall presume that protection of a bank is significant to the Bylaw wetland values specified in § 503-1B of the Easton Town Code.
- (3) Additional Standards for ACEC. Where the Bylaw resource area of bank is within an area of critical environmental concern, the Commission shall not allow the application of new pavement or other impervious materials within the bank or the additional one-hundred-foot buffer zone to the bank and shall regulate the application of impervious materials in the restricted area beyond the one-hundred-foot buffer zone in accordance with § 503-23B(2) of the Easton Town Code. The Commission may grant a waiver of this performance standard as provided in § 503-22 of the Easton Town Code.

§ 503-16. Vegetated wetlands (wet meadows, marshes, swamps, bogs).

A. Preamble, definition, and presumptions are consistent with Wetland Protection Act Regulations 310 CMR 10.55, except:

- (1) Vegetated wetlands ("freshwater wetlands" as provided in the Bylaw at § 227-2 of the Easton Town Code) are areas where the topography is low and where the soils are annually saturated. Vegetated wetlands may be bordering on surface water bodies or other Bylaw resource areas, or they may be isolated. Vegetated wetlands may be of any size.
- (2) Vegetated wetlands also include areas where groundwater, flowing or standing surface water, or ice provides a significant part of the supporting substrate for a plant community for at least five months of the year, such as a seep, and areas of emergent and submerged plant communities in inland waters.
- (3) The boundaries of a vegetated wetland are the line within which 50% or more of the vegetative community consists of wetland species identified in the Wetlands Protection Act. Alternatively, if the

vegetative community has been disturbed, then the boundaries may be determined in accordance with the standards of Subsection A (4) below.

- (4) The boundary of a vegetated wetland that 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 before the disturbance.

B. Presumption of significance; findings.

- (1) The physical characteristics of vegetated wetlands, are critical to the protection of the Bylaw wetland values. The Conservation Commission shall presume that protection of a vegetated wetland, whether bordering or isolated, is significant to the Bylaw wetland values § 503-1B of the Easton Town Code. This presumption of significance may be rebutted upon a showing by clear and convincing evidence that the vegetated wetland does not play a role in the protection of the Bylaw wetland values.
 - (a) Where the Conservation Commission determines that the presumption of significance of the vegetated wetland to one or more, but not all, Bylaw wetland values has been overcome, the Commission shall make a written determination to this effect, setting forth its grounds as part of its findings in the permit for work or denial of the permit for work.
 - (b) Where the Conservation Commission determines that the presumption of significance of the vegetated wetland to all Bylaw wetland values has been overcome, the Commission shall make a written determination to this effect, setting forth its grounds in a determination of nonsignificance.
- (2) Vegetated wetlands are likely to be significant to wildlife, and to the protection of shellfish.
- (3) Vegetated wetlands are also important to the protection of rare and endangered wildlife species.
- (4) Vegetated wetlands, together with land within 100 feet of a vegetated wetland (the buffer zone) serve to moderate and alleviate thermal shock and pollution resulting from runoff from impervious surfaces, which may be detrimental to wildlife, fisheries, and shellfish downstream of the vegetated wetland.

C. Performance standards.

- (1) No activity or work, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of a vegetated wetland, or land within 50 feet of any vegetated wetland (the fifty-foot inner buffer zone), shall be permitted by the Conservation Commission. The Commission may grant a waiver of this performance standard as provided in § 503-22 of the Easton Town Code.
- (2) Any activity that the Conservation Commission allows pursuant to the criteria upon or within 50 feet of a vegetated wetland shall not impair in any way the ability of the Vegetated Wetland to perform any of the functions.
- (3) Additional Standards for ACEC. Where the Bylaw resource area of vegetated wetlands is within an area of critical environmental concern, an additional 100 feet of jurisdictional area past the outer buffer zone boundary is regulated. The Commission shall not allow the application of new pavement or other impervious materials within the vegetated wetlands or the one hundred-foot buffer zone to the vegetated wetlands and shall regulate the application of impervious materials in the restricted area beyond the one-hundred-foot buffer zone in accordance with § 503-23B(2) of the Easton Town Code. The Commission may grant a waiver of this performance standard as provided in § 503-22 of the Easton Town Code.

§ 503-17. Lands under water bodies and waterways (under any reservoir, lake, pond, river, or stream).

- A. Preamble, definition, and presumptions are consistent with Wetland Protection Act Regulations 310 CMR

10.56, except:

- (1) Land under water bodies and waterways is the land beneath any reservoir.
- (2) The boundary of land under water bodies and waterways is the mean low water level.
- (3) The Conservation Commission shall presume that protection of land under water bodies and waterways is significant to the Bylaw wetland values specified in § 503-1B of the Easton Town Code.
- (4) Land under water bodies and waterways is likely to be significant to wildlife. Land within 100 feet of land under water bodies and waterways is likely to be significant to the protection and maintenance of the land under water bodies and waterways and, therefore, to the protection of the Bylaw wetland values that this Bylaw resource area serves to protect. Said hundred-foot buffer zone is regulated under § 503-20 of the Easton Town Code.

B. Performance standards.

- (1) No activity or work, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of land under water bodies and waterways, or land within 50 feet of any land under water bodies and waterways (the fifty-foot inner buffer zone), shall be permitted by the Conservation Commission. The Commission may grant a waiver of this performance standard as provided in § 503-22 of the Easton Town Code.
- (2) Any activity that the Conservation Commission allows pursuant to the criteria upon or within 50 feet of land under water bodies and waterways shall not impair in any way the ability of the land under water bodies and waterways to perform any of the functions.
- (3) Additional Standards for ACEC. Where the Bylaw resource area of land under water bodies is within an area of critical environmental concern, an additional 100 feet of jurisdictional area is added to the outer buffer zone boundary. The Commission shall not allow the application of new pavement or other impervious materials within the land under water bodies or the one-hundred-foot buffer zone to the land under water bodies and shall regulate the application of impervious materials in the restricted area beyond the one-hundred-foot buffer zone. The Commission may grant a waiver of this performance standard as provided in § 503-22 of the Easton Town Code.

§ 503-18. Lands subject to flooding (both bordering and isolated).

A. Preamble, definition, and presumptions are consistent with Wetland Protection Act Regulations 310 CMR 10.57, except:

- (1) Bordering land subject to flooding.
 - (a) Bordering land subject to flooding is an area with low, flat topography adjacent to and inundated by flood waters rising from reservoirs
- (2) Isolated land subject to flooding.
 - (a) Isolated land subject to flooding is an isolated depression or closed basin without an inlet or an outlet. It is an area that at least once a year confines standing water of any volume.

B. Presumption of significance; findings. The Conservation Commission shall presume that protection of land subject to flooding, both bordering and isolated, is significant to the Bylaw wetland values specified in § 503-1B of the Easton Town Code.

- (1) Bordering land subject to flooding.
 - (a) The topography and location of bordering land subject to flooding are critical to the protection of the Bylaw wetland values of flood control and storm damage prevention.

(2) Isolated land subject to flooding.

(a) Isolated land subject to flooding provides important breeding habitat for amphibians and some rare plants.

C. Performance standards for bordering and isolated land subject to flooding.

(1) No activity or work, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of land subject to flooding, or land within 50 feet of any land subject to flooding (the fifty-foot inner buffer zone), shall be permitted by the Conservation Commission. The Commission may grant a waiver of this performance standard as provided in § 503-22 of the Easton Town Code.

(2) Any activity that the Conservation Commission allows pursuant to the criteria in the aforesaid Subsection C(1) upon or within 50 feet of a land subject to flooding shall not impair in any way the ability of the land subject to flooding to perform any of the functions in protecting Bylaw wetland values.

§ 503-19. Buffer zones (one-hundred-foot).

A. Definition, critical characteristics, boundary.

(1) A buffer zone is a resource area subject to protection under the Bylaw that is land extending 100 feet horizontally outward from the boundary of the following Bylaw resource areas: vernal pools; reservoirs, lakes, and ponds; banks; vegetated wetlands, whether bordering or isolated; lands under water bodies; and lands subject to flooding, both bordering and isolated.

B. Presumption of significance; findings.

(1) The Conservation Commission shall presume that protection of the Buffer Zone is significant to the Bylaw wetland values specified in § 503-1B of the Easton Town Code.

(2) A buffer zone is highly likely to be significant to the Bylaw wetland values listed in § 503-1B of the Easton Town Code, and in protecting these Bylaw wetland values in many ways, including but not limited to:

(a) Moderating water temperature by providing shade and cover through the riparian vegetation growing within the buffer zone.

(b) Filtering sediments, pollutants, and other contaminants (e.g., pesticides and heavy metals) from surface flow.

(c) Preventing erosion in riparian areas and precluding development that could lead to increased contaminant loading.

(d) Reducing nutrient inputs into streams by (i) filtering from surface flow the nutrient bound to sediments; (ii) removing nutrients from groundwater through uptake in vegetation and by denitrification, and (iii) precluding development that could increase nutrient loading, for example, septic systems, fertilized lawns, and landscaping.

(e) Maintaining stream flow by storing water, thus helping maintain the base flow and water quality during low-flow periods.

(f) Providing one of the richest habitat zones for aquatic organisms, mammals, birds, and amphibians in the vegetated uplands adjacent to vegetated wetlands.

(g) Providing corridors critical for wildlife movement.

C. Performance standards.

(1) Inner fifty-foot no-disturbance zone for undisturbed lands.

- (a) Undisturbed land is land determined by the Conservation Commission to be of a predominantly natural character or
 - 1. Lands that have been altered without a permit for work from the Commission or an order of conditions under the Wetlands Protection Act after December 8, 1986 is also considered undisturbed.
 - (b) No alterations are permitted within the inner 50 feet of the buffer zone.
 - (c) Prohibited alterations include, but are not limited to, grading, landscaping, clearing or cutting of vegetation, filling, excavating, and construction of roads or structures.
 - 1. Structures include, but are not limited to, single-family houses, multifamily dwellings, commercial or industrial buildings, porches, decks, house additions, pools, septic systems and any of its components, and sheds.
 - 2. Driveways, roadways, fences, walls, septic system repairs, and facilities for stormwater management may be allowed in the fifty-foot no-disturbance zone, when no other feasible alternatives exist; provided, however, that no new septic system connecting pipes (as well as the prohibited tank and sub-surface soil absorption system) shall be allowed in the inner fifty-foot buffer zone to a BVW or bank.
- (2) Inner fifty-foot no-disturbance zone for disturbed lands.
- (a) Disturbed land is land determined by the Conservation Commission to be of a legally modified nature that was altered before December 8, 1986, or after that date with a permit for work from the Commission or an order of conditions under the Wetlands Protection Act.
 - (b) The Conservation Commission shall not permit any alteration resulting in a net increase in impervious surface area, a net increase in non-native or invasive species, a net increase in stormwater runoff, a net increase in lawn area, or net decrease in vegetative cover within the inner 50 feet of the buffer zone.
 - (c) No structures shall be constructed or placed on pervious surfaces and no driveways, roadways, fences, walls, and facilities for stormwater management may be allowed within the inner 50 feet of the buffer zone without compensatory restoration and mitigation.
 - (d) No components of a new septic system shall be constructed within the previously disturbed inner fifty-foot buffer zone to a BVW or a bank. Components shall include, but not limited to, connecting pipes, holding tanks, distribution boxes, and subsurface soil absorption systems.
- (3) Outer fifty-foot buffer zone. Activities within the outer 50 feet of a buffer zone shall not adversely affect the form or function of the adjacent Bylaw resource area or the inner fifty-foot no-disturbance zone of the buffer zone.
- (4) Vernal pool buffer zone. The Conservation Commission shall not permit any alteration within the entire one-hundred-foot buffer zone of a vernal pool. , unless the Commission grants a waiver under the provisions of § 503-22 of the Easton Town Code and the Commission is not otherwise prohibited from granting such waiver by the provisions of Chapter 503 of the Easton Town Code, and, if granted, such waiver shall have same conditions and performance standards. the inner fifty-foot no- disturbance zone for undisturbed lands.

§ 503-20. Riverfront areas.

- A. Preamble, definition, and presumptions are consistent with Wetland Protection Act Regulations 310 CMR

10.57, except:

- (1) Riverfront areas apply to intermittent streams as defined in the Bylaw regulations (§ 503-14).
- (2) Where a river (perennial stream) or stream (intermittent stream) flows through a lake or pond, the riverfront area continues and the inner boundary of the riverfront area is measured from the bank of the reservoir, lake, or pond.

Presumption of significance; findings.

- (3) The Conservation Commission shall presume that protection of the riverfront area is significant to the Bylaw wetland values specified in § 503-1B of the Easton Town Code.

B. Performance standards.

- (1) Performance standards for riverfront area of a river or stream. No activity or work, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of the 200-foot riverfront area shall be permitted by the Conservation Commission. The Commission may grant a waiver of this performance standard as provided in § 503-22 of the Easton Town Code.
 - (a) Single-family house discretionary exception. The Conservation Commission may allow the construction of a single-family house, a septic system if no sewer is available, and a driveway, on a lot recorded before April 8, 2002, where the size or shape of the lot within the riverfront area prevents the construction from meeting the requirements, provided that: (a) the lot can be developed for such purposes under the applicable provisions of other municipal and state law; (b) the performance standards are met to the maximum extent feasible; and (c) the Commission is not otherwise prohibited from allowing such under another provision of Chapter 503 of the Easton Town Code. In difficult situations, the maximum extent of yard around houses should be limited to the area necessary for construction. Except where the lot contains vernal pool habitat or specified habitat sites of rare species, a wildlife habitat evaluation study shall not be required.
 - (b) Additional Standards for ACEC. Where the Riverfront Area is within an area of critical environmental concern. The Commission shall not allow the application of new pavement or other impervious materials within the Riverfront Area and shall regulate the application of impervious materials in the restricted area beyond the one-hundred-foot buffer zone. The Commission may grant a waiver of this performance standard as provided in § 503-22 of the Easton Town Code
 - (c) Performance standards for redevelopment. Where the proposed project is a redevelopment of a previously altered riverfront area to either a perennial or an intermittent stream, then the criteria found in Mass. Regs. Code tit. 310, § 10.58(5), apply in lieu of the alternatives analysis performance standard stated in the aforesaid with the exception that no new structure may be placed on a pervious surface within the first 50 feet of the Riverfront Area.
- (2) For proposed activity and work within the riverfront area of a river (perennial stream), the activity or work shall comply with Wetlands Protection Act 310 CMR 10.58.
- (3) For proposed activity or work within the riverfront area of intermittent streams should apply with the following performance standards
 - (a) Ten percent for protected lot. The Commission may, in unusual circumstances, allow, as a consideration and not as a right, the alteration of up to 10% of the riverfront area within the lot, on a lot recorded on or before April 8, 2002, or up to 10% of the riverfront area within a lot recorded after April 8, 2002, provided that:
 1. At a minimum, a one-hundred-fifty-foot-wide area of undisturbed vegetation is provided. This

area shall extend from mean annual high water along the river unless another location would better protect the values identified in the Bylaw and regulations.

- a. If there is not a one-hundred-fifty-foot-wide area of undisturbed vegetation within the riverfront area, existing vegetative cover shall be preserved or extended to the maximum extent feasible to approximate a one-hundred-fifty-foot-wide corridor of natural vegetation.
 - b. Replication and compensatory storage required to meet other resource area performance standards are not allowed within this area; structural stormwater management measures may be allowed only when there is no practicable alternative.
 - c. Temporary impacts where necessary for installation of linear site related utilities are allowed, provided the area is restored to its natural conditions.
2. Stormwater is managed according to standards established by the Department of Environmental Protection.
 3. The proposed work does not impair the capacity of the riverfront area to provide important wildlife habitat functions.
 4. The proposed work shall not impair groundwater or surface water quality by incorporating erosion and sedimentation controls and other measures to attenuate nonpoint source pollution. The calculation of square footage of alteration shall exclude areas of replication or compensatory flood storage required to meet performance standards for other resource areas, or any area of restoration within the riverfront area. The calculation also shall exclude areas used for structural stormwater management measures, provided there is no practicable alternative to locating these structures within the riverfront area and provided a wildlife corridor is maintained (e.g., detention basins shall not be fenced).
 5. Other Bylaw resource areas. The work must meet the performance standards for all other resource areas subject to protection under the Bylaw that are located within the riverfront area, including the one – hundred foot buffer zone.

ARTICLE III
Waivers; Standards for Areas of Critical Environmental Concern

§ 503-21. Waiver from performance standard.

- A. General provisions. The Conservation Commission adopted performance standards for the resource areas protected under the Bylaw to ensure that the Bylaw wetland values, as listed in § 503-1 of the Easton Town Code, are adequately protected. However, the Commission recognizes that, in certain situations, a waiver of a specific performance standard for a Bylaw resource area may be appropriate for a particular project where there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with these regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible and that the waiver is necessary to accommodate an overriding public interest and when the waiver is consistent with the intent and purpose of the Bylaw and these regulations.
- B. Waiver requirements. The applicant shall have the burden proof (§ 503-3) and the burden of demonstrating, by clear and convincing evidence, that the granting of the waiver is consistent with the intent and purpose of the Bylaw and these regulations and, further, the applicant must show, by clear and convincing evidence, that:
- (1) There are no practicable conditions or alternatives that would allow the project to proceed in compliance with the Bylaw or these regulations; and
 - (2) The proposed work, including necessary and required mitigation measures, and its natural and consequential cumulative effects, will have no significant adverse effects upon any of the Bylaw wetland values; and
 - (3) That the project provides benefits in the public interest as defined by § 503-4.
- C. Process.
- (1) An applicant shall file a written request for a waiver with the application for permit for work or request for a determination of applicability with the Commission. The waiver request shall be made in a separate letter or complete the Waiver Request Form. At any time after filing the waiver request, but in no event less than five business days prior to the date of commencement of the public hearing at which the waiver request is to be considered, the applicant or representative shall submit to the Commission a brief in support of the waiver request. Such brief shall be submitted electronically using the online permitting system found at the Town of Easton and include, but not be limited to, the following items:
 - (a) A brief statement of the relief sought;
 - (b) A description of all reasonably identifiable alternatives to the applicant's proposal that were considered by the applicant that would avoid or minimize the necessity of the requested relief, along with the reasons why such alternatives were deemed to be inadequate, unworkable, or inadvisable;
 - (c) A statement of all efforts that will be undertaken to minimize impact upon the affected resource areas subject to protection under the Bylaw (Bylaw resource area) arising out of the work proposed;
 - (d) Detailed plans for proposed mitigation measures;
 - (e) Adequate engineering and expert evidence to permit the Conservation Commission to evaluate the basis for applicant's contentions in support of the waiver requested.

- (2) Any and all relevant information that the applicant wishes the Conservation Commission to consider in deliberating the waiver request.
- D. Standards. The Commission shall only grant a waiver from a performance standard if the applicant has met the burden of proof as provided in the aforesaid Subsections B and C. The standards as set forth herein shall be the sole basis upon which the Conservation Commission may grant a waiver.
- (1) It shall be the responsibility of the applicant to provide the Conservation Commission with any and all information which the Commission may request orally or in writing, in order to enable the Commission to ascertain such adverse effects, and the failure of the applicant to furnish any information that has been so requested shall result in the denial of a request for a waiver.
 - (2) The Conservation Commission shall impose all necessary mitigation measures. Where replication is required, it shall be at least twice that of the altered Bylaw resource area and shall offer additional protection to the Bylaw wetlands values. The Commission may require perpetual restrictions on the property by way of a conservation restriction under the provisions of MGL c. 184, §§ 30 through 33, or deed restrictions as necessary mitigation.

§ 503-22. Standards applicable to Areas of Critical Environmental Concern (ACEC).

- A. The areas within the Town of Easton that have been designated as areas of critical environmental concern (the "ACEC") by the Secretary of Environmental Affairs, Commonwealth of Massachusetts, are so designated due to the particularly unique environmental factors that impact upon such areas.
- B. Standard of review. As a result of such designation, it is incumbent upon the Conservation Commission to be even more diligent in its review of projects proposed within an ACEC. The highest standards of scrutiny as to the impact of any proposal are required.
- (1) The Commission shall require the applicant to meet the burden of proof required for a waiver for each Bylaw resource area located within an ACEC. Therefore, the applicant shall follow the process outlined in § 503-22 of the Easton Town Code.
 - (2) The applicant shall provide clear and convincing evidence that any application of new pavement or other impervious materials within a one-hundred-foot area beyond the one-hundred foot buffer zone to a vernal pool, bank, vegetated wetland or land under water shall have no natural and consequential cumulative impacts on said resource area.
 - (3) Stormwater discharges within an Area of Critical Environmental Concern shall be removed and set back from the Area Subject to Protection under the Bylaw, and receive the highest and best practical method of treatment.

ARTICLE IV
Filing Requirements

§ 503-23. Filing fees; consultant fees.

A. Filing fees.

(1) General provisions.

- (a) The Bylaw at § 227-4D of the Easton Town Code authorizes the Conservation Commission to charge a filing fee for a request for a determination and an application for a permit for work and to set the amount of this fee by regulation. The schedule of filing fees is in Appendix C, payable at the time of application, and such fees are nonrefundable. All applications reviewed by the Commission are listed below. If a particular project type is not described below, the prospective applicant is encouraged to seek pre-application assistance from the Conservation Commission. The Commission does not consider an application or request received until the filing fee is paid.
- (b) Town, county, state, and federal projects are exempt from filing fees.
- (c) The Conservation Commission will consider reduced fees in the following three instances: (1) Agricultural activities are not exempt under the wetlands bylaw at § 227-3A; (2) Projects by applicants that the Easton Assessor's Office find eligible for a tax exemption under G.L. c. 61A, and (3) activities by a non-profit organization that enhance open space or wetland values found at § 503-1.
- (d) The Bylaw filing fees are in addition to the filing fees charged under MGL c. 131, § 40, and Mass. Regs. Code tit. 310, §§ 4.00, 10.03(7).
- (e) The maximum fee amount shall be \$10,000.

B. Consultant fees.

- (1) The Bylaw, at § 227-4E through J, authorizes the Conservation Commission to impose fees on the applicant to pay for expert consultants to the Commission to aid in and expedite the Commission's review of the proposed project. If the Commission elects to engage a consultant to assist with plan reviews, the Commission shall notify the applicant, within 21 days of the filing of the application, of its designation of an outside consultant. The applicant shall submit the full fee amount prior to the town's consultant receiving the notice to proceed with the peer review. Failure of an applicant to pay a review fee within 10 days shall be grounds for denial of the Permit.
- (2) All activities involved with a consultant (peer) review shall follow: M.G.L. c. 44, § 53G.

§ 503-24. Filing requirements: information, plan standards, conditions for site inspection.

- (1) Generally. The information provided to the Conservation Commission to enable it to review an application for a permit for work or a determination shall describe the proposed activity and its effect on the environment. By effect on the environment, the Conservation Commission requires a discussion of the effect of the proposed project on all Bylaw wetland values, which are listed in § 503-1 and defined in § 503-4 of the Easton Town Code. In addition, due regard shall be shown for all natural features such as large trees, watercourses and water bodies, wildlife habitat, and similar community assets.
- (2) Minimal submittal requirements for applications. Applicants should refer to Filing Checklists provided by the Conservation Office.
 - (a) The applicant may submit, or be required to submit, any further information that will assist the Conservation Commission in its review and deemed necessary to determine the proposed effect on the Bylaw wetlands values, listed in § 503-1 of the Easton Town Code. However, the Conservation

Commission may waive any of the plan requirements for projects deemed insignificant.

- (b) The applicant must submit the application with all relevant material electronically using the online permitting system found at the Town of Easton website. Original material and two hard copies will be accepted by the Conservation Commission only where the applicant can demonstrate they do not have access to or the means to access a computer.
1. An appropriate request or application forms.
 2. An eight-and-one-half-inch by eleven-inch reproduction of the United States Geological Survey (USGS) quadrangle sheet showing the project locus.
 3. One or more appropriate drawings or plans of the project site and Bylaw resource areas. Where the project requires two or more plans or drawings to show the locus, an eight-and-one-half-inch by eleven-inch sheet clearly identifying the proposed site and work in addition to the labeled boundaries of the resource areas.
 4. The names and addresses of the record owner(s), the applicant(s) and of all abutters, as determined by the most recent local tax list unless the applicant shall have a more recent knowledge of such abutters.
 5. A description of any alteration to flood storage capacity on the site. Include calculations if necessary.
 6. The maximum groundwater elevations. The calendar dates of measurements, samplings, and percolation tests shall be included, regardless of planned sewer connections.
 7. The soil characteristics in representative portions of the site.
 8. A runoff plan and calculations using the Rational Method for pipe size and the TR-55/TR-20 Soil Conservation Service methods for all drainage and flood storage design.
 9. The methods to be used to stabilize and maintain any embankments facing any area subject to protection under the Bylaw, except land subject to flooding, buffer zones, and riverfront areas, or show on a professionally prepared plan existing slopes of less than or equal to 3:1.
 10. The methods to control erosion during and after construction, which shall be in accordance with the Massachusetts Department of Environmental Protection's current guidelines.
 11. Where applicable, a description and calculation of peak flow and estimated water quality characteristics of discharge from a point source (both closed and open channel) when the point of discharge falls within a resource area subject to protection under the Bylaw.
- (c) Delay in opening public hearing if application incomplete. The Bylaw at § 227-5C of the Easton Town Code states that the "Commission shall commence the public hearing within 21 days of the receipt of a completed application or request for determination." Where the Conservation Commission does not receive the minimum filing requirements it shall deem the application incomplete. The minimum filing requirements include payment of the filing fee as provided in § 503-23 of the Easton Town Code.

B. Plans (drawings).

- (1) Required plans and information. All plans shall contain applicable information listed in Appendix D: Plan Requirements. The Conservation Commission requires that plans be stamped by a duly licensed Registered Professional Engineer or Registered Land Surveyor. This requirement may be waived by the Conservation Commission at its discretion for small projects where professional design may not be warranted. All plans and information shall be submitted

which completely and accurately describe the proposed activity and proximity to wetland resource areas protected by the bylaw. Plans shall also include other Federal, State or local laws applicable to the project. For example, if a new septic system or a septic system repair is proposed in an area subject to Conservation Commission jurisdiction, plans must show compliance with the design setbacks of Title 5 of the Massachusetts Sanitary Code.

- C. Conditions required for site inspection. Before the Conservation Commission or the Commission's agent can conduct a site inspection, the following conditions must be met:
- (1) Stakes shall be provided as follows. Failure to have the lot staked may result in no review and thus costly delay of the project. If the lot is not staked in accordance with the requirements below, the application shall not be considered complete and, therefore, the twenty-one-day period to open the public hearing, as provided in the Bylaw at § 227-5C of the Easton Town Code, does not begin.
 - (a) Stakes indicating the corners of houses or other structures nearest the Bylaw resource area and area subject to protection under the Act;
 - (b) Stakes indicating the septic tank and the leaching field location; and
 - (c) Stakes indicating the limit of work
 - (2) Lot number or house number must be posted at location.
 - (3) Boundaries of all Bylaw resource areas and areas subject to protection under the Act shall be marked appropriately.
 - (4) Directions shall be made available to the Conservation Commission to locate property.

§ 503-25. Stormwater Management Standards.

- A. Applicability.
- (1) No Area Subject to Protection under the Act or Bylaw may be altered or filled for the impoundment or detention of stormwater, the control of sedimentation or the attenuation of pollutants in stormwater discharges, and the applicable performance standards shall apply to any such alteration or fill.
 - (2) Except as expressly provided herein, stormwater runoff from all industrial, commercial, institutional, office, residential and transportation projects that are subject to regulation under Chapter 227 of the Town of Easton Bylaw and the Easton Wetlands Regulations, Chapter 503 of the Easton Town Code including site preparation, construction, and redevelopment and all point source stormwater discharges from said projects within an Area Subject to Protection under the Act and Bylaw or within the Buffer Zone shall be provided with stormwater best management practices to attenuate pollutants and to provide a setback from the receiving waters and wetlands in accordance with the Stormwater Management Performance Standards.
 - (3) Compliance with the Stormwater Management Standards does not relieve a discharger of the obligation to comply with all applicable Federal, State, and local laws, regulations and permits.
- B. Performance Standards. Shall comply with Wetland Protection Act 310 CMR 10.05(6)(k-q), except for:
- (1) Stormwater management systems shall be designed to remove 90% of the average annual post-construction load of Total Suspended Solids (TSS). This Standard is met when:
 - (a) Suitable practices for source control and pollution prevention are identified in a long-term pollution prevention plan and thereafter are implemented and maintained;
 - (b) Structural stormwater best management practices are sized to capture the required water quality volume determined in accordance with Massachusetts Stormwater Handbook; and

- (c) Stormwater discharges to Outstanding Resource Waters, Special Resource Waters, within an Area of Critical Environmental Concern and their buffer zones shall be removed and set back from the receiving water or wetland and receive the highest and best practical method of treatment. Stormwater discharges to a Zone I or Zone A are prohibited, unless essential to the operation of the public water supply.
 - (2) A redevelopment project is required to meet the following Stormwater Management Standards: Standard 2, Standard 3, and the pretreatment and structural stormwater best management practice requirements of Standards 4, 5 and 6. Existing stormwater discharges shall comply with Standard 1 only to the maximum extent practicable. A redevelopment project shall also comply with all other requirements of the Stormwater Management Standards and improve existing conditions.
- C. Applicability. The Stormwater Management Standards shall apply to the maximum extent practicable to the following:
 - (1) Housing development and redevelopment projects comprised of detached single-family dwellings on three or more lots;
 - (2) Housing development and redevelopment projects comprised of detached single-family dwellings on one or two lots that may potentially affect, as determined by the Commission, a critical area as discussed in § 503-28B(6);
 - (3) Multi-family housing development and redevelopment projects including condominiums, cooperatives, apartment buildings, and townhouses; and
 - (4) Footpaths, bike paths and other paths for pedestrian and/or nonmotorized vehicle access.
- D. Exceptions - the Stormwater Management Standards shall not apply to:
 - (1) Housing development and redevelopment projects comprised of detached single-family dwellings on one or two lots with stormwater discharges that do not potentially affect, as determined by the Commission, a critical area as discussed in § 503-28B(6);
 - (2) Multi-family housing development and redevelopment projects, including condominiums, cooperatives, apartment buildings and townhouses, that do not potentially affect, as determined by the Commission, a critical area as discussed in § 503-28B(6); and
 - (3) Emergency repairs to roads or their drainage systems.
- E. Compliance
 - (1) Project proponents seeking to demonstrate compliance with some or all of the Stormwater Management Standards to the maximum extent practicable must demonstrate that:
 - (a) They have made all reasonable efforts to meet each of the Standards;
 - (b) They have made a complete evaluation of possible stormwater management measures including environmentally sensitive site design and low impact development techniques that minimize land disturbance and impervious surfaces, structural stormwater best management practices, pollution prevention, erosion and sedimentation control and proper operation and maintenance of stormwater best management practices; and
 - (c) If full compliance with the Standards cannot be achieved, they are implementing the highest practicable level of stormwater management.
 - (2) Operations and Maintenance. The ability of Stormwater Management structures and elements to achieve the intended result is fully dependent on the system functioning properly on a continuing basis. To ensure the structures and elements are operated and maintained according to plan, the applicant shall submit an

annual report to the Commission for review no later than January 31 of each year. This report shall correlate to the originally approved Operations and Maintenance plan and shall include:

- (a) Reference to each structure or element comprising the overall stormwater management system;
 - (b) Maintenance conducted over the past year, including dates and contractors;
 - (c) Observations of function; and
 - (d) Recommendation and schedule for repairs, as necessary. Repairs must be documented in the next annual report.
- (3) Failure to provide the report by the date due will result in a fine of up to \$100 per business day beyond the January 31 due date.

F. Submittals.

- (1) Information. Every project subject to the Town of Easton's Stormwater Management Regulations and/or the State Stormwater Management Regulations shall submit a Stormwater Management Report. This report should document the stormwater management system proposed and provide the Town and its consultants with the information necessary to adequately evaluate the design.
- (2) Minimal Submittal Requirements.
 - (a) Supply one copy of original material to the Easton Conservation Commission, plus either six hard copies or one electronic version in Portable Document Format (PDF). Original material must conform to the submission requirements of § 503-25 and be printed double sided where feasible; electronic versions deemed illegible will be rejected by the Commission.
 - (b) Reports should not include any information that is not relevant to the particular project being proposed. For example, portions of the regulations should not be quoted within the report unless they provide meaningful relevance; items in the checklist which have not been checked as applying to the proposed project should not be included; do not include appendices if there is no associated or relevant content.
 - (c) The report shall be ordered such that there is a section labeled and referenced to correlate directly to each section of the Massachusetts Department of Environmental Protection Checklist for Stormwater Report. All sections and information listed below shall be included in the report, in the order listed. Each section should be clearly labeled and separated from the previous section. The following information, at a minimum, must be included in the report:
 1. Title. Identify the project name, location (e.g.. street address and map and lot #), DEP/Easton File Number, applicant, and engineer
 2. Introduction. This should be a summary narrative that includes:
 - a. A description of existing topography and landscape at the site
 - b. Existing stormwater drainage patterns
 - c. Existing soil conditions and times of concentrations
 - d. Proposed topographic, landscape and soil changes
 - e. Proposed treatment methods and resulting stormwater drainage patterns
 - f. Summary, in tabular format, of pre- and post-development curve numbers, run-off rates and times of concentration
 3. MADEP Checklist for Stormwater Report and Certification.

4. Low Impact Design Measures.
 - a. Summary of LID measures proposed
 - b. Detailed Description of and relevant design information for each method proposed.
 - c. Operations and Maintenance plans for each design element
5. Stormwater Management Standards.
 - a. For each standard cited at § 503-28B. Performance Standards, address each in sufficient detail. At a minimum, the detail should include a summary of the supporting calculations. The full drainage analysis calculations should be provided in an addendum to the report.
6. Operations and Maintenance Plan
 - a. Must address operations and maintenance of all proposed stormwater management structures and elements, including erosion control methods, during construction and post-construction, including:
 - [i] Maintenance schedule
 - [ii] Maintenance required to ensure proper function
 - [iii] Party responsible for conducting maintenance, including address and telephone number.