

TOWN OF GEORGETOWN WETLANDS PROTECTION REGULATIONS

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HISTORY:

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Modified in public hearing and Adopted by the Georgetown Conservation Commission June 10, 2004.

Modified Fee Schedule in public hearing and Adopted by the Georgetown Conservation Commission September 18, 2008.

1. Purpose.

The purpose of these regulations is to aid in the consistent and effective implementation of the Georgetown Wetlands Protection Bylaw, (the Bylaw) by way of further definition; explanation and specification; and illustration and example of the Bylaw’s provisions. These regulations are intended to clarify but not expand, extend, modify, or replace any provision of the Georgetown Wetlands Protection Bylaw.

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2. Burden of proof

As stated in the bylaw “The applicant for a permit shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application will not have unacceptable significant or cumulative effect upon the wetland values protected by this chapter. Failure to provide adequate evidence of the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions”.

3. Jurisdiction.

3.1. Wetland Resources Wetland resources protected by the bylaw include:

- a. Land within two-hundred (200) horizontal linear feet of any, river, perennial stream, brook, or creek.
- b. Land within one-hundred (100) horizontal linear feet of any bank of any, intermittent stream, brook, or creek.
- c. Land within one-hundred (100) horizontal linear feet of any land subject to flooding or inundation by groundwater or surface water.
- d. Land within one-hundred (100) horizontal linear feet of any freshwater wetland, marsh, wet meadow, bog, swamp, pond, or lake
- e. Land within one-hundred (100) horizontal linear feet of any bank, flat, or estuary.
- f. Land or water under or water within any of the bodies listed above

3.2. Bordering Vegetated Wetland and Isolated Vegetated Wetlands

Bordering Vegetated Wetlands (BVW) and Isolated (IVW) Vegetated, herein referred to as Vegetated Wetlands are assumed to be significant to public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution, fisheries, shellfish, wildlife habitat, recreation, aesthetics, agriculture and aquaculture values, collectively, the “wetland values” protected by the Bylaw and regulations.

The boundary of Vegetated Wetlands is the line within which a predominance (50% or greater) of the vegetational community consists of wetland indicator plants, or saturated or inundated conditions exist within eighteen (18) inches of the surface for a significant period of time or where soils are hydric. Wetland indicator plants shall include but not necessarily be limited to those plant species identified in these Regulations. Wetland indicator plants are also those classified in the indicator categories of Facultative (FAC), Facultative+ (FAC+), Facultative Wetland- (FACW-), Facultative Wetland (FACW), Facultative Wetland+ (FACW+), or Obligate (OBL) Wetland in the National List of Plant Species That Occur in Wetlands: Massachusetts (Fish & Wildlife Service, U.S. Department of

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the Interior, 1988) as amended, or plants exhibiting physiological or morphological adaptations to life in saturated or inundated conditions.

Delineations shall be conducted and reviewed when herbaceous vegetation is present, between April 15th through October 16th. Except for projects the Commission deems urgent, such as emergency projects, for projects deemed minor the Commission may grant exemptions to this requirement.

In delineating wetlands, preference is given to wetland vegetation over other indicators. Vegetation presumption is overcome by proof of seasonal high ground water lower than eighteen (18) inches below the surface.

The plants and soils of Vegetated Wetlands remove or detain sediments, nutrients (such as nitrogen and phosphorous) and toxic substances (such as heavy metal compounds) that occur in run-off and flood waters. Some nutrients and toxic substances are detained for years in plant root systems or in the soils. Vegetated Wetlands are areas where ground water discharges to the surface and where, under some circumstances, surface water discharges to the ground water.

The profusion of vegetation in Vegetated Wetlands acts to slow down and reduce the passage of floodwaters during periods of peak flows by providing temporary floodwater storage and by facilitating water removal through evaporation and transpiration. During dry periods the water retained in Vegetated Wetlands is essential to the maintenance of base flow levels in rivers and streams, which in turn is important to the protection of water quality and water supplies.

Wetlands are defined by freshwater hydrology and vegetation. Hydrology is the driving force, which creates wetlands, but it is a transient, temporal parameter. The presence of water at or within eighteen (18) inches of the ground surface during a significant portion of the year supports, and in fact promotes, the growth of wetland indicator plants. Prolonged or frequent saturation or inundation also produces hydric soils, and creates anaerobic conditions that favor the growth of wetland indicator plants. Hydric soils are direct indicators of long-term hydrologic conditions and are present throughout the year. Conditions are not always present to produce hydric soils, such as when highly oxygenated water or moving ground water percolates through an area.

Hydrology can supplement vegetative criteria to enhance the technical accuracy, consistency, and credibility of wetland boundary delineations, and are especially useful for analyzing disturbed sites.

Where a proposed activity involves the removing, filling, dredging or altering of a Vegetated Wetland, the conservation Commission shall presume that such area is significant to the interests specified in the Bylaw. The Commission may issue an Order of Conditions permitting work which results in the loss of up to five

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thousand (5000) square feet of Vegetated Wetland, for any lot in existence at the adoption of the Bylaw May 5, 1986, no matter how since sub-divided, when said area is replaced in accordance with section 8.6 of these regulations. The Commission shall specify conditions to ensure that the replacement area will function in a manner similar or superior to the area that will be lost. Any applicant proposing filling a resource area must provide proof, to the Commission's satisfaction, that the lot was not subdivided.

3.3. Intermittent Streams

Intermittent streams are important for storm damage prevention, flood control, ground water protection, wildlife habitat, and recreation values. During spring, summer, and fall these streams disperse snowmelt and storm runoff across the landscape thereby preventing dangerous volumes and flows from spilling over roadways and property. This broad dispersal also allows for larger volumes of water to infiltrate into the ground, recharging groundwater supplies.

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/fruited plants the base trophic level of food than surrounding upland areas.

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.

For these 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 one hundred (100) horizontal linear feet of the outer boundary of those streams. The outer boundary of an intermittent stream is the first observable break in slope or mean annual high water, whichever is higher. The Conservation Commission will utilize the definition of "intermittent stream" per 310 CMR 10.58 (2) as of June 10, 2004, with the following exception:

For the purposes of the bylaw, an intermittent stream is that segment of a flowing watercourse 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.

If an intermittent stream is shown on the USGS it shall be, if it is not shown on the USGS the Commission may, based on the specific functions and values of the

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resource, use protection guidelines adopted for the one hundred (100) foot Riverfront area for a perennial stream. Intermittent streams can be isolated, must have a channel or bank; however the channel or bank may be interrupted or may not be continuous.

3.4. Perennial Streams

The bylaw protects Rivers and Perennial streams of all forms and the adjacent upland resource within two hundred (200) horizontal linear feet of those streams. The Conservation Commission will utilize the definition of "River or Perennial Stream" per 310 CMR 10.58 (2) as of June 10, 2004,, with the following exception:

watercourses that show on a USGS map shall be considered rivers or perennial streams unless a preponderance of evidence deemed acceptable by the Conservation Commission rebutting this presumption is presented. Information necessary to overcoming this presumption includes, evidence that there is no flow for seven (7) or more consecutive days per year, that is not a result of drought, a material obstruction, or human causes. The Conservation Commission shall consider all of the evidence available together, judging the validity and reliability of the information, and base its determination on the preponderance of acceptable evidence.

3.5. Riverfront Area Protection

The bylaw protects Riverfront Area of all forms and the adjacent upland resource within two hundred (200) horizontal linear feet of a river.

Any work or activity within the first one-hundred (100) horizontal linear feet, or the inner riparian zone, of a river or perennial stream shall be discouraged. Re-development within the inner riparian zone shall provide an increase in protection of the values associated with the inner riparian zone.

The applicant shall carry the burden of proof for demonstrating to the Commission's satisfaction that the proposed work or activities in the inner riparian zone are necessary and that reasonable alternatives, including reducing the scale and scope of the project, do not exist. Problems of nutrient runoff, water pollution, siltation, erosion, vegetation change, and habitat destruction are greatly exacerbated by activities within the inner riparian zone. Thus, in general, work and activity within the inner riparian zone should be avoided and reasonable alternatives pursued.

3.6. Vernal Pools

3.6.1. Vernal Pool

"The term "vernal pool" shall include, in addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131, §40 and Regulations there under, 310

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CMR 10.00 as revised, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least fifty (50) cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife or any other appropriate state certifying bodies

3.6.2. Presumption of Vernal Pool Habitat

Vernal pools are protected as a resource under the Bylaw. Vernal pool habitat exists if a body of water's physical characteristics conforms to those defined for vernal pools in section 10 (Definitions). This is a presumptive definition of the existence and extent of vernal pools, based on systematic field observations in the Town of Georgetown by the Georgetown Conservation Commission showing that virtually all basins that possess the above characteristics actually host breeding vernal pool species. A vernal pool may have an intermittent inflow, an intermittent outflow, may be contained partially or entirely within a wetland, or may be isolated. The boundary of a vernal pool is, whichever is higher, the first observable break in slope, mean annual high water level, or highest known observation of water level recorded.

The presumption of vernal pool habitat may be overcome, with the presentation of credible evidence, which in the judgment of the Commission demonstrates that the water body does not provide, or cannot provide, vernal pool habitat functions.

3.6.3. Demonstrating that a Ponding Area Is Not a Vernal Pool

- a. For the purposes of overcoming the presumption of vernal pool habitat the Commission will consider, as presented by a qualified independent reviewer:
 - a. Evidence that the ponding area does not hold water for at least two continuous months in most years. As a rule of thumb, the term "most years" shall mean three out of five consecutive years of average rain fall.
 - b. Evidence that vernal pool species do not breed or have not bred in the ponding area for at least three consecutive years of average rain fall. The Commission shall provide explicit guidelines for this evidence.
 - c. Evidence that the ponding area could not be a viable breeding site for vernal pool species due to incompatible physical, chemical, biological, or other persistent conditions at the site in most years. Such evidence could include, without limitation, several months of pH and dissolved oxygen measurements yielding values

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incompatible with breeding of any animal species known to be a vernal pool indicator.

4. Exceptions.

4.1. Exception for Public Service Providers

As stated in section 3 of the bylaw:

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

The Conservation Commission encourages any public service provider who feels that the proposed project falls under this exemption to file a Wetland Bylaw Request for Determination. The filing will be considered the “written notice” per section 3 of the Bylaw. The RDA will determine if the exemption applies and will provide guidance to the applicant to insure “that the work conforms to performance standards and design specifications in regulations adopted by the Commission”

4.2. Definition and Application of the Term "Existing" for a Public Utility

- 4.2.1. The term "existing" refers to structures placed in service prior to May 5, 1986, and refers to both structure and any fixture claiming exemption.
- 4.2.2. Therefore, the application and permit required by the bylaw shall apply to work associated with entirely new structures (those that are not replacing antecedents) placed in service on or after May 5, 1986, whether or not they would be considered fixtures.
- 4.2.3. In those instances where a state or federal filing is required for projects associated with existing structures or facilities, the full application and permit required by the Bylaw does apply.

4.3. Emergency Projects.

Projects necessary for the protection of the health or safety of the public shall not require a permit and application prior to the commencement of work, provided that the work is to be performed by or has been ordered to be performed by an

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agency of the Commonwealth or a political subdivision. The Commission or its agent must be notified, orally, prior to commencement of work or in writing within twenty-four (24) hours after commencement.

The work is performed only for the time and place certified by the Conservation Commission for the limited purposes to abate the emergency.

Within twenty-one (21) days of commencement of an emergency project, a permit application shall be filed with the Commission for review as provided in this chapter.

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

Other than stated in this section, the exceptions provided in the Wetlands Protection Act, G.L. Ch. 131, §40, and Regulations, 310 CMR 10.00, shall not apply under the bylaw.

5. Applications for permit and requests for determination.

5.1. Timeframes for Submission of Documentation

The applicant must provide all required documentation with the initial filing including, but not limited to, plans, maps, tables, charts, reports, to be considered as part of a permit filing by the applicant must be included with the initial filing. The commission or its agent must determine that the filing is complete and correct. The commission or its agent will provide an initial hearing date upon acceptance of a complete correct filing. The Commission shall commence the public hearing within twenty-one (21) days from acceptance of a completed application or request for determination. The commission's acceptance of a completed application in no way implies or means the application is adequate or approvable.

The commission shall consider a document received only when the commission stamps it or its agent, with the Georgetown Conservation Commission date stamp. The applicant must allow enough time for mail delivery for any application or document, the postmark will not be considered when determining timeliness.

All documentation – including but not limited to, plans, maps, tables, charts, reports, that are to be considered as part of a permit filing by the applicant must be submitted to the Conservation Commission no later than five business days prior to the continuation of a public hearing. This is the minimum time needed to allow the Commission and staff to properly review, analyze, and check the information provided. Documentation submitted with fewer than the minimum

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five business days for review may be excluded from consideration at the scheduled hearing and held for discussion at a subsequently scheduled meeting.

5.2. Resource Area Designations on Plans

All plans submitted to the Conservation Commission for a permit or determination under Section 4 of the Bylaw shall show all resource areas on the property and within two hundred (200) horizontal linear feet outside of the property, regardless whether the proposed work is expected to occur within any areas subject to the protection of the Bylaw.

In those instances where the project is part of a subdivision, a plan shall be submitted to the Conservation Commission showing all resource areas located within the subdivision boundaries and within two hundred (200) horizontal linear feet of the subdivision boundaries.

Failure to provide this information, or providing erroneous or false information, shall be grounds for denying, suspending, or revoking the permit as outlined in Section 7 of the Bylaw.

5.3. Notice of Resource Area Delineation

A Notice of Resource Area Delineation (NRAD), an abbreviated NRAD (ANRAD), or a Notice of Intent (NOI) must include all areas subject to the protection of the Bylaw under a single comprehensive delineation.

5.3.1. Consultant and Review Fees

At the time of an application or request, the applicant shall pay a filing fee specified in regulations of the Commission see section 14. This fee is in addition to that required by the Wetlands Protection Act, MGL c. 131, § 40. In addition, the Commission is authorized to require the applicant to pay the costs and expenses of any expert consultant deemed necessary by the Commission to review the application or request.

5.3.2. Independent Reviewer Policy

Under Chapter 161 § 4D of the Town of Georgetown Wetlands Protection Bylaw the Commission is authorized to require the applicant of notices or determinations to pay the costs and expenses of any expert consultant deemed necessary by the Commission to review the application or request. Pursuant to M.G.L. Ch 44 §53G the Commission hereby adopts this policy with respect to selection of consultants.

Applicants may administratively appeal the selection of an

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independent reviewer made by the Commission. All appeals shall be made in writing to the Board of Selectmen. The grounds for such an appeal shall be limited solely to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. In the event that no decision is made by Board of Selectmen within one month following the filing of the appeal, the selection made by the Commission shall stand. This administrative appeal shall not preclude further judicial review, if otherwise permitted by law.

6. Notice and hearings.

6.1. Notification

- 6.1.1. At the time of application, the applicant shall obtain, from the Town Assessor, a certified abutters list, according to the Assessors most recent records. Proof of abutter notification as defined by the Bylaw, shall be submitted to the Commission at the commencement of the public hearing. If proof of abutter notification is not presented at the opening of the public hearing the Commission may open the public hearing and immediately deny the application without prejudice for the lack of required information, or the Commission may open and immediately continue the hearing to a date certain and require the applicant to re-notify all abutters and re-advertise. Proof of notification shall include either:
 - a. A copy of the United States Post Office Receipt for the Certified Mail notification or;
 - b. Returned Certified Mail cards from United States Post Office Certified Mail notification or;
 - c. Signatures of the abutters if hand notification is delivered.
- 6.1.2. By applying for a permit or determination the applicant authorizes the Commission or it's agent: to place a legal advertisement for a public hearing at the expense of the applicant, to enter the subject property for the purpose of inspection during normal business hours with reasonable notice.

6.2. Hearings

The Commission in an appropriate case may combine its hearing under the Bylaw with the hearing conducted under the Wetlands Protection Act, MGL c. 131. § 40.

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7. Coordination with Other Boards

Any person filing a permit application or a request for determination with the Commission shall provide a copy thereof at the same time, by certified mail or hand delivery, to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health and Building Inspector, the Highway Department, and a cover page of the application to the Board of Selectmen. The Commission shall not take final action until such boards and officials have had fourteen (14) days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any such comments and recommendations and to respond to them at a hearing of the Commission prior to final action.

8. Permits and Conditions

8.1. Performance Standards & Design Criteria for Adjacent Upland Resources

Water body resource areas are presumed important to the protection of all the resource and values protected under the bylaw. Activities undertaken in close proximity to wetlands or other resources have a high likelihood of adverse impact upon the wetlands or other resources, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or conducting the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and harm to wildlife habitat.

The Commission therefore shall require that the applicant maintain a strip of continuous, undisturbed vegetative cover in part or all of the one hundred (100)-foot area and set other conditions on this area, unless the applicant provides evidence deemed sufficient by the Commission that no other feasible alternative is available.

In some circumstances, certain types of activities, when properly conditioned, may be acceptable in adjacent upland resource areas. Under other circumstances, even minimal adjacent upland resource disturbance may have serious harmful effects on resource area values and functions. When the presumption of significance is questioned, the actual determination of impact must be made on a project-and site-specific basis. In this respect, the actual impact of proposed adjacent upland resource work or activities on wetland values and functions can often be reduced substantially, and thus made permissible, when appropriate conditions are imposed.

Therefore, the traditional approach of "all or nothing" adjacent upland resource restrictions unnecessarily creates conflicts between property use and resource

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protection. Accordingly, the Bylaw gives the Conservation Commission broad discretion to permit, condition, and prohibit work within the adjacent upland resource as the specific situation warrants

Therefore, the Conservation Commission shall consider proposals for work in the adjacent upland resource and in the resource area in terms of four broad forms of disturbance areas. This approach is intended to allow maximum flexibility for property use while maintaining adequate levels of resource protection.

8.1.1. No Disturbance Area

Virtually no activities or work, other than passive passage, are permitted in this area. No vegetation may be disturbed, leaf litter and debris remains in place, etc. The no disturbance area should remain unchanged from its pre-project state. This area shall be demarcated with concrete, granite, or stone bounds, which will have a plaque attached that will be supplied by the Georgetown Conservation Commission.

8.1.2. Temporary Disturbance Area

This is an area where temporary disturbance for a limited period of time is permitted, such as for re-grading or travel by heavy machinery. Once the activity is completed, however, the area will be restored and allowed to return to natural vegetation and function. Any subsequent disturbance or activity shall require a new filing.

The Conservation Commission shall establish specific time frames and conditions for allowing temporary disturbances, as well as setting criteria for assessing the successful return of the adjacent upland resource to natural functions. The applicant is encouraged to provide remediation plans for these areas.

8.1.3. Limited Disturbance Area

This is an area in where a limited set of activities and work is permitted in perpetuity. For example under story clearing of poison ivy might be allowed, but no clearing of over story and no planting of lawn. Limited (sustainable) harvesting of wood, composting of brush, and storing firewood are other examples of limited activities that might be allowed.

8.1.4. Permanent Disturbance Area.

This is an area in which most, if not all, legal activities and permanent disturbances are permitted. Houses, porches, driveways, gardens, and lawns in the adjacent upland resource represent permanent disturbance areas.

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Nevertheless, within the context of permanent disturbance the Conservation Commission may set specific conditions prohibiting or restricting those forms of work and activities in the adjacent upland resource deemed potentially harmful to the resource area values, such as the use of herbicides and pesticides, use of interceptor drains, or installation of in-ground sprinkler systems for irrigating areas in the adjacent upland resource.

8.2. Considerations in Setting Disturbance Restrictions.

A growing body of research evidence suggests that even "no disturbance" areas reaching one hundred (100) horizontal linear feet from wetlands may be insufficient to protect many important wetland resource characteristics and values. Problems of nutrient runoff, water pollution, siltation, erosion, vegetation change, and habitat destruction are greatly exacerbated by activities within one hundred (100) horizontal linear feet of wetlands. Thus, in general work and activity within one hundred (100) horizontal linear feet of wetlands should be avoided and discouraged and reasonable alternatives pursued.

Accordingly, the Conservation Commission shall begin with the presumption that lands within the adjacent upland resource areas best left in an undisturbed and natural state.

However, the Commission shall designate areas of the adjacent upland resource to be suitable for temporary, limited, or permanent disturbance as appropriate when the applicant can demonstrate to the Commission's satisfaction that the proposed work or activity will not affect wetland values singularly or cumulatively and that reasonable alternatives to the proposed work or activity do not exist.

In considering designation of adjacent upland resource disturbance areas, the types of work and activities allowable, and conditions to apply, the Conservation Commission shall consider:

8.2.1. Values and Functions of the Resource Area

The quantity and quality of resource values and functions should be considered explicitly in placing conditions on adjacent upland resource work. Some isolated land subject to flooding, for example, may serve for temporary flood storage only. Minimal adjacent upland resource restrictions within several feet of the resource might be necessary only to prevent erosion.

Other isolated land subject to flooding might provide vernal pool habitat. It might also provide important flood storage capacity and intersect ground water. In this instance far stronger adjacent upland

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resource restrictions would be appropriate because a larger number of functions are involved and some functions, such as habitat, are more sensitive to adjacent upland resource activity and require greater protection. If rare or endangered species were found at the site then still greater levels of restrictions would be appropriate.

8.2.2. Pre-Project Characteristics of the Site

Ground slope, soil conditions, vegetation, and prior disturbance are just a few of the site specific characteristics that shall be considered in setting conditions for work in the adjacent upland resource.

For example, land that slopes in the direction of a wetland demands greater restrictions on work and activity and larger no-disturbance distances to prevent pollution and silt from storm water runoff from harming wetlands values. Larger slopes imply greater restrictions.

8.2.3. Preservation of Large Areas of Contiguous Undisturbed Open Space

Large areas of undisturbed open space provide more biodiversity and higher quality of wildlife habitat. Consideration should be made in the planning of development in adjacent upland resource areas to maximize undisturbed open areas. The Commission will consider lessen setbacks on portions of high value resource areas if the remaining portions can be preserved including non-jurisdictional areas, provide larger contiguous areas connecting other high value adjacent upland resource areas. This effort will increase habitat value and bio-diversity within larger protected areas of open space, surrounding resource areas. These larger contiguous should not be confined to the subject property(s) and the applicant should provide information regarding undisturbed open space abutting the subject property. Consideration for the level of protection of these properties should be made.

8.2.4. Wildlife Habitat and Rare Species

The near-upland areas around wetland resources often play important roles in determining and maintaining the wildlife habitat values of associated wetlands. While it is common to think of the protective or "buffering" value of adjacent upland resources in terms of area undisturbed, habitat values may be equally affected by the configuration of the adjacent upland resource perimeter, the inclusion or exclusion of specific topographical and ecological features (such as an abutting sandy knoll or tree canopy), etc.

Therefore where significant wildlife habitat values and functions are present delineation of no-disturbance areas within the adjacent upland

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resource shall, as is reasonable, minimize the length of perimeter to area left undisturbed, exclude fingers, islands, or other projections or indentations into the no-disturbance zone, and in general avoid delineating oddly shaped no-disturbed areas. The Commission shall give special attention to inclusion inside the no disturbance area of those topographical and ecological features that it deems important for maintaining the wildlife habitat value of the resource.

The potential presence of rare or endangered species and their specific sensitivity to adjacent upland resource activity shall be considered in determining adjacent upland resource restrictions. Evidence of the presence of such species or evidence of likely habitat shall be considered by the Conservation Commission. Prior designation of rare or endangered species habitat by the Division of Fisheries and Wildlife Natural Heritage Endangered Species Program is not necessary.

The Commission may consult with the Division of Fisheries and Wildlife Natural Heritage Program or other authorities, as it deems necessary for guidance and recommendations.

8.2.5. No Significant Adverse Impact on Wildlife Habitat

Wildlife habitat serves a variety of functions in support of wildlife. Food, water, breeding space, shelter, security, movement and migration space, and connections to other habitat areas are all equally important. All of these wildlife habitat functions are presumed to exist in all resource areas.

Therefore, in accordance with the Bylaw's fundamental purposes (see Section 1) no project may have a significant adverse impact -- either project-specific or cumulative -- on wildlife habitat.

For wildlife habitat purposes, a significant adverse project-specific impact is defined as an impact caused by work in a resource area that would under reasonable assumptions (a) result in a measurable decrease in the extant wildlife populations or biological composition, structure, or richness on the site or in the vicinity exclusive of the present or future state of adjacent and nearby properties, or (b) impair, damage, destroy, or reduce in value for wildlife purposes certain specific habitat features.

Wildlife studies have shown that direct impacts from work – filling, grading, vegetation removal, construction of barriers to movement, etc. – in resource areas can severely harm wildlife populations. For example, low stonewalls bisecting a resource area can prevent

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amphibians that live in upland areas from reaching breeding pools, marshes, and streams. Or, removal of large snags (dead trees) can virtually eliminate nesting by barred owls, Pileated woodpeckers, mink, etc. Accordingly, the Commission shall prohibit the placement of fences or other barriers to wildlife movement within and between resource areas and the destruction of specific habitat features.

Examples of protected habitat features include (but are not limited to):

Large cavity trees.	Beaver dams, dens, and lodges.
Turtle nesting areas.	Mink or otter dens.
Existing nest trees for birds that reuse nests.	Vernal pools.
	Vertical sandy banks.

Including migration corridors that provide connectivity between wildlife habitats. Sphagnum hummocks and pools suitable to serve as nesting habitat for four-toed salamanders.

However, indirect impacts – the effects of human activities near wildlife habitat – can have equally harmful effects. Therefore, the Commission shall take into account indirect effects on a project-by-project basis.

As clearly stated in Section 1 of the Georgetown Wetlands Protection Bylaw the purpose of the Bylaw is to “protect the wetlands, related water resources and adjoining land areas in this municipality by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon wetland values.” The Bylaw protects wetland values in the future as well as current ones. Therefore, the Commission must be especially cognizant of the likely cumulative impact of work within resource areas.

For wildlife habitat purposes a significant cumulative adverse impact is defined as an impact that would under reasonable assumptions result in a measurable decrease in the extant wildlife populations or biological structure, composition, or richness on the site or in the vicinity taking into account the projected impacts of future projects that could be proposed in the vicinity with similar, comparable, or other significant impacts and disturbance.

This method for assessing cumulative impacts avoids the pitfall of placing an unreasonable burden of resource protection on subsequent applicants/projects in the vicinity while subsidizing those who are first to develop land. It allows the Commission to level the marginal impact of all proposed projects in the vicinity while ensuring appropriate protection – present and future -- of the values and interests protected by the Bylaw.

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8.2.6. Projects to Enhance or Benefit Wildlife Habitat

The Conservation Commission may, as part of the permitting process, require at its discretion any project that proposes to alter the extant wildlife populations or biological composition, structure, or richness of an area as a wildlife benefit to have that plan approved by the Massachusetts Division of Fisheries and Wildlife, or appropriate State office or agency with regulatory authority thereof.

8.2.7. The Character of the Work or Activities Proposed and Alternatives

The applicant shall carry the burden of proof for demonstrating to the Commission's satisfaction that the proposed work or activities in the adjacent upland resource are necessary and that reasonable alternatives, including reducing the scale and scope of the project, do not exist.

The Commission shall consider the specific characteristics of the work proposed for immediate and cumulative impact on the wetland resource. For example, under story clearing and shrub landscaping in sensitive sections of the adjacent upland resource might be appropriate where a lawn might not due to concerns about nutrient runoff. Similarly, clearing a flat section of the adjacent upland resource to establish a vegetable garden might not threaten adjacent wetland values and functions. However, construction of a tennis court with extensive impervious surface on the same site and covering the same area might not be acceptable.

The Conservation Commission may offer suggestions and advice for altering plans and proposals to reduce impact on wetlands values and functions toward the goal of modifying the project to make it acceptable. However, the Commission is not obligated to do so and shall not be bound in its decision-making by any prior advice or suggestions offered to applicants.

8.3. Subdivision and Roadways

The construction of impervious surfaces such as roadways in watersheds can significantly alter the quantity and quality of storm water runoff and affect important ground water characteristics. Impervious surfaces reduce surface infiltration, potentially worsening flooding problems by increasing storm water runoff volumes and by redirecting flows within a watershed.

The increase in surface flows from impervious surfaces may create new erosion problems where storm flows are directed and discharged.

Impervious surfaces increase the opportunities for various pollutants to mix in water flows. Roadways, for example, will retain a surface coating of petroleum and combustion-byproduct pollutants that will flush during the early stages of a storm. Roof runoff can pick up a variety of chemicals used in fertilizers, pesticides, and herbicides as it transverses lawns and landscape areas.

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Impervious surfaces that direct water flows into wetlands may inundate sensitive resources and thereby destroy vital vegetative and wildlife characteristics, reduce preexisting flood storage capacity, and contaminate ground water recharge areas.

Conversely, impervious surfaces may direct traditional water flow patterns away from wetlands and thereby destroy the necessary hydrological conditions needed to maintain wetland functions and values.

Therefore, for purposes of flood control, erosion control, water quality protection, and wildlife habitat preservation the Conservation Commission shall review all construction plans for impact, immediate and cumulative, on wetland functions and values. In particular, the Conservation Commission shall enforce the following general performance standards:

8.3.1. Minimize Pre-Project to Post-Project Changes in Site Hydrology

Pre-project and post-project hydrology should remain fundamentally the same as it pertains to protecting wetlands functions and values. Of course some minor degree of change in hydrology is inevitable in any engineering/construction project and within reasonable limits the Commission shall permit such variation when in its judgment such changes will not produce a significant impact of wetlands functions and values.

Erosion control may require limiting storm water discharge volumes and velocities. Therefore the Commission may require the construction of such storm water control structures, and specify particular engineering and design details, as it deems necessary to protect wetland resources, values, and functions.

8.3.2. Minimizing Change in Runoff Water Quality.

The physical, chemical, and biological qualities of storm water runoff are altered by encounters with impervious surfaces, especially roadways and related structures. Changes in water temperature, changes in pH, chemical and nutrient contamination, and transport of silt are just a few of the degrading shifts that may occur.

Where such waters are likely to contact wetland resources or adjacent upland resources the Commission shall impose conditions that in its judgment reduce undesirable water quality changes to levels that will not harm wetland functions or values, immediately or cumulatively. The Commission may require the construction of specific structures to improve storm water runoff quality, such as wet detention basins for pollutant removal and broad riprap swales for aeration.

8.3.3. Requirements for Hydraulic Calculations

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In accordance with the above, the Conservation Commission shall require as part of the application for permit complete hydrological calculations for the two, ten, and one-hundred year storm events, the commission may require other calculation as deemed necessary. Such calculations shall include runoff from all impervious surfaces associated the project including individual lot construction; and both pre- and post-project calculations for discharge volumes, concentration times, discharge velocities, and other quantities that the Commission may require for complete information.

8.4. Sanitary Septic Systems

- 8.4.1. The wetland delineation must be done by a professional wetland scientist and will be reviewed by the conservation agent; however the commission may not approve the delineation.
- 8.4.2. Any and all sanitary septic systems shall be located one hundred (100) horizontal linear feet from any wetland resource area.
- 8.4.3. An existing sanitary septic system lawfully located, within one-hundred (100) horizontal linear feet of a resource area, may be maintained or repaired but not substantially changed or enlarged.
- 8.4.4. An existing sanitary septic system lawfully located, within one-hundred (100) horizontal linear feet of a resource area, may be replaced within one-hundred (100) horizontal linear feet of a resource area. Practical alternatives to locate the septic system outside one-hundred horizontal linear feet of a resource area must be investigated with due diligence by the applicant, should one or more prove feasible the plan must be amended to relocate all activities accordingly.
- 8.4.5. Any and all buildings or dwellings that have septic systems that have been previously issued an Order of Conditions from the Commission, which states that the septic system, shall remain one-hundred (100) horizontal linear feet from any resource area in perpetuity, shall be required to have any replacement systems one-hundred (100) horizontal linear feet from any resource area.

8.5. Site Visits

As stated in Section 7 of the Georgetown Wetland Bylaw, Permits, and Conditions, the Conservation Commission may deny a permit if the applicant fails to provide the information and plans requested. "Information" in this instance includes site visits by the Commission and its staff or representatives for the purpose of directly observing pre-project, during the project and post-project conditions on the property, at reasonably appropriate times.

8.6. Replications

The history of wetland replication is mixed. Scientific reviews conclude that in most cases replications fail to reproduce the range of values — in quantity and quality — of the wetlands they ostensibly replace. In particular, difficulties in replicating proper hydrological conditions in a consistent and enduring fashion seem to be the source of the

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problem

Accordingly, the Conservation Commission strongly discourages any plan that requires replication. The filling of resource areas shall be avoided to the maximum extent feasible and shall be minimized.

8.7. Replication Planning Requirements

Any replication plan shall include provision for, without limit, the following:

- 8.7.1. The replication area shall be constructed and planted prior to construction of any structures, during the initial phase of the site development to provide sufficient time for resource values and function to become established prior to the expiration of the permit.
- 8.7.2. At minimum, the replicated wetland must reproduce all the values and functions of the original wetland as determined by the Conservation Commission.
- 8.7.3. In certain instances, site conditions notwithstanding, the Commission may require that additional values and functions be incorporated into the replication design.
- 8.7.4. In particular, in circumstances where replacement of specific functions and values would require substantial amounts of time before being completely replicated (for example, those provided by large mature trees) the Commission may require additional compensation of area, functions, values, etc.
- 8.7.5. The area of replication must be at least twice as large as the area of the original resource that will be destroyed.
- 8.7.6. The actual area ratio of replacement shall be decided on a case-by case basis in accordance with 8.7.5
- 8.7.7. In most instances the replication of wetland resource areas will result in the destruction of adjacent upland resource areas. In such instances replication of new adjacent upland resources shall follow 8.7.5
- 8.7.8. A minimum of the top 18" of soil from the original wetland(s) must be relocated with soil structure intact— especially lamination and density profile when constructing the replication area. This is intended to preserve plant, invertebrate, and plank tonic communities of the wetland, inhibit the blossoming of invasive species and maintain integrity of the original hydric soils.
- 8.7.9. Any replication or restoration work that creates a resource on abutting properties shall require an easement from the abutting property owner covering the full extension of the resource on that property prior to commencement of the work.
- 8.7.10. A bond shall be posted that will enable the Commission to complete the replication should the applicant fail to fulfill obligations set forth in the Order of Conditions.

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Standards for the replication shall be specified and verified in terms of functions, values, and actual performance. Technical and engineering specifications used for design and construction shall be considered approximate. Criteria for acceptance and approval shall be based solely on function and performance as specified in the Order of Conditions. In other words, replications will be evaluated on what they are expected to do, not how closely actual construction matched the plan.

For example, although elevations may be used for design and planning of a pond the standards shall be set in terms of volume and depth of water over the course of a year. In vernal pool replication, the pool must be capable of sustaining full development of vernal pool species, regardless of design elevations or siting.

Replications that do not meet or exceed the effective wetland functions and values of the area(s) it replaces, or as specified in the order of conditions will not be deemed acceptable no matter how closely they adhere to approved engineered plans.

The Commission may set other conditions on a project/site specific basis.

8.8. Storm Water Runoff Best Management Practices

All storm water runoff systems shall at minimum conform to best management practices as specified in the Georgetown Planning Board's Storm Water Runoff Regulations. The Conservation Commission may impose conditions that are more stringent where resource values and functions warrant it.

8.9. Alternative Analysis

The Georgetown Wetlands Protection Bylaw clearly states that projects and associated disturbances should be located outside of any resource that falls under the jurisdiction of the bylaw, including the adjacent upland resource area. Practical alternatives to locate the project outside these areas must be investigated with due diligence by the applicant, should one or more prove feasible the plan must be amended to relocate all activities accordingly.

The Commission shall consider as practical alternatives options that were available to the applicant but appear to be precluded due to self-imposed hardships and constraints (e.g., lot, roadway, and drainage layouts engineered without prior regard to impact on Bylaw resources.)

If in the Commission's view, there are no practical alternatives project impacts must be minimized and mitigated so there are no adverse impacts to the resources. If the Commission determines that the project will have significant adverse impacts on the resources then the project shall be denied.

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9. Regulations.

The Georgetown Wetland Bylaw States:

“After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this chapter. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this chapter.”

10. Definitions.

The following definitions shall apply in the interpretation and implementation of the bylaw and these regulations.

- 10.1.1. The term “**Abutter**” means the owner of any property that lies within three hundred (300) feet radially from any lot line of the subject property including owners of land directly opposite on any public or private street or way including any in another municipality or across a body of water. In the case of property that has frontage on a pond, abutters shall include all those properties with frontage on the pond and pond association if in existence.
- 10.1.2. The term “**Adjacent Upland Resource Area**” shall include all lands within one hundred (100) horizontal linear feet of wetland resource areas as enumerated in Section 2, except for perennial streams and rivers for which the adjacent upland resource area extends for two hundred (200) horizontal linear feet from the top of bank. The term “**Buffer Zone**” may be used interchangeably with “**Adjacent Upland Resource Area**”.
- 10.1.3. The term “**Alter**” shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by the Georgetown Wetlands Protection Bylaw:
 - a. Removal, excavation, or dredging of soil, sand, gravel or aggregate materials of any kind.
 - b. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics.
 - c. Drainage or other disturbance of water level or water table.
 - d. Dumping, discharging, or filling with any material which may degrade water quality.
 - e. Placing of fill or removal of material which would alter elevation.
 - f. Driving of piles, erection, or repair of buildings or structures of any kind.
 - g. Placing of obstructions or objects in water.
 - h. Destruction of plant life, including cutting of trees.
 - i. Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water.
 - j. Any activities, changes, or work which may cause or tend to contribute to

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pollution of any body of water or groundwater.

- k. Application of pesticides or herbicides;
 - l. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by the bylaw.
- 10.1.4. The term “**Applicant**” is any person who files a Request for Determination of Applicability (RDA), Abbreviated Notice of Resource Area Delineation (ANRAD), Notice of Intent (NOI), Abbreviated Notice of Intent Local Permit, or the person on whose behalf these applications are filed. The term applicant shall apply to any person filing any application with the Conservation Commission.
- 10.1.5. The term “**Bank**” 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 significant observable break in the slope or the mean annual flood level, whichever is higher.
- 10.1.6. The term “**Beach**” indicates a naturally or man-made un-vegetated bank which normally abuts and confines a water body.
- 10.1.7. The term “**Bogs**” are areas where standing or slowly running water is near or at the surface during a normal growing season and where a vegetational community has a significant portion of the ground or water surface covered with Sphagnum moss (Sphagnum) and where the vegetational community is made up of a significant portion of one or more of, but not limited to nor necessarily including all, of the following plants or groups of plants: aster (Aster nemoralis), azaleas (Rhododendron canadense and R. viscosum), black spruce (Picea mariana), bog cotton (Eriophorum), cranberry (Vaccinium macrocarpon), high-bush blueberry (Vaccinium corymbosum), larch (Larix laricina), laurels (Kalmia angustifolia and K. polifolia), leatherleaf (Chamaedaphne calyculata), orchids (Arethusa, Calopogon, Pogonia), pitcher plants (Sarracenia purpurea), sedges (Cyperaceae), sundews (Droseraceae), sweet gale (Myrica gale), white cedar (Chamaecyparis thyoides).
- 10.1.8. “**Vegetated Wetlands**” are freshwater wetlands which border on creeks, streams, vernal pools, IVW, BVW, ILSF, BLSF, any water body, watercourse or other wetland resource.
- 10.1.9. “**Buffer Zone**” means that area of land extending one hundred (100) horizontal linear feet horizontally outward from the boundary of the following resource areas: Freshwater Wetlands, Marshes, Wet Meadows, Bogs, Swamps, Lakes, Ponds, Intermittent Streams, Banks, Beaches, Vernal Pools, isolated wetlands, lands under water bodies, and lands subject to flooding or inundation by groundwater or surface water. And two hundred (200) horizontal linear feet horizontally outward from the boundary of any river or perennial stream. The term “Adjacent Upland Resource Area” may be used interchangeably with “**Buffer Zone**”.

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- 10.1.10. The term “**Direct discharge**” includes, without limitation, any outfall of water that empties into the resource area or adjacent upland resource, including infiltration.
- 10.1.11. “**Dredge**” to deepen, widen, or excavate, temporarily or permanently.
- 10.1.12. “**Fill**” to deposit or place any material to raise the any elevation temporarily or permanently. Or anything that fills or is used to fill.
- 10.1.13. “**Freshwater Wetlands**” are Wet Meadows, Marshes, Swamps, and Bogs.
- 10.1.14. The term “**Vernal Pool**” shall include, in addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131, §40 and Regulations there under, 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The presumption of essential habitat value may be overcome by the presentation of credible evidence, which in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the regulations. The adjacent upland resource area for vernal pools shall extend one hundred (100) horizontal linear feet from the mean annual high-water line defining the depression, or one-half of the distance between the vernal pool and any existing house foundation, whichever is smaller. In either case, the adjacent upland resource area for vernal pools shall not extend over existing lawns, gardens, landscaped or developed areas.
- 10.1.15. The term “**Hydraulic Connection**” is any surface water connection, whether natural or artificially created or modified, including but not limited to: surface and subsurface pipes, culverts, ditches, etc
- 10.1.16. The term “**Intermittent stream**” is a defined channel with a hydraulic gradient through which water flows during part of the year and which either flows out of, into, or within a wetland resource under the bylaw.
- 10.1.17. “**Isolated land subject to flooding**” shall include an area, depression, or basin that holds minimum of twenty-five (25) cubic feet of water and retains standing water for a significant period of time. Not included are swimming pools, artificially lined ponds, or pools, or constructed wastewater lagoons.
- 10.1.18. “**Lake**” means any open body of fresh water with a surface area of ten (10) acres or more, and shall include great ponds.
- 10.1.19. “**Marshes**” are areas where a vegetational community exists in standing or running water during the growing season and where a significant part of the vegetational community is composed of, but not limited to nor necessarily including all, of the following plants or groups of plants: arums (Araceae),

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bladder worts (*Utricularia*), burr reeds (*Sparganiaceae*), button bush (*Cephalanthus occidentalis*), cattails (*Typhá*), duck weeds (*Lemnaceae*), eelgrass (~*Vallisneria*), frog bits (*Hydrocharitaceae*), horsetails (*Equisetaceae*), hydrophilic grasses (*Gramineae*), leatherleaf (*Chamaedaphne calyculata*), pickerel weeds (*Pontederiaceae*), pipeworts (*Eriocaulon*), pond weeds (*Potamogeton*), rushes (*Juncaceae*), sedges (*Cyperaceae*), smartweeds (*Polygonum*), sweet gale (*Myrica gale*), water milfoil (*Haloragaceae*), water lilies (*Nymphaeaceae*), water starworts (*Callitrichaceae*), water willow (*Decodon verticillatus*).

10.1.20. "**Pond**" shall include any open body of fresh water with a surface area observed or recorded within the last ten years of at least ten thousand (10,000) square feet. Ponds shall contain standing water except for periods of extended drought. Not included are swimming pools, artificially lined ponds, or pools, or constructed wastewater lagoons. The adjacent upland resource area for ponds shall extend one hundred (100) horizontal linear feet from the mean annual high-water, and individual gravel pits or quarries excavated from upland areas unless inactive for five or more consecutive years.

10.1.21. "**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 representatives, agents, or assigns.

10.1.22. "**Rare Species**" shall include, without limitation, all vertebrate and invertebrate animals and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

10.1.23. The term "**Recreation**" connotes passive recreation activities that do not conflict with or diminish other wetland values and functions. Examples include, without limitation, bird watching and other nature studies, walking and hiking, canoeing, and as appropriate fishing, hunting, etc.

10.1.24. "**River**" shall be defined by 310 CMR 10.58 (2) as of June 10, 2004,.

10.1.25. "**Riverfront Area**" shall be defined by 310 CMR 10.58 (2) as of June 10, 2004, or the mean annual high water level, whichever is higher.

10.1.26. "**Stream**" is a body of running water, and the land under the water, including brooks, creeks, and man-made water courses which moves in a definite channel in the ground due to hydraulic gradient. A portion of a stream may flow through a culvert, or beneath a bridge or beneath the surface of the ground.

10.1.27. "**Swamps**" are areas where ground water is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface, and where a significant part of the vegetational community is made up of, but not limited to nor necessarily

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include all of the following plants or groups of plants: alders (*Am us*), ashes (*Fraxin us*), azaleas (*Rhododendron canadense* and *R. viscosum*), black alder (*Ilex verticillata*), black spruce (*Picea mariana*), buttonbush (*Cephalanthus occidentalis*), American or white elm (*Ulmus americana*), white Hellebore (*Veratrum viride*), hemlock (*Tsuga canadensis*), highbush blueberry (*Vaccinium corymbosum*), larch (*Larix laricina*), cowslip (*Caltha palustris*), poison sumac (*Toxicodendron vernix*), red maple (*Acer rubrum*), skunk cabbage (*Symplocarpus foetidus*), sphagnum mosses (*Sphagnum*), spice bush (*Lindera benzoin*), black gum tupelo (*Nyssa sylvatica*), sweet pepperbush (*Clethra alnifolia*), white cedar (*Chamaecyparis thyoides*), willow (*Salicaceae*), common reed (*Phragmites communis*), jewelweed (*Impatiens capensis*).

10.1.28. **“Vernal Pool Species”** shall be any species of reptile or amphibian, that breeds in a vernal pool, whether obligate or facultative or any obligate invertebrate species.

10.1.29. **“Wet Detention Basin”** a wet detention basin is a detention basin designed to hold water for at least two continuous months during the spring/summer, where the ponding area covers at least one-third of the basin floor to an average depth of six inches of water, which supports wetland vegetation, and which meets the other design requirements set by the Conservation Commission. For the purposes of the Bylaw a wet detention basin shall be considered a constructed wetland and not acceptable as part of a wetland replication plan. As a constructed wetland, a wet detention basin shall be presumed to serve two wetlands values: pollution attenuation and flood control. The adjacent upland resource for wet detention basins shall extend two horizontal linear feet beyond the break in slope of the detention basin, unless the basin wetland attains dimensions consistent with jurisdiction under the Massachusetts Wetlands Protection Act in which case a full one hundred (100)-foot adjacent upland resource shall apply.

10.1.30. **“Wet Meadows”** are areas where ground water is at the surface for the significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges, and rushes, made up of, but not limited to nor necessarily including all of the following plants or groups of plants: blue flag (*Iris*), vervain (*Verbena*), thoroughwort (*Eupatorium*), dock (*Rumex*), false loosestrife (*Ludwigia*), hydrophilic grasses (*Gramineae*), loosestrife (*Lythrum*), marsh fern (*Dryopteris thelypteris*), rushes (*Juncaceae*), sedges (*Cyperaceae*), sensitive fern (*Onoclea sensibilis*), smartweed (*Polygonum*), jewelweed (*Impatiens capensis*).

10.1.31. **“Wild Life Habitat”** those areas subject to the Georgetown Wetlands Protection Bylaw and these regulations which, due to their plant community composition and structure, hydrologic regime or other characteristics without limitations, provide food, shelter, migratory, travel or over-wintering areas, or breeding, spawning, or egg laying areas for wildlife, without limitations. [See

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section 7.2]

10.1.32. **“Watercourse”** is any stream, brook, river, creek, ditch, or other channelized water flow, perennial or intermittent.

10.1.33. **“Water body”** is any pond, great pond, lake, vernal pool, ILSF, or any other basin containing water intermittently or perennially.

10.2. List of Abbreviations:

- a. BVW is Bordering Vegetated Wetlands
- b. CMR as in 310 CMR 10.00 is Code of Massachusetts Regulations
- c. CoC is Certificate of Compliance
- d. DEP is Department of Environmental Protection
- e. MGL is Massachusetts General Laws
- f. NOI is Notice of Intent
- g. OoC is Order of Conditions
- h. RDA is Request for Determination of Applicability
- i. ANRAD is Abbreviated Notice of Resource Area Delineation

11. Security

11.1. Orders of Conditions & Bonding

As part of a permit issued under this chapter, in addition to any security required by any other municipal 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.

No permit shall be issued for any project to an applicant who has an outstanding violation of the bylaw for which either (a) no corrective Order of Conditions has been recorded at the Registry of Deeds, or (b) which is not under legal appeal, or (c) any enforcement order issued by the Commission

12. Enforcement; violations and penalties.

12.1. Recording a Notice of Violation

The Conservation Commission may record a Notice of Violation issued under Section 11 of the bylaw with the Registry of Deeds when (1) it has information that the property in violation of the bylaw may change ownership, (2) when the owner of the property in violation has failed to respond to the Notice of Violation after ten business days.

12.2. Municipal Lien Certificate

The Conservation Commission may request that the Town Treasurer record a municipal lien certificate against any property for which outstanding fines levied under the bylaw

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have not been paid.

12.3. Violations and penalties.

Any person who violates any provision of the Georgetown Wetlands Protection Bylaw or the regulations or Order of Conditions issued there under shall be punished by a fine of not more than three hundred dollars (\$300). Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the chapter, regulations or permit violated shall constitute a separate offense.

In the alternative to criminal prosecution the Commission may elect to utilize the non-criminal procedure set forth in MGL c. 40, § 21D.

12.4. Abatement of Fines

The Conservation Commission may abate fines imposed under the bylaw, in part or in whole

13. Certificate of Compliance

Certificate of Compliance shall mean a written determination made by the Conservation Commission verifying that work has been completed in accordance with an Order of Conditions.

13.1. Requirements

- a. For all projects plans the following shall be provided:
 - a. A written statement by a registered professional civil engineer and/or other qualified professional, as may be required by the Commission, certifying compliance with the approved plans referenced above and this Order of Conditions and setting forth what deviations, if any, exist.
 - b. Two sets of as-built plans (1" = 40' or 1" = 20' scale, corresponding to the plans filed with the NOI) stamped by a Massachusetts registered professional engineer showing:
 - c. All structures, buildings, impervious surfaces, and existing grading, any other elevations or distances the Commission may specify to ensure compliance with this Order.
- b. For minor projects the Commission may waive some of the following requirements.

13.2. Denial

After a site inspection, the Commission determines that the requirements for the Certificate of Compliance have not been met; the request for a Certificate of Compliance may be denied. This decision, along with the reasons for denial, shall be forwarded to the applicant.

13.3. Burden of Proof

The applicant shall have the burden and obligation of bringing the subject property into compliance with the Order of Conditions.

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14. Required Minimum No Disturbance Zones

These are required minimum “No Disturbance Zones”.

The following are the required widths (in horizontal linear feet) for perpetual “No Cut – No Disturb” areas or “Do Not Disturb Zones” adjoining Wetlands, Water Bodies, Streams and Rivers:

<u>Required Minimum Perpetual</u> No Cut – No Disturb Areas or Do Not Disturb Zones	14.1. Standard Condition Setbacks			**Special Condition Setbacks		
	Adjacent to Wetlands	Adjacent to Water Bodies & Streams	Adjacent to Rivers	Adjacent to Wetlands	Adjacent to Water Bodies & Streams	Adjacent to Rivers
Required Minimum Width in horizontal linear feet	50	50	100	100	100	200

**for special conditions see section 16.

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15. Required Minimum Setbacks

These are required minimum “Setbacks”.

The following are the Minimum Required Setbacks from Wetlands, Water Bodies, Streams and Rivers:

15.1. REQUIRED MINIMUM SETBACKS						
Types of Activities or Alterations in Adjoining Land Areas	15.2. Standard Condition Setbacks			**Special Condition Setbacks		
	Adjacent to Wetlands	Adjacent to Water Bodies & Streams	Adjacent to Rivers	Adjacent to Wetlands	Adjacent to Water Bodies & Streams	Adjacent to Rivers
Home improvement projects that convert existing lawfully authorized or exempt altered areas.	50	50	50	50	75	100
Any new non-vegetated area or structure.	75	75	150	100	100	200
Any holding paddock or containment area used by more than five pets or any farm animal.	100	100	200	100	100	200
Any test pit, excavation, filling, grading for, or construction of any leaching field or reserve area of any new Sanitary Disposal System.	100	100	200	100	100	200

**for special conditions see section 16.

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16. Special Conditions for Setbacks and “No Disturbance Zones”

16.1. Required Minimum Setbacks and “No Disturbance Zones”

- 16.1.1. Wetlands shall include both Bordering Vegetated Wetlands (BVW) and Isolated Vegetated Wetlands (IVW). Water Bodies shall include both perennial and intermittent bodies of water, including Great Ponds, Lakes, Ponds, Vernal Pools (regardless of whether they are State certified), and State protected Isolated Land Subject to Flooding (ILSF) and Locally protected Isolated Land Subject to Flooding (L-ILSF). Streams shall include any intermittent watercourse, regardless of whether it is otherwise named or commonly called a brook, creek or ditch, and regardless of whether it does not flow from or into any Wetland, Water Body, Stream or River. Rivers shall include any perennial watercourse, regardless of whether it is otherwise named or commonly called a stream, brook, creek or ditch.
- 16.1.2. Minimum Required Setbacks are measured in horizontal linear feet from the outer boundary of any Wetland, Water Body, Stream or River.
- 16.1.3. Minimum Required Setback distances are expanded from Standard Condition Setbacks wherever the following Special Conditions exist:
 - 16.1.3.1. Where any part of any Wetland, Water Body, Stream, River, or any Adjoining Land Area is within any Zone 2 of any public drinking water supply;
 - 16.1.3.2. Where any part of any Wetland, Stream, Water Body, River, or any Adjoining Land Area is within Estimated Habitat Range of Rare Species as shown on the latest map published by the Massachusetts Natural Heritage and Endangered Species Program (NHESP), unless and until a determination is made by NHESP or, in the absence of any determination from NHESP after 30 days notice, by an Independent Review; that said areas are not used by Rare Species for breeding, feeding, migration, or over-wintering;
 - 16.1.3.3. Where any portion of any Stream is a Major Stream in that it shows on the latest map published by the United States Geological Survey (USGS);
 - 16.1.3.4. Where any Water Body is a Major Water Body in that it shows on the latest map published by the United States Geological Survey (USGS);
 - 16.1.3.5. Where any Water Body or the basin of an intermittent Water Body has characteristics of a Vernal Pool, unless and until an Independent Review demonstrates there is a preponderance of evidence that said Water Body or basin does not function as a Vernal Pool and that there is no credible evidence that said Water Body or basin was altered so as not to function as a Vernal Pool;

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- 16.1.3.6. Where there is any Vernal Pool within the subject property, or less than 200 horizontal linear feet from the subject property, Special Condition Setbacks shall be required for all Adjoining Land Areas on the subject property, unless and until an Independent Review demonstrates that there is no credible evidence that any such Vernal Pool is used by migrating reptiles or amphibians for breeding; and
- 16.1.3.7. Where any slope within any Adjoining Land Area is steeper than three (3) feet of elevation to one (1) foot of horizontal distance at any fifty (50) foot increment, starting from the outer boundary of the Adjoining Land Area to any Wetland, Water Body, Stream, or River.

16.2. Setback and “No Disturbance Zone” Exceptions

The Commission shall not grant any exception to these regulations unless a request for such exception is specifically made in writing by the applicant. Such a request must include a rationale for the exception along with proposed compensation or mitigation for the exception.

Requested exceptions must be prominently noted in the written narrative and must show on the submitted plan for the project. No exception to these regulations shall be valid unless it is specifically noted in writing by the Commission in the Findings or Determination or Permit or Order it issues regarding a project, and any such exception is specifically noted in writing on any final approved referenced plans.

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17. Fee Schedule

Fee Schedule Table

APPLICATION OR REQUEST	AMOUNT	PER
Request for Determination (RFD)	\$50.00	
Georgetown Notice of Intent (Georgetown NOI)no State Notice of Intent (State NOI) required	\$200.00	
Georgetown Notice of Intent (State NOI required) 3 times the amount of the total State fee		
Georgetown Notice of Intent (State NOI required) for Repair of existing failed Septic systems.	\$50.00	*No site inspection fee
Georgetown Notice of Intent (State NOI required) for Simple Projects. (To be determined by agent.) Examples: Home repair (no expansion), small decks and etc.	\$75.00	*No site inspection fee
Other Requests:		
Confirmation of delineated borders and assessed values of Resource Areas (with RFD or Georgetown NOI)		\$25.00 per 200 linear feet
Resource or Bank disturbance	\$5 per Square foot	
Encroachment on buffer. For example if an applicant wants to grade within the 50' the total area of wavered work would be multiplied times \$.50.	\$.50 per Square foot	
Remove an Enforcement Order (including a Site Inspection)	\$250.00	
Amendment to an Order of Conditions	\$150.00	
Extension to an Order of Conditions	\$150.00	
If COC is requested after 30 days prior to the expiration of the OOC	\$250.00	
Certificate of Compliance	\$150.00	
Re-Issuance of any of the above	\$150.00	
Conditioned Site Inspections*	\$100.00	Per Site Inspection

The fees stated above do not include the cost of advertising required for a public hearing. The applicant shall provide the Commission a check or money order to pay the cost of such

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advertising prior to the opening of any public hearing.

* “Conditioned Site Inspections” shall include any Site Inspection required as a Condition of an Order of Conditions, Amendment to an Order of Conditions, Extension to an Order of Conditions, Partial Certificate of Compliance, or Certificate of Compliance.

18. History

These regulations were adopted June 26, 2003, by a unanimous vote, after a public hearing was held and closed on May 24, 2003.

After a public hearing these regulations were changed and re-adopted by unanimous vote, after an open public hearing was held and closed on June 10, 2004.

These regulations were revised September 18, 2008, by unanimous vote, after this open public hearing was held and closed on September 18, 2008. Hearings for this revision began March 20, 2008.