

**TOWN OF BILLERICA CONSERVATION COMMISSION
WETLANDS PROTECTION REGULATIONS**

PART ONE: GENERAL PROVISIONS

1.01 Introduction and Purpose

A. Introduction:

1. Authority to Promulgate Regulations: The Billerica Conservation Commission promulgates these regulations pursuant to the authority granted to it under the Town of Billerica Wetlands By-Law at Section 10. (Hereinafter "Wetlands By-Law".) These regulations complement the Wetlands By-Law and have the force of law in implementing and enforcing the Wetlands By-Law.
2. Relationship with State's Wetlands Protection Act: All of the standards, requirements, and procedures set forth in the Massachusetts Wetlands Protection Act and regulations published at 310 CMR 10.00, et seq. are incorporated and made part of these regulations as if restated herein, except where they differ from or depart from these regulations. Where these regulations differ from the state regulations, these regulations will be applied in addition to the state regulations.
3. Severability and Compliance with Court Decisions.
 - a. The invalidity of any section or provision of the Wetlands By-Law or of these regulations shall not invalidate any other section or provisions thereof, nor shall such invalidate any By-Law Permit that the Commission previously issued.
 - b. If any court of the Commonwealth invalidates any provision of the Wetlands By-Law or of these regulations, the Conservation Commission shall promulgate additional regulations or present to the next town meeting after such invalidation, amendments to the By-Law or regulations that are designed to comply with any court decision invalidating such provisions or regulations, as the case may be.

B. Purpose:

1. Set Process Criteria: The Wetlands By-Law sets forth a public review and decision-making process by which the Billerica Conservation Commission regulates activities affecting areas subject to protection under the By-Law. The purpose of these regulations is to define and clarify this process by establishing standard definitions and uniform procedures by which the Billerica Conservation Commission shall carry out its responsibilities under the Wetlands By-Law.
2. Protect Wetland Values: The purpose of this regulatory process is to ensure the conservation and preservation of wetlands and water resources.
 - a. This conservation and protection includes no net loss of wetlands resource areas protected by the Wetlands By-Law.
 - b. This conservation and protection contributes to the critical wetland resource values as identified in Section 2.1.A (2) of the Wetlands By-Law.
 - c. This conservation and protection includes assuring that the following areas are properly maintained to protect the wetland values: passive recreation areas adjoining resource areas deemed important to the community; land in agricultural use; and land and water bodies used for aquaculture.

1.02 Jurisdiction

- A. Areas Subject to Protection under the By-Law (By-Law Protected Areas).** The following areas, whether bordering on surface waters or isolated from surface waters, are subject to protection under the Wetlands By-Law:
1. Banks (Beaches)
 2. Buffer Zones
 3. Freshwater Vegetated Wetlands (bogs, marshes, swamps, wet meadows)
 4. Lands Subject to Flooding (Isolated or Bordering)
 5. Lands Under Water Bodies and Waterways
 6. Riverfront Areas
 7. Streams (intermittent and perennial)
 8. Vernal Pools

BILLERICA CONSERVATION COMMISSION
WETLANDS PROTECTION REGULATIONS

PAGE 2 OF 18

- B. Activities Regulated. The Billerica Conservation Commission regulates any activity proposed or undertaken that constitutes building upon, within, or under; removing anything from; filling; dredging; or otherwise altering any area specified in Section 1.02.A, and such requires a filing of an application for a By-Law Permit. Where there is a question as to whether an activity outside a By-law protected area will alter an area specified in Section 1.02.A, the individual should submit a Request for Determination of Applicability.

1.03 Burden of Proof and Presumptions

- A. Burden of Proof. Any individual filing a request for Determination of Applicability, Application for By-Law Permit, or Abbreviated By-Law Permit under the Wetlands By-Law to perform any work within an area specified in Section 1.02.A, has the burden of going forward with substantial credible evidence.

B. Presumptions:

1. Areas Subject to Protection Presumed Significant to Wetland Values: Each By-Law Protected Area is presumed to be significant to the wetland values specified in the Wetlands By-Law at Section 2.1. A(2).
2. Presumption Rebutted by Preponderance of Evidence: This presumption may be overcome by preponderance of the evidence showing that the resource area does not play a role in the protection of one or more of the values identified in Section 1.01.B.2. If the Commission finds that the presumption of significance has been rebutted, in whole or part, the Commission shall make a written determination to this effect, setting forth its reasons for that decision.

1.04 Definitions. In addition to the definitions contained in the Wetlands Protection By-Law and those found at 310 CMR 10.04, the following terms shall have the meanings:

Act— The Massachusetts Wetlands Protection Act, Mass. Gen. Laws, c. 131, §40. This Act also protects Riverfront Areas, and is sometimes referenced as the Rivers Protection Act. When used in these regulations, the term "Act" includes the regulations promulgated by the Department of Environmental Protection at 310 CMR 10.00.

Alter- (Defined in the By-Law)

Alternative Analysis- An analysis provided by all applicants showing that the proposed project offers the best mitigation measures to assure compliance with the standards of the Billerica By-Law and these regulations over all other reasonable possible configurations of the project.

Area Subject to Protection Under the By-Law- An area specified in the Wetlands By-Law and the Act as a protected resource area and an area within 100 feet from any such wetland resource area ("wetland buffer resource area" or "Buffer Zone") except there is no Buffer Zone to the Riverfront Area.

Best Management Practices- The use of design and maintenance criteria that minimize to the greatest extent possible adverse effects on the environment, including without limitation controlling and abating the discharge of pollutants and inadvertent alterations of Areas Subject to Protection Under the By-Law.

Commission- The Conservation Commission of the Town of Billerica or its employee.

Evidence-

Credible Evidence- Evidence from a competent source such as the Department of Environmental Protection, the Conservation Commission members or staff, or from a professionally qualified individual, which evidence was collected using acceptable scientific methodology or best available reliable practices or that which is based on personal knowledge.

Preponderance of the Evidence- Greater weight of the evidence; evidence that is more credible and convincing to the mind.

Substantial Evidence- Evidence showing the existence of a fact (as opposed to discrediting a witness) that supports the decision of the Conservation Commission so that considering the total evidence presented during the administrative hearing process, a court of competent jurisdiction would not find that the Commission acted arbitrarily or capriciously in making its decision.

Drought (Extended Drought)- Those periods, in specifically identified geographic locations, determined to be at the "Advisory" or more severe drought level by the Massachusetts Drought Management Task Force, in accordance with the Massachusetts Drought Management Plan. See 310 CMR 10.58(2)(f).

BILLERICA CONSERVATION COMMISSION
WETLANDS PROTECTION REGULATIONS

PAGE 3 OF 18

Maintenance- The work or activity of keeping a structure in proper condition but not the expansion thereof either by physical structures, landscaping, or usage.

Performance Standards- Those physical characteristics and functions of an Area Subject to Protection Under the By-Law and a wetland resource area protected by the Wetlands Protection Act that must not be impaired by any activity permitted by the Conservation Commission under the By-Law or Act.

Protection of Wildlife- The measures necessary to safeguard and otherwise preserve any and all of the following:

- (1) Any plant or animal species listed as endangered, threatened, or special concern or placed on the Watch List by the Massachusetts Natural Heritage Program; listed as Federally Endangered or Federally Threatened by the U.S. Fish and Wildlife Service; and deemed locally threatened, in writing, by the Conservation Commission which decision shall be based on scientific data from a competent source.
- (2) Any non-domesticated mammal, bird, reptile, amphibian, fish, mollusk, arthropod, or other invertebrate, other than a species of the Class *Insecta* or predaceous arachnids of the Order *Araneida* that have been determined by the Commonwealth of Massachusetts or any agency thereof to be a pest whose protection under the provisions of the By-Law would be a risk to humans.
- (3) The ability of any resource area to provide food, breeding habitat, or escape cover for animal species set forth in these regulations at (2) above.

Quorum- Majority of the members of the Commission then in office. A majority of the quorum, duly convened, must vote to take any action. *See* 310 CMR 10.05(2).

Repair- (*See definition of Maintenance*).

Significant or Cumulative Effect. The Commission shall determine whether the proposed activities will have a significant or cumulative effect on the wetland values protected by the By-Law. This decision shall be made on case specific information, which shall include but not be limited to attritional loss and history of activities on the Area Subject to Protection Under the By-Law.

Values identified in the By-Law- Those wetlands values specified in Section 2.1.A (2) of the Billerica By-Law. The term "wetlands values" is analogous to the term "wetlands interests" in the Wetlands Protection Act and the Department of Environmental Protection regulations.

Wetland Resource Area- An Area Subject to Protection under the Wetlands Protection Act, Mass. Gen. Laws, c. 131, §40, or the Billerica Wetlands Protection By-Law, or both. For the purpose of these regulations, when comparing the protection of a Buffer Zone to other wetland resource areas, the Buffer Zone will be referenced as the "wetland buffer resource area."

SECTION TWO: PROCEDURES

- 2.01 Receipt and Acceptance of Request for Determination of Applicability, Application for By-Law Permit or Notice of Intent, or Application for Resource Delineation Confirmation. Where the Commission receives a request for Determination, Application Permit or Resource Delineation under the By-Law, or Notice of Intent under the Wetlands Protection Act, that receipt may be by one member of the Commission or an individual designated by the Commission to receive such request or notice. The Commission may use the state forms.

A. Application Must Be Complete

1. Inspection. That designated person shall inspect the submission for completeness in accordance with the requirements of these regulations and the Act and the regulations of the Department of Environmental Protection.
2. Incomplete Submission. Where the designated person decides that the request or notice is not complete, the request or notice shall not be accepted and the application shall be returned within seven (7) business days of receipt with a written reason for the non-acceptance.

B. File Number Issuance

1. Application for By-Law Wetlands Permit. Upon receipt of complete application materials, the Commission shall issue a file number. The designation of a file number shall not imply that the plans and

BILLERICA CONSERVATION COMMISSION
WETLANDS PROTECTION REGULATIONS

PAGE 4 OF 18

supporting documents have been judged adequate for the issuance of a By-Law Permit, but only that copies of the minimal submittal requirements have been filed and the application is complete.

2. Notice of Intent. The Department of Environmental Protection issues a file number upon receipt of a complete Notice of Intent. The Commission shall not close a public hearing until such file number is received.

2.03 Requests and Applications under By-Law and Act

A. Determination of Applicability

1. Discretionary Requests: An applicant may request the Commission to determine whether the Act or By-Law applies to the land or to the proposed work. The procedures for these requests may be found at 310 CMR 10.05 and the filing fees for such requests are found at 310 CMR 10.03(7) and at Section 6.02.B of these regulations.
2. Mandatory Requests.
 - a. Application of Exemptions under Act. Any person who proposes to perform work, maintenance, or other activities within an wetland resource area on land in agriculture or aquaculture use, as those are defined in 310 CMR 10.04, should submit a Request for Determination to the Commission as to whether such activity meets the conditions that would qualify such work or activity to be exempt under the Act.
 - b. Activity within Wetland Resource Area under the Act or Area Subject to Protection Under the By-Law. Any person who proposes to perform work within an Area Subject to Protection under the Wetlands By-Law shall submit an application to the Commission that shall conform to the requirements of the Act and the Wetlands By-Law and these regulations.
- B. Wetland Resource Area Delineation. A person who wishes confirmation that an Area Subject to Protection under the By-Law has been identified and delineated according to the By-Law definitions shall request the Commission to confirm or modify the delineation submitted. The Order of Resource Area Delineation shall be effective for three years. *See also* 310 CMR 10.05(6)(a)3.
- C. By-Law Wetlands Permit and Order of Conditions under the Act. A person who proposes to alter any Area Subject to Protection under the By-Law must submit an application for an Order of Conditions under the Act and an application for a By-Law Wetlands Permit under the By-Law before beginning work. A Notice of Intent Form and Application for By-Law Permit Form may be obtained from the Commission. The Commission may use State Notice of Intent form for the By-Law Permit application.
- D. Emergency Certification: Any single member of the Commission, its agent or employee may certify that the project is an emergency. The criteria and procedures of 310 CMR 10.06 shall apply to such certification.

2.04. Filing Procedures for Determinations of Applicability, Wetland Resource Area Delineation, and Permits under Billerica Wetlands Protection By-Law

- A. By Hand or Certified Mail. The applicant shall submit, in hand or by certified mail, the request for a Determination or application for By-Law Permit to the Commission.
- B. Contents of Application. The applicant shall submit, at a minimum, the following documents to the Commission:
 1. A completed form, which form is available from the Commission.
 2. A plan showing the topography, delineation of Areas Subject to Protection under the By-Law and Act, property lines, and nearby streets in accordance with the requirements of the Commission as specified on the application form. *See* Section 6.04 of these regulations.
 3. A certified abutter's list, as provided at Section 7.1.A of the Wetlands By-Law. This list is available from the Billerica Assessors Office.
 - a. Where there is an extensive project, such as a pipe line installation, the applicant shall only be required to notify abutters within 300 feet from an Area Subject to Protection Under the By-Law. The applicant should verify with the administrator of the Commission exactly which abutters should be notified in such a case.

BILLERICA CONSERVATION COMMISSION
WETLANDS PROTECTION REGULATIONS

PAGE 5 OF 18

-
-
- b. The applicant may request permission from the Commission to allow notification to a home owners association or condominium association and posting in a common area in the case of multiple connected or clustered residences or condominium developments.
 4. The names and addresses of the applicant(s), the applicant's representative(s), and the owner(s) of the property.
 - 2.05 Public Hearing Process. The Commission shall hold a public hearing within twenty-one (21) days of the submittal of a complete request or application.
 - A. Opening Hearing
 1. Postponement of Opening the Hearing. The Commission may open the public hearing beyond the 21 days with the written consent of the applicant.
 2. Notice.
 - a. Duties of Commission. The Conservation Commission shall give notice of the time and place of the public hearing at the expense of the applicant not less than five business days before such hearing, by publication in a newspaper of general circulation in Billerica and by mailing a notice to the applicant and applicant's representative; the owner, if different from the applicant; and the following Town departments: Board of Health, Planning and Zoning Board, Board of Appeals, Board of Selectmen, and Inspector of Buildings.
 - b. Duties of Applicant. The applicant shall give notice that an application has been filed, that a public hearing will be scheduled within 21 days, and that information concerning the application and the date of the hearing is available at the office of the Commission to all abutters by certified mail, return receipt requested, or hand delivery and shall provide proof of such notice to the Commission before the Commission opens the hearing. *See* Section 2.04.B.3 of these regulations for additional information regarding notification to abutters.
 - B. Hearing Process.
 1. Procedure. The Commission determines the order of the presentations and public participation at the public hearing. Said hearing shall be orderly and the Commission may stop such hearing for cause. The Chair may delegate the responsibility for conducting any hearing to any other Commissioner.
 2. Continued Hearings. Where the public hearing is continued, the date, time, and place of said continued hearing shall be publicized in accordance with the By-Law, and notice shall be sent to any person at the hearing who so requests in writing. Public hearings may be continued as provided in 310 CMR 10.05(5)(b).
 - C. Closing the Public Hearing; Issuing the Decision.
 1. Determination of Applicability under the By-Law and Act.
 - a. Closing the Hearing. The Commission shall close the public hearing and issue its Determination within twenty-one (21) days of the submittal of the completed Request for Determination, or by a later dated agreed upon in writing by the applicant.
 - b. Decision.
 - (1) Decision where Land Is Within Wetlands Resource Area. The Commission shall find that the Wetlands By-Law and these regulations apply to the land, or a portion thereof, if it is an Area Subject to Protection under the By-Law.
 - (2) Decision where Activity May Alter an Area Subject to Protection under the By-Law. The Commission shall find that the By-Law applies to the work, or a portion thereof, if it is an activity subject to these regulations. An application for By-Law Permit shall be filed if the Commission makes a positive determination, and all the procedures applicable to the application for By-Law Permit filing shall apply.
 - (3) Decision as to whether Activity is Exempt under the Act. The Commission shall, if applicable, determine that the proposed activity is exempt under the provisions of 310 CMR 10.04

BILLERICA CONSERVATION COMMISSION
WETLANDS PROTECTION REGULATIONS

PAGE 6 OF 18

Agriculture, Aquaculture, or the limited project exemption for public utilities and highway right-of-ways as specified in the Act and 310 CMR 10.53(3).

2. By-Law Order of Delineation. The Commission follows the procedures outlined in 310 CMR 10.05.
3. By-Law Wetlands Permit
 - a. Closing the Hearing. The Commission shall close the public hearing upon receiving sufficient information or if requested to do so by the applicant.
 - b. Decision.
 - (1) Significance of Area Subject to Protection. In accordance with Section 3.01.A of these regulations and the regulations of the Department of Environmental Protection at 310 CMR 10.03(5), where the applicant proposes to alter any Area Subject to Protection Under the By-Law and wetland resource area protected under the Act, the Commission shall presume such are significant to protect wetland values (interests) identified by the By-Law and Act. Within twenty-one (21) days of the close of the public hearing, the Commission shall either:
 - (a) Issue a decision that the area on which the activity is proposed to be done, or which the proposed activity will remove, fill, dredge, or alter is not significant to any of the values identified in the By-Law.
 - (b) Issue a decision that the area on which the activity is proposed to be done, or which the proposed activity will remove, fill, dredge, or alter is significant to any of the values identified in the By-Law.
 - (2) Findings of Fact. In each decision, the Commission shall make the following findings of fact and any other finding that it may deem necessary:
 - (a) General descriptions of the history of land use of the project site, its relationship with abutting land, and niche within the watershed.
 - (b) Specify the Areas Subject to Protection Under the By-Law that are located on the project site.
 - (c) Describe the proposed project or portion of the proposed project under review.
 - (d) Specify, as to each Area Subject to Protection under the By-Law, a description of the determined boundaries. Reference may be to an engineering drawing.
 - (e) Specify whether any part of the project site and that part under review are located within a Rare Species Habitat or other specially designated area.
 - (f) Specify whether the proposed project should be reviewed under the Massachusetts Environmental Policy Act, Mass. Gen. Laws, c. 30, §§ 6 – 62H and the MEPA regulations found at 301 CMR 11.00.
 - (g) Discuss any alternative analysis and mitigation measures presented by the applicant.
 - (3) Conditions and Work Prohibition.
 - (a) The Commission shall impose conditions in the By-Law Permit as are necessary for the protection of those areas found to be significant to one or more of the wetlands values identified in the By-Law.
 - i. The Commission shall impose conditions upon the work or the portion thereof that will, in the judgment of the Commission, result in the alteration of an Area Subject to Protection under the By-Law. Such conditions may include a zone of natural indigenous vegetation and no alteration.
 - ii. The Commission shall impose conditions setting limits on the quantity and quality of discharge from a point source (both open and closed channel) when said limits are necessary to protect the values identified in the By-Law.
 - (b) The Commission shall prohibit any activity or any portion thereof that cannot be conditioned to meet the applicable Performance Standards.

BILLERICA CONSERVATION COMMISSION
WETLANDS PROTECTION REGULATIONS

PAGE 7 OF 18

-
-
- (4) Insufficient Information Resulting in By-Law Wetlands Permit Denial. If the Commission has requested necessary information and such has not been provided, the Commission may find that the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the values identified in the By-Law, and the Commission may issue a By-Law Permit Denial on such grounds. The Commission shall specify the information that is lacking and why it is necessary.
- 2.06 Appeal of Decision. Any person with standing may appeal a decision of the Commission regarding a request for Determination or application for By-Law Permit or Order of Delineation to the Middlesex Superior Court according to the provisions of Mass. Gen. Laws, c. 249, §4.
- A. Determination of Applicability.
1. Upon the issuance of a Positive By-Law Determination, work may not proceed until a judicial determination has been made by a court of competent legal jurisdiction that the proposed activity is not subject to the Wetlands By-Law, or until a By-Law Permit has been issued approving the project as conditioned.
 2. Upon the issuance of a Negative By-Law Determination, the applicant may begin work but at the applicant's risk that the decision of the Commission might be appealed to superior court and that the court may issue an injunction.
- B. By-Law Wetlands Permit and Delineations
1. Upon the issuance of a By-Law Permit Denial, work may not proceed until a court makes a judicial determination that overturns the Commission's decision to deny the proposed activity.
 2. Upon the issuance of a By-Law Permit, work may proceed at the applicant's risk unless a court has issued an injunction.
- 2.07 Amendment of By-Law Wetlands Permit of Conditions. The Commission must assess necessary modifications to projects that may occur during construction in accordance with the following.
- A. Preliminary Review by Commission. Because each modification is unique, it is impossible to determine in advance how the Commission will address any particular change. Therefore, the applicant will first contact the Commission and explain the modification at a public meeting. The Commission shall determine the appropriate category for the modification.
- B. Categories of Changes.
1. Minor. Minor changes to a project are modifications that the Commission determines will have no likelihood of an impact or less impact on any wetland value protected under the By-Law. Minor changes are within the scope of deviations allowed for the receipt of a Certificate of Compliance.
 - a. The Commission shall consider the following criteria in making this determination: the extent of modification, the proximity to Area Subject to Protection under the By-Law, and the type of equipment required for the modification.
 - b. Minor changes need only the authorization from the Commission as documented in a Letter of Understanding in Contemplation of a Certificate of Compliance, signed by a majority of the Commission and the applicant or authorized agent. The Commission will retain this Letter of Understanding in the file, mail a copy to the applicant and the Massachusetts Department of Environmental Protection regional office, if an Order of Conditions is affected by the modification.
 2. Moderate. Moderate changes to a project are modifications that the Commission determines will have some likelihood of an impact on any wetland value protected under the By-Law.
 - a. The following may require an Amended By-Law Permit: a decrease in the distance from the Area Subject to Protection Under the By-Law, a change that results in an increase in potential for erosion or sedimentation, an alteration of a land form, a change in size and location of structure and appurtenances, an increase in amount of vegetation removed, and activity beyond the limit-of-work.
 - b. Moderate changes require an Amended By-Law Permit, which requires a public hearing and issuance of an amended By-Law Permit in accordance with the procedures for a request for a By-Law Permit pursuant to a Wetlands Permit filing. If the Commission denies the request to amend the By-Law

BILLERICA CONSERVATION COMMISSION
WETLANDS PROTECTION REGULATIONS

PAGE 8 OF 18

Permit, the applicant must follow the provisions of the By-Law Permit or file another application for a By-Law Permit.

3. Significant. Changes that are not related to the originally permitted activity may require a new application for a By-Law Permit rather than an Amended By-Law Permit. The Commission considers any modification that will adversely increase the impact of the project on any wetland value protected by the By-Law as requiring a new filing.
- 2.08. Extension of By-Law Wetlands Permit. The Commission, in accordance with the provisions Section 8.2.C of the Wetlands By-Law, may extend a By-Law Permit.
- 2.09. Certificate of Compliance. A By-Law Certificate of Compliance may be combined with a Certificate of Compliance as provided in the Act and 310 CMR 10.05(9).
- A. Written Request; Content. The applicant or owner of the property shall request, in writing, the Commission to issue a Certificate of Compliance. The contents of the request shall be specified by the Commission in a guidance document that may be obtainable from the Commission, and the applicant or owner shall use the request form provided by the Commission.
 - B. Review Process.
 1. Time Limitation. Upon written request by the applicant or owner of the property, the Commission shall issue or refuse to issue a Certificate of Compliance within twenty-one (21) days of receipt of a completed request.
 2. Site Inspection. Before the Commission may act upon a Certificate of Compliance, a member of the Commission or an employee of Billerica working for the Commission, in the presence of the applicant or the applicant's agent, shall inspect the site and report the findings to the Commission.
 - C. Decision. The Commission shall make its decision at a public meeting. The Commission shall not issue a Certificate of Compliance for part of the work, but may issue a status letter.
 1. Denial. If the Commission determines, after review and inspection, that the work has not been done in substantial compliance with the By-Law Permit, it shall refuse to issue a Certificate of Compliance.
 - a. The Commission shall issue such refusal within twenty-one (21) days of receipt of a request for a Certificate.
 - b. Such refusal shall be in writing and shall specify the reasons for the denial and ordering the corrective actions that must be taken.
 2. Continuing Conditions. If the By-Law Permit contains conditions that continue past the completion of the work, the Commission shall specify which conditions shall continue in the Certificate of Compliance and repeat the continuing conditions in full on the Certificate. Examples of such conditions are maintenance and monitoring.
 - D. Recording. The Certificate of Compliance shall be recorded in the Middlesex Northern District Registry of Deeds or in the Land Court, whichever is appropriate. Certification of such recording shall be sent to the Commission.

PART THREE: AREAS PROTECTED UNDER THE BY-LAW:

PRESUMPTION OF SIGNIFICANCE; LIMITED PROJECT STATUS;

DEFINITIONS; WETLAND VALUES PROTECTED; PERFORMANCE STANDARDS

- 3.01 Wetland Values Protected and Performance Standards Common to All Areas Subject to Protection under the By-Law.
- A. Presumption of Significance. The Commission shall presume that the Areas Subject to Protection Under the By-Law function to protect those wetlands values specified in Section 2.1.A(2) of the By-Law and therefore such Areas Subject to Protection Under the By-Law are presumed to be significant to one or more of such wetland values.

BILLERICA CONSERVATION COMMISSION
WETLANDS PROTECTION REGULATIONS

PAGE 9 OF 18

B. Performance Standards Common to all Areas Subject to Protection under the By-Law.

1. The Commission shall not permit any activity, other than the maintenance of an already existing structure, that will result in the building within or upon, removing, filling, or otherwise altering an Area Subject to Protection Under the By-Law, except for an activity that the Commission allows under a By-Law Permit and, in appropriate circumstances, under a By-Law Determination of Applicability.
2. The Commission must find that any proposed activity shall not significantly impair in any manner the ability of the Area Subject to Protection under the By-Law to perform any of the Area's functions that protect relevant wetland values.
3. To control flooding, prevent sedimentation and erosion, protect the hydrology of the wetland resource areas, and to preserve water quality, the Commission shall apply the Storm Water Management Policy of the Department of Environmental Protection to all proposed activities within An Area Subject to Protection Under the By-Law, except those projects that are determined to be minor in 310 CMR 10.02(2)(b) and 10.58(6)(b).
4. To preserve water quality, the Commission shall require that the proposed activity not increase levels of contaminants or pollutants in the groundwater or surface water. The Commission shall require that:
 - a. The stormwater management system be designed to maximize treatment before discharge;
 - b. The drainage structures shall not discharge directly to any wetland resource area, and if discharging into a wetland buffer resource area, the applicant must show that there is no increase in runoff rate from the wetland buffer resource area post construction;
 - c. All vegetated and nonvegetated drainage structures, including but not limited to outfall pipes, riprap or velocity dissipaters, and drainage swales shall meet the requirements of 3.03(C). In appropriate circumstances, as needed to protect the wetland resource area due to conditions affecting water quality, the Commission may require a more extensive setback for vegetated and nonvegetated drainage structures.
5. When an animal or plant species listed as rare, threatened, endangered, or of special concern by the Massachusetts Natural Heritage Program is known to inhabit or occur in an Area Subject to Protection Under the By-Law, no activity shall occur in the Area that will destroy or displace said species or will alter either permanently or temporarily, said species' habitat, niche, or food source. The Commission shall presume that any activity in an Area Subject to Protection Under the By-Law where any listed species is known to inhabit or occur will adversely affect the species unless the contrary is proven by the preponderance of evidence presented to the Commission by the proponent.

C. Limited Project Status.

1. By-Law. The Commission may grant a By-Law permit under a limited project status only where the project will improve the natural capacity of the ecosystem to protect the wetland values. In making its decision, the Commission shall require the applicant to provide an alternatives analysis as that is provided in 310 CMR 10.58 (4)(c).
2. Act.
 - a. The Commission may permit, in its discretion, a limited project as those are specified in the regulations of the Department of Environmental Protection at 310 CMR 10.53, after evaluating the magnitude of the alteration and the significance of the project site to the wetland-resource area values; the availability of reasonable alternatives to the proposed activity; the extent to which adverse impacts are minimized; and the extent to which mitigation measures, including replication or restoration, are provided to contribute to the protection of the wetland-resource area interests (values).
 - b. Notwithstanding the above, the Commission shall not permit a limited project that will have any adverse effect on rare species habitat sites.

3.02 Bank and Beach.

- A. Definition. The definition and boundary of a Bank are found in Section 5.1 of the By-Law. An inland beach is a Bank that is not vegetated. The critical characteristic and regulation of these Areas Protected under the By-Law are found in 310 CMR 10.54.
- B. Wetlands Values Protected. Banks are significant to the protection of those wetland interests (values) specified in 310 CMR 10.54 (1).
- C. Performance Standards.
 - 1. In addition to the performance standards specified in Section 3.01.B of these regulations, the Commission must find that the proposed activity will not impair in any manner the following:
 - a. the physical stability of the Bank;
 - b. the water-carrying capacity of the existing channel within the Bank;
 - c. the capacity of the Bank to provide breeding habitat, escape cover, and food for fisheries; and
 - d. the capacity of the Bank to provide important wildlife habitat functions.
 - 2. In its review of a By-Law request or application, the Commission shall apply the presumption of 310 CMR 10.54 (4) (a) 5.

3.03 Buffer Zone

- A. Definition. The definition and boundary of a Buffer Zone (wetland buffer resource area) are found in Section 5.2 of the By-Law.
- B. Wetland Values Protected. A Buffer Zone is significant to the protection of the following wetland values, which are protected by maintaining a continuous cover of naturally occurring indigenous vegetation that shall:
 - 1. Act as a filter zone to protect water supplies and prevent pollution by providing a natural filter to absorb nutrients and chemicals contained in road runoff, fertilizers, pesticides, and other contaminants, thus protecting other Areas Subject to Protection Under the By-Law.
 - 2. Reduce soil erosion and siltation of surface waters and adjacent wetland resource areas by slowing surface water runoff.
 - 3. Maintain ambient shade conditions to preserve natural water temperature regimes, to protect indigenous aquatic, amphibian, and reptilian life.
 - 4. Provide wildlife habitat and corridors for wildlife movement.
- C. Performance Standards. In addition to the performance standards stated in Section 3.01.B of these regulations, the following performance standards apply to a Buffer Zone:
 - 1. The Commission shall presume that the proposed activity within a Buffer Zone (wetland buffer resource area) shall alter the adjacent wetland resource areas. This presumption may be rebutted by a preponderance of the evidence that either:
 - a. the Buffer Zone does not play a role in the protection of any of the wetland values applicable to the associated wetlands resource area; or
 - b. the activity shall occur in such a manner so that potential adverse environmental impacts on the wetland values applicable to the associated wetlands resource area are avoided, minimized, or mitigated.
 - 2. Limit on Impervious Surface in Buffer Zone. The Commission shall limit, notwithstanding Section 3.03.C.1, the placement of impervious surface in the Buffer Zone. For new construction, the impervious surface area shall not exceed twenty-five percent (25%) of the Buffer Zone located on the site. On lots with legally existing impervious surfaces, the impervious surface in the Buffer Zone shall not be increased more than twenty-five percent (25%) for the entire project.
 - 3. No Alteration Zone.
 - a. The Commission shall require, when any activity is proposed within the wetland buffer resource area (Buffer Zone) on previously undeveloped lots, or previously developed lots where an existing structure

has been or is proposed to be razed, a continuous strip of at least fifty feet (50 ft) in width of undisturbed naturally occurring vegetation between the proposed activity and the wetland resource area. b. The Commission shall require, when any activity is proposed within the wetland buffer resource area (Buffer Zone) on lots legally developed as of June 27, 2003 where there is a proposed alteration to an existing structure or a temporary alteration with restoration, a continuous strip of at least twenty-five feet (25ft) in width of naturally occurring vegetation between the proposed activity and the wetland resource. c.

The Commission may require the creation of such No Alteration Zone where no wetland buffer resource area (buffer zone) currently exists because of previous activities that have altered the wetland resource area.

- d. In designing a project to meet this performance standard, the applicant shall take into account not only the proposed construction activity, but also realistic future use of the site. The burden is on the applicant to demonstrate to the Commission that the proposed construction activity and the realistic future use of the site is not likely to result in intrusion into, or alteration of the No Alteration Zone. The Commission may require the applicant to submit a use plan and narrative as part of that demonstration.
- e. On lots that have been granted non-conforming protection under the State or Billerica zoning laws and where there is a proposed alteration to an existing structure, the Commission shall review each application on a case-by-case basis.
- f. The applicant shall expect the Commission to require a no alteration zone significantly greater than twenty-five feet (25') where the slopes are steeper than 2:1 and where there is no retaining wall.
- g. The Commission may consider a variance to these requirements provided the applicant meets the variance criteria cited in section 4.01(c).

3.04 Freshwater Vegetated Wetlands (Marshes, Wet Meadows, Bogs, Swamps).

- A. Definition. The definition and boundary of a Freshwater Vegetated Wetlands are found in Section 5.3 of the By-Law.
- B. Wetland Values Protected. Freshwater Vegetated Wetlands are significant to the protection of those wetland interests (values) specified in 310 CMR 10.55 (1). However, under the By-Law all Freshwater Vegetated Wetlands are protected, whether such border on another water body or wetland resource area or not connected by surface water to any other waterbody or wetland resource area.
- C. Performance Standards. The performance standards are stated in Section 3.01.B of these regulations and those contained in 310 CMR 10.55(4), which the Commission shall apply in regulating this wetland resource area.

3.05 Lakes and Ponds (Reservoirs)

- A. Definition. The definitions of a "lake" and a "pond" are found at 310 CMR 10.04.
- B. Wetland Values Protected and Performance Standards. The values protected and performance standards are found at Section 3.01 A and B of these regulations and those additional values and standards that are found under the following Areas Subject to Protection under the Bylaw: Bank, Buffer Zone, Land Under Water, and Riverfront Area.

3.06 Lands Subject to Flooding (Bordering and Isolated).

- A. Definition. The definitions of these wetland resource areas are found in 310 CMR 10.57. Regardless of methodology used to determine floodplain elevation, the elevations must be corroborated with field observations by a competent source. The Town of Billerica's Green Engineering Floodplain Maps shall apply in determining the extent of land subject to flooding and shall be shown on the application plan. Examples of field observations include ice gouges, soils analysis, and bridge abutments. The Commission may also use aerial photographs to verify the boundary.
- B. Wetland Values Protected The wetland values protected are found at 310 CMR 10.57(1)(b) 4 and 10.57(1)(b)4.

C. Performance Standards.

1. Where the applicant does not rebut the presumption of significance, any activity within this wetland resource area shall comply with the performance standards identified in 310 CMR 10.57(4) and, in addition, the wildlife habitat alteration thresholds in 310 CMR 10.60.
2. Lands Subject to Flooding, under the By-Law, have an adjacent Buffer Zone as regulated by Section 3.03 of these regulations.

3.07 Lands Under Water Bodies and Waterways (LUW). The definition and regulation of these wetland resource areas may be found in 310 CMR 10.56. Where the applicant does not rebut the presumption of significance, any activity within this wetland resource area shall comply with the performance standards identified in Section 3.01.B of these regulations and 310 CMR 10.56(4) and, in addition, not affect the groundwater infiltration or discharge rates. Such wetland resource areas, under the By-Law, have an adjacent Buffer Zone (wetland buffer resource area) as regulated by Section 3.03 of these regulations.

3.08 Riverfront Areas

- A. Definition. The definition and boundary of a Riverfront Area are found in Section 5.4 of the By-Law.
- B. Wetland Values Protected. A Riverfront Area is significant to the protection of those wetland interests (values) specified in 310 CMR 10.58 (1) and (3).
- C. Performance Standards. In addition to the performance standards stated in Section 5.4.A of the By-Law, in Section 3.01.B of these regulations and those contained in 310 CMR 10.58(4), which the Commission shall apply in regulating this wetland resource area, the Commission shall:
 1. Require, in accordance with Section 5.4.B of the By-Law, when activity is proposed within the Riverfront Area, a continuous strip of at least twenty-five feet (25') in width of naturally occurring indigenous vegetation between the proposed activity and boundary of the Bank to the River. The Commission may require the creation of such zone of indigenous vegetation where none currently exists because of previous activities. In addition, the Commission may require structure setbacks as it shall determine on a case by case basis to protect the Bank and Land Under Water.
 2. Require an alternatives analysis for not only new construction but also for renovations.
 3. Consider, in the alternatives analysis required in Section 5.4.C of the By-Law and 310 CMR 10.58(4)(c), comparable costs of the alternatives and overall project costs, but shall not use such as an overriding factor in making its decision.

3.09 Streams

- A. Definition. The definition of a Stream is found in Section 5.5 of the By-Law. The Commission shall apply the criteria for determining whether a stream is intermittent or perennial in accordance with 310 CMR 10.58.
- B. Wetland Values Protected and Performance Standards. The values protected and performance standards are found at Section 3.01.A and 3.01.B of these regulations and those additional values and standards that are found under the following Areas Subject to Protection under the By-Law: Bank, Buffer Zone, Land Under Water, and Riverfront Area.

3.10 Vernal Pools.

- A. Definition. The definition of a Vernal Pool is found at 10.04 Vernal Pool Habitat. Such wetland resource area under the By-Law at Section 2.1.A, has an adjacent Buffer Zone (wetland buffer resource area).
- B. Wetland Values Protected and Performance Standards. The Commission shall regulate this wetland resource area in accordance with the provisions of the regulations of the Department of Environmental Protection at 310 CMR 10.04, 10.28, 10.53(6), 10.57(1)(a)3, 10.57(1)(b)4, 10.57(2)(a)5, and 6, 10.57 (2)(b)4 and 5, 10.59, and 10.60. The Commission shall regulate the Buffer Zone to the Vernal Pool in accordance with Section 3.03 of these regulations.

PART FOUR: VARIANCES

4.01 Introduction and Process.

- A. Standards Generally. The Commission may, in its sole discretion, grant variances from the operation of the provisions of the Wetlands By-Law or these regulations. The Commission shall not grant a variance if the granting of such would be inconsistent with the provisions of the Wetlands Protection Act or the regulations promulgated thereunder.
1. Where the Commission is prohibited from issuing a By-Law Permit, except as provided in Section 4.01.B of these regulations, the Commission may grant a variance only in rare and unusual cases upon a showing of clear hardship relating to the subject premises if the Commission does not grant the desired relief.
 2. The standards as set forth in Part 4 of these regulations shall be the sole basis upon which the Commission shall grant a variance.
- B. No Variance May Be Granted: Endangered Species. The Commission shall not consider a variance for any activity within an Area Protected under the By-Law that is within an estimated habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage and Endangered Species Program.
- C. Variance Process Generally.
1. Applicant to Submit Written Statement In Support of Variance. At any time after the filing of the Application for a By-Law Permit, but in no event less than five (5) business days before the date that the public hearing begins at which the Commission is to consider the variance request, the applicant or the applicant's representative shall submit to the Commission seven copies of a statement in support of the variance request.
 2. Content of Written Statement in Support of Variance. The statement of the applicant in support of a variance(s) shall include but is not limited to the following:
 - 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, which 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 Areas Subject to Protection under the By-Law arising from the activity proposed.
 - d. Detailed plans for proposed mitigation measures.
 - e. Adequate engineering and expert evidence to enable the Commission to evaluate the basis for the applicant's arguments that the Commission should grant a variance.
 - f. All relevant information that the applicant wishes the Commission to consider in deliberating the request for a variance.

4.02 Variance Decision Criteria.

- A. Burden of Proof. The Commission may grant a variance upon a showing by the applicant by a preponderance of evidence that:
1. Any proposed work, or its natural and consequential impacts and effects, will not have any significant adverse effect upon any of the wetland values protected in the Wetlands By-Law and regulations; and
 2. There is will be no net loss of an Area Subject to Protection under the By-Law; and
 3. There are no practicable and substantially equivalent economic alternatives to the proposed project with less adverse effects on the protected wetland values:
- B. Findings. If the Commission grants a variance from the requirements of the By-Law or these regulations, the Commission shall make specific findings that such work will not impair in any manner the ability of each Area Subject to Protection under the By-Law to perform any of that resource areas functions.

PART FIVE: SURETY REQUIREMENTS

5.01 Posting of Bond

- A. Generally. As provided in the Wetlands By-Law at Section 11, the Commission may require, in addition to any security required by any other municipal or state board, agency, or official, as a condition in the Permit, that the applicant post a proper bond, a deposit of money, negotiable securities, or other security sufficient to secure the protection of the Areas Subject to Protection under the By-Law affected by the project as approved by the Commission. The surety shall be held by the Town and shall be released by the Commission only upon satisfactory completion of the work required by the By-Law Permit and the issuance of a Certificate of Compliance or a Partial Certificate of Compliance.
1. The Commission may specify in a condition of the Permit a time within which the activity shall be completed. In the event the activity is not completed as approved, the Commission, at its option, may, in writing, extend the time for such completion, require an additional amount of security, or use the security in completing the work.
 2. The Commission may, from time to time as specified in the Permit or as appropriate, reduce the sum of any such bond, or the amount of any deposit held, and, thus, release the obligations of the parties in whole or in part.
- B. Amount of Bond. The amount of security shall not exceed the cost, as estimated by the Commission or its agent, of the required work or of the restoration of affected land if the work is not faithfully performed as required, whichever is greater. The proposed security shall reflect the total cost for the Town to engage private contractors to complete the activity or restore affected land, including any additional consultation fees.
- C. Forfeiture of Bond. Forfeiture of the security may be challenged in a complaint against the Town in the Middlesex Superior Court.

PART SIX: FILING AND PLAN REQUIREMENTS

6.01 Forms.

The forms, together with any procedural requirements for the submission of applications for By-Law Permits or Requests for Determinations which the Commission may from time to time promulgate in writing, are incorporated by reference, and are expressly made a part of these regulations. These forms and policy statements are on file in the office of the Commission and may be obtained during normal business hours.

6.02 Filing Fees.

A. Rules.

1. The By-Law Permit fees are payable at the time of application and are nonrefundable. The Wetland Protection Act Notice of Intent fees are also payable at the time of application.
2. The Commission shall calculate By-Law application for permit or request for determination fees according to the schedule in Section 6.02.B below.
3. Town, county, state, and federal projects are exempt from By-Law fees.

BILLERICA CONSERVATION COMMISSION
WETLANDS PROTECTION REGULATIONS

PAGE 15 OF 18

B. Fee Schedule.

1. Proposed Projects.

<u>PROJECT CATEGORY</u>	<u>DESCRIPTION</u>	
<u>Category 1</u>		
Fee per activity:	a. Work on single family lot, addition, pool, etc.	e. Work on septic system separate from building
	b. Site work without a house	f. Monitoring well activities minus roadway
\$40.00	c. Control vegetation	g. Agricultural or aquaculture projects
	d. Resource improvement, mitigation	
<u>Category 2</u>		
Fee per activity:	a. Construction of single family house	g. Each project source (storm drain) discharge
	b. Parking lot construction	h. Control vegetation in development
\$137.50	c. Beach nourishment	i. Water level variations
	d. Electric generating facility activities	j. Any other activity not in Category 1, 3, 4, 5, or 6
	e. Inland limited projects minus road crossings and agriculture	k. Water supply exploration
	f. Each crossing for driveway to single family house	
<u>Category 3</u>		
Fee per activity:	a. Site preparation (for development) beyond By-Law Permit scope	c. Road construction not crossings or driveways
\$275.00	b. Each building (for development) including site	d. Hazardous cleanup
		e. Water supply development
<u>Category 4</u>		
Fee per activity:	a. Each crossing for development or commercial road	h. Dredging
	b. Dam, sluiceway, tidegate (safety) work	i. Package treatment plant and discharge
\$375.00	c. Landfill operations/closures	j. Airport tree clearing
	d. Sand and gravel operations	k. Oil and/or hazardous material release response actions
	e. Railroad line construction	
	f. Bridge construction	
	g. Hazardous waste alterations to wetland resource areas and Areas Subject to Protection under the By-Law	
<u>Category 5</u>		
Fee per linear foot:	Construction, reconstruction, repair, or replacement of docks, piers, revetments, dikes, or other engineering structures on wetland resource areas, including the placement of rip rap or other material on wetland resource areas.	
\$1.00		
<u>Category 6</u>		
Fee per linear foot:	Confirm delineation of boundary of freshwater wetlands (such includes the Buffer Zone)	
\$0.50	There shall be a maximum of \$100.00 for a single family house project and \$1,000. for any other activity.	

2. Amended By-Law Wetlands Permits: The By-Law fee for application to amend a By-Law Permit shall be \$50.00.

3. Extensions.

a. Single Family Dwelling or Minor Project: the By-Law fee shall be: \$50.00

BILLERICA CONSERVATION COMMISSION
WETLANDS PROTECTION REGULATIONS

PAGE 16 OF 18

- b. Other: \$100.00
- 4. Refilings of Previously Denied Projects within Three Years. The By-Law fee for re-filing of previously denied projects within three years shall be the original fee or \$1,000.00, whichever is less.
- 5. Determinations: The By-Law fee for a request for Determination of Applicability is \$50.00

6.03 Consultant Fees.

A. Generally.

- 1. The Commission shall only require a consultant fee with respect to compliance with the By-Law. The Commission may not use the consultant fee to determine compliance with the Act.
- 2. The Commission shall strive to limit the amount and scope of the consultant's work.
- 3. The Commission shall determine whether a consultant fee is necessary on a case-by-case basis.
- 4. In cases where the Commission determines that a consultant is necessary, the consultant shall provide a written report to the Commission and at the same time to the applicant or the representative of the applicant. The Commission shall grant a request by the applicant to continue the hearing for purposes of reviewing and responding to the consultant's written report.

B. Decision to Use Consultant. The Commission shall make its decision to use a consultant as soon as possible after the opening of the public hearing. In reaching a decision to retain an independent consultant to be paid by the applicant, the Commission shall consider the following:

- 1. The size or scope of the project.
- 2. The amount of the By-Law filing fee in relation to the anticipated amount of the consultant cost.
- 3. The nature of the project, including but not limited to projects of particular benefit to the natural resources of Billerica.
- 4. The need for an independent verification of information submitted with the application.
- 5. The need for an independent review regarding compliance of the proposed project with the By-Law and these regulations.
- 6. The ability and willingness of the applicant to provide information deemed necessary by the Commission.

C. Process.

- 1. Choosing the Consultant. The Commission shall make its decision to engage an independent consultant at a public meeting, consistent with the Massachusetts Uniform Procurement Act, G.L. c. 30B.
- 2. Defining Scope of Work. The Commission shall establish the scope of work, which shall be consistent with the questions raised from the technical submissions under the application for a By-Law Permit relative to compliance with the By-Law and the performance standards.
- 3. Amount of Consultant Fee and Exemptions, Payment, Dispute Settlement
 - a. Amount. The Commission shall determine a reasonable consultant fee based on the cost of the services as estimated by the Commission at the public meeting or the cost of the services as estimated by the independent consultant.
 - b. Payment.
 - (1) The Commission may require that the consultant fee be paid by the applicant before services are rendered.
 - (2) The applicant shall not be responsible for payment of the consultant fee if the application for a By-Law Permit is withdrawn, provided that the Commission has not incurred costs associated with engaging the consultant.
 - (3) Failure by the applicant to pay the consultant fee associated with an application for a By-Law Permit shall render the application incomplete and may be cause for the Commission to deny all or a part of the proposed project.
 - d. Dispute Settlement. As provided in the Wetlands Protection By-Law at Section 6.5.D, problems or disputes over payment arrangements between the consultant and the applicant shall be settled at a regularly scheduled meeting of the Commission by a majority vote of a quorum of the Commission.

BILLERICA CONSERVATION COMMISSION
WETLANDS PROTECTION REGULATIONS

PAGE 17 OF 18

- 6.04 Filing Requirements for Applications for a By-Law Permit and Resource Delineation, Notices of Intent under the Act, and Requests for Determinations. The required documentation that must be included in any application or request under the By-Law and Act may be obtained from the Commission and is included in the application forms. If a document is missing, the Commission will not accept the filing.
- 6.05 Site Visit; Marking Proposed Structures; Delineating Wetland Boundaries. Before the Commission will make a site inspection, the applicant or agent must provide directions to the property and must:
- (1) Stake the corners of houses or other structure nearest the Area Subject to Protection under the By-Law or wetland resource area.
 - (2) Stake the septic tank and the leaching field location.
 - (3) Stake the limit of work.
 - (4) Post the lot number or house number.
 - (5) Delineate all Areas Subject to Protection under the By-Law and State wetland resource areas, provided that the Buffer Zone is to be staked only at the boundaries that nearest to the proposed project.

PART SEVEN: ENFORCEMENT

7.01 Enforcement Authority.

- A. No person shall remove, fill, dredge, or otherwise alter any Area Subject to Protection under the Billerica Wetlands By-Law without the required authorization; or cause, suffer, or allow such activity; or leave in place unauthorized fill; or otherwise fail to restore illegally altered land to its original condition; or fail to comply with an enforcement order issued pursuant to the provisions of the By-Law.
- B. Any person who violates any provision of the By-Law, of these regulations, or of any condition in a By-Law Permit, or who allows such violation to occur on his or her property, may be ordered to restore the property to its original condition and take other actions deemed necessary to remedy such violations.

7.02 Enforcement Actions and Enforcing Persons.

- A. Enforcement Actions. The Commission shall have the authority to enforce the Wetlands By-Law and these regulations by means of violation notices, enforcement orders, administrative orders, civil actions, and criminal proceedings.
 1. Violation Notice. The Commission will issue a violation notice letter as an initial notification to the landowner of an alleged violation, unless the violation is of such a magnitude or immediate action is needed. In the notice, the Commission may require the landowner to attend its next public meeting to discuss the alleged violation.
 2. Enforcement Order.
 - a. By-Law. When the Commission or its enforcing person, as more fully described below at Section 7.01.B of these regulations, determines that an activity is in violation of the Wetlands By-Law, these regulations, or a By-Law Permit, the Commission may issue an Enforcement Order.
 - b. Act. The provisions of 310 CMR 10.08 apply to the issuance of an Enforcement Order for violations of the Act or a Final Order under the Act.
- B. Enforcing Person. Members of the Commission and the Agent of the Commission are empowered to act as an enforcing person under the By-Law at Section 2.2C.
 1. No enforcement order shall be issued without a majority vote of the *members* of the Commission, provided there is no need for immediate action. Where an enforcing person issues an enforcement order because of the need for immediate action, that action shall be ratified by a majority of the *members* of the Commission at the next scheduled meeting of the Commission.
 2. The Commission may designate a member or its agent to issue violation notices. Where an enforcing person issues a violation notice or administrative order, that enforcing person shall report such action to the Commission at its next scheduled meeting for review and possible further action by the Commission. Upon review, the Commission may, at its discretion, withdraw the notice. Notwithstanding the

BILLERICA CONSERVATION COMMISSION
WETLANDS PROTECTION REGULATIONS

PAGE 18 OF 18

Commission's review, during the review, the subject matter of the notice shall be governed by all other provisions of the By-Law and these regulations.

Approved, at a public meeting, by a majority of the Conservation Commission this 25 day of June 2008.
