



**TOWN OF WEST NEWBURY
CONSERVATION COMMISSION**
381 Main Street, West Newbury, Mass. 01985
TEL: 978-363-1100 x126 EMAIL: conservation@wnewbury.org

AGENDA AMENDED ON 4/5/2024 at 11:30 AM

DATE: Tuesday April 9, 2024, 6:00 pm

SIGNED: _____ **DATE:** 4/5/2024

Open Session: 6:00 PM by in person attendance 381 Main Street, West Newbury, MA 1st Floor Hearing Room or remote participation via Zoom (instructions below)

1. Public Info Session on Proposed Wetlands Protection Bylaw

- The proposed wetlands protection bylaw may be viewed on the Town website at: <https://www.wnewbury.org/conservation-commission/files/wetlands-protection-bylaw-3192024-final>
- Copies of the proposed bylaw will be available to review at the meeting
- The meeting will be recorded

Addendum to Meeting Notice regarding Remote Participation in Open Session Meeting

Public participation in this meeting of the West Newbury Conservation Commission will be available via remote participation. For this meeting, members of the public who wish to listen or participate in this meeting remotely may do so in the following manner:

Zoom Meeting

Phone: 646 558 8656

Meeting ID: 820 3053 6974

Join at: <https://us06web.zoom.us/j/82030536974>

Every effort will be made to ensure that the public can adequately access the proceedings in real time via technological means. In the event that we are unable to do so, despite best efforts, we will post on the West Newbury website an audio or video recording of proceedings as soon as practicable after the meeting.

Executive Session: Immediately following the information session by in person attendance 381 Main Street, West Newbury, MA 1st Floor Hearing Room

- 1. MGL Ch. 30A §21(a) 6:** To consider the purchase or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body (*Meeting with Select Board regarding Sawmill Brook Conservation Area*).



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Proposed Wetlands Protection Bylaw Information Session

Tuesday, April 9, 2024, 6:00pm

POSTED ON: APRIL 5, 2024 - 8:15AM

REMINDER: Proposed Wetlands Protection Bylaw Information Session 04.09.2024

The West Newbury Conservation Commission is hosting a second info session on the proposed Wetlands Protection Bylaw ahead of Spring Town Meeting.

The info session will be held Tuesday April 9th, 2024 at 6:00 PM in hybrid format with the option for interested persons to participate in person at the Town Office Building, 381 Main Street, West Newbury, MA in the first floor hearing room or virtually from a computer, tablet, or smartphone via Zoom using the Zoom info below.

The final draft of the proposed Wetlands Protection Bylaw can be viewed here

Additional information, including a recording of the first info session on the proposed wetlands protection bylaw that was held on December 6, 2023, slides presented at this info session, and previous draft versions of the wetlands protection bylaw, can be viewed here.

Please send any questions or comments to Michelle Greene, Conservation Agent, at conservation@wnewbury.org.

Zoom meeting info for remote participation in April 9, 2024 Info Session:

- Join online at <https://us06web.zoom.us/j/82030536974>
- Meeting ID: Meeting ID: 820 3053 6974
- By phone at: 646 558 8656

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Proposed Wetlands Protection Bylaw

Proposed Wetlands Protection Bylaw Information

March 19, 2024 Update:

The WNCC has further revised the wetlands protection bylaw and it is now in final draft form for spring 2024 town meeting:

- The 3/19/2024 revised bylaw can be viewed in redline form [here](#).
- The 3/19/20204 bylaw in final draft form can be viewed [here](#).

The WNCC will be presenting the Spring 2024 town meeting article for the wetlands protection bylaw to the Select Board and Finance Committee at their joint public meeting of 3/20/2024 at 6PM.

The WNCC will host a second info session on the bylaw ahead of spring town meeting on Tuesday April 9th, 2024 at 6:00 PM.

The info session will be held in hybrid format with the option for interested persons to participate in person at the Town Office Building, 381 Main Street, West Newbury, MA in the first floor hearing room or by virtual attendance from a computer, tablet, or smartphone via Zoom using the Zoom info below. More info and the Zoom link can be found [here](#).

February 21, 2024 Update:

The WNCC has further revised the draft wetlands protection bylaw.

- The 2/21/2024 revised draft bylaw can be viewed in redline form [here](#).
- The 2/21/2024 revised draft bylaw in clean format with all redline changes accepted can be viewed [here](#).

The WNCC will be presenting the wetlands protection bylaw article for spring 2024 town meeting to the Select Board and Finance Committee at their joint public meeting of 3/20/2024 at 6PM.

February 8, 2024 Update:

The WNCC has submitted an article request to the Select Board for the spring 2024 town meeting. The article request can be viewed [here](#) on page 203.

January 24, 2024 Update:

The WNCC has further revised the draft wetlands protection bylaw.

- The 1/24/2024 revised draft bylaw can be viewed in redline form [here](#).
- The 1/24/2024 revised draft bylaw in clean format with all redline changes accepted can be viewed [here](#).

December 27, 2023 Update:

The public info session held by the WNCC on the draft wetland bylaw on 12/7/2023 is now available to view on YouTube [here](#). The slides from the public info session can be viewed [here](#).

The draft wetlands bylaw has been further revised based on feedback received at the public info session and by comments submitted directly to the WNCC.

- The 12/27/2023 revised draft bylaw can be viewed in redline form [here](#).
- The 12/27/2023 revised draft bylaw in clean format with all redline changes accepted can be viewed [here](#).

The WNCC will be responding directly to each person who has emailed feedback over the upcoming weeks and will be continuing to further revise the draft bylaw in public meetings as needed ahead of the Spring 2024 Annual Town Meeting warrant schedule.

Please send any questions, comments, or feedback to Michelle Greene, Conservation Agent, at conservation@wnewbury.org.

November 21, 2023 Update:

The WNCC has prepared a draft version of a proposed wetlands protection bylaw and is seeking feedback and comments on it. The draft bylaw can be viewed here (please click the link to view the draft bylaw).

A public info session to present the draft bylaw and answer questions has been scheduled for December 6, 2023 at 6 PM in the First Floor Hearing Room of the Town Office Building. If you are unable to attend the info session you are still encouraged to submit comments, feedback, or questions on the proposed draft bylaw to the WNCC by email. Please send comments, feedback, or questions to Michelle Greene, Conservation Agent, at conservation@wnewbury.org.

Additional meetings to discuss the proposed draft bylaw will likely be held and further revisions to the draft bylaw may be made by the WNCC. These meetings will be posted on the town calendar on the town website, the calendar on the WNCC web page on the town website, and posted in upcoming meeting agendas of the WNCC. If the draft bylaw is further revised, these revised versions of the draft bylaw will be posted to the WNCC web page on the town website for review.

August 2023 Update:

The WNCC is currently working on a proposed wetlands protection bylaw with intentions to bring the bylaw to the Spring 2024 Annual Town Meeting. Once available, the draft bylaw and draft regulations will be posted for review and the Commission will welcome feedback on both draft documents.

Why have a local bylaw?

The West Newbury Conservation Commission is seeking support from residents for a local Wetlands Protection Bylaw. Wetlands and their bordering lands are valuable to the community for several important reasons including protecting the public drinking water supply, storing flood water and preventing storm damage, filtering pollutants, slowing erosion, and providing wildlife habitat. Areas extending out 200 feet from rivers and perennial streams and 100 feet from other wetland resource areas are protected for these purposes by the Massachusetts Wetlands Protection Act (G.L. Ch. 131 sec. 40) (the Act). The Act was enacted in 1972 and regulations under the Act (310 CMR 10.00) were enacted shortly after. The Act recognizes the values provided by wetlands and their surrounding areas and gives local Conservation Commissions responsibility for implementing the protections provided to these areas. Despite these efforts, according to the EPA, more than half of the original wetlands on the continental United States have been lost to commercial, agricultural, and residential development.

The Home Rule authority allows individual towns to protect additional wetland resource areas, recognize additional wetland resource values, and to impose in local regulations and permits additional standards and procedures above what is in the state Act and Regulations through bylaws deemed appropriate by their residents. As of 2019, 210 Massachusetts towns and

cities have adopted wetlands bylaws, including neighboring towns including Newburyport, Newbury, Merrimac, Amesbury, Groveland, Georgetown, Rowley, Boxford, Topsfield, Ipswich, Hamilton, Wenham, Andover, and North Andover. West Newbury's wetlands protection bylaw would protect the current and future inhabitants of the Town from the costs of wetland degradation through regulations that more adequately protect the function of resource areas.

A local bylaw and regulations will allow the Commission to provide additional protections for vernal pools, ponds, isolated wetlands, and buffer zones, including setbacks for no-disturb and no build areas in buffer zones. Buffer zones are important as vegetation and naturally occurring leaf litter and debris around wetlands help prevent erosion and siltation by slowing the velocity of water. Roots bind the soil to allow for infiltration and also take up heavy metals and phosphorus that would otherwise pollute wetlands, waterways, and ground water. Vegetation also prevents thermal pollution by shading the ground and maintaining water temperatures. A reduction of pollutants and cooler water helps prevent algal blooms, a growing concern with more frequent extreme weather. With plants for cover, wildlife is better able to use the area around wetlands for refuge and reproduction. The Commission also recognizes that certain natural features, resources, and amenities in West Newbury are irreplaceable, and that there are costs incurred to the community by development in or near wetland resource areas.

Many residents live close to wetlands and at some point, they may interact with the Conservation Commission and/or the Conservation Agent as they design and permit work in or along a river, stream, swamp, wet meadow, vernal pool, or other resource area. The bylaw provides for waivers where a proposed project will not adversely impact the interests protected by the bylaw. The Commission's goal is to provide residents with a user-friendly application process and uniformity of response to activities near these valuable natural resources to further protect and enhance the resilience of West Newbury for all residents.

If you have any questions about the bylaw please contact Michelle Greene, Conservation Agent, at 978-363-1100 x126.

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[Proposed Wetlands Protection Bylaw](#)

[Wetlands Permitting Forms, Instructions, and Filing Fees](#)

[2024 Conservation Commission Meeting Schedule and Submission Deadlines](#)

[Additional Wetlands Information, Resources, and Maps](#)

[Conservation Commission Policy on Hiring Outside Consultants](#)

[Invasive Plant Information](#)

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Contact Info

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See map: [Google Maps](#)

Town of West Newbury, 381 Main Street, West Newbury, Massachusetts 01985

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**Town of West Newbury
Conservation Commission**

FINAL 3/19/2024

WETLANDS PROTECTION BYLAW

Sections:

- | | |
|---|--|
| 1. Purpose | 8. Decisions and Conditions |
| 2. Jurisdiction | 9. Security |
| 3. Exemptions & Exceptions | 10. Appeals |
| 4. Definitions | 11. Enforcement |
| 5. Burden of Proof | 12. Regulations |
| 6. Applications, Fees, & Outside
Consultants | 13. Relation to Wetlands Protection Act |
| 7. Notice, Public Hearings, and Public
Meetings | 14. Severability |
| | 15. Effective Date |

1. Purpose

The purpose of this bylaw is to protect the wetlands, water resources, flood-prone areas, and adjoining upland areas in the Town of West Newbury by regulating activities deemed by the Conservation Commission (“Commission”) likely to have a significant or cumulative adverse effect on resource area values deemed important to the community (collectively, the “resource area values protected by this bylaw”), including but not limited to the following:

- 1.1** Public or private water supply;
- 1.2** Groundwater supply;
- 1.3** Flood control;
- 1.4** Erosion and sedimentation control;
- 1.5** Storm damage prevention including coastal storm flowage;
- 1.6** Water quality;
- 1.7** Prevention and control of water pollution;
- 1.8** Agriculture;
- 1.9** Fisheries, including aquaculture;
- 1.10** Wildlife habitat;
- 1.11** Rare species habitat, including rare plant and animal species; and
- 1.12** Recreation.

This bylaw is subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth and other relevant bylaws of the Town of West Newbury.

This bylaw is intended to utilize the Home Rule authority of West Newbury to protect the resource areas under the Wetlands Protection Act (G.L. c.131, §40; the Act) to a greater degree, to protect additional resource areas beyond those protected in the Act recognized by the Town as significant, to protect all resource areas for their additional values beyond those identified in the Act, and to impose, in local regulations and permits, Orders of Conditions, and Determinations of Applicability additional standards and procedures in addition to those of the Act and regulations thereunder (310 CMR 10.00).

2. Jurisdiction

Except as permitted by the Commission or as provided in Section 3 of this bylaw, no person shall remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas (collectively the “resource areas protected by this bylaw”):

- 2.1 Any freshwater or coastal wetlands, isolated wetlands, marshes, wet meadows, bogs, swamps and adjoining land extending out to a distance of 100 feet, known as the Buffer Zone;
- 2.2 Any freshwater or coastal bank or beach bordering on any lake, pond, reservoir, river, stream, brook, or creek and adjoining land extending out to a distance of 100 feet, known as the Buffer Zone;
- 2.3 Any perennial rivers, streams, brooks and creeks and lands adjoining these resource areas out to a distance of 200 feet, known as the Riverfront Area;
- 2.4 Any land under the aforementioned waterbodies and waterways;
- 2.5 Any vernal pools and adjoining land extending out 100 feet, known as the Vernal Pool Habitat;
- 2.6 Any lands subject to flooding;
- 2.7 Any lands subject to tidal action; and
- 2.8 Any lands subject to coastal storm flowage.

Said resource areas shall be protected whether or not they border surface waters.

3. Exemptions and Exceptions

The following exemptions shall apply:

- 3.1 Activities in the Buffer Zone and Riverfront Area Pursuant to 310 CMR 10.02 (2)(a) and (b) and as may be Amended by the Massachusetts Department of Environmental Protection (“MassDEP”)
The exemptions provided in the Wetlands Protection Act (G.L. c. 131 §40, the Act) and regulations (310 CMR 10.00) shall apply under this bylaw provided that advance written notice of at least 72 hours has been given to the Commission or its agent before the commencement of work and provided that the work also conforms to any performance standards and design specifications as written in the Act and regulations and to any performance standards and design specifications in regulations adopted by the Commission.
- 3.2 Emergency Projects
Projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof and provided that advance notice, oral or written, has been given to the Commission or its agent before the commencement of work or within 24 hours after the commencement and provided that the Commission or its agent certifies the work as an emergency project and provided that the work is performed only for the time and place certified by the Commission or its agent for the limited purposes necessary to abate the emergency. 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.
- 3.3 Agriculture
Work performed for normal maintenance or improvement of land in agricultural and/or aquacultural use as defined by the Wetlands Protection Act (G.L. c.131, §40; the Act) and regulations thereunder (310 CMR 10.00).
- 3.4 Routine Mowing and Maintenance of Lawns, Gardens, and Landscaped Areas
The routine mowing and maintenance of lawns, gardens, and landscaped areas shall be exempt from this bylaw provided that these areas were lawfully in existence on the effective date of this bylaw or were created after such date in accordance to any performance standards and design specifications in regulations adopted by the Commission.

4. Definitions

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

The term "agriculture" shall refer to the definition provided by G.L. c. 128, §1A.

The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within, or affecting resource areas protected by this 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 changing 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 expansion of buildings or structures of any kind;
- g. Placing of obstructions or objects in water;
- h. Destruction of plant life including but not limited to cutting or trimming of trees, shrubs, and other vegetation;
- i. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
- j. Any activities, changes, or work that may cause or tend to contribute to pollution of any body of water or groundwater;
- k. Incremental activities which have, or may have, a cumulative adverse effect on the resource areas protected by this bylaw; and/or
- l. Increasing the volume of untreated stormwater directed to a resource area.

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 break in the slope observed in the field or the mean annual high water line, whichever is higher.

The term "cumulative adverse effect" shall mean the adverse effects of activities regulated under this bylaw which may be individually insignificant to the interests and values under this bylaw, but when considered in relation to other past or present activities in a given area may be significant to said interests and values in the aggregate.

The term "interests" shall mean the resource area values and resource areas protected by this bylaw.

The term "isolated wetlands" means freshwater wetlands not bordering on a water body and at least 5,000 square feet in surface area.

The term "permit" shall mean a document issued by the Commission solely under this bylaw or regulations promulgated hereunder.

The term "pond" shall follow the definition of 310 CMR 10.04, and as may be amended, except a size threshold of 5,000 square feet shall apply.

The term "rare species" shall include, without limitation, all vertebrate and invertebrate animals and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, the United States Fish and Wildlife Service, and/or the National Oceanic and Atmospheric Administration regardless of whether the habitat in which they occur has been previously identified and/or mapped by the Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program.

The term "vernal pool" shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, 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 which have been found in the basin or depression. The boundary of the vernal pool is the mean annual high-water line defining the depression. A vernal pool may be subject to jurisdiction hereunder regardless of whether it has been certified by the Massachusetts Division of Fisheries and Wildlife's Natural Heritage and Endangered Species Program.

The term "written notice" shall include notice by electronic mail.

Except as otherwise provided in this bylaw or in associated regulations of the Commission, the definitions of terms and the procedures in this bylaw shall be as set forth in the Wetlands Protection Act (G.L. c. 131, §40) and regulations (310 CMR 10.00).

5. Burden of Proof

The applicant for a permit, Notice of Intent, or Request for Determination of Applicability to perform any work in a resource area protected by this bylaw shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have significant or cumulative adverse effects on the interests protected by this bylaw.

Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to:

- a. Deny a permit or Order of Conditions; or
- b. Issue a positive Determination of Applicability; or
- c. Issue a permit, Order of Conditions, or Negative Determination of Applicability with conditions; or
- d. Continue a public hearing or public meeting to another date at the Commission's discretion and with the applicant's permission, to enable the applicant or others to present additional evidence upon such terms and conditions the Commission deems reasonable.

6. Applications, Fees, & Outside Consultants

6.1 Application

A written application shall be filed with the Commission to perform activities that may impact resource areas protected by this bylaw. No activities under the jurisdiction of this bylaw shall commence without receiving and complying with a permit, Order of Conditions, or Determination of Applicability issued pursuant to this bylaw.

6.2 Request for Determination of Applicability (RDA)

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may request, in writing, a Determination of Applicability from the Commission. The Commission shall accept a Request for Determination of Applicability (RDA) under the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00) as an RDA under this bylaw where the RDA is sufficient to meet the requirements of the bylaw and any regulations promulgated thereunder. The Commission may require additional materials or information in addition to the plans and specifications required to be filed by an applicant under the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00), in order to fulfill the requirements of this bylaw and any regulations promulgated thereunder.

The decision issued by the Commission for an RDA filing is a Determination of Applicability.

Any person desiring only to confirm delineations of resource area(s) on site shall file an Abbreviated Notice of Resource Area Delineation (ANRAD).

6.3 Abbreviated Notice of Resource Area Delineation (ANRAD)

Any person desiring to confirm, for purposes of this bylaw, the limits of resource areas on a site may file an Abbreviated Notice of Resource Area Delineation (ANRAD) with the Commission. This application shall include such information and plans as are set forth in the regulations of the Commission to describe and define the wetland resource areas. The Commission shall accept an ANRAD under the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00) as an ANRAD under this bylaw where the ANRAD is sufficient to meet the requirements of the bylaw and any regulations promulgated thereunder. The Commission may require additional materials or information in addition to the plans and specifications required to be filed by an applicant under the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00), in order to fulfill the requirements of this bylaw and any regulations promulgated thereunder.

The decision issued by the Commission for an ANRAD filing is an Order of Resource Area Delineation (ORAD).

6.4 Notice of Intent (NOI)

Any Person desiring to perform activities regulated by this bylaw affecting resource areas protected by this bylaw shall first file a Notice of Intent (NOI) with the Commission. The Notice of Intent shall include such information and plans deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. The Commission shall accept an NOI under the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00) as an NOI under this bylaw where the NOI is sufficient to meet the requirements of the bylaw and any regulations promulgated thereunder. The Commission may require additional materials or information in addition to the plans and specifications required to be filed by an applicant under the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00), in order to fulfill the requirements of this bylaw and any regulations promulgated thereunder.

The decision issued by the Commission for an NOI filing is an Order of Conditions (OOC).

6.5 Permit

For regulating activities affecting resource areas protected solely under this bylaw and not under the Wetlands Protection Act (G.L. c. 131 §40), the Commission may create a permit application. Any permit application and all processes relating to a permit application shall be outlined in the regulations promulgated under this bylaw.

The decision issued by the Commission for a permit application is a permit.

6.6 Fees

At the time of an application, the applicant shall pay a filing fee specified in the regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00).

6.7 Fee Waiver

The Commission may waive fees specified in the regulations of the Commission for applications filed by a government agency, including a municipal department, board, or committee. The Commission may also waive fees specified in the regulations of the Commission for applications filed for projects the Commission finds have a net benefit to wetland resources and a primary purpose of restoring wetland ecological functions.

6.8 Consultants

The Commission may, at the expense of the applicant and in accordance with the provisions of G.L. c. 44 §53G and regulations promulgated by the Commission, impose reasonable fees upon applicants to secure outside consultants including engineers, wetlands scientists, wildlife biologists, or other experts to aid in the review of proposed projects presenting technical issues requiring additional expertise to assist the Commission in protecting resource areas. Such funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than initially calculated or new information requires additional consultant services. This is intended to apply only to assist in reviewing projects deemed by the Commission to be large or complex.

7. Notice, Public Hearings, and Public Meetings

7.1 Abutter Notification

Any person filing a Notice of Intent or Abbreviated Notice of Resource Area Delineation, or for an amendment to an Order of Conditions shall follow the abutter notification requirements set forth in the Wetlands Protection Act (M.G.L. c. 131 §40) and regulations, 310 CMR 10.05(4), and as may be amended by the MassDEP.

7.2 Public Notice

The Commission shall provide written notice given at the expense of the applicant at least five business days prior to the public hearing or public meeting by publication in a newspaper of general circulation in West Newbury or in any other manner approved by the MassDEP. Where applicable, notice given for public meetings and public hearings under this bylaw may be combined with notice given for public meetings and public hearings under the Wetlands Protection Act (G.L. c. 131, §40) and regulations (310 CMR 10.00).

7.3 Public Hearings & Public Meetings

The Commission shall commence a public hearing on any permit application, Notice of Intent, Abbreviated Notice of Resource Area Delineation, or request to amend a final Order of Conditions, or a public meeting on any Request for Determination of Applicability, within 21 days from receipt of a complete application, unless an extension is authorized in writing by the applicant.

The Commission shall have authority to request that an applicant agree to continue the public hearing or public meeting to a specific date announced at the hearing or meeting, for reasons stated at the hearing or meeting, which may include the need for additional information or plans required of the applicant or others as deemed necessary by the Commission. In the event that the applicant objects to a continuance or postponement, the hearing or meeting shall be closed and the Commission shall take action on such information as is available.

The Commission may combine its public hearing or public meeting under this bylaw with the public hearing or public meeting conducted under the Wetlands Protection Act (M.G.L. c. 131 §40) and Regulations (310 CMR 10.00).

8. Decisions and Conditions

8.1 Decision

The Commission shall issue its decision as a permit, Order of Conditions, denial, Order of Resource Area Delineation, or Determination of Applicability within 21 calendar days of the close of the public hearing or public meeting, unless the applicant authorizes an extension in writing. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any adverse effect to the interests of this bylaw. Each case will be considered on its own merits. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing or

public meeting. The Commission may, in an appropriate case, combine the permit, Order of Conditions, Order of Resource Area Delineation, or Determination of Applicability issued under this bylaw with the Order of Conditions, Order of Resource Area Delineation, or Determination of Applicability issued under the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00).

8.2 Waivers

Upon written request, the Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in this bylaw or regulations, provided that:

- a. The Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said bylaw or regulations; and
- b. That avoidance, minimization and mitigation have been employed to the maximum extent feasible; and
- c. The project, when considered in its entirety, would result in a net benefit of resource areas values; and
- d. The waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

8.3 Approvals

The Commission is authorized to approve a permit or Order of Conditions or issue a Negative Determination of Applicability when proposed work meets all applicable design specifications, performance standards and other requirements under this bylaw and in regulations of the Commission and where the work will not result in significant or cumulative adverse effects upon the interests protected by this bylaw, as determined by the Commission. Any permit, Order of Conditions, or Negative Determination of Applicability issued under this bylaw may differ from any such permit or Order of Conditions issued by the Commission under the provisions of the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00) (the "Act"), where the bylaw and regulations of the Commission are more protective of any resource area(s) than the Act.

8.4 Conditions

The Commission is authorized to impose conditions on any approved permit, Order of Conditions, or Negative Determination of Applicability that the Commission deems necessary to protect the interests of this bylaw or to ensure that a project or activity proceeds in accordance with any design specifications, performance standards and other requirements in regulations of the Commission. If an approved permit Order of Conditions, or Negative Determination of Applicability contains conditions, all activities shall be conducted in accordance with those conditions.

A permit or Order of Conditions may include conditions with requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all present and future owners of the land. These conditions may remain in full force and effect after issuance of a Certificate of Compliance if so noted on the Certificate of Compliance.

8.5 Entry

The Commission, its agents, officers, and employees shall have authority to request authorization to enter upon privately owned land to perform their duties under this bylaw subject to the constitutions and laws of the United States and the Commonwealth. They may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth. The refusal to authorize entry in connection with review of an

application for a permit, Notice of Intent, Request for Determination of Applicability, or Abbreviated Notice of Resource Area Delineation shall be grounds for denial of that application.

8.6 Denials

The Commission is empowered to deny a permit or Order of Conditions or issue a Positive Determination of Applicability for reasons including, but not limited to:

- a. Failure to meet the requirements of this bylaw;
- b. Failure to submit necessary information and plans requested by the Commission;
- c. Failure to meet the design specifications, performance standards and/or other requirements in regulations of the Commission;
- d. Failure to meet the design specifications, performance standards and/or other requirements of the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00);
- e. Failure to avoid or prevent significant or cumulative adverse effects upon the interests protected by this bylaw;
- f. The refusal to authorize entry of the Commission to a property in connection with review of an application for a permit, Notice of Intent, RDA or ANRAD; and/or
- g. Where no conditions are adequate to protect the interests of this bylaw, as determined by the Commission in its sole discretion as the issuing authority.

Any denial issued under this bylaw may differ from any such permit, Order of Conditions, denial, or Determination of Applicability issued by the Commission under the provisions of the Act, where the bylaw and regulations of the Commission are more protective of any resource area(s) than the Act.

8.7 Amendments

An applicant may request an amendment to an Order of Conditions. Any request for an amendment to an OOC shall comply with MassDEP Wetlands Program Policy 85-4, and as may be modified or amended by MassDEP.

8.8 Expiration

A permit, Order of Conditions, Determination of Applicability, or Order of Resource Area Delineation shall expire three years from the date of issuance unless otherwise specified by the Commission at the time of issuance.

8.9 Extensions

Notwithstanding the above, the Commission in its discretion may extend a permit, Order of Conditions, or Order of Resource Area Delineation for one or more periods of up to three years each, upon written request from the applicant made at least 30 days prior to the expiration of the permit Order of Conditions, or Order of Resource Area Delineation.

8.10 Revocation

For good cause the Commission may revoke or modify any permit, Order of Conditions, Order of Resource Area Delineation, or other decision issued under this bylaw after notice to the holder, the public, abutters, and after a public hearing.

8.11 Recordation of Order of Conditions or Permit

No work proposed in any application shall be undertaken until the permit, Order of Conditions, or amended Order of Conditions issued by the Commission with respect to such work has been recorded in the Southern Essex District Registry of Deeds or, if the land affected is registered land, in the registry section of the Land Court for the Southern Essex District Registry of Deeds, and until the holder of the permit, Order of Conditions, or amended Order of Conditions certifies in writing to the Commission that the document has been recorded or registered.

9. Security

As part of a permit or Order of Conditions issued under this bylaw, 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 thereunder, including conditions requiring mitigation work, be secured wholly or in part by one or both of the methods described below:

- A. By a proper bond, a deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.
- B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the West Newbury Conservation Commission whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method of accepting a conservation restriction, easement, or other covenant shall be used only with the consent of the applicant.

10. Appeals

Any decision of the Commission issued under this bylaw and any regulations promulgated hereunder, shall be reviewable in the Essex County Superior Court in accordance with G.L. c. 249, §4.

11. Enforcement

11.1 Scope

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw without the required authorization of the Commission, 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 a permit or an enforcement order issued pursuant to this bylaw. Any person who violates any provision of this section may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

11.2 Enforcement

The Commission, its agents, officers, and employees shall have authority to enforce this bylaw, its regulations, permits, Orders of Conditions, Orders of Resource Area Delineation, and Determinations of Applicability issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, enforcement orders, non-criminal citations under G.L. c. 40 §21D, and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

11.3 Legal Action

Upon request of the Commission, the Select Board may authorize town counsel to take legal action for enforcement of this bylaw under civil law. Upon request of the Commission, the chief of police may take legal action for enforcement of this bylaw under criminal law. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

11.4 Fines

Any person who violates any provision of this bylaw, or regulations, permits, Orders of Conditions, Orders of Resource Area Delineation, Determinations of Applicability, enforcement order, or other administrative orders issued thereunder, shall be punished by a fine set by the Commission at \$300 per violation. Each day or portion thereof during which a violation continues, or unauthorized fill or other

alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations, permit, or administrative orders violated shall constitute a separate violation.

As an alternative to criminal prosecution in a specific case, the Commission may, in its sole discretion, issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in G.L. c. 40 §21D, which West Newbury has adopted in §XXVIII of the Bylaws of the Town of West Newbury.

As long as any person in violation demonstrates, in the sole judgement of the Commission, a reasonable, good faith effort to comply with this bylaw, the Commission may refrain from issuing fines. However, the Commission may resort to issuing fines when the violator ceases to demonstrate a reasonable, good faith effort toward achieving compliance. This provision does not preclude the Commission from exercising its prosecutorial discretion to issue fines or preclude the Commission from simultaneously ordering mitigation and/or restoration of the affected resource areas.

11.5 Appeal of Fines

In addition to the appeal provisions under G.L. c. 40, §21D, persons fined may appeal in writing to the Commission within 21 days of issuance.

11.6 Vacate Fines

The Commission may vacate fines where compliance has been established or where the issuance of fines is inconsistent with the interests of this bylaw. The Commission may suspend fines as long as the person in violation demonstrates a reasonable, good faith effort toward obtaining compliance. The Commission may restore suspended fines at any time during an existing violation. This provision does not preclude the issuance of fines in conjunction with orders for restoration or mitigation.

12. Regulations

The Commission may promulgate regulations after public notice and a public hearing to effectuate the purposes of this bylaw, effective when voted by the Commission and filed with the town clerk. At a minimum, these regulations shall reiterate the terms defined in this bylaw, define additional terms and requirements not inconsistent with the bylaw, impose filing and consultant fees, and include design specifications and performance standards which provide for undisturbed vegetative buffers extending from the edge of resource areas. Failure by the Commission to promulgate such regulations or a legal declaration of their invalidity, in whole or in part, by a court of law shall not act to suspend or invalidate the effect of this bylaw.

13. Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00) thereunder. It is the intention of this bylaw that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as more protective than those of the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00).

14. Severability

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, Order of Condition, Order of Resource Area Delineation, Determination of Applicability, enforcement or other administrative orders which previously has been issued.

15. Effective Date

The effective date of this bylaw shall be the first day of the month following the approval of the bylaw by the Attorney General.

This bylaw shall not be applicable to activity that is the subject of a Notice of Intent, Request for Determination of Applicability, or Abbreviated Notice of Resource Area Delineation filed with the Commission pursuant to the provisions of the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00) before the effective date of this bylaw. This bylaw shall not be applicable to activity that has been issued a permit, Order of Conditions, Order of Resource Area Delineation, or Determination of Applicability pursuant to the provisions of the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00) before the effective date of this bylaw.