

BROOKLINE WETLANDS REGULATIONS

CONTENTS

1. General Provisions
 - 1.1. Authority
 - 1.2. Purpose
 - 1.3. Areas Subject to Jurisdiction
 - 1.4. Definitions
 - 1.5. Jurisdiction
 - 1.6. Exemptions and Exceptions

2. Performance Standards for Areas Subject to Jurisdiction
 - 2.1. Wetland Values Protected and Performance Standards Common to All Areas Subject to Jurisdiction under the By-Law
 - 2.2. Land Under Lakes, Ponds, Rivers or Streams (Land Under Water Bodies and Waterways, LUW)
 - 2.3. Banks
 - 2.4. Marshes, Wet Meadows, Bogs, Swamps (Vegetated Wetlands)
 - 2.5. Land Subject to Flooding
 - 2.6. Riverfront Areas
 - 2.7. Vernal Pools
 - 2.8. Buffer Zones

3. Procedures
 - 3.1. Filing Procedures
 - 3.2. Filing Requirements
 - 3.3. Security Requirements
 - 3.4. Enforcement
 - 3.5. Burden of Proof
 - 3.6. Appeal of Decisions
 - 3.7. Severability

1 General Provisions

1.1 Authority

- A. These regulations are promulgated by the Town of Brookline Conservation Commission pursuant to the authority granted to it under Section 9 of the Town of Brookline Wetlands Protection By-Law (the By-Law). These regulations complement the By-Law, and have the force of law in implementing the By-Law. The By-Law, and these regulations, are intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act (M.G.L. c. 131, § 40, WPA) and Regulations thereunder (310 CMR 10.00); subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth.

1.2 Purpose

- A. The purpose of these regulations is to support and implement the By-Law and to protect the wetlands, water resources, and adjoining land areas in the Town of Brookline by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, wildlife habitat, rare species habitat including rare plant species, and recreation values.
- B. The By-Law identifies additional interests not recognized by the WPA. These include but are not limited to isolated wetlands larger than 2,500 square feet, vernal pools, ponds larger than 5,000 square feet, and intermittent streams. It also increases the buffer zone around wetland resource areas to 150 feet.
- C. 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 are less stringent than these regulations.

1.3 Areas Subject to Jurisdiction:

- A. The following areas are subject to jurisdiction under the By-Law:
 - 1. Resource Areas:
 - a. Land under lakes, ponds, rivers or streams (Land Under Water Bodies, LUW)
 - b. Banks
 - c. Any wetland, marsh, wet meadow, bog or swamp bordering on any lake, pond, river or stream (Bordering Vegetated Wetlands, BVW)
 - d. Land subject to flooding bordering on any lake, pond, river or stream
 - e. Any wetland, marsh, wet meadow, bog or swamp larger than 2500 square feet that is isolated from other resource areas (Isolated Vegetated Wetlands, IVW)
 - f. Riverfront areas
 - g. Vernal pools
 - 2. Buffer Zones.

1.4 Definitions

- A. In addition to the definitions contained in the By-Law and those found at 310 CMR 10.04, terms in these regulations shall have the following 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 - To change the condition of any resource area subject to jurisdiction under the By-Law. Examples of alteration include but are not limited to, the following:

- 1) the changing of pre-existing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns or flood retention areas;
- 2) the raising or lowering of the water level or water table;
- 3) the destruction of vegetation;
- 4) the changing of water temperature, salinity, biochemical oxygen demand (BOD), or other physical, biological or chemical characteristics of the receiving water.

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

Area Subject to Jurisdiction under the By-Law - An area specified in the By-Law or the Act as a Resource Area or a Buffer Zone.

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

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 Jurisdiction under the By-Law.

Bordering Vegetated Wetland - The area characterized by a wetland plant community and wetland hydrology, adjacent to a pond or stream, as defined in M.G.L. c. 131 § 40.

Buffer Zone - That area of land extending 150 feet horizontally outward from the boundary of a resource area, except that riverfront areas and vernal pools shall have no buffer zones.

Commission - The Conservation Commission of the Town of Brookline or its employee, representing the Commission or its agents.

Credible Evidence - Evidence from a competent source, as determined by the Brookline Conservation Commission, such as the Department of Environmental Protection, the Commission, 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.

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).

Isolated Vegetated Wetland - An isolated wetland that is not hydraulically connected to another resource area and is at least 2,500 square feet in size.

Land Subject to Flooding - An area that floods from a rise in a bordering waterway or water body. It is an area with low, flat topography adjacent to and inundated by flood waters rising from creeks, rivers, streams, ponds or lakes. It extends from the banks of these waterways and water bodies; where a bordering vegetated wetland occurs, it extends from said wetland. Or, an area designated as a floodplain by the Flood Insurance Rate Maps, community number 250234B, for the Town of Brookline.

Land under lakes, ponds, rivers or streams (Land Under Water Bodies, LUW) - The land beneath any creek, river, stream, pond or lake. Said land may be composed of organic muck or peat, fine sediments, rocks or bedrock. The physical characteristics and location of LUW are critical to the protection of the interests identified. The boundary of LUW is the mean annual low water level.

Maintenance - Activity that maintains but does not enlarge a structure; does not alter its design, or change its runoff characteristics; or does not alter an existing landscape from its current condition.

Native vegetation - Vegetation native to the Northeastern United States, excluding any vegetation listed as non-native invasive by the Massachusetts Invasive Plant Advisory Group.

Person - Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town By-Laws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

Pond - A water body as so defined in the Wetlands Protection Act and 310 CMR 10.04, except that a minimum size threshold of 5,000 square feet shall apply.

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 Arachnida 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). Provided

however, a majority of the members must vote to issue an enforcement order under Section 3.4 of these regulations.

Rare Species - Without limitation, all vertebrate and invertebrate animal and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

Resource Areas - Land under lakes, ponds, rivers or streams; any bank, marsh, wet meadow, bog or swamp bordering on any lake, pond, river or stream; land subject to flooding bordering on any lake, pond, river or stream; isolated vegetated wetlands; riverfront areas; and vernal pools.

Wetland Resource Area Values - Without limitation, public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, wildlife habitat, rare species habitat including rare plant species, and recreation values.

Riverfront Area –The area of land between a river's mean annual high water line and a parallel line measured horizontally, as so defined in the Wetlands Protection Act and 310 CMR 10.58(2), as they may be amended. Rivers and streams that have a riverfront area are shown on the map in Appendix A.

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 in the Area Subject to Jurisdiction under the By-Law.

Stream - An open body of running water, including brooks and creeks, which moves in a definite channel, in the ground, due to a hydraulic gradient and flows within, into, or out of an Area Subject to Jurisdiction under this By-Law. Such bodies of running water that are intermittent are streams, except for those that serve only to carry the immediate surface runoff from stormwater or snowmelt. A portion of a stream may flow through a culvert or beneath a bridge. Where a stream or river runs through a culvert more than 200 feet in length, the buffer zone or riverfront area stops at a perpendicular line at the upstream end of the culvert and resumes at the downstream end.

Vernal Pool - A confined basin depression that, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and that is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, and that is breeding habitat for amphibian species such as wood frog, spotted salamander, and fairy shrimp, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. A vernal pool does not have a buffer zone.

Wetland Resource Area – An Area Subject to Protection under the Wetlands Protection Act, Mass. Gen. Laws c. 131, § 40, or the By-Law, or both.

1.5 Jurisdiction

- A. Except as permitted by the Commission or as provided in this By-Law, no person shall alter a resource area or a buffer zone. Resource areas shall be protected whether or not they border surface waters.

1.6 Exemptions and Exceptions

- A. The application and permit required by the By-Law and controlled by this set of rules and regulations shall not be required for the following activities so long as the applicant complies with Section 3.1.D of these regulations:
1. Maintaining, repairing, or replacing, but not substantially changing or enlarging an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission;
 2. Maintenance, as defined in Section 1.4.A of these regulations, of existing structures or landscaped areas;
 3. Work performed for normal maintenance or improvement of land which is lawfully in agricultural use, as defined in 310 CMR, at the time the work takes place;
 4. For emergency 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; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this By-Law. 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.
 5. The application of herbicides as specifically set forth in 310 CMR 10.03(6), as may be amended.
 6. Facilities constructed for the purpose of and designated as reservoirs by the Commonwealth of Massachusetts shall be exempt from the jurisdiction of this By-Law.
 7. Any bordering vegetated wetland, isolated wetland, bank, land under water, land subject to flooding, or riverfront area in existence for the purpose of stormwater management shall not require the filing of a Notice of Intent or a Request for

Determination of Applicability to maintain the stormwater management system, provided that the work is limited to the maintenance of the stormwater management system and that the area is not altered for other purposes.

- B. Other than as stated in this section, the exceptions provided in the Wetlands Protection Act (M.G.L. c. 131, § 40) and Regulations (310 CMR 10.00) shall not apply under this By-Law.

2 Performance Standards for Areas Subject to Jurisdiction:

2.1 Wetland Values Protected and Performance Standards Common to All Areas Subject to Jurisdiction under the By-Law.

- A. Preamble: The Commission shall presume that areas subject to jurisdiction under the By-Law function to protect wetland values. Alterations to Resource Areas, and to Buffer Zones, are presumed to impact wetland values. Activities other than maintenance as defined in Section 1.4.A above and exemptions and exceptions as defined in Section 1.6.A above are subject to review by the Commission. A Permit for work in a Buffer Zone or a Resource Area shall only be issued if the Commission finds that any proposed activity will not impair the ability of the Resource Area or the Buffer Zone to perform its functions or protect wetland values.

1. Persons engaging in activities in areas subject to jurisdiction shall seek to avoid impacts. Unavoidable impacts shall be minimized, and all impacts shall be mitigated.
2. Any plans to mitigate impacts to jurisdictional areas shall be designed with the following goals:
 - a. minimize disruption or removal of existing native vegetation, including trees
 - b. minimize the creation of new impervious area
 - c. maximize recharge from any impervious surfaces, with any necessary pre-treatment
 - d. ensure that runoff from the site is minimized
 - e. ensure that runoff from the site is treated to minimize pollutants
 - f. develop designs that are functional, appropriately scaled and sized, and easy to maintain
 - g. where feasible, manage runoff using surface, vegetative designs rather than underground piped infrastructure
 - h. design with sensitivity to habitat characteristics both on-site and in adjacent areas

- B. Performance Standards: The following performance standards shall be met for activities proposed in all areas subject to jurisdiction under the By-Law:

1. There shall be no significant or cumulative alteration of wetland values as a result of any proposed activities.
2. There shall be no new direct discharge to resource areas.
3. The stormwater management system shall be designed to maximize treatment before discharge;

4. 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 Jurisdiction under the By-Law, no activity will be permitted 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 Jurisdiction 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 a preponderance of credible evidence presented to the Commission by the proponent.
 - C. Activities that are subject to this By-Law are not exempt from Brookline Stormwater By-Law, Erosion and Sedimentation Control By-Law, and/or Stormdrain Connection By-Law or any other applicable local state or federal permitting requirements.
- 2.2 Land under lakes, ponds, rivers or streams (Land Under Water Bodies and Waterways, LUW)
- A. Preamble: Land Under Water Bodies and Waterways (LUW) has a fundamental impact on water resources and habitat. The physical nature of LUW is highly variable, ranging from deep organic and fine sedimentary deposits to rocks and bedrock. The dynamic relationship between surface and groundwater within the “hyporheic zone”, located below the stream channel, sustains communities of aquatic organisms which regulate the flux of nutrients, biomass and the productivity of organisms including fish within the stream itself. LUW plays an important role in the chemical, physical and biological processes that occur in water bodies and waterways, and alterations to LUW are presumed to alter these functions. The plant community composition and structure, hydrologic regime, topography, soil composition and water quality of LUW provide important food, shelter, migratory and overwintering areas, and breeding areas for wildlife.
 - B. Wetland Values Protected: LUW is significant to: ground water supply, flood control, storm damage prevention, water quality protection, water pollution control, prevention of pollution, protection of fisheries, wildlife habitat protection, rare species habitat protection, erosion and sedimentation control, flood control and storm damage prevention.
 - C. Performance Standards: In addition to meeting the performance standards applicable to all areas subject to jurisdiction that are found at Section 2.1.B of these regulations, and to those found at 310 CMR 10.56(4), the following performance standards shall apply to any work performed in LUW:
 1. Work within LUW shall not:
 - a. Impair the water carrying capacity within the defined channel, which is provided by said land in conjunction with the banks.
 - b. Impair ground and surface water quality.
 - c. Impair the capacity of said land to provide breeding habitat, escape cover and food for fisheries or the capacity of said land to provide wildlife habitat function.
 - d. Cause alterations to flood elevations, or to the hydrologic regime during high or low flow conditions.
 - e. Significantly alter the level of adjacent groundwater.

- f. Result in increased suspension or transport of pollutants, sediments, erosion or bank instability.

2.3 Banks

- A. Preamble: Banks are created by the natural rising and falling of water in the water body over the course of a typical year, with the low point, or toe of the bank, being the typical mean annual low water level and the top of the bank typically the mean annual high water level. Stable, vegetated banks are important to healthy water bodies, protecting water quality and habitat, maintaining cool temperatures, and reducing stream velocities. Bank instability and erosion can cause significant impacts to water bodies: excessive sediment and nutrient loading; scouring and undercutting of banks; widening and shallowing of stream channels; impacts to fish passage; loss of vegetative cover; and loss of instream habitat. Alterations in a watershed may result in significant changes in stream hydrology, which can destabilize banks. Protection of banks is a vital component of stream and pond protection.
- B. Wetland Values Protected: Banks are significant to ground water supply, to flood control, to storm damage prevention, to the prevention of pollution, and to the protection of fisheries and wildlife habitat.
- C. Performance Standards: In addition to meeting the performance standards applicable to all areas subject to jurisdiction that are found at Section 2.1.B of these regulations, and to those found at 310 CMR 10.54(4), the following performance standards shall apply to any work performed in banks:
 - 1. Work in banks shall 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) Ground and surface water quality;
 - (d) The capacity of the Bank to provide breeding habitat, escape cover, and food for fisheries; and
 - (e) The capacity of the Bank to provide wildlife habitat function.
 - 2. Bank treatment and stabilization design should be sensitive to slope, stream hydrology, and surrounding habitat. In most cases, vegetative measures, using appropriate native species, are preferred for bank stabilization and protection. In some instances, slope or hydrology may require additional or alternative measures. Priority consideration should be given to bioengineering approaches (using natural structural materials such as vegetative mats, logs, root balls, fiber logs, etc.) in conjunction with vegetative measures. Traditional structural measures such as riprap are the least desirable bank stabilization technique.

2.4 Marshes, Wet Meadows, Bogs, Swamps (Vegetated Wetlands)

- A. Preamble: In wetlands, water saturation is the dominant factor determining the nature of soil development and the types of plant and animal communities living in the surrounding environment. Wetlands provide many important functions including water quality enhancement, flood storage, thermal regulation, bank protection, and critical habitat area. Wetlands are sensitive to disturbances; natural wetland ecosystems, when

disturbed, can easily be overrun by invasive species; changes in surface or groundwater hydrology can dramatically alter wetland size and type; fragmentation or isolation of wetlands can significantly reduce their function and value. Diverse wetland communities dominated by native species provide by far the most value.

- B. Wetland Values Protected: Vegetated Wetlands, both bordering and isolated, are significant to the protection of ground water supply, flood control, storm damage prevention, the prevention of pollution, and the protection of fisheries and to wildlife habitat.
- C. Performance Standards: In addition to meeting the performance standards applicable to all areas subject to jurisdiction that are found at Section 2.1.B of these regulations, and to those found at 310 CMR 10.55(4), the following performance standards shall apply to any work performed in wetlands:
 - 1. Work in wetlands shall not impair in any manner the following:
 - a. Flood storage capacity;
 - b. Ground and surface water quality;
 - c. The capacity of said land to provide breeding habitat, escape cover and food for fisheries; and
 - d. The capacity of said land to provide wildlife habitat function.
 - 2. Work in wetlands should not cause alterations to flood elevations, or to the hydrologic regime during high or low flow conditions
 - 3. Work within wetlands shall not significantly alter the level of adjacent groundwater
 - 4. Wetlands should in general be planted with appropriate native species
 - 5. When work is proposed in wetlands to support or provide for public access, such as the construction of boardwalks, care should be taken to minimize physical, visual and auditory impacts to surrounding wetlands, to minimize disruption of habitats, to avoid impacts to surface and groundwater flows and to avoid sensitive areas including endangered species habitat.
- D. Notwithstanding the provisions of this bylaw, the Conservation Commission may issue an Order of Conditions permitting work which results in the loss of up to 5,000 square feet of Bordering Vegetated Wetland when said area is replaced in accordance with 310 CMR 10.55(4)(b). In such a case, the provisions of this By-Law shall apply to the area of wetland replacement.

2.5 Land Subject to Flooding

- A. Preamble: Lands Subject to Flooding are significant to flood control, storm damage prevention, public and private water supply, groundwater supply, water quality protection, water pollution control, prevention of pollution, wildlife habitat, and erosion and sedimentation control. Land Subject to Flooding provides a temporary storage area for flood water and/or high groundwater. During periods of peak run-off, flood waters are both retained (i.e., slowly released through evaporation and percolation) and detained (i.e., slowly released through surface discharge) by Land Subject to Flooding. Over

time, incremental filling of these areas causes increases in the extent and level of flooding by eliminating flood storage volume or by restricting flows, thereby causing increases in damage to public and private properties. Certain portions of Land Subject to Flooding are also likely to be significant to the protection of wildlife habitat.

- B. Wetland Values Protected: Lands Subject to Flooding are significant to the protection of ground water supply, flood control, storm damage prevention, the prevention of pollution, and the protection of fisheries and to wildlife habitat.
- C. Performance Standards: In addition to meeting the performance standards applicable to all areas subject to jurisdiction that are found at Section 2.1.B of these regulations, and to those found at 310 CMR 10.57(4), the following performance standards shall apply to any work performed in Land Subject to Flooding:
 - 1. Work within Land Subject to Flooding shall not impair in any manner the following:
 - a. The water carrying capacity of the adjacent waterway, water body or wetland;
 - b. Ground and surface water quality;
 - c. The capacity of said land to provide breeding habitat, escape cover and food for fisheries;
 - d. The capacity of said land to provide wildlife habitat function.
 - 2. Work within Land Subject to Flooding shall not cause alterations to flood elevations, or to the hydrologic regime during high or low flow conditions.

2.6 Riverfront Areas

The Brookline Conservation Commission recognizes the functions and values associated with both perennial and intermittent streams. All rivers and streams shown on the map in Appendix A have a 200-foot riverfront area for the entire length portrayed on the map, except for portions that are underground (culverted) for 200 feet or more.

- A. Preamble: The riverfront area can prevent degradation of water quality by filtering sediments, toxic substances (such as heavy metals), and nutrients (such as phosphorus and nitrogen) from stormwater, nonpoint pollution sources, and the river itself. Sediments are trapped by vegetation before reaching the river. Nutrients and toxic substances may be detained in plant root systems or broken down by soil bacteria. Natural vegetation within the riverfront area also maintains water quality for fish and wildlife. Riverfront areas are important wildlife habitat, providing food, shelter, breeding, migratory, and overwintering areas. Some predominantly upland species use, and may be seasonally dependent, on riverfront areas.
- B. Wetland Values Protected. A Riverfront Area is significant to the protection of groundwater; flood control; the prevention of storm damage; the prevention of pollution; the protection of wildlife habitat; and the protection of fisheries.
- C. Performance Standards: In addition to meeting the performance standards applicable to all areas subject to jurisdiction that are found at Section 2.1.B of these regulations, and to those found at 310 CMR 10.58(4), the following performance standards shall apply to any work performed in wetlands:
 - 1. Work in riverfront areas shall not impair in any manner the following:

- a. Flood storage capacity;
 - b. Ground and surface water quality;
 - c. The ability of the riverfront area to control erosion, filter pollutants, recharge stormwater, and reduce overland flows;
 - d. The capacity of said land to provide breeding habitat, escape cover and food for wildlife; and
 - e. The capacity of said land to provide wildlife habitat function.
2. Work in riverfront areas should be sensitive to existing conditions, including hydrology, plant species, habitat uses, temperatures and soils. Removal of mature trees in the riverfront area should be minimized. In some cases, the Conservation Commission may require the preservation of a strip up to 50 feet wide of continuous, undisturbed vegetative cover.
 3. When work is proposed in riverfront areas to support or provide for public access, such as the construction of footpaths, care should be taken to minimize disruption of habitats, to avoid impacts to surface and groundwater flows and to avoid sensitive areas including endangered species habitat.

2.7 Vernal Pools

- A. Preamble: Vernal Pools are essential breeding habitat, and provide other important wildlife habitat functions during non-breeding season as well, for a variety of amphibian species such as wood frog (*Rana sylvatica*) and the spotted salamander (*Ambystoma maculatum*), and are important habitat for other wildlife species. Protection of habitat for vernal pool obligate species, such as wood frogs and spotted salamanders, is particularly important in Brookline because these populations are small and their habitat is more limited, more fragmented and more isolated than is commonly the case in Massachusetts. Vernal pools are extremely sensitive to disruption of soils, vegetation, ground and surface water flows, and to alterations in water quality, chemistry, and temperature. Vernal pools are protected by the Brookline Wetlands By-Law whether or not they have been certified.
- B. Wetland Values Protected: Vernal pools are significant to flood control; the prevention of storm damage; and the protection of wildlife habitat.
- C. Performance Standards: The Commission shall regulate this resource area in accordance with the provisions of the regulations of the Department of Environmental Protection at 310 CMR 10.04, 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, 10.58, 10.59, and 10.60. In addition to meeting the performance standards applicable to all areas subject to jurisdiction that are found at Section 2.1.B of these regulations, the following performance standards shall apply to any work performed in vernal pools:
 1. Work shall not impair vernal pool habitat. Any alteration of vernal pools requires a detailed wildlife habitat evaluation. A finding that alterations to vernal pools will not impair habitat will only occur under rare and unusual circumstances. Avoidance of impacts to vernal pools is almost always necessary to meet performance standards.

2. Work in vernal pools shall not disrupt wildlife passage.
3. Work in vernal pools shall not alter ground or surface water flows or temperatures.

2.8 Buffer Zones

- A. Preamble: Buffer zones protect resource areas by filtering and removing pollutants from runoff, providing groundwater recharge, moderating water temperatures, stabilizing soils, and maintaining surface and groundwater flow volumes. They also provide essential habitat for wetland-associated species for use in feeding, roosting, breeding and rearing of young, and cover for safety, mobility and thermal protection. The intent of the Commission is to avoid, minimize and mitigate alterations in the buffer zone, and to keep all land alterations, structures and activities as far away as possible from any Resource Area, in order to protect wetland values and Resource Areas. Unavoidable alterations to the buffer zone must be mitigated to maintain the functions of the buffer zone and protect wetland values.
- B. Wetland Values Protected: A Buffer Zone is significant to the protection of groundwater; to flood control; to the prevention of storm damage; to the prevention of pollution; to the protection wildlife habitat; and to protect fisheries.
- C. Performance Standards: In addition to meeting the performance standards applicable to all areas subject to jurisdiction that are found at Section 2.1.B of these regulations, and to those found at 310 CMR 10.53(1), the following performance standards shall apply to any work performed in the buffer zone:
 1. To the maximum extent possible, buffer zones shall be retained and maintained in a naturally vegetated condition. Where buffer zone disturbance is permitted during construction or other activities, revegetation with native vegetation may be required.
 2. Activities in buffer zones shall not substantially alter the hydrology of the site, including runoff rate, volume, water quality or flow paths.
 3. Activities in buffer zones shall not negatively impact critical wildlife habitat.
 4. Except as otherwise specified, the use of herbicides, pesticides, fungicides, fertilizers and other chemical treatments is prohibited.
- D. The Commission shall presume that alterations to the buffer zone shall alter the adjacent wetland resource areas. This presumption may be rebutted by credible evidence that either:
 1. The Buffer Zone does not play a role in the protection of any of the wetland values applicable to the associated wetland resource area; or
 2. The activity shall occur in such a manner so that potential adverse environmental impacts on the wetland values applicable to the associated wetland resource area are avoided, minimized, or mitigated.

3 Procedures

3.1 Filing Procedures

- A. Receipt and Acceptance of Applications: A Request for Determination of Applicability or Application for a Permit or Resource Delineation under the By-Law; or a Notice of Intent under the Wetlands Protection Act, may be filed with the Commission, and shall be

submitted on the forms prescribed by the Commission and available at the Commission's office.

B. Application Must Be Complete

1. Inspection. The recipient of the filing 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 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.
3. For contents, see Section 3.1 E(2) of these regulations.

C. 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 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, and by filing such the applicant submits to any such continuances as may be necessary to receive a file number from the Department of Environmental Protection.

D. Requests and Applications under By-Law and Act

1. Discretionary Requests
 - a. Determination of Applicability. 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 3.2.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 a wetland resource area on land in agriculture or aquaculture use, as those are defined in 310 CMR 10.04, shall 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 Jurisdiction under the By-Law. Any person who proposes to perform work within an Area Subject to Jurisdiction under the By-Law shall submit an application to the Commission that shall conform to the requirements of the Act and the By-Law and these regulations.

- c. Wetland Resource Area Delineation. A person who wishes confirmation that an Area Subject to Jurisdiction 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.
 - d. By-Law Wetlands Permit and Order of Conditions under the Act. A person who proposes to alter any Area Subject to Jurisdiction 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 the State Notice of Intent form for the By-Law Permit application. The commission may consider these applications at the same time.
 - e. 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.
- E. Filing Procedures for Determinations of Applicability, Wetland Resource Area Delineation, and Permits under the By-Law
- 1. By Hand or Certified Mail. The applicant shall submit, by hand or by certified mail, the Request for a Determination or Application for a Resource Area Delineation or By-Law Permit to the Commission.
 - 2. Contents of Application. The applicant shall submit, at a minimum, the following documents to the Commission:
 - a. A completed form, which form is available at the Commission's office.
 - b. A project narrative and description of proposed activities.
 - c. A plan showing the topography, delineation of Areas Subject to Jurisdiction 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.
 - d. A certified list of abutters to abutters within 100 feet of the property line of the applicant, as provided at Section 8.27.6(a) of the By-Law. Certified abutters lists are available from the Brookline Assessors Office.
 - i. Where there is an extensive project, such as a pipe line installation, the applicant shall only be required to notify abutters within 1000 feet from an Area Subject to Jurisdiction under the By-Law. The applicant should verify with the administrator of the Commission exactly which abutters should be notified in such a case.
 - ii. 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.
 - e. The names and addresses of the applicant(s), the applicant's representative(s), and the owner(s) of the property.
- F. Public Hearing Process. The Commission shall hold a public hearing within twenty-one (21) days of the submittal of a complete Request or Application.

1. Opening Hearing
 - a. Postponement of Opening the Hearing. The Commission may open the public hearing beyond the twenty-one (21) days with the written consent of the applicant.
 - b. Notice:
 - i. Duties of Commission. The 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 Brookline, see Section 8.27.6 of the Brookline Wetlands Protection By-Law, and by mailing a notice to the applicant and applicant's representative and the owner, if different from the applicant.
 - ii. Duties of Applicant. The applicant shall give notice to abutters by certified mail, return receipt requested, or by hand delivery, that an application has been filed, that a public hearing will be scheduled within twenty-one (21) days, and that information concerning the application and the date of the hearing is available at the office of the Commission. The applicant shall provide proof of such notice (i.e., return receipt cards for certified mail) to the Commission Office no less than 3 business days prior to the hearing. The applicant shall also provide written notice to the Town Engineer and to the Building Commissioner, and shall provide proof of such notice to the Commission no less than 3 business days prior to the hearing. See Section 8.27.6 of the By-Law for additional information regarding notification to abutters, and Section 8.27.7 regarding coordination with other boards and commissions.

2. Hearing Process
 - a. 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.
 - b. Continued Hearings. Where the public hearing is continued, the date, time, and place of said continued hearing shall be publicized in accordance in a manner consistent with the Massachusetts Wetlands Protection Act. 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).

- G. Closing the Public Hearing; Issuing the Decision.
 1. Determination of Applicability under the By-Law and Act
 - a. The Commission shall issue its Determination within twenty-one (21) days of the closing of the hearing, or by a later date agreed upon in writing by the applicant.

 2. Determination
 - a. Determination where Land is within Wetland Resource Area: The Commission shall find that the By-Law and these regulations apply to the land, or a portion thereof, if it is an Area Subject to Jurisdiction under the By-Law.

- b. Determination where Activity may Alter an Area Subject to Jurisdiction under the By-Law: The Commission shall find that the Wetlands 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 such a positive determination, and all the procedures applicable to the application for By-Law Permit filing shall apply.
 - c. Determination as to whether Activity is Exempt or excepted under the Act: The Commission shall, if applicable, determine that the proposed activity is exempt under the provisions of 310 CMR, or the limited project exception for public utilities and highway right-of-ways as specified in the Act and 310 CMR 10.53(3).
- 3. Wetlands By-Law Order of Resource Area Delineation: The Commission follows the procedures outlined in the Massachusetts Wetlands protection Act regulations 310 CMR 10.05 as amended.
- 4. By-Law Wetlands Permit
 - a. Closing the Hearing: The Commission shall close the public hearing upon receiving sufficient information or testimony if requested to do so by the applicant.
 - b. Decision
 - i. Significance of Area Subject to Jurisdiction: In accordance with Section 1.3 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 Jurisdiction under the By-Law or wetland resource area protected under the Act, the Commission shall presume such are significant to protect wetland values (interests) identified by the By-Law or the Act. Within twenty-one (21) days of the close of the public hearing, the Commission shall either:
 - 1. Issue a decision that the area on which the activity is proposed to be done, or on which the proposed activity will remove, fill, dredge, or alter, is not significant to any of the values identified in the By-Law.
 - 2. Issue a decision that the area on which the activity is proposed to be done, or on which the proposed activity will remove, fill, dredge, or alter, is significant to any of the values identified in the By-Law.
 - c. Conditions and Work Prohibition
 - 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 Jurisdiction under the By-Law. Such conditions may include the preservation of a strip up to 50 feet wide of continuous, undisturbed vegetative cover.
 - 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 in the opinion of the Commission to protect the values identified in the By-Law.

- iii. The Commission shall prohibit any activity or any portion thereof that cannot be conditioned to meet the applicable performance standards.
 - d. 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.
 - e. Recording: The Wetlands Permit shall be recorded in the Norfolk County Registry of Deeds or in the Land Court, whichever is appropriate, within 30 days of the date of issuance. Certification of such recording shall be sent to the Commission.
- 5. Amendment of By-Law Wetlands Permit: 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 must first contact the Commission, or its staff, and explain the modification. The Commission, or its staff, shall determine the appropriate category for the modification.
 - b. Categories of Change
 - i. 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 for that Area Subject to Jurisdiction under the By-Law. Minor changes are within the scope of deviations allowed for the receipt of a Certificate of Compliance.
 - 1. The Commission shall consider the following criteria in making this determination: the extent of modification, the proximity to Area Subject to Jurisdiction under the By-Law, and the type of equipment required for the modification.
 - 2. Minor changes need only the authorization from the Commission as documented in a letter signed by a majority of the Commission or authorized agent. The Commission will retain this Letter of Understanding in the file, and mail a copy to the applicant.
 - ii. 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 for that Area Subject to Jurisdiction under the By-Law.
 - 1. The following may require an Amended By-Law Permit: a decrease in the distance from the Area Subject to Jurisdiction 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 structures and/or appurtenances, an increase in amount of vegetation removed, and activity beyond the limit-of-work.

2. 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 By-Law Permit filing. If the Commission denies the request to amend the By-Law Permit, the applicant must follow the provisions of the By-Law Permit or file another application for a By-Law Permit.
 - iii. Significant: Changes that are not related to the originally permitted activity may require a new application for a By-Law Permit and a new public hearing 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.
- H. Extension of By-Law Wetlands Permit: The Commission, in accordance with the provisions of Section 8.27.8(f) of the By-Law, may extend a By-Law Permit.
- I. Certificate of Compliance: A Wetlands By-Law Certificate of Compliance may be combined with a Certificate of Compliance as provided in the Act and 310 CMR 10.05(9).
1. 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 is obtainable from the Commission, and the applicant or owner shall use the request form provided by the Commission and available at the Commission's office.
 2. Review Process
 - a. Time Limitation. Upon written request by the applicant or owner of the property, the Commission shall issue a Certificate of Compliance or refuse to issue a Certificate of Compliance within twenty-one (21) days of receipt of a completed request.
 - b. Site Inspection. Before the Commission may act upon a Certificate of Compliance, a member or employee of the Commission, in the presence of the applicant or the applicant's agent, shall inspect the site and report the findings to the Commission.
 3. 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.
 - a. 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.
 - i. The Commission shall issue such refusal within twenty-one (21) days of receipt of a request for a Certificate of Compliance.
 - ii. Such refusal shall be in writing and shall specify the reasons for the denial and ordering the corrective actions that must be taken.

- b. 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.
- 4. Recording: The Certificate of Compliance shall be recorded in the Norfolk County Registry of Deeds or in the Land Court, whichever is appropriate, within 30 days of the date of issuance. Certification of such recording shall be sent to the Commission.

3.2 Filing Requirements

- A. Forms: The forms, together with any procedural requirements for the submission of Applications for By-Law Permit or Resource Area Delineation 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.
- B. Consultants
 - 1. Consultant Fees
 - a. The Commission shall only require a consultant fee to pay for a consultant to advise it with respect to the By-Law.
 - b. The Commission shall strive to limit the amount and scope of the consultant's work.
 - c. The Commission shall determine whether a consultant fee is necessary on a case by-case basis.
 - 2. 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.
 - 3. 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:
 - a. The size or scope of the project;
 - b. The nature of the project, including but not limited to projects of particular benefit to the natural resources of Brookline;
 - c. The need for an independent verification of information submitted with the application;
 - d. The need for an independent review regarding compliance of the proposed project with the By-Law and these regulations; and
 - e. The ability and willingness of the applicant to provide information deemed necessary by the Commission.

4. 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.
 5. 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.
 6. Fee 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.
 7. Payment of Fee.
 - a. The Commission may require that the consultant fee be paid by the applicant before services are rendered.
 - b. 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.
 - c. 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.
 8. Dispute Settlement: 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.
- C. Filing Requirements for Application 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. If a document is missing, the Commission will not accept the filing.
- D. Site Visit: Marking Proposed Structures; Delineating Resource Area 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 proposed houses or other structure nearest the Area Subject to Jurisdiction under the By-Law or wetland resource area;
 2. Stake the septic tank and the leaching field location, if applicable;
 3. Stake the limit of work;
 4. Post the lot number or house number; and
 5. Delineate all Areas Subject to Jurisdiction under the By-Law and State wetland resource areas, provided that the Buffer Zone is to be staked only at the boundaries that are nearest to the proposed project.
- E. 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 provided in 310 CMR 10.58 (4)(c).

2. Act: 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.
 - a. Notwithstanding the above, the Commission shall not permit a limited project that will have any adverse effect on rare species habitat sites.

3.3 Security Requirements

- A. As part of a permit issued under this By-Law, 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 more of the methods described below:
 1. By a proper bond or deposit of money or negotiable securities 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.
 2. 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 this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the property owner.

3.4 Enforcement

- A. No person shall alter a resource area or a buffer zone, or cause, suffer, or allow alteration, 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 By-Law.
- B. Upon the filing of either a Request for Determination or a Permit under this By-Law the applicant expressly permits and agrees that the Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this By-Law and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary. In the absence of the filing of a Request for Determination or a Permit, the Commission, its agents, officers and employees shall consult with Town Counsel prior to entering upon privately owned land for the purpose of determining compliance with this By-Law or for any other purpose in furtherance of the objectives of this By-Law.
- C. The Commission shall have authority to enforce this By-Law, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil court actions. Any person who violates provisions of this By-Law 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.

- D. In the case of civil action, the Commission, with the approval of the Board of Selectmen, may request the Town Counsel to take legal action as necessary to enforce the terms of this By-Law under civil law.
- E. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- F. Any person who violates any provision of this By-Law, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than \$300. 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 By-Law, regulations, permits, or administrative orders violated shall constitute a separate offense, notwithstanding and in addition to remedies available herein or authorized by the Brookline Conservation Commission.
- G. As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the non-criminal disposition procedure set forth in M.G.L. c. 40, § 21D, which has been adopted by the Town in Article 10.3 of the general By-Laws.

3.5 Burden of Proof

- A. The applicant for a permit shall have the burden of proving by a preponderance of credible evidence that the work proposed in the permit application will not have unacceptable, significant, or cumulative effect upon the resource area values protected by this By-Law. Failure to provide adequate credible evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

3.6 Appeal of Decisions

- A. A decision of the Commission is reviewable under the By-Law in the Superior Court in accordance with M.G.L. c. 249, § 4. This in no way alters or amends an applicant's right to appeal as set forth in the Massachusetts Wetlands Protection Act M.G.L. c.131 § 40, or any other applicable state law.

3.7 Severability

- A. The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination that has been issued previously.