
Town of Merrimac, Massachusetts

Wetlands Protection Regulations

Effective 09-08-04



Merrimac Conservation Commission

TABLE OF CONTENTS

| | |
|--|----|
| MERRIMAC WETLAND PROTECTION REGULATIONS | 1 |
| 1.0 General Provisions | 1 |
| 1.1 Authority | 1 |
| 1.2 Purpose | 1 |
| 1.3 Jurisdiction | 1 |
| 1.4 Fee Schedule | 2 |
| 1.5 Officers and Members | 3 |
| 2.0 Definitions | 5 |
| 3.0 Additional Wetland Resource Areas Protected Under the Bylaw and Regulations | 10 |
| 3.1 Vernal Pools and Vernal Pool Habitat | 10 |
| 3.2 Isolated Vegetated Wetland | 12 |
| 3.3 Riverfront Area | 14 |
| 3.4 Buffer Zone | 15 |
| 4.0 Permit Applications | 17 |
| 4.1 Request for Determination of Applicability | 17 |
| 4.1.1 Overview | 17 |
| 4.1.2 Filing Procedures and Submittal Requirements | 18 |
| 4.1.3 Public Meetings | 19 |
| 4.2 Abbreviated Notice of Resource Area Delineation | 19 |
| 4.2.1 Overview | 19 |
| 4.2.2 Filing Procedures and Submittal Requirements | 19 |
| 4.2.3 Public Hearings | 21 |
| 4.3 Notice of Intent | 21 |
| 4.3.1 Overview | 21 |
| 4.3.2 Filing Procedures and Submittal Requirements | 22 |
| 4.3.3 Public Hearings | 26 |
| 5.0 Waiver Provisions and Alternatives Analysis Requirements | 26 |
| 5.1 No-Disturbance Zones | 27 |
| 5.2 No-Build Zones | 28 |
| 5.3 Vegetated Wetland Alteration | 28 |
| 6.0 Replication Standards and Habitat Evaluations | 29 |
| 6.1 Wetland Replication | 29 |
| 6.2 Wildlife Habitat Evaluations | 32 |
| 7.0 Stormwater Management and Flood Control | 32 |
| 8.0 Permits and Decisions | 38 |
| 8.1 Public Hearings and Public Meetings | 38 |
| 8.2 Decisions | 38 |
| 8.3 Extension Permits | 39 |
| 8.4 Modifications, Amendments and Revocations | 39 |

| | | |
|------|----------------------------------|----|
| 8.5 | Certificate's of Compliance | 41 |
| 9.0 | Performance Guarantees | 42 |
| 9.1 | Security | 42 |
| 9.2 | Covenant | 43 |
| 9.3 | Reduction of Security | 43 |
| 9.4 | Release of Performance Guarantee | 43 |
| 10.0 | Availability of Regulations | 44 |
| 11.0 | Amendments | 44 |
| 12.0 | MCC Policy Statements | 44 |
| 13.0 | Effective Dates | 44 |
| 14.0 | Severability | 44 |
| 15.0 | Enforcement | 44 |

APPENDIX A - APPLICATION CHECKLISTS

- Request for Determination of Applicability
- Abbreviated Notice of Resource Area Delineation
- Notice of Intent

APPENDIX B - WPA ACTIVITY CATEGORY DEFINITIONS

APPENDIX C - VERNAL POOL CRITERIA

APPENDIX D - WAIVER REQUEST FORM

APPENDIX E - ORDER OF CONDITIONS CERTIFICATION FORM

APPENDIX F - DEP STORMWATER MANAGEMENT FORM

APPENDIX G - MERRIMAC WETLANDS PROTECTION BYLAW

MERRIMAC WETLAND PROTECTION REGULATIONS

1.0 General Provisions

1.1 Authority

These Regulations are promulgated under the authority of the Home Rule Amendment Article LXXXIX (89), of the amendments of the Constitution of Massachusetts, 1966 as amended from time to time, and in accordance with the Merrimac Wetlands Bylaw and shall be effective upon fulfillment of all legal requirements.

1.2 Purpose

The purpose of the Merrimac Wetlands Protection Bylaw (hereafter referred to as the "Bylaw") is clearly stated in Section 1.1 of the Bylaw. These Regulations are promulgated to ensure fairness, to create a uniformity of process and to clarify and define the provisions of the Bylaw, administered by the Merrimac Conservation Commission, hereafter called the "Commission" or "MCC".

Wetlands contribute to a number of public interests and are therefore protected by the Bylaw. The Bylaw identifies three additional public interests not recognized by the Massachusetts Wetlands Protection Act ("the Act" or "WPA"). These are: "the prevention and control of erosion and sedimentation, the protection of wildlife, and the protection of recreation". Any permit issued under the Bylaw and Regulations must therefore not adversely affect these additional public interests.

1.3 Jurisdiction

The areas subject to protection under the Bylaw differ from those protected solely by the Act in that additional wetland resource areas are protected by the Bylaw, as well as the additional interests previously described. The additional areas subject to protection under the Bylaw include the Buffer Zone, Vernal Pools, Vernal Pool Habitat and Isolated Vegetated Wetlands that do not meet the definition of Bordering Vegetated Wetland under the Act.

The Town's wetland resource areas consist of:

1. any Isolated Vegetated Wetland;
2. any Vernal Pool and Vernal Pool Habitat;
3. any vegetated wetlands bordering on any creek, river, stream, pond or lake (bordering vegetated wetland);
4. any bank, beach, marsh, wet meadow, bog, or swamp;

5. any land under any creek, river, stream, pond or lake;
6. any 100-foot Buffer Zone of wetland areas 1-5 listed above;
7. any land subject to storm flowage, or flooding by groundwater or surface water;
8. and the 200-foot Riverfront Area.

The following waterbodies and contiguous 200-foot zones on either side of the mean high water elevations of these waterbodies have been identified by the Commission as having Riverfront Areas: Back River, Cobblers Brook, Presby's Creek, East Meadow River, and the Merrimack River.

Rivers or streams not referenced above or not otherwise depicted on the current revision of the Merrimac area USGS map may still have a 200-foot Riverfront Area associated with them per 310 CMR 10.58 (latest amendment), which the Commission has adopted by reference into these Regulations. Applicants shall evaluate said rivers or streams in accordance with 310 CMR 10.58(2) and this Bylaw and include such data in the submitted permit application.

1.4 *Fee Schedule*

The following fee schedule has been determined by the Commission to be commensurate with the expense of providing review services to applicants (exclusive of design review fees by expert engineers and consultants) and shall be paid at the time an application or other request for Commission approval is filed. These fees are in addition to and commensurate with those required by the Wetlands Protection Act (WPA) (except where otherwise noted). This fee schedule may be amended as necessary by majority vote of the Commission at any public hearing.

NOTE: Similar to 310 CMR 10.03(7), when the work involves activities within the Riverfront Area as well as another resource area or the Buffer Zone, the fee shall be determined by adding an additional 50% of the fee calculated for activities in another resource area(s) or the buffer zone to another resource area for each of the proposed activities within the Riverfront Area. When the work involves activities within the Riverfront Area but no other resource area, the fee shall be determined by adding the fees for each of the proposed activities within the Riverfront Area.

Table 1-1: Bylaw Filing Fee Schedule

| WPA Filing Fee Category (per activity) ⁽¹⁾ | Equivalent Bylaw Fee (per activity) |
|--|--|
| Notice of Intent/RDA - WPA Cat 1 Activity | \$105 (add 50% if in Riverfront Area in addition to another resource area) |
| Notice of Intent/RDA - WPA Cat 2 Activity | \$300 (add 50% if in Riverfront Area in addition to another resource area) |
| Notice of Intent/RDA - WPA Cat 3 Activity | \$575 (add 50% if in Riverfront Area in addition to another resource area) |
| Notice of Intent/RDA - WPA Cat 4 Activity | \$775 (add 50% if in Riverfront Area in addition to another resource area) |
| Notice of Intent/RDA - WPA Cat 5 Activity | \$2 per ft.⁽²⁾/min. \$50/not to exceed \$1,000 (add 50% if in Riverfront Area in addition to another resource area) |
| Notice of Intent/RDA - WPA Cat 6 Activity | \$1 per ft.⁽²⁾/min. \$100 (add 50% if in Riverfront Area in addition to another resource area) |
| ANRAD Filing | \$1 per ft.⁽²⁾/min. \$100/max.\$3,000 (add 50% if in Riverfront Area in addition to another resource area) |
| Modification/Amendment Request | \$100 |
| Partial Certificate of Compliance Request | \$100 |
| Certificate of Compliance (2 nd request only; there is no charge for first request.) | \$100 |
| Extension Permit Request | \$100 |
| Emergency Certification Request | \$100 |

(1) Activity Category defined per CMR 310.0, section 10.03 par. 7. See Appendix B

(2) Per foot of delineated wetlands

1.5 *Officers and Members*

Officers

There shall be a Chair and Vice-Chair, who shall be elected by a majority vote of the eligible Commission members. The term of office shall be one year, commencing and ending with the second regular Commission meeting following the adjournment of the annual Town meeting. In the event of a vacancy, the Vice-Chair shall succeed to the position of Chair, and a new Vice-Chair shall be elected by the eligible Commission members.

Members

New Commission members shall be appointed by the Board of Selectmen. The Commission shall offer its views to the Selectmen on the qualifications and suitability of potential candidates.

A quorum consists of a majority of the commission members who are serving in office at the time a vote is taken by the Commission. A majority vote of a quorum of the Commission shall constitute the decision of the Commission.

The members have such powers as are vested in them by any law or regulation, custom and practice.

Committees

There shall be such committees as the Commission may decide are necessary for the efficient execution of its duties.

Consultants

The Commission may, by vote at any public meeting, appoint consultants to the Commission as allowed in Section 1.13 of the Bylaw and in MGL Ch.40 S.8C. Such consultants shall not have the right to vote, nor to represent themselves as official members of the Commission, but shall have the right to participate in meetings and activities of the Commission, as the Chair (or Vice-Chair) may designate upon the advice and consent of the Commission.

Associate Members

Associate members may be appointed by the Selectmen, in concert with the Conservation Commission and shall be designated as consultants in accordance with MGL Ch.40 S C. Notwithstanding the provisions of any general or special law to the contrary, the Board of Selectmen of the Town of Merrimac may appoint up to two alternate members of the Conservation Commission for a term of one year. When the Conservation Commission lacks a quorum for reasons of absence, inability to act or a conflict of interest, the Chairperson of the Conservation Commission may designate an alternate to sit on the Commission. The Commission shall offer its views to the Selectmen on the qualifications and suitability of potential candidates.

2.0 Definitions

Massachusetts General Laws, Chapter 40 Section C and Chapter 131, Section 40 (hereafter referred to as the "Act"), as well as 310 CMR 10.00 Wetlands Regulations are hereby incorporated by reference and made a part hereof, except as otherwise modified by the Merrimac Wetlands Bylaw and the Regulations promulgated herein and any subsequent amendments. The definitions provided in the WPA regulations 310 CMR 10.04 shall apply to the Bylaw and Regulations and as modified below:

1. Adjoining Land Area(s) means the Buffer Zone measured 100 feet horizontally from the boundary of any wetland resource area as defined by the Act or the Bylaw.
2. Alter shall include without limitation, the following actions when undertaken in areas subject to the Bylaw:
 - A. changing of pre-existing drainage characteristics, sedimentation patterns, flow patterns or flood retention characteristics;
 - B. placement of fill, excavation or re-grading;
 - C. destruction of plant life, including mowing, and the cutting and/or removal of trees or shrubs;
 - D. changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water;
 - E. any activities, changes or work which pollute or cause displacement of any body of water or groundwater;
 - F. any activities, changes or work which cause alteration of wildlife habitat.
3. Amendment means a change in the project that the Commission deems of sufficient magnitude that will require the imposition of additional conditions to ensure adequate protection of resource areas and interests covered under this Bylaw and Regulations (see Section 11.0).
4. Bordering Vegetated Wetlands protected under this Bylaw are freshwater wetlands that border on creeks, rivers, streams, ponds or lakes. The types of Bordering Vegetated Wetlands may include wet meadows, marshes, swamps and bogs. In addition to the minimum size requirement, Bordering Vegetated Wetlands must be comprised of the following three (3) delineation parameters:

- A. The vegetation community of a Bordering Vegetated Wetland consists of 50% or more wetland indicator plants. Wetland indicator plants are classified in the following categories: Facultative, Facultative+, Facultative Wetland-, Facultative Wetland, Facultative Wetland+, or Obligate Wetland (*source: Reed, P.B., 1988, "National List of Wetland Plants that Occur in Wetlands in Massachusetts", U.S. Fish & Wildlife Service, or it's most recent revision*) and wetland plants specifically indicated in the Act and,
 - B. Other indicators of hydrology including site inundation or saturation, water marks, drift lines, sediment deposits, oxidized rhizospheres, water-stained leaves, shallow root systems, buttressed tree trunks, recorded hydrologic data (stream or lake gauge, aerial photo, other) and plants that exhibit morphological adaptations to wetlands (*source: Tiner, R. W., 1991, Bioscience 41: 236-247*) and,
 - C. Hydric Soils (*source: New England Hydric Soil Technical Committee, 1998, 2nd Edition, "Field Indicators for Identifying Hydric Soils in New England", New England Interstate Water Pollution Control Commission, or it's most recent version*).
5. Buffer Zone is that resource area which extends one-hundred feet (100') from the edge of those wetland resource areas identified in Section 1.0. However, it is possible that these resource areas will overlap in some instances (e.g. Riverfront Area and Land Subject to Flooding).
- A. 25' No-Disturbance Zone is that portion of the Buffer Zone which extends twenty-five feet (25') from the edge of those wetland resource areas identified in Section 1.3, however, it is possible that these resource areas will overlap in some instances (e.g. Riverfront Area and Land Subject to Flooding). Disturbance of any kind is prohibited within this Zone including but not limited to grading, landscaping, vegetation removal, grazing, dumping of landscaping debris, pruning, filling, excavating, roadway construction and/or driveway construction.
 - B. 50' No-Build Zone is that portion of the Buffer Zone which extends fifty-feet (50') from the edge of those wetland resource areas identified in Section 1.3, however, it is possible that these resource areas will overlap in some instances (e.g. Riverfront Area and Land Subject to Flooding). Construction of any kind is prohibited within this Zone including but not limited to foundations associated with single family homes, multi-family

dwellings, commercial and/or industrial buildings, porches, decks (i.e., footing, piling, sonotube), patios, house additions, building additions, pools, septic systems, sheds, and any other impermeable surface. Driveways, roadways, retaining walls and landscape boulder walls may be allowed in the 50-foot No-Build Zone when no other feasible location or alternative means of access exists.

- C. 50' Vernal Pool No-Disturbance Zone is that portion of the Buffer Zone which extends fifty feet (50') from the edge of an Vernal Pool which is situated in an upland location or, in situations where a wetland resource area encompasses the Pool, that area which extends 50' from the edge of Vernal Pool Habitat (see definition of Vernal Pool Habitat and Section 3.1). Disturbance of any kind is prohibited within this Zone including but not limited to grading, landscaping, vegetation removal, grazing, pruning, filling, excavating, roadway construction and/or driveway construction.
 - D. 75' Vernal Pool No-Build Zone is that portion of the Buffer Zone which extends seventy five feet (75') from the edge of an Vernal Pool which is situated in an upland location or, in situations where a wetland resource area encompasses the Pool that area which extends 75' from the edge of Vernal Pool Habitat (see definition of Vernal Pool Habitat and Section 3.1 of these Regulations). Construction of any kind is prohibited within this Zone including but not limited to foundations associated with single family homes, multi-family dwellings, commercial and/or industrial buildings, porches, decks (i.e., footing, piling, sonotube), patios, house additions, building additions, pools, septic systems, sheds, and any other impermeable surface. Driveways, roadways retaining walls and landscape boulder walls may be allowed in the 75-foot Vernal Pool No-Build Zone when no other feasible location or alternative means of access exists. Any permitted work shall not obstruct the migratory pathways of Vernal Pool breeders such as *Ambystomid* salamanders and wood frogs.
6. Burden of Proof means the applicant shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application shall not have an unacceptable significant and/or cumulative effect upon the wetland values protected by this Bylaw. Failure to provide adequate evidence that the work proposed in the application shall not have an unacceptable significant and/or cumulative effect upon the wetland

values protected by this Bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

7. Critical Area(s) In addition to those area(s) identified under “DEP’s SW Mgmt. Policy”, Section 401 of the US Clean Water Act and MA Surface Water Quality Standards (310 CMR 4.00 and 9.00), the Town of Merrimac has also determined that the Lake Attitash Watershed Area (as depicted on the Town’s Zoning Map) and the Buffer Zone associated with an Vernal Pool or Vernal Pool Habitat are “Critical Areas”.
8. Emergency Project means an activity undertaken to provide immediate protection to public health, safety and welfare.
9. Vernal Pool means a confined basin depression which, in most years, holds water for a minimum of two (2) consecutive months and is free of adult fish populations and has no permanently flowing outlet. These areas are essential breeding habitat, and provide other extremely important wildlife habitat functions during non-breeding season as well, for a variety of amphibian species such as wood frog and the spotted salamander, and are important habitat for other wildlife species. See Section 3.1 of these regulations.
10. Vernal Pool Habitat means that portion of a wetland resource area (excluding the Buffer Zone, which is also regulated as a wetland resource area under this Bylaw) within 100-feet of the mean annual boundaries of an Vernal Pool.
11. Extended Drought (or Drought) Coincides with an “Advisory” or more severe drought as declared by the MA Drought Management Task Force in accordance with a statewide drought management plan.
12. Growing Season means the entire period from March 15th to October 15th.
13. Isolated Vegetated Wetland is defined in Section 3.2 of these regulations.
14. Modification means a minor or insignificant project change (as determined by the Commission or the Conservation Administrator) that will not result in an adverse impact on the wetland resource areas and/or interests protected under the Act and this Bylaw.
15. Normal Maintenance of Land in Agricultural Use is defined under these regulations the same as it is in 310 CMR 10.04 (Agriculture) (b).
16. Permits shall collectively refer to Orders of Conditions, Order of Resource Area Delineation, Notice(s) of Non-Significance, Enforcement Order(s) and/or Determinations of Applicability.

17. Pond means any open body of fresh water with a surface area observed or recorded within the last ten years of at least 10,000 s.f. Ponds may be either naturally occurring or man made by impoundment, excavation or otherwise. Ponds shall contain standing water except for periods of extended drought. Periods of extended drought for purposes of this regulation shall be those periods, in those specifically identified geographic locations, determined to be at the "Advisory" or more severe drought level by the Massachusetts Drought Management Task Force, as established by the Executive Office of Environmental Affairs and the Massachusetts Emergency Management Agency in 2001, in accordance with the Massachusetts Drought Management Plan (MDMP). Notwithstanding the above, the following, man-made bodies of open water shall not be considered ponds in Merrimac: a) basins or lagoons which are part of wastewater treatment plants; b) swimming pools or other impervious man-made basins, 3) man made retention and detention basins that are part of a stormwater management system, and; individual gravel pits or quarries excavated from upland areas unless inactive for five or more consecutive years.
18. Public Hearing means a formal meeting, subject to statutory requirements, at which certain and specific determinations are made. A public hearing is required for a Notice of Intent and Abbreviated Notice of Resource Area Delineation under the Act and Bylaw but not for a Request for a Determination of Applicability (unless work or other activities are proposed, otherwise the Commission will hold a public meeting) and/or when in the opinion of the Commission a legally abutting individual's rights may be affected.
19. Public Meeting(s) are held when a formal public hearing is not required (e.g. Request for a Determination of Applicability where work is not proposed and the applicant is merely seeking a Determination from the Commission) and the Commission is not legally required to accept input from the public.
20. Recreation means passive recreation activities that do not conflict with or diminish other wetland values and functions. Examples include, without limitation, bird watching, nature studies, walking, hiking, canoeing, fishing, and hunting.
21. Revocation means to revoke an Order of Conditions issued under the Act and Bylaw.
22. River means any natural flowing body of water that empties into any ocean, lake, pond or other river. Rivers include streams that are perennial because surface water flows within them throughout the year. Rivers thus have a 200-foot Riverfront Area associated with them.

23. Riverfront Area is the area of land between a river's mean annual high water line measured horizontally outward from the river and a parallel line located 200 feet away. The Riverfront Area may include or overlap other resource areas or their Buffer Zones. The Riverfront Area does not have a Buffer Zone.
24. Stream means a body of flowing water, including brooks and creeks, which moves in a defined channel in the ground due to a hydraulic gradient, and which flows within, into or out of an area subject to Protection Under the Act or Bylaw. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (i.e., which is intermittent) is also considered a stream unless it is up-gradient of all bogs, swamps, wet meadows, and marshes or otherwise determined to be a river in accordance with Section 1.2 of the Merrimac Wetland Protection Bylaw and these Regulations.
25. Wetland Resource Area means those areas subject to protection under the Massachusetts Wetland Protection Act (MGL c.131 s.40) and the Merrimac Wetland Protection Bylaw (Section 1.2) and Regulations (Section 1.3).

3.0 Additional Wetland Resource Areas Protected Under the Bylaw and Regulations

3.1 *Vernal Pools and Vernal Pool Habitat*

Preamble

Vernal Pools and their associated habitat are likely to be significant to the protection of wildlife and wildlife habitat. Vernal Pools constitute a unique and increasingly rare type of wetland that are inhabited by many species of wildlife, some of which are totally dependent on Vernal Pool Habitat for their survival. The wood frog (*Rana sylvatica*) and all species of mole salamanders (genus *Ambystoma*) that occur in Massachusetts breed exclusively in Vernal Pools. Areas in the immediate vicinity of the pool also provide these species with important non-breeding habitat functions, such as feeding, shelter, and over-wintering sites. Many other species of amphibians utilize Vernal Pool Habitat for breeding and non-breeding functions, although they are not restricted to this type of wetland. The protection of Vernal Pools is essential for the continued survival of wildlife species that are dependent upon this unique and threatened resource area.

Definition, Critical Characteristics and Boundary

A Vernal Pool means a confined basin depression which, in most years, holds water for a minimum of two (2) consecutive months and is free of adult fish populations and has no permanently flowing outlet. A confined basin depression is protected under the Bylaw as a Vernal Pool if it meets the biological and physical criteria identified in Appendix C and/or this Section of the regulations which provides guidelines for the identification of Vernal Pools in the Town of Merrimac.

Vernal Pool Habitat means that portion of a wetland resource area (excluding the Buffer Zone, which is also regulated as a wetland under this Bylaw) within 100-feet of the mean annual boundaries of an Vernal Pool.

NOTE: It is not necessary for a Vernal Pool to be located within another type of wetland resource area, or certified as a vernal pool by the MA Division of Fisheries and Wildlife, to be eligible for protection under this Bylaw.

Presumptions of Significance

Where a proposed activity involves the removing, filling, dredging or altering of a Vernal Pool or Vernal Pool Habitat, the Commission shall presume that the Vernal Pool or Vernal Pool Habitat is significant to the interests specified in the WPA and Section 1.2 of these regulations. This presumption is rebuttable and may be overcome upon a clear showing that the Vernal Pool or Vernal Pool Habitat does not play a role in the protection of said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

Performance Standards

1. **50-foot No-Disturbance Zone:** No activity shall be permitted within 50 feet of the delineated edge of a Vernal Pool or Vernal Pool Habitat (whichever is greater and/or more restrictive). Prohibited activities include, but are not limited to, grading, landscaping, vegetation removal, grazing, pruning, filling, excavating, roadway construction, and/or driveway construction.
2. **75-foot No-Build Zone:** No structures shall be permitted within 75-feet of the delineated edge of a Vernal Pool or Vernal Pool Habitat (whichever is greater). Structures include, but are not limited to foundations and footings associated with single family dwellings, multi-family dwellings, commercial and/or industrial buildings,

footings, pilings, impervious pads or sonotubes associated with porches, patios, decks, house additions, building additions, pools, septic system, sheds and any other impermeable surface. Driveways, roadways, retaining walls and landscape boulder walls may be allowed in the 75-foot No-Build Zone when no other feasible location or alternative means of access exists. Any permitted work shall not obstruct the migratory pathways of Vernal Pool breeders such as *Ambystomid* salamanders and wood frogs.

3. **100-foot Septic System Setback:** No septic system leaching field shall be permitted within 100-feet of the delineated edge of a Vernal Pool or Vernal Pool Habitat (whichever is greater) when the proposed septic system is located up gradient of the Vernal Pool. Any permitted work shall not obstruct the migratory pathways of Vernal Pool breeders such as *Ambystomid* salamanders and wood frogs.

3.2 *Isolated Vegetated Wetland*

Preamble

Isolated Vegetated Wetlands are likely to be significant to all of the interests identified in Section 1.1 of the Bylaw and are likely to support all of the functions and values identified for Bordering Vegetated Wetlands in 310 CMR 10.55(1). These interests include public or private water supply; groundwater; the prevention and control of flooding, erosion, sedimentation, storm damage, and/or pollution; and the protection of fisheries, wildlife, wildlife habitat, and recreation.

Definition, Critical Characteristics and Boundary

Isolated Vegetated Wetlands protected under this Bylaw are freshwater wetlands, of at least 2,000 sq. ft. in surface area, that do not border on creeks, rivers, streams, ponds or lakes. The types of Isolated Vegetated Wetlands may include wet meadows, marshes, swamps and bogs. In addition to the minimum size requirement, Isolated Vegetated Wetlands must be comprised of the following three (3) delineation parameters:

1. The vegetation community of an Isolated Vegetated Wetland consists of 50% or more wetland indicator plants. Wetland indicator plants are classified in the following categories: Facultative, Facultative+, Facultative Wetland-, Facultative Wetland, Facultative Wetland+, or Obligate Wetland (source: : Reed, P.B., 1988, "National List of Wetland Plants that Occur in Wetlands in Massachusetts", U.S. Fish & Wildlife Service, or it' most recent revision) and wetland plants specifically

indicated in the Act and plants that exhibit morphological adaptations to wetlands (*source: Tiner, R. W., 1991, Bioscience 41: 236-247*) and,

2. Other indicators of hydrology including site inundation or saturation, water marks, drift lines, sediment deposits, oxidized rhizospheres, water-stained leaves, shallow root systems, buttressed tree trunks, and recorded hydrologic data (stream or lake gauge, aerial photo, other) and,
3. Hydric Soils (*source: New England Hydric Soil Technical Committee, 1998, 2nd Edition, "Field Indicators for Identifying Hydric Soils in New England", New England Interstate Water Pollution Control Commission, or it's most recent version*).

Presumptions of Significance

Where a proposed activity involves the removing, filling, dredging or altering of an Isolated Vegetated Wetland, the Commission shall presume that the Isolated Vegetated Wetland is significant to the interests specified in Section 1.2 of these regulations. This presumption is rebuttable and may be overcome upon a clear showing that the Isolated Vegetated Wetland does not play a role in the protection of said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

Performance Standards

When the presumption set forth in Section 1.0 of these regulations is not overcome, any proposed work in Isolated Vegetated Wetlands shall not destroy or otherwise impair any portion of said area. The following additional standards also apply to isolated vegetated wetlands.

1. **25-foot No Disturbance Zone:** No activity is permitted within 25 feet of the edge of the delineated Isolated Vegetated Wetland boundary. Activities include, but are not limited to, grading, landscaping, vegetation clearing, grazing, filling, excavating, and road construction. This standard has been adopted by the Commission because the alteration of land immediately adjacent to a wetland is likely to result in the alteration of the wetland itself. Alterations typically result from siltation, overgrading, depositing of construction debris, unregulated filling, vegetation clearing, extension of lawns or the depositing of yard waste.

2. **50-foot No-Build Zone:** No structures shall be permitted within 50-feet of the delineated edge of an Isolated Vegetated Wetland. Structures include, but are not limited to foundations and footings associated with single family dwellings, multi-family dwellings, commercial and/or industrial buildings, and footings, pilings, impervious pads or sonotubes associated with patios, porches, decks, house additions, building additions, pools, septic systems, sheds, and any other impermeable surface. Driveways, roadways, retaining walls and landscape boulder walls may be allowed in the 50-foot no-build zone when no other feasible location or alternative means of access exists.

3.3 *Riverfront Area*

Preamble

Riverfront Areas are likely to be significant to all of the interests identified in Section 1.1 of the Bylaw. These interests include public or private water supply; groundwater; the prevention and control of flooding, erosion, sedimentation, storm damage, and/or pollution; and the protection of fisheries, wildlife, wildlife habitat, and recreation.

Definition, Critical Characteristics and Boundary

A Riverfront Area is the area of land between a river's mean annual high water line measured horizontally outward from the river and a parallel line located 200 feet away. The Riverfront Area may include or overlap other resource areas or their buffer zones. The Riverfront Area does not have a buffer zone.

The entire length and width of the following water bodies in the Town of Merrimac have been identified by the Commission as rivers and thus having a 200-foot Riverfront Area associated with them regardless of an intermittent or perennial flow condition: Back River, Cobblers Brook, Presby's Creek, East Meadow River, and the Merrimack River. The approximate extent of these rivers is depicted on Appendix B of these regulations. Field observations by the Commission have shown that water may not flow throughout the year in all or portions of these rivers. When water is not flowing, it may remain in isolated pools or surface water may be all together absent. The Commission has determined that the Riverfront Areas of these rivers are significant to the interests identified in Section 3.3 above, even under such conditions or a "no-flow period".

NOTE: Rivers or streams not referenced above or not otherwise depicted on the current revision of the Merrimac area USGS map may still have a 200-foot Riverfront Area associated with them per 310 CMR 10.58 (as amended December 20, 2002), which the Commission has adopted by reference into these Regulations (as amended September 10, 2003). Applicants shall evaluate said rivers or streams in accordance with 310 CMR 10.58(2) and this Bylaw and include such data in the submitted permit application.

Presumptions of Significance

Where a proposed activity involves the removing, filling, dredging or altering of Riverfront Area, the Commission shall presume that the Riverfront Area is significant to the interests specified in Section 3.3 of these regulations. This presumption is rebuttable and may be overcome upon a clear showing that the Riverfront Area does not play a role in the protection of said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

Performance Standards

Activities in Riverfront Areas in Merrimac are regulated by the same performance standards as those listed in the Massachusetts Wetland Protection Act Regulations (see 310 CMR 10.58 as amended December 20, 2002).

3.4 *Buffer Zone*

Preamble

Buffer Zones are likely to be significant to the interests identified for the specific buffer zone resource area, as identified in Section 1.1 of the Bylaw. Buffer Zones can be a vital link in protecting the interests of the Bylaw in the following ways:

1. **Temperature:** Shade and cover provided by riparian vegetation can moderate water temperature in small streams.
2. **Sediments and Other Contaminants:** Buffer strips filter sediments and other contaminants (e.g. pesticides, heavy metals) from surface flow. Buffer strips also prevent erosion in riparian areas and preclude development that could lead to increased contaminant loading.

3. **Nutrients (Nitrogen and Phosphorous):** Buffer strips reduce inputs into streams by: 1) filtering sediment bound nutrients from surface flow, 2) removing nutrients from groundwater via uptake in vegetation and by de-nitrification, and 3) precluding development which could increase nutrient loading (i.e. septic systems).
4. **Maintenance of stream flow:** Buffer strips can store water and help maintain stream base flow (and water quality) during low flow periods.

Definition, Critical Characteristics and Boundary

A Buffer Zone is the area of land extending 100 feet horizontally outward from the boundary of the following resource areas:¹

1. Isolated Vegetated Wetlands;
2. Vernal Pools;
3. Bordering Vegetated Wetlands;
4. Bank, beach, marsh, wet meadow, bog, or swamp;
5. Land under any creek, river, stream, pond or lake.

Presumptions of Significance

Where a proposed activity involves the removing, filling, dredging or altering of Buffer Zone, the Commission shall presume that protection of the Buffer Zone of a resource area identified in Section 1.3 is significant to the interests specified in Section 1.1 of the Bylaw. This presumption is rebuttable and may be overcome upon a clear showing that the Buffer Zone does not play a role in the protection of said interests. In the event that the Commission deems that the presumption has been overcome, the Commission shall make a written determination to this effect, setting forth its grounds

Performance Standards

The 100-foot Buffer Zones of Isolated Vegetated Wetlands, Bordering Vegetated Wetlands, Bank, and Land Under Water all contain, at a minimum, a 25-foot No-Disturbance Zone and a 50-foot No-Build Zone,

¹ The following wetland resource areas do not have a 100-foot Buffer Zone: Riverfront Area and Land Subject to Flooding (Bordering and Isolated Areas).

which are described as follows:²

1. **25-foot No-Disturbance Zone:** No activity is permitted within 25 - feet of the edge of the wetland resource areas identified in Section 1.3. Activities include, but are not limited to, grading, landscaping, vegetation clearing, filling, excavating, and road construction. This standard has been adopted by the Commission because the alteration of land immediately adjacent to a wetland is likely to result in the alteration of the wetland itself. Alterations typically result from siltation, over grading, deposition of construction debris, unregulated filling, vegetation clearing, grazing, extension of lawns or the depositing of yard waste.
2. **50-foot No-Build Zone:** Construction of any kind is prohibited within 50-feet of the edge of the wetland resource areas identified in Section 1.3. Structures include but are not limited to foundations and footings associated with single family dwellings, multi-family dwellings, commercial and/or industrial buildings, porches, patios, decks, house additions, building additions, pools, septic systems, sheds, and any other impermeable surface. Driveways, roadways, retaining walls and landscape boulder walls may be allowed in the 50-foot No-Build Zone when no other feasible location or alternative means of access exists.

4.0 Permit Applications

4.1 *Request for Determination of Applicability*

4.1.1 Overview

Any person or persons who desire a Determination as to whether this Bylaw applies to an area, or work to be performed in an area, shall submit a written request to the Commission in accordance with Section 1.6 of the Bylaw. **NOTE:** The Commission will not accept a Request for Determination of Applicability seeking confirmation of delineated state and/or local wetland resource areas where no work is proposed. Under such a scenario, applicants must submit an Abbreviated Notice of Resource Area Delineation and comply with the filing requirements referenced therein (see Section 4.2).

² Vernal Pools have their own specific No-Disturbance and No-Build Zones which are described separately in these Regulations.

4.1.2 Filing Procedures and Submittal Requirements

General Requirements

Two (2) copies of a Complete Request for Determination of Applicability (DEP WPA Form 1) and accompanying plans, together with five (5) additional copies of the plans, along with a check for the appropriate filing fee, shall be received by the date stipulated in the Commission's schedule prior to the anticipated hearing date by certified mail, or hand delivery to the Conservation Commission at 4 School Street, Merrimac, MA 01860. This submittal shall be in accordance with Section 1.6 of the Bylaw. The Request for Determination of Applicability submitted to the Commission must also include a complete "Application Checklist(s)" found in Appendix A of these regulations.

Upon receipt of an application, the Commission or Town Conservation Administrator will determine, within four (4) business days, if the application meets the minimum submittal requirements identified on the "Application Checklist" (Appendix A). Those applications that do not meet the minimum submittal requirements of the application checklist will be rejected until the necessary information is provided.

Legal Notice

A legal notice will be placed by the Commission in the local newspaper and the cost of the notice charged to the applicant.

Abutter Notification Requirements

The applicant shall provide proof of notification to abutters, having been made at least seven calendar days in advance of the anticipated meeting date. The applicant shall submit with their Request for Determination of Applicability a list of abutters within 100 feet of the property line where work is proposed and an affidavit signed by the applicant or his agent stating that all abutters on the list have been notified. The notice to abutters shall include all information pertinent to the time and location of the public meeting or indicate where such information can be obtained.

Filing Fee Requirements

To determine the applicable fees, please refer to Section 1.4 of these Regulations for the Bylaw fee schedule.

Plan Requirements

The Commission and/or their designated agent may, at their discretion, accept less detailed plans for a Request for Determination of Applicability than are generally required for a Notice of Intent application. At a minimum, all plans submitted shall clearly and accurately show the present conditions and proposed work and depict the location of water bodies and wetlands. All plans must be signed/dated by the person who prepared them.

4.1.3 Public Meetings

The Commission shall hold a public meeting on the Request for Determination of Applicability and shall issue a written Determination within twenty-one days upon receipt of such a Request. Should work or activities be proposed under a Request for Determination of Applicability, the Commission shall hold a public hearing and issue a written determination within twenty-one days upon receipt of such a Request. Prior to making a determination, the commission may require the submission of additional data deemed pertinent to the determination.

The Commission may continue or adjourn a public meeting or public hearing in the following instances:

1. With the consent of the applicant, to an agreed-upon date which shall be announced at the meeting/hearing; or
2. Without the consent of the applicant, to a specific date for the reasons stated at the meeting/hearing, including but not limited to receipt of additional information from the applicant or others.

4.2 *Abbreviated Notice of Resource Area Delineation*

4.2.1 Overview

The Abbreviated Notice of Resource Area Delineation (ANRAD) provides a procedure for an applicant to confirm the precise boundaries of Bordering Vegetated Wetlands or Isolated Vegetated Wetlands protected under the Bylaw and/or Act. Applicants may also use Form 4A to seek confirmation of the boundaries of other resource areas which have been delineated, if the other resource area boundaries are identified on the plans which accompany the vegetated wetland delineation.

4.2.2 Filing Procedures and Submittal Requirements

General Requirements

Two (2) copies of an complete ANRAD (DEP WPA Form 4A) and accompanying plans, together with five (5) additional copies of plans, along with a check for the appropriate filing fee, shall be received by the date stipulated in the Commissions schedule by certified mail, or hand delivery to the Conservation Commission at 4 School Street, Merrimac, MA 01860. This submittal shall be in accordance with Section 1.6 of the Bylaw. The ANRAD submitted to the Commission must also include a complete "Application Checklist(s)" found in Appendix A of these regulations.

Upon receipt of an application, the Commission or Town Conservation Administrator will determine, within four (4) business days, if the application meets the minimum submittal requirements identified on the "Application Checklist" (Appendix A). Those applications that do not meet the minimum submittal requirements of the application checklist will be rejected until the necessary information is provided.

Legal Notice

A legal notice will be placed by the Commission in the local newspaper and the cost of the notice charged to the applicant.

Abutter Notification Requirements

The applicant shall provide proof of notification to abutters, having been made at least seven calendar days in advance of the anticipated meeting date. The applicant shall submit with their ANRAD, a list of abutters within 100 feet of the property line where the delineation is proposed and an affidavit signed by the applicant or his agent stating that all abutters have been notified. The notice to abutters shall include all information pertinent to the time and location of the public meeting or indicate where such information can be obtained.

Filing Fee Requirements

The fees charged for filing under the Bylaw shall be in addition to those required under the Massachusetts Wetlands Protection Act. (MG.L. c.131, sec. 40). To determine the applicable fees, please refer to Section 1.4 of these regulations for the Bylaw fee schedule and 310 CMR 10.03(7) for the state fee schedule.

Plan Requirements

At a minimum and/or unless otherwise directed by the Commission or their designated Agent, all plans submitted shall clearly and accurately show the present conditions including topography (minimum 2-foot contour intervals),

property lines, the location of water bodies and wetland resource areas. All existing conditions plans must be stamped and signed accordingly by a Registered Professional Land Surveyor of the Commonwealth of Massachusetts.

4.2.3 Public Hearings

The Commission shall hold a public hearing on the ANRAD and shall issue a written decision within twenty-one days after the close of the public hearing. Prior to the close of a public hearing all data deemed pertinent to the decision must be submitted and reviewed by the Commission. The Commission may continue or adjourn a public hearing in the following situations:

1. With the consent of the applicant, to an agreed-upon date which shall be announced at the hearing; or
2. Without the consent of the applicant, to a specific date for the reasons stated at the hearing, including but not limited to receipt of additional information from the applicant or others.

4.3 *Notice of Intent*

4.3.1 Overview

Any person who desires review of a Notice of Intent shall file with the Commission plans and specifications as required under MGL Chapter 131 Section 40 and as further defined below. In order to demonstrate full compliance with this Merrimac Wetlands Protection Bylaw and these Regulations, the applicant has the burden of proof to completely describe the site, the work, and its effect on resource areas and the interests they provide. The applicant is obligated to demonstrate that the work subject to regulation under this Bylaw and Regulations can be performed in a manner that meets all applicable performance standards and results in no impact on the wetland resource areas in question .

Applicants are urged to retain the services of qualified, experienced, professional consultants when filing a Notice of Intent. Submission of incomplete or inadequate information or a failure to meet the burden of proof may result in extensive delays and continuations in the review and approval procedure. Failure to supply adequate and credible documentation describing the impact of the project on resource areas may result in the issuance of a decision prohibiting the work.

4.3.2 Filing Procedures and Submittal Requirements

General Requirements

Two (2) copies of the complete Notice of Intent application (DEP WPA Form 3), accompanying plans and appurtenant data, together with five (5) additional copies of the plans, and the appropriate filing fee, payable to the "Town of Merrimac", shall be sent by certified mail or hand delivery, to the Merrimac Conservation Commission, 4 School Street, Merrimac, MA 01860, at least nine (9) days prior to the anticipated date of a scheduled hearing.

Upon receipt of an application the Commission or Town Conservation Administrator will determine, within four (4) business days, if the application meets the minimum submittal requirements identified on the "Application Checklist(s)" (Appendix A). Those applications that do not meet the minimum submittal requirements of the application checklist will be rejected until the necessary information is provided.

Legal Notice

A legal notice will be placed by the Commission in the local newspaper and the cost of the notice charged to the applicant.

Abutter Notification Requirements

The applicant shall provide proof of notification to abutters, having been made at least seven calendar days in advance of the anticipated hearing date. The applicant shall submit with their Notice of Intent a list of abutters within 300 feet of the property line where work is proposed and an affidavit signed by the applicant or his agent stating that all abutters on the list have been notified. The notice to abutters shall include all information pertinent to the time and location of the public hearing or indicate where such information can be obtained.

Filing Fee Requirements

The fees charged for filing under the Bylaw shall be in addition to those required under the Massachusetts Wetlands Protection Act. (MG.L. c.131, sec. 40). To determine the applicable fees, please refer to Section 1.4 of these regulations for the Bylaw fee schedule and 310 CMR 10.03(7) for the state fee schedule.

Plan Requirements

All applications shall include seven (7) copies of detailed plans. Technical

data should be submitted to support the plans and shall be in narrative form with calculations submitted as necessary to substantiate the designs proposed. The applicant, upon submission of a Notice of Intent, shall comply with the requirements of Section 1.6 of the Bylaw and incorporate the following:

1. All drawings shall be drawn with the title designating the name of the project, location and the names of the persons(s) preparing the drawings, and the date prepared, including the latest revision date. Drawings shall be stamped and signed by a duly qualified Registered Professional Civil Engineer and/or Registered Professional Land Surveyor of the Commonwealth of Massachusetts (whichever expertise is applicable). For certain projects, including but not limited to additions to existing structures, the Commission may accept plans not drawn by a surveyor or civil engineer when these plans utilize a stamped plan as a "base map". In this case, the "base map" shall also be submitted or referenced.
2. Plans depicting proposed drainage systems and/or a subsurface sewage disposal system must be stamped by a Registered Professional Civil Engineer of the Commonwealth.
3. An 8½" X 11" photocopy of the USGS topographic quadrangle indicating the location of the proposed activity and the outline of the area in which the activity is located.
4. Technical reports on both the engineering aspects of the project as well as the wetland resources of the project site shall accompany the Notice of Intent application.
5. Source material for any plan submitted must be referenced on the new plan.
6. Photographs of the proposed impact areas. Photographs to be labeled, dated and mounted on 8"x11" heavy stock paper.

Existing Conditions Site Plans

The following standards and design specifications are intended to provide the Commission with the minimum amount of data necessary to determine the impact of a proposed project on wetland resource areas and/or the ability of said resource area to provide documented functions and values. The Commission may from time to time adopt and publish additional guidelines

and minimum technical standards for plans, calculations, and environmental impact reports submitted with an application for a permit. The Commission may find it necessary to request additional site-specific information to adequately determine the effect of the work on resource areas.

Existing conditions site plans shall incorporate the following information, as applicable:

1. Property boundaries and abutters from the most recent information on record at the Assessor's Office.
2. Watershed Resources Protection District boundaries from the most recent Zoning Map.
3. Existing contours at two-foot intervals and the source for any datum used to establish these contours.
4. All existing natural and man-made features including tree lines, rock outcrops, stone walls, fence lines, cart roads, foot paths, overhead and underground utilities, and drainage structures.
5. The location of all surface water supplies, wells, and septic systems on the property, and on abutting properties, within 100' of proposed work.
6. Elevations of all natural and man-made drainage structures, waterways, and wetlands (as defined by the Act and Bylaw).
7. All wetland resource areas including but not limited to the 100-foot Buffer Zone, 25-foot No-Disturbance Zone and the 50-foot No-Build Zone.
8. Flag numbers of all field delineated wetland resource areas.
9. 100 year flood elevations of all natural and man-made waterways and water bodies as determined from the FEMA Flood Insurance Rate Maps and Flood Boundary and Floodway Maps. Where the floodplain of wetlands and water bodies have not been mapped by FEMA, hydrologic and calculations may be required, prepared by a registered professional engineer to determine the boundary of the 10 and 100-year floodplain. Watershed modeling, hydrograph routing, and backwater analysis shall be performed using the nationally recognized modeling techniques developed by the USDA, Soil Conservation Service. The SCS Type III - 24-hour storm event shall be used in the drainage calculations.

Calculations based on a Rational Method analysis shall not be accepted.

10. Site plans shall be submitted at an appropriate scale (typically 1" = 40' for subdivisions and 1" = 20' for single family lot developments) to accurately depict proposed work. Additional plans with greater or lesser detail may also be required if such plans would provide valuable information to the Commission in it's review. The Commission may request a plan at a different scale for large properties or unique circumstances.

Developed Conditions Site Plans

Developed conditions site plans shall include the following information, as applicable:

1. All proposed man-made features including roads, driveways, parking areas, structures, building, overhead and underground utilities.
2. Subsurface sewage disposal systems, foundation drains and perimeter drains.
3. Proposed grading and changes in elevations depicted with two foot contours and spot grades.
4. All surface and subsurface drainage structures including the location, cross-section, slope, and surface treatment of all drainage channels and the inverts, slope, pipe materials, catch basins, manholes, and end treatment of all storm drains discharging within 100 feet of any wetlands.
5. The location and detail of all temporary erosion control devices, diversions, terraces, silt fences, hay bale barriers, sediment stockpile locations and sedimentation basins.
6. The location and nature of all proposed alterations to wetland resource areas.
7. The location and planting plans for any proposed mitigation areas.
8. Flag numbers for all field delineated wetland resource areas.

9. Plans shall be submitted at an appropriate scale (typically 1" = 40' for subdivisions and 1" = 20' for single family lot developments) and in cross-section as may be necessary. Additional plans with greater or lesser detail may also be required if such plans would provide valuable information to the Commission. The Commission may request a plan at a different scale for large properties.

4.3.3 Public Hearings

The Commission shall hold a public hearing on the Notice of Intent and shall issue a written decision within twenty-one days after the close of the public hearing. Prior to the close of a public hearing all data deemed pertinent to the decision must be submitted and reviewed by the Commission. The Commission may continue or adjourn a public hearing in the following situations:

- ◆ With the consent of the applicant, to an agreed-upon date which shall be announced at the hearing; or
- ◆ Without the consent of the applicant, to a specific date for the reasons stated at the hearing, including but not limited to receipt of additional information from the applicant or others.

5.0 Waiver Provisions and Alternatives Analysis Requirements

The performance standards for wetland resource areas have been created to ensure that the interests of the Act and Bylaw are adequately protected. The Commission recognizes that, in certain situations, a waiver of a specific wetland resource area performance standard may be appropriate for a particular project when the waiver is consistent with the intent and purpose of the Bylaw and these Regulations. As an example, the Commission may grant a waiver from these regulations for the construction and maintenance of a new roadway or driveway of minimum legal and practical width consistent with Planning Board Dimensional standards, where no alternative means of access from an existing public or private way to an upland area of the same owner is available. Such an approach is consistent with the limited project provision of the Act (see 310 CMR 10.53(a-s)), however, the applicant is still bound by this Bylaw to a maximum alteration limit of 5,000 square feet (see Section 5.3). Replication of altered wetland resource areas may be required by the Commission to minimize adverse impacts and to protect the interests identified in the Bylaw.

Wetland alterations intended to make lands buildable, as by fulfilling septic system setback requirements, flood elevation requirements, or other minimum construction setback requirements, or to achieve minimum lot area requirements, are prohibited.

Wetland alterations required to access upland parcels will not be allowed if that landowner landlocked the parcel by selling upland access. The Commission may require the filing of a request for a waiver of certain Planning Board or Zoning Board of Appeals requirements in order to minimize wetland impacts.

The applicant shall have the burden of proof of demonstrating that the granting of the waiver is consistent with the intent and purpose of the Bylaw and these Regulations. The Commission shall act on the request for a waiver and shall provide to the applicant, either by certified mail or hand delivery, its written decision. (See Appendix D for a Waiver Request Form).

5.1 *No-Disturbance Zones*

The Commission may grant a waiver from these regulations for alteration of a buffer zone resource area in situations where there are no feasible alternatives that provide less impacts to the resource area values. The applicant is responsible for conducting this alternatives analysis to show that there are no feasible alternatives. The Commission may grant a waiver of the 25-Foot No-Disturbance Zone and/or 50-foot Vernal Pool No-Disturbance Zone performance standards and impose such additional or substituted mitigative requirements as it deems necessary, upon a clear and convincing showing by the applicant that:

1. There are no practicable conditions or alternatives that would allow the project to proceed in compliance with the regulations; and
2. The project, or its natural and consequential effects, will not have any adverse effects upon any of the interests protected by the Bylaw. It shall be the responsibility of the applicant to provide the Commission with any information that the Commission may request to enable the Commission to ascertain such adverse effects. The failure of the applicant to furnish any information that has been so requested shall result in the denial of a request for a waiver pursuant to this subsection; and
3. The project will improve the natural capacity of a resource area to protect the interests identified in the Bylaw, provided any adverse effects on any such interests are minimized by carefully considered conditions. However, no such project may be permitted which would have an adverse impact on rare or endangered plant or wildlife species.

