DRAFT: 7/18/2019

(Note: sections to be flagged for Town Counsel attention are in red below.)

TOWN OF AYER GENERAL BYLAWS: WETLANDS PROTECTION ARTICLE
(To replace current Article XXVI)

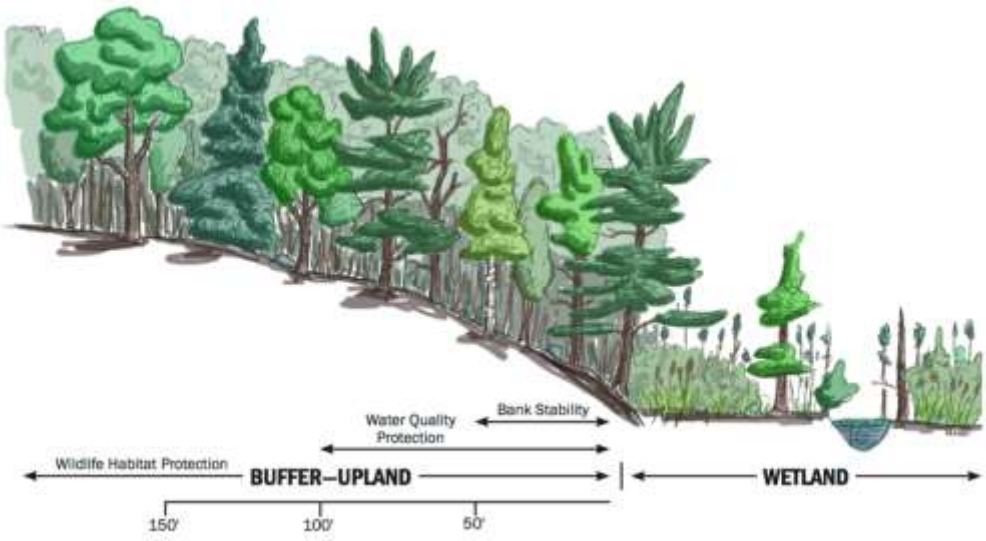
WETLANDS PROTECTION BYLAW

PREAMBLE

Wetlands are critically essential natural resources, performing numerous invaluable and irreplaceable ecological functions: protecting and improving water quality by filtering out sediments and pollutants; creating vital fish and wildlife habitats, including habitats for rare and endangered species; acting as a natural sponge to store floodwaters, reduce erosion, and protect or minimize flood damage to man-made structures and properties. These are in addition to the scenic values and recreational opportunities (swimming, fishing, boating, hiking, birding, hunting) provided by wetlands that shape and color the character of a community.

Of Ayer's total land area (6082 acres or 9.6 sq. miles), approximately 13.5% or 829 acres consist of surface wetlands and open water. Ponds are a dominant feature in Ayer, including Sandy Pond, where the Town Beach is located, and notably pristine Long Pond, both classified by the Commonwealth as 'Great Ponds'. Some of the ponds form a chained network that bisects Ayer. Several important streams also run through the town, with Nonacoicus Brook connecting the last of the chained ponds (Plow Shop) to the Nashua River – this portion of which was officially designated by Congress in 2019 as part of the National Wild & Scenic Rivers System – that forms most of Ayer's western boundary. Complex hydrological conditions below the surface add to this vast water system, tying surface wetlands to groundwater, river watersheds, aquifers, and floodplains.

Most importantly, all of Ayer's drinking water comes from its wetland resources. With all of the valuable functions and ecosystem services that wetlands and their adjacent upland areas provide, their healthy preservation is critical to the maintenance of Ayer's ecosystem, community character, and even the preservation and enhancement of property values for individual residents. Passage of the Massachusetts Wetlands Protection Act in 1972 laid a basic groundwork for protection, but as development pressures increase throughout the Commonwealth, individual communities benefit from added protections to best meet their own specific needs.



Wetland resource areas are defined by the presence of highly specific soils and plant communities. The first 50' of upland buffer adjacent to a wetland provides soil or bank stability. The first 100' adjacent to a wetland provides water quality protection. The entire upland buffer and beyond provides important wildlife habitat protection. This graphic for information only.

SECTION 1: PURPOSE

A. The purpose of this bylaw is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Ayer by managing activities determined by the Ayer Conservation Commission (hereafter, the Commission) as likely to have a significant or cumulative adverse impact on resource areas. This includes but is not limited to the protection of the following interests and values: public or private water supply, aquifer and groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, fisheries, wildlife and wildlife habitat, rare plant or animal species and habitat, agriculture and aquaculture, and recreational and aesthetic values deemed important to the community (collectively, the "**resource area values protected by this bylaw**"). This bylaw is intended to use the Home Rule authority of the Town of Ayer to protect additional resource areas, interests and values to a greater degree than the Wetlands Protection Act (MGL chapter 131, section 40; the Act) and to implement in local regulations and permits additional standards and procedures stricter than those in the Act and its regulations (310 CMR 10.00).

B. The Commission will affirm and support the environmental standards set forth by broader federal agencies (such as the U.S. Environmental Protection Agency or U. S. Army Corps of Engineers) and legislation protecting wetlands and wetland habitat (such as the Clean Water Act and the Endangered Species Act). The Commission will affirm and support environmental standards and permitting requirements put forth by other state agencies besides the Mass. Department of Environmental Protection (MassDEP) – such as MassWildlife, the Natural Heritage & Endangered Species Program (NHESP), and the Mass. Environmental

Species Act (MESA) review process. Finally, the Commission will work to coordinate policies, regulations, and permitting standards with other Town of Ayer bylaws and regulations.

SECTION 2: JURISDICTION

A. Except as permitted by the Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any wetlands, wet meadows, bogs, swamps, vernal pools, springs, banks, lakes, ponds of any size, beaches, and lands under water bodies; intermittent streams, brooks and creeks; or within the 100 foot Buffer Zone of any of the aforesaid resource areas; perennial rivers, streams, brooks and creeks, including Buffer Zone lands adjoining these resource areas out to a distance of 200 feet, known in the Act as the Riverfront Area; or any land subject to flooding (collectively the "**resource areas protected by this bylaw**"). Said resource areas shall be protected whether or not they border surface waters.

B. The jurisdiction of this bylaw shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture, including work performed for normal maintenance or improvement of land in agricultural or aquacultural uses as defined by the Act's regulations (310 CMR 10.04). Neither applications nor permits are therefore required in the case of this usage.

C. An activity proposed or undertaken outside the resource areas and buffer zones protected by this bylaw is not subject to regulation and does not require the filing of a Notice of Intent unless and until that activity actually alters or detrimentally impacts a resource area subject to protection. In the event that such activity has in fact altered a resource area protected by this bylaw, the Commission shall impose through enforcement action such conditions on the activity or any portion thereof as it determines necessary to protect resource area interests.

SECTION 3: PRESUMPTIONS

A. In reviewing activities proposed within the 100 foot Buffer Zone, the Commission shall consider the Buffer Zone as a resource area in its own right, important to the protection of adjacent resource areas because activities undertaken in close proximity to those areas have a high likelihood of adverse impact, either immediately as a consequence of construction, or over time as a consequence of daily operation. Further, the Commission shall recognize the inner portion of the Buffer Zone as having a higher ecological value than the outer portion. Adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, alteration of hydrological or stormwater flow patterns, and loss of wildlife habitat.

B. In reviewing activities proposed within the Riverfront Area, the Commission shall presume the Riverfront Area is important to the resource area values protected by this bylaw unless demonstrated otherwise. Applicants must prove by a preponderance of evidence that (1) there is no practicable or substantially equivalent economic alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant or cumulative adverse impact on the areas or values protected by this bylaw.

C. The Commission shall presume that all areas meeting the definition of "vernal pools" under Section 9 of this bylaw, including the adjacent upland area, perform essential and valuable habitat functions that merit protection.

SECTION 4: EXEMPTIONS AND EXCEPTIONS

A. The applications and permits mandated by this bylaw shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

B. The applications and permits mandated by this bylaw shall not be required 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 bylaw. 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.

C. The Commission also may specify "minor activities" within the 100-foot Buffer Zone to wetland resource areas and within the 200-foot Riverfront Area as exempt from the application and permitting process. Further details and specifications will be found in 310 CMR 10.02(2)(b)1 & 2 and the Commission's own regulations.

D. Prior to the commencement of a project, if there is a question as to whether an activity is in fact minor in scope, an informal assessment by the Conservation Administrator or a Commission review through a Request for Determination of Applicability (RDA) is recommended.

E. This bylaw and the regulations adopted by the Commission will apply in instances where they are more restrictive than the exceptions provided in the Wetlands Protection Act (MGL c. 131 sect. 40) and regulations (310 CMR 10.00). However, until such regulations are enacted by the Commission or in instances where the bylaw and regulations do not address a situation, the exceptions delineated in the Wetlands Protection Act (MGL c. 131 sect. 40) and regulations (310 CMR 10.00) will apply.

SECTION 5: APPLICATIONS AND FEES

A. Review and permit applications, including but not limited to:

a. Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may submit a written Request for Determination of Applicability (RDA) to the Commission. An RDA is a request for the Commission to review a proposed activity and issue a Determination of Applicability (DOA) stating whether the activity is subject to this bylaw.

b. A Notice of Intent (NOI) is an application for an Order of Conditions (OOC) permit to conduct an activity subject to this bylaw.

c. An Abbreviated Notice of Resource Area Delineation (ANRAD) is a request for the Commission to certify through an Order of Resource Area Delineation (ORAD) the location and extent of a resource area as defined under this bylaw.

d. An Amendment to an Order of Conditions is an application to modify the scope of a previously permitted activity.

B. Written applications shall be filed with the Commission to perform activities in or affecting resource areas. Permit applications shall include such information and plans as are determined necessary by the Commission to adequately describe proposed activities and their effects on the resource areas protected by this bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

C. The Commission, where it determines appropriate, may accept as the permit application and plans under this bylaw any application (NOI, RDA, ANRAD) and plans filed under the Wetlands Protection Act (MGL c. 131 sect. 40) and regulations (310 CMR 10.00), but the Commission is not obliged to do so.

D. At the time of an application, the applicant shall pay the filing fee specified in the Wetlands Protection Act and its Regulations. The Commission reserves the right in future, for good cause, to impose an additional local filing fee per its authority to enact regulations, and solely for the purpose of recovering actual costs of administering this bylaw.

E. Coordination with other boards: In order for a permit application to be considered complete, the Commission and/or its Administrator reserve the right to exercise a 14-day period for the solicitation of feedback and comments from other Town departments and officials including, but not limited to, any of the following: the Board of Selectmen, Town Planner, Planning Board, Zoning Board of Appeals, Board of Health, Department of Public Works, Town Engineer, Building Inspector, and Office of Community and Economic Development. In addition, comments may be solicited by the Commission from an adjoining municipality's conservation commission if the application or RDA pertains to property within 300 feet of that municipality. In the case of large and complex project applications, applicants may be required to provide additional copies of applications and plans to other departments and officials for this purpose.

F. Outside consultants:

    a. Upon receipt of a permit application or RDA, or at any point during the hearing process, the Commission may require the imposition of reasonable fees upon an applicant for the employment of outside consultants, engaged by the Commission, for expert assistance in the review of proposed projects so as to assist the Commission in reaching a final decision on an application. Outside consultants can include engineers, wetlands scientists, wildlife biologists, and other professionals, and their services may include, but are not limited to, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydrogeological and drainage analysis; advising on environmental or land use law; and to aid in the ongoing monitoring or evaluation of a particularly complex project. The cost for the outside consultant shall be borne by the applicant as provided in MGL c. 44, sect. 53G.

    b. Pursuant to regulations adopted by the Commission, as well as the "Rules for Hiring Outside Consultants under MGL c. 44 sect. 53G" adopted as policy by the Commission in May 2017, consultant fees shall be deposited with the Town Treasurer, who shall create an account specifically for this purpose. Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission. The Commission shall provide applicants with written notice of the selection of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. The entire fee must be received before the initiation of consulting services.

c. Additional consultant fees may be requested where the required review is more expensive than originally calculated or where new information requires additional consultant services.

d. Failure by the applicant to pay the requested consultant fee within ten (10) business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and deny the permit without prejudice, except in the case of an appeal.

e. An applicant may appeal the selection of an outside consultant to the Board of Selectmen, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified.

f. The Commission shall return any unused portion of the consultant fee to the applicant upon completion of the consultant's services.

G. The Commission may waive the filing fee, consultant fee, and/or costs and expenses for a permit application or RDA filed by, or for, a town department.

H. Any application can be withdrawn by an applicant at any time, without prejudice.

SECTION 6: NOTICE AND HEARINGS

A. Any person filing a permit or other application (i.e. NOI, ANRAD) or other request (such as an Amendment to an OOC to an NOI) with the Commission at the same time shall give to all abutters (as described below) written notice thereof, by certified mail (return receipt requested), by certificates of mailing, or by hand delivery (with signed and dated receipt), to their mailing addresses shown on the most recent applicable tax list of the Assessor's office. These abutters include owners of bordering land, owners of land opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property lines of the applicant, including any in another municipality or across a body of water. Excluded from the abutter notification process are RDAs, Extensions to Orders of Conditions and Requests for Certificates of Compliance.

B. The notice shall briefly describe the project and state where copies of the applications and plans may be examined or obtained by abutters. It shall include the date of any Commission hearing or meeting if known. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission.

C. When an applicant is other than the owner, the application, the notice of the hearing or meeting, and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

D. The Commission shall open the public hearing or meeting within 21 business days from receipt of a completed permit application, NOI, Amendment to OOC, RDA, or ANRAD unless an extension is determined to be necessary, and agreed to in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its own discretion or in response to comments and recommendations that it deems persuasive as received from abutters or concerned residents, from the boards and officials listed in Section 5E above, or from outside consultants (Section 5F above). If permission for a continuance or postponement is not granted, the Commission may deny the permit if it believes that important information is not available.

E. The Commission shall conduct a public hearing on any permit application, NOI, ANRAD, or Amendment to an Order of Conditions with written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the municipality.

F. An RDA does not require abutter notification or the publication of written notice in the newspaper.

G. The Commission shall issue its permit, other order or determination in writing within 21 days of the close of the public hearing or meeting unless an extension is authorized in writing by the applicant, or pending confirmed receipt of other forthcoming and required state and/or federal permits.

H. The Commission may combine its hearing under this bylaw with the hearing conducted under the Act and its regulations. Notice of a hearing so combined shall not be considered defective solely because it fails to make reference to this bylaw.

SECTION 7: PERMITS AND CONDITIONS

A. If the Commission, after a public hearing, determines that the activities which are subject to the permit application, or the land and water use which will result therefrom, are likely to have a significant individual or cumulative adverse effect upon the wetland resource area values and interests protected by this bylaw, the Commission shall, within 21 days of the close of said hearing, issue or deny an OOC or other permit for the activities requested. No conditions shall be imposed, nor shall the Commission, in reference to this bylaw, render any determination unless the Commission meets with a quorum present.

B. The Commission is empowered to deny a permit for the applicant's failure to meet the requirements of this bylaw. The Commission may also deny a permit or Order of Conditions: a) for failure to submit necessary information and plans

requested by the Commission; b) for failure to comply with the procedures, design specification, performance standards, and other requirements in regulations of the Commission; c) for failure to avoid, minimize or mitigate unacceptable significant or cumulative adverse effects upon the resource area values and interests protected by this bylaw; d) for where, in its judgment, such denial is necessary to preserve environmental quality of either or both to the subject lands and contiguous lands; or e) for where it finds that no conditions are adequate to protect such values and interests. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

C. In any permit or OOC it approves, the Commission shall impose conditions which it determines necessary or desirable to protect said resource area values and interests, and all activities shall be done in compliance with those conditions. In imposing conditions, the Commission shall consider the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, which have resulted from past activities, permitted and exempt, or which may result from foreseeable future activities.

D. To prevent resource area loss, the Commission shall require applicants to avoid wetlands alteration whenever feasible; to minimize wetlands alteration; and, where alteration is unavoidable and has been minimized, to provide required mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure long-lasting success in light of historically common rates of replication failure.

E. The Commission may also grant an OOC for projects within wetland resource areas if it determines that the granting of such an OOC will result in a significant public or environmental benefit and that, because of the characteristics of the land, the proposed alterations, and/or proposed mitigation measures, the interests of this bylaw will be maintained.

F. The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it determines appropriate, regardless the type of resource area, natural vegetation, or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60).

G. At its own discretion, the Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

H. A permit, OOC, DOA, or ORAD shall expire three years from the date of issuance. At its discretion, the Commission may renew any such permit for one or more additional periods of up to three years, provided that a request for a renewal is received in writing by the Commission at least 21 days prior to expiration.

I. A permit may identify requirements which shall be enforceable for a stated number of years, in perpetuity, or until permanent protection is in place, and these requirements shall apply to current and subsequent owners of the land affected thereby. Amendments to permits, OOCs, DOAs, or ORADs shall be handled in the manner set out in the Wetlands Protection Act regulations and policies thereunder.

J. The Commission in an appropriate case may combine the decision issued under this bylaw with the permit, OOC, DOA, ORAD, or Certificate of Compliance (COC) issued under the Wetlands Protection Act and regulations.

K. For good cause the Commission may revoke any permit, OOC, DOA, or ORAD or any other order, determination or other decision issued under this bylaw after notice to the holder, the public, abutters, and town boards, pursuant to Section 6A and B above, and after a public hearing.

L. No work proposed in any application shall be undertaken until the permit, OOC, or ORAD issued by the Commission with respect to such work has been recorded in the Middlesex County South Registry of Deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the document has been recorded.

SECTION 8: REGULATIONS

After public notice and public hearing, the Commission shall enact regulations to carry out the purposes of this bylaw, effective when approved by vote of the Commission and filed with the Town Clerk. Failure by the Commission to put forward such rules and regulations, or a legal declaration of their invalidity by a court of law, shall not act to suspend or invalidate the effect of this bylaw. At a minimum these regulations shall

reiterate the terms defined in this bylaw, define additional terms not inconsistent with the bylaw, and establish procedures, design specifications, performance standards, and other measures and safeguards. Stricter standards may also be employed for jurisdictional lands and waters within the Petapawag and Squannissit Areas of Critical Environmental Concern (ACEC), as designated by the Massachusetts Executive Office of Environmental Affairs.

SECTION 9: DEFINITIONS

Unless stated below, definitions shall be as stated in the Act (MGL chapter 131, section 40) and its regulations (310 CMR 10.00). The following definitions shall apply in the interpretation and implementation of this bylaw:

ABBREVIATED NOTICE OF RESOURCE AREA DELINEATION (ANRAD)
This form (WPA Form 4A) provides a public hearing procedure for an applicant to confirm the precise boundaries of bordering vegetated wetlands (BVW) or other resource areas. The permit issued under an ANRAD is an Order of Resource Area Delineation, or ORAD, which must be recorded at the Registry of Deeds.

ABUTTER
Shall mean, in addition to the usual meaning of the term regarding bordering land, owners of land directly opposite on any public or private street or way, and abutters to abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water.

ADJACENT UPLAND RESOURCE AREA
Shall include lands with 100 feet of any freshwater wetland; marsh; flat; wet meadow; bog; swamp; vernal pool; bank; reservoir; lake or pond of any size; creek; intermittent stream; beach or land under water bodies; and lands within 200 feet of perennial rivers and streams.

AGRICULTURE
Shall refer to the definition as provided by MGL c. 128 sect. 1A.

ALTER
Shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

1) Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
2) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
3) Drainage, or other disturbance of water level or water table;

4) Dumping, discharging, or filling with any material which may degrade water quality;
5) Placing of fill, or removal of material, which would alter elevation;
6) Driving of piles, erection, expansion or repair of buildings, or structures of any kind;
7) Placing of obstructions or objects in water;
8) Destruction of vegetation including cutting, trimming, or removal of trees and shrubs;
9) Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
10) Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater;
11) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas and values protected by this bylaw.

AREA OF CRITICAL ENVIRONMENTAL CONCERN (ACEC)
Areas crossing multiple towns and given special recognition for the quality, uniqueness and significance of their natural and cultural resources are designated as ACECs by the Mass. Executive Office of Environmental Affairs. In order to better preserve, restore, and enhance critical environmental resources/resource areas in the Commonwealth, ACECs receive increased environmental oversight through additional state permitting standards, elevated performance standards, and lowered thresholds for review.

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

BUFFER ZONE
See definition for **ADJACENT UPLAND RESOURCE AREA** above.

FRESHWATER WETLAND
Shall include all wetlands whether or not they border on a water body. For the purposes of this bylaw, lakes or ponds of any size, all bordering vegetated wetlands, as well as isolated vegetated wetlands shall be protected.

LAND SUBJECT TO FLOODING
Shall include lands subject to the temporary inundation of water, whether by stormwater, groundwater or surface water, including a rise or expansion in the surface of an existing body of water, such that land not usually covered by water is flooded.

MINOR ACTIVITIES

Shall refer to those activities within the Buffer Zone (but not within other resource areas identified as jurisdictional by this bylaw) that are temporary in nature, have negligible immediate impact, and do not have adverse impacts to adjacent resource areas. Per the guidance established in 310 CMR 10.02(2)(b)1 & 2, the Commission shall, in its regulations, provide examples of minor activities that do not require Commission review. Factors to consider when measuring the potential for adverse impacts include the extent of the work and/or ground disturbance, the proximity to adjacent resource areas, the need for erosion controls, and the measures employed to prevent adverse impacts to resource areas during and following the work.

NOTICE OF INTENT (NOI)
This form (WPA Form 3) is filed by an applicant who proposes to do work within 100 feet of a wetland resource area or within 200 feet of a river or stream protected by the Massachusetts Wetlands Protect Act or the Ayer Wetlands Protection Bylaw. The permit issued under an NOI is an Order of Conditions, or OOC, which must be recorded at the Registry of Deeds.

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

POND (Inland)
Per 310 CMR 10.04, shall refer to any open body of fresh water, either naturally occurring or human-made by impoundment, excavation, or otherwise. Ponds shall contain standing water except for periods of extended 'advisory' or 'severe' drought, per the Massachusetts Executive Office of Energy and Environmental Affairs. The following human-made bodies of open water shall not be considered ponds:

1) Basins or lagoons which are part of wastewater treatment plants;
2) Swimming pools or other impervious human-made basins;
3) Individual gravel pits or quarries excavated from upland areas at active construction sites, unless inactive for five or more consecutive years;
4) Stormwater impoundments such as retention or detention basins.

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

REQUEST FOR DETERMINATION OF APPLICABILITY (RDA)

This form (WPA Form 1) is filed by a person desiring to know whether or not a proposed activity, or an area, is subject to this bylaw. An RDA can also be filed by any person, as defined above, that wishes to know if wetlands exist within 100 feet of a site proposed for development. Minor projects within the 100-foot buffer zone are also considered under this filing category. The permit issued under an RDA is a Determination of Applicability or DOA.

VERNAL POOL

1) Shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.
2) The adjacent upland resource area for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or ½ of the distance between the vernal pool and any existing house foundation, whichever is smaller. In either case, the adjacent upland resource area for vernal pools shall not extend over lawns, gardens, and landscaped or developed areas existing as of the effective date of this bylaw.

WILDLIFE HABITAT

Shall mean those areas that due to their plant community, composition and structure, hydrological regime, or other characteristics, provide important food, shelter, migratory or over-wintering areas, or breeding areas for wildlife.

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

SECTION 10: SECURITY

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed thereunder, including conditions requiring mitigation work, be secured wholly or in part by one or both of the following methods:

A. By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility

sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a COC for work performed pursuant to the permit.

B. By accepting a Conservation Restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Ayer, acting through the Commission, 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 applicant.

SECTION 11: ENFORCEMENT; SITE INSPECTIONS

A. No person without written authorization from the Commission shall remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

B. In order to carry out its duties under this bylaw, whether reviewing an application submitted for permitting or monitoring compliance with an Order of Conditions or other permit, the Commission and/or its agents, will need to perform site inspections from time to time by entering land privately owned by an applicant or serving as a project site. When site inspections, surveys or sampling are determined to be necessary, the Commission and/or its agents shall enter the privately owned subject land at reasonable times and with the prior notification and consent of the property owner. Failure to provide consent may be grounds for the Commission to a) deny a permit application on the grounds of inadequate review; b) seek an administrative search warrant for permission to enter; or c) revoke an open OOC if it is determined to be necessary. Such site inspections shall at all times be subject to the constitutions and laws of the United States and the Commonwealth.

C. The Commission is authorized to enforce this bylaw, its regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, administrative orders/warrants, non-criminal citations under MGL c. 40 sect. 21D, and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

D. In addition to any other remedy available in law or in equity, any person who violates any provision of this bylaw, regulations, permits, or administrative orders issued thereunder, may, at the option of the Commission, be subject to noncriminal prosecution and fines up to a maximum of $300, pursuant to MGL c. 40 sect. 21D and adopted by the Town of Ayer in Article LIII of its general

bylaws. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations, permits, or administrative orders violated shall also constitute a separate offense.

E. As per Article LIII of the general bylaws, the provisions of this bylaw and regulations, or of any permit or order issued thereunder, may be enforced by the Commission, by its agents, by a Commissioner so authorized by vote of the Commission, or by any police officer of the Town. The Commission may request the Board of Selectmen and Town Counsel to take legal action for enforcement under civil law. The Commission may request the Chief of Police to take legal action for enforcement under criminal law.

SECTION 12: BURDEN OF PROOF

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative adverse effects upon the resource area values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or at the Commission's discretion, to continue the hearing to enable the applicant or others to present additional evidence.

SECTION 13: APPEALS

A decision of the Commission shall be reviewable in the superior court in accordance with MGL c. 249 sect. 4.

SECTION 14: RELATION TO THE WETLANDS PROTECTION ACT

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

SECTION 15: SEVERABILITY

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, approval or determination which previously has been issued.