

Setbacks from Wetlands

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Issue Overview Many municipalities create limited-use zones within the buffer zone adjacent to the wetlands. Most require a setback from the wetland of undisturbed natural vegetation, often called a zone of “no disturbance,” “no alteration,” “no cut” or “no work.” Beyond the zone of “no disturbance” (or instead of it), there is often a “no build” zone where construction of structures is prohibited, but other activities are allowed, including clearing, landscaping and paving. Several municipalities create concentric zones or several setbacks that vary according to (1) proposed activity (alteration of vegetation, pavement, porches, dwellings), (2) use types (single family, multi-family, commercial), (3) type of wetland (vegetated wetlands, isolated land subject to flooding, vernal pools), (4) site characteristics (groundwater protection overlay, steep land, ground cover, mapped habitat for endangered species) or (5) existing versus new lots.

The state regulations do not establish limited use zones.

Some municipalities enforce limited use zones as a matter of policy, and do not establish the requirements in the bylaw/ordinance or regulations. Some municipalities describe the limited use requirements in the zoning bylaw/ordinance.

Research Coding The answer is coded Yes when limited use zones are established as municipal law – in the wetlands bylaw/ordinance, promulgated regulations, or zoning bylaw/ordinance - not when enforced as a matter of “policy.” The researcher may have missed the relevant provisions in zoning bylaws/ordinances. Although the researcher did not systematically obtain “policies” from the municipalities, the researcher described policies in the database notes when conservation agents listed the policies on surveys or described them in phone interviews. Setback policies were reported both by towns with bylaws and those without. Note that while the research notes often include information on setbacks from vernal pools and land subject to flooding, researchers did not systematically seek this information; setbacks from bordering vegetated wetlands are more consistently entered.

Abington *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes The Town of Abington's wetlands bylaws do not refer to "no disturbance" zones.

In survey received 3/24/04 from Abington: "Yes, nothing within 10' of wetlands."

Acton *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 50 foot no disturbance
75 foot no build

Section 3.2 Wetlands Setbacks for New Activities of the Acton Wetlands Bylaw Regulations lists the setback requirements: "...(2)50-foot setback of undisturbed natural vegetation (3) 75-foot no-build setback to the edge of the driveways, roadways, and structures (4) 50-foot chemical free area, within which no fertilizers, herbicides, pesticides or other chemical maintenance substances shall be used (5) 100-foot setback for underground storage of gasoline, oil, or other fuels and hazardous materials (6) 100-foot setback of undisturbed natural vegetation to the mean high water line for vernal pools.

The researcher did not find any reference of variances specific to these setbacks. Under Section 1.5 of the Acton Wetlands Bylaw Regulations, variances for any regulation are available, "Strict compliance with these Rules and Regulations may be waived when, in the judgment of the Commission, such action is in the public interest, and is consistent with the intent and purpose of the Bylaw."

(Town of Acton Wetland Protection Bylaw Rules and Regulations, Adopted 2004)

Amesbury *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No The researcher did not find any reference to limited use zones in the wetlands by-laws.

Andover *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 25 foot no disturbance (50 feet in Haggett Watershed)
50 foot no build (75 feet in Haggett's Watershed)

Section 7.6(b) of the Andover Wetlands Regulations establishes a 25 foot no touch buffer strip around all wetland resource areas (50 feet within Haggett Watershed) and a 50 foot no build (75 feet in Haggett Watershed):

"Based upon experience to date with projects within the buffer zone, the Conservation Commission shall presume that work within the buffer zone will result in alteration of the resource area. This presumption is rebuttable and may be overcome upon a clear showing that the nature of the proposed work, special design measures, construction controls, or site conditions will prevent alteration of the resource areas. The Conservation Commission has established the following buffer strip and limit of structures

1. Buffer Strip: There shall be no removal of vegetation, excavation, filling, or placement of any building or structure (except as permitted with an Order of Conditions for a limited project, wetland crossing or water dependant structure such as a dock, bridge, vegetative treatment swale or other earthen stormwater treatment devices necessary for stormwater management) for a minimum of 25 feet from any bank, bordering vegetated wetland, isolated vegetated wetland, marsh, wet meadow, bog, swamp, vernal pool, reservoir, pond, creek, river or stream, or any land under said waters. The activities listed above shall not be allowed within a minimum of 50 feet of the above listed resource areas located within the Haggetts Pond Watershed Protection Overlay District. There shall be no piling of natural material such as leaves, brush, grass clippings and manure or storage or manmade objects or materials such as, but not limited to, boats, vehicles, trash or its container, scrap metal, garbage etc. within 25 feet of the edge of the above listed wetland resources.
2. Building Within 50 Feet: There shall be no structures for human habitation ("building") placed within 50 feet of any bank, bordering vegetated wetland, isolated vegetated wetland, marsh, wet meadow, bog, swamp, vernal pool, reservoir, pond, creek, river or stream, or any land under said waters, or within 75 feet of resource areas located within Haggetts Pond Watershed Protection Overlay District, except as permitted with an Order of Conditions for a water dependant structure or if no practical alternative is determined to be available after completion of an alternatives analysis."

Arlington *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 25 foot no disturbance
(vegetated wetland)
50 foot no disturbance
(lands subject to flooding, land under water bodies)

Wetlands Protection Regulations Town of Arlington, (Revised 2001),

Section 17.

D. No work shall be performed within 25 feet of a vegetated wetland that abuts on an estimated habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage and Endangered Species Program without a request for a variance and a variance granted by the Commission, and said variance request shall receive the highest level of scrutiny.

Section 18

E. No work shall be performed within 50 feet of land under water bodies that abuts an estimated habitat area as designated on the most current map

prepared by the Massachusetts Natural Heritage and Endangered Species Program unless the Applicant can demonstrate by a preponderance of credible evidence that the work will not have any short term or long term adverse effect on the resource area values protected by the Bylaw.

Section 19.

E. No work shall be performed within 50 feet of land subject to flooding that abuts and estimated habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage and Endangered Species Program without a request for a variance and a variance granted by the Commission, and said variance request shall receive the highest level of scrutiny.

Ashland

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes 25 foot no disturbance

Town of Ashland Wetlands Protection Bylaw (Ashland Bylaws Chapter 280-1) states :

"No work or disturbance, including but not limited to grading, vegetation removal, or disturbance, shall be permitted within twenty-five (25) feet of any Bordering Vegetated Wetland or Bank area, unless the applicant provides information and evidence deemed satisfactory to the Commission that the work to be performed sufficiently protects or enhances wetland interests. This provision shall not apply to previously existing docks, piers, or floats or to pre-existing agricultural uses."

Attleboro

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes 25 foot - no disturbance

"The Commission therefore shall require that the applicant maintain a 25-foot wide continuous, undisturbed vegetative buffer measures from and parallel to the resource area boundary, as an absolute minimum." From the City of Attleboro Wetlands Protection Ordinance. Section 18-1.8 (Adopted 2001).

From the City of Attleboro Wetlands Rules and Regulations:

4.9 WETLANDS PROTECTION ZONE (WPZ)

The land area located within 25 feet of the Wetland Resource Areas identified in Section 1.3 (a) (b) (c) and (d) of these regulations is also a protected Wetland Resource Area pursuant to Sections 18-1.2 and 18-1.8 of the Ordinance. This area shall be known as the Wetlands Protection Zone ("WPZ"). As stated in the Section 18-1.8 of the Ordinance, the WPZ is "presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact Attleboro Conservation Commission Page 18 of 28

Proposed Wetlands Protection Rules and Regulations Adopted November 17, 2004

upon the wetland or other resource, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities".

Important functions of the WPZ include, but are not limited to: Protecting the Wetland Resource Area it surrounds, i.e. by shading; filtering stormwater runoff; reducing noise and wind; and reducing the inflow of pollutants such as salts, pesticides, herbicides and fertilizers; providing wildlife habitat, including food, shelter, nesting, and migratory areas; providing traversable recreation areas; and allowing for wetland plant growth and wetland expansion.

The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover in part or all of the WPZ and set other conditions on this area, unless the applicant provides evidence deemed credible and sufficient by the Commission that the area or part of it may be disturbed without harm to the values protected by the Ordinance.

As stated in Section 18-1.8 of the Ordinance, the Commission may allow the WPZ to be utilized in a passive manner. As such, in some circumstances activities — when properly conditioned — may be acceptable in WPZ areas. Under other circumstances even minimal adjacent disturbance may have serious harmful effects on Wetland Resource Area values and functions. When the presumption of significance is questioned the actual determination of impact must be made on a project and site-specific basis. In this respect the actual impact of proposed work or activities within the WPZ on wetland values and functions can often be reduced substantially, and thus made permissible, when appropriate conditions are imposed.

The Ordinance gives the Conservation Commission broad discretion to permit, condition, and prohibit work within the WPZ as the specific situation warrants. Therefore the Commission shall consider proposals for

work in the WPZ in terms of four broad forms of disturbance. This approach is intended to allow flexibility for property use while maintaining adequate levels of resource protection.

4.9.1 No Disturbance

The Commission may find that the specific characteristics of the WPZ on a particular site are so important to the protection of the Wetland Resource Area values that that virtually no activities or work, other than passive passage, will be permitted. In these cases, no vegetation should be disturbed, leaf litter and debris should remain in place, etc., and the WPZ should remain unchanged from its pre-project state.

4.9.2 Temporary Disturbance

The Commission may find that the specific characteristics of the WPZ on a particular site are such that a temporary disturbance for a limited period of time may be permitted, such as for regrading or travel by construction machinery. Once the activity is completed, however, the area would be allowed to return to natural vegetation and pre-disturbance functions. Any subsequent disturbance or activity would require additional filings and review by the Commission. In these instances, the Commission shall establish specific time frames and conditions for allowing temporary disturbances, as well as setting criteria for assessing the successful return of the WPZ to natural functions.

4.9.3 Limited Disturbance

The Commission may find that the specific characteristics of the WPZ on a particular site are such that a limited set of activities and work may be permitted in perpetuity. For example understory clearing of vegetation may be allowed, but no clearing of overstory and no conversion of ground cover to lawn would be allowed. Limited (sustainable) harvesting of wood, composting of brush, and storing firewood are other examples of limited activities that might be allowed.

4.9.4 Permanent Disturbance

The Commission may find that the specific characteristics of the WPZ on a particular site are such that permanent disturbances are permitted. Dwellings, parking areas, driveways, decks, and lawns in the WPZ represent permanent disturbance areas. Within the context of permanent disturbance within the WPZ, the Commission may set specific conditions prohibiting or restricting those forms of work and activities deemed potentially harmful to resource area values, such as the use of herbicides and pesticides, the use of interceptor drains, swimming pool discharge or filter backwash systems, or the installation of in-ground sprinkler systems for irrigation.

4.9.5 Permanent Immovable Barriers and Enhancement

The Commission may, at its discretion, require the installation of a permanent immovable barrier(s) (splitrail fence, large rocks, stonewalls, shrub barriers, etc.) along the WPZ boundary or the line within the WPZ where the limit of work or disturbance is approved. It has been the Commission's experience that permanent immovable barriers are an effective visual reference, and serve to help avoid 'lawn creep' by future homeowners, who may not be as aware of the resource areas as the original applicant. Enhancements, such as the removal of invasive/exotic plant species or the planting of native vegetation may be required as compensation for authorized disturbances within the WPZ at the discretion of the Commission.

Auburn

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

No

The researcher did not find any reference to specific limited use zones in the wetland bylaws. On 10/25/04, the researcher spoke with the conservation administrator, who said there are no policies of limited use/ no cut zones.

Avon

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

No

Answer based on 6/28/04 phone conversation with Gene Guilbault, Avon Conservation Officer -- he stated that it depends on the circumstances, but right now there is no zone delineated such as a 25 ft buffer.

The researcher found no reference to limited use zones in the wetlands bylaws.

Bedford

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

25 foot no disturbance

Town of Bedford Conservation Commission Regulations Pursuant to the Bedford Wetlands Protection Bylaw, Section 2.2.2

2.2.2 Specific Standards

2.2.2.1 Buffer Zone

Where an activity is proposed within the Buffer Zone, the Commission shall presume that the activity has a high likelihood of altering any resource area adjacent to the Buffer Zone unless the proponent proves by a preponderance of the credible evidence that either:

- a) the Buffer Zone does not play a role in the protection of any of the wetland values of the Bylaw; or
 - b) the activity shall occur in such a manner that any potential adverse environmental impacts on any of the wetland values are avoided.
- Notwithstanding any of the above, the placement of impervious surface in the Buffer Zone is limited to the greater of:

- a) 25% of the Buffer Zone; or
- b) the percentage of the Buffer Zone covered by previously placed impervious surface due to activity allowed at the time it was performed.

2.2.2.2 Buffer Strip

Where an activity is proposed within the Buffer Zone to a wetland, vernal pool, bank or beach, or isolated land subject to flooding, the Commission shall require that a continuous Buffer Strip (at least 25 feet wide) of undisturbed, natural vegetation be maintained between the proposed activity and the resource area(s). The Commission may require that a buffer strip be created where non currently exists, due to previous activities.

In designing a project to meet this performance standard, the applicant shall take into account not only proposed construction activity, but also realistic future use of the site....

When partial encroachment of proposed structures into the 25-foot "yard" setback is unavoidable, the applicant may mitigate the encroachment by increasing the Buffer Strip area by an amount equal to or greater than the encroachment into the "yard". The following guidelines are offered: (1) The encroachment should not exceed 10% of the total recommended "yard" setback for the lot; and (2) The encroachment should not exceed one quarter of the recommended width of the total setback from the resource area.

It is the applicants burden to demonstrate to the Commission's satisfaction that realistic future use of the site is not likely to result in intrusion into, or alteration of, the Buffer Strip. The Commission may require the applicant to submit a use plan and narrative as part of that demonstration. At the Commission's request, the applicant shall demonstrate to the Commission's satisfaction that work or activities proposed at the edge of the Buffer Strip are necessary and that reasonable alternatives, including reducing the scale and scope of the project or adjusting other setbacks, do not exist.

Beverly

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

25 foot no disturbance

100 foot no disturbance (vernal pools)

The City of Beverly Wetlands Protection Regulations (2003) create a 25 Foot No-Disturbance Zone defined as "that portion of the Buffer Zone which extends twenty-five (25) feet from the edge of those wetland resource areas identified in Section I(C) (1,3,4,5); 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, pruning, cutting, filling, excavation, roadway construction and /or driveway construction."

There is also a 100 Foot No-Disturbance Zone defined as, "the land area that extends one hundred (100) feet from the edge of any Vernal Pool that is located in an upland area or, in the case of a wetland resource area that encompasses the pool (Section 1(C)(1,3,4,5), within one hundred (100) feet from the edge of the said wetland resource area. Disturbance of any kind is prohibited within this Zone including but not limited to grading, landscaping, vegetation removal, pruning, cutting, filling, excavating, roadway construction and/or driveway construction. The extent and location of this No-Disturbance Zone is subject to change based on the results of a biological and/or habitat evaluation, which may be required to determine the migratory pathways and other important habitat usage of Vernal Pool breeders."

The City of Beverly Wetlands Protection Regulations, Section IV(B)(1) and (C)(1) (2003, as amended) provide for waiver in both the 100 Foot and the 25 Foot No-Disturbance Zones. The regulation lists the procedures to obtain waiver as follows:

100-Foot No-Disturbance Zone For Vernal Pools

1. Waiver(s):

The Commission may grant a partial waiver from this performance standard for the alteration of the 100-foot No-Disturbance Zone in situations where there are no practicable alternatives that provide for less impacts to the resource area values. The applicant is responsible for conducting an alternatives analysis to show that there are no feasible alternatives. The Commission may grant a partial waiver of the 100-foot No-Disturbance Zone performance standard and impose such additional or substituted mitigation requirements as it determines necessary, upon a clear and convincing showing by the

applicant that:

- a) There are no practicable alternatives that would allow the project to proceed in full compliance with this regulation; and
- b) The project, or its natural and consequential effects, will have no adverse effects on any of the interests protected by the Ordinance. It shall be the responsibility of the applicant to provide the Commission with any information that the Commission requests in order for it to determine that no adverse effects will occur. The failure of the applicant to furnish information so requested shall result in the denial of a request for a waiver pursuant to this subsection; and
- c) The project will improve the natural capacity of a resource area to protect the interests identified in the Ordinance, provided any adverse effects on any such interests are minimized by carefully considered and environmentally sensitive project design.

25-Foot No-Disturbance Zone

1. Waiver(s):

The Commission may grant a partial waiver from this performance standard for the alteration of a part of the 25-Foot No-Disturbance Zone in situations where there are no feasible alternatives that provide for fewer impacts to the resource area values. The applicant is responsible for conducting an alternatives analysis to show that there are no feasible alternatives. The Commission may grant a waiver of the 25-Foot No-Disturbance Zone performance standard and impose such additional or substituted mitigation requirements as it determines are necessary, upon a clear and convincing showing by the applicant that:

- a) There are no practicable alternatives that would allow the project to proceed in full compliance with these regulations; and
- b) The project, or its natural and consequential effects, will have no adverse effects on any of the interests protected by the Ordinance. It shall be the responsibility of the applicant to provide the Commission with any information that the Commission requests in order for it to determine that no adverse effects will occur. The failure of the applicant to furnish information that has been so requested shall result in the denial of a request for a waiver pursuant to this subsection; and
- c) The project will improve the natural capacity of a resource area to protect the interests identified in the Ordinance, provided any adverse effects on any such interests are minimized by carefully considered and environmentally sensitive project design.

Billerica

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

50 foot no build
25 foot no disturbance

There is a 50 foot no-build zone from any resource area, and a 25 foot no-disturbance zone from any resource areas.

The commission is empowered by Article XXII, Section 5.2 of the Billerica town bylaws to create such zones. It reads: "By regulation, the Commission may require within a buffer zone certain setbacks and/or an area of natural vegetation of sufficient width and vegetative community type to assure protection of the wetlands resource area and mitigation of proposed activities. Nothing herein shall preclude the Commission from establishing a no-alteration zone on a case-by-case basis."

The regulations are more specific.

From Section 3.03 C(3) No Alteration Zone,

"The Commission shall require, when activity is proposed within the wetland buffer resource area (Buffer Zone), a continuous strip of at least twenty-five feet (25') in width of undisturbed naturally occurring vegetation between the proposed activity and the adjacent wetland resource area. The Commission may consider a variance to this provision where there is proposed alteration to an existing structure or a temporary alteration with restoration. The Commission may require the creation of such no alteration zone where no wetland buffer resource area (Buffer Zone) currently exists because of previous activities that have altered the wetland resource area.

a. In designing a project to meet this performance standard, the applicant shall take into account not only proposed construction activity, but also realistic future use of the site. The burden is on the applicant to demonstrate to the Commission that realistic future use of the site is not likely to result in intrusion into, or alteration of, the no alteration zone. The Commission may require the applicant to submit a use plan and narrative as part of that demonstration.

b. On lots that have been granted non-conforming protection under the State of Billerica zoning laws and where there is a proposed alteration to an existing structure, the Commission shall review each application on a case by case basis.

c. The applicant shall expect the Commission to require new construction on a lot not previously developed to be sited at least fifty feet (50') from any wetland resource area.

d. The applicant shall expect the Commission to require a no alteration zone significantly greater than twenty-five feet (25') where the slopes are steeper than 2:1 and where there is no retaining wall."

(Billerica Conservation Commission Wetlands Protection Regulations, Adopted 2003)

The regulations do not mention variance provisions for new construction.

Blackstone

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes 100 foot no build

From Section 119-12. Denial of permission and setback regulation. [Added 4-29-1991 by ATM, Art 41],
"B. Every proposed building shall have a one-hundred-foot setback from any wetlands, bank, marsh, wet meadows, bog, swamp, creek, river, stream, ford, lake or one-hundred-year floodplain. One request for a variance of the setback rules shall require an affirmative vote of at least four members of the Conservation Commission present and voting. [added 4-29-1991 by ATM, Art. 41; amended 5-30-2000 by ATM, Art. 13]."

In addition, from Section 119-11. Order of conditions,
"C. Per order of conditions, any new subdivision which proposes construction bordering a wetland and is determined to negatively impact the wetland due to alteration or runoff will be required to provide a construction setback amounting to between five percent (5%) and ten percent (10%) of the subdivision land. This land will border the wetland and will serve to protect the wetland from negative impact. [Amended by 4-25-1994 ATM, Art. 29]"

(Blackstone Code Chapter 119, Wetlands, Adopted 1986)

Bolton

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes 25 foot no disturbance

The conservation agent (11/8/04) said there is a 25 foot no disturbance zone, but that there is some exception to this when establishing a crossing to uplands. The agent also said that the zoning bylaws give special permits for a wider variety of cases in addition to crossings. This inconsistency is in the beginning phases of being rectified -- the agent was unsure whether that meant fewer cases eligible for special permitting under the zoning bylaw or more cases eligible for special permitting under the wetlands bylaw.

"Unless excepted in Section 1.18.3 herein or pursuant to a wetland crossing permit, no person shall commence to remove, fill, dredge, build upon, degrade, pollute, discharge into, or otherwise alter the following resource areas or land within 25 feet of the following: any freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pool habitat, including but not limited to state certified vernal pools; banks; fresh water seeps; reservoirs; lakes; rivers; streams; creeks; beaches; lands under water bodies; lands subject to flooding or inundation by ground water or surface water (collectively the resource areas). This 25-foot prohibition, however, shall not apply to crossings essential to access upland areas. Said resource areas shall be protected whether or not they border surface waters.

Except as expressly permitted by the Conservation Commission or as provided in this Bylaw no person shall commence to remove, fill, dredge, build upon, degrade, pollute, discharge into, or otherwise alter either a resource area, as described above, or land within 100 feet of the aforesaid resource areas." From the Town of Bolton Wetlands Bylaws, Section 1.18.2.

"The presumption is rebuttal and may be overcome by a clear showing that the resource area or land within 100 feet does not play a role in the protection of one or more of these interests [i.e. the wetlands values]." From the Town of Bolton Wetlands Protection Bylaw, Section 1.18.2.

Boxborough

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes 50 foot no disturbance

Applicants must demonstrate that they can maintain wetlands values, improve the condition of the existing resource, or that the effects of the proposed activity will be minor before a waiver will be granted for work 50 feet from a wetland. Lawns, decks & porches without a foundation, as well as dry wells for runoff are permitted 75 ft from a wetland.

Table 1. Summary of Activities Allowed in a Wetland Resource Area

Activity	Wetland Resource Area	Conservation Commission Exception
Roads & Driveways	Not Allowed	Yes*
Parking Lots	Not Allowed	

Detention Basins	Not Allowed	
Buildings & Structures	Not Allowed	
Decks & Porches	Not Allowed	
Swimming Pools	Not Allowed	
Fuel Storage	Not Allowed	
Hazardous Materials	Not Allowed	
Dumpsters	Not Allowed	
Wells & Water Lines	Not Allowed	Yes **
Sanitary West Systems	Not Allowed	
Dry Wells	Not Allowed	
Utilities	Not Allowed	Yes*

Activity	Distance into Adjacent Land Resource Area	Conservation Commission Exception
Roads & Driveways	Not Allowed	Yes*
Parking Lots	Not Allowed	
Detention Basins	Not Allowed	
Buildings & Structures	Not Allowed	
Decks & Porches	Outer 25 ft	
Swimming Pools	Not Allowed	
Fuel Storage	Not Allowed	
Hazardous Materials	Not Allowed	
Dumpsters	Not Allowed	
Wells & Water Lines	Not Allowed	Yes **
Sanitary West Systems	Not Allowed	Yes **
Dry Wells	Outer 25 ft	
Utilities	Not Allowed	Yes*
Lawns	Outer 25 ft	
Wetlands vegetation disturbance	Outer 50 ft	
Stump Pits	Not Allowed	

*The Commission may allow an exception under limited project provision of State Wetland Law.

**The Commission may allow if applicant can show by preponderance of credible evidence that the activity will not harm wetlands interests and that there is not a suitable alternative location.

From Tables in Town of Boxborough Regulations for the Wetlands Bylaw (Adopted 11/14/01).

Boxford

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

- 25 foot no disturbance
- 75 foot no build
- 100 foot no disturbance (vernal pools)

In Section 375-98 Buffer Zones there is table titled "Minimum Setback Distance Chart (in feet)". This table is very detailed for various structures and types of resource areas. Essentially, around vernal pools there is a 100 foot no alteration zone. For "other wetland resource areas", there is a 25 foot no alteration zone and 75 foot no build zone ("structures requiring a building permit).

From the same section, part D. Cutting of vegetation,

"(1) No-disturb zone

(a) There shall be a no-disturb zone with a minimum depth of twenty-five (25) feet measured horizontally from the border of the protected wetland resource area (with the exception of riverfront areas, which do not have buffer zones, vernal pools, which have a 100 foot no-disturb zone, and Hovey's, Baldpate, and Stiles Ponds, which have a minimum of 100 foot no-disturb zones). The Commission, at its sole discretion, may require a no-disturb zone of greater than the minimum where there are site specific conditions which would if altered result in resource area degradation."

There are variance provisions.

375.98 B(1)-(5) reads in part:

"B.Presumption.

(1) Based on experience to-date with projects in the buffer zone, the Commission presumes that alterations listed in the Minimum Setback Distance Chart below and closer than the stated setbacks, will result in alteration of the wetland resource area. Therefore, all proposed buffer zone alterations must

comply with the stated minimum setbacks. These regulations consist of more than a single chart, and greater setbacks than the stated minimums can be and often are required for a project to comply with all sections of these regulations. For this reason, permit applicants are strongly encouraged to review all regulations contained herein prior to designing a project.

(2) This presumption is rebuttable and may be overcome only for the conversion of lawn or other significantly altered land to a structure requiring a building permit when said structure is accessory to an existing single family dwelling legally in existence as of May 19, 1994 (the original issue date of these Regulations), or when a wetlands permit application was filed for said single family dwelling on or before May 19, 1994; and only upon a clear showing by the applicant that the work proposed within the buffer zone, closer than the tabulated minimum setback distances, will not result in the alteration of any wetland resource area. The proposed design shall comply as much as possible with the minimum setback distances specified in the Minimum Setback Distance Chart.

(3) In addition, an applicant attempting to overcome this presumption shall have the burden of demonstrating by a preponderance of the credible evidence that construction and continued use of said accessory structure will not have a significant or cumulative adverse effect upon the ability of the buffer zone to protect all applicable wetland resource area values identified in § 376-1B(1) through (13) of these Regulations. No alteration shall be allowed within a naturally vegetated no-disturb zone, except as specified in § 375-98D(1).

(4) The Commission may place additional conditions on the project to provide impact mitigation for locating accessory structures closer than the minimum setback distances (e.g. by requiring applicants to establish no-disturb zones adjacent to wetland resource areas, by requiring plantings of indigenous shrubs and/or trees in the buffer zone, or by restoring altered buffer zone and/or wetland resource areas to a natural condition). Accessory structures include but are not necessarily limited to additions, decks, porches, sheds, garages, patios, gazebos, and pools.

(5) In the event that this presumption is deemed by the Commission to have been overcome, the Commission shall make a written determination to this effect in the "Findings" section of the order of conditions, setting forth its grounds."

(Town of Boxford Wetlands Protection Bylaw Regulations, Adopted 1994, Amended 2004)

Braintree *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 25 foot no disturbance

Braintree Wetlands Bylaw Section VIII (Determinations, Permits and Conditions, C (Buffer Zone):

C. BUFFER ZONE

Lands within the 100 foot buffer zone are presumed important to the protection of wetland areas because activities undertaken in close proximity to said areas have a high likelihood of adverse impacts upon them as a consequence of construction or as a consequence of daily operation or existence of said activities. Impacts may include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality and loss of wildlife habitat. The Commission therefore shall require an applicant to maintain, at a minimum, a continuous undisturbed vegetative strip abutting a wetland 25 feet in width and may set other conditions as it deems necessary, unless the applicant provides evidence deemed sufficient by the Commission that the buffer zone may be disturbed without harm to the values protected by the Bylaw.

According to Peter Lopolla (7/6/04), Director of Planning and Conservation, Braintree's Conservation Commission requires 25-feet of "no disturbance" around wetlands. He said: "there is always escape language built in. 25 feet shall remain undisturbed, unless the Commission determines it is impractical to do for some reason." He noted that for some properties in the zone where lot sizes may be small the 25-foot no disturbance zone could cover the whole lot. In such cases, they would allow development.

Bridgewater *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No At present there is no mention of no-disturbance zone in the bylaw, but the researcher was told that a de-facto 25 foot no-disturbance zone is going to be incorporated into the bylaws within the year.
(10/13/04)

Burlington *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No Randy Newell, Assistant Administrator, said that Burlington encourages developers to respect a 20-foot no disturb zone. This is an informal policy, but it will likely be in the next iteration of the bylaw or regulations.

Canton *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 30 foot no disturbance

Effective July 18, 1991
Town of Canton Conservation Commission
Wetland Protection Bylaw Regulation
C.C 9 1-1: Wetland Buffer Zone Regulation

2. Prohibition:

No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of land within the thirty (30) feet of a bordering vegetated wetland or an inland bank shall be permitted by the Conservation Commission, except for any activity which is allowed under the variance provision of this regulation. Bordering vegetated wetland and bank are deemed to be as defined in Massachusetts General Laws, Chapter 131, Section 40 and Massachusetts Regulation 310 CMR 10.00.

3. Variance

The Conservation Commission may, in its discretion, grant variances from the operation of this regulation. Such variances are intended to be granted only in rare and unusual cases, and may be granted only for the following reasons and upon the following conditions:

(a) The conservation commission may grant a variance from this regulation upon a clear and convincing showing by the applicant that any proposed work, or its natural, consequential, and cumulative impacts and effects will not have any adverse effect upon any wetland values protected by the Bylaw. It shall be the responsibility of the applicant to provide the Conservation Commission with any and all information which the Commission may in writing request in order to enable the Commission to ascertain such adverse affects, and the failure of the applicant to furnish any information which has been so requested shall result in the denial of a request for a variance pursuant to this regulation.

(b) The Conservation Commission may grant a variance from this regulation when it is necessary to avoid so restricting the use of the property as to constitute an unconstitutional taking without compensation. If an applicant for a variance pursuant to this regulation is received by the Conservation Commission, the Commission may request an opinion from Town Counsel as to whether the application of this regulation to a particular case will result in such a taking without compensation.

Carlisle *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No Sylvia Willard, Carlisle conservation agent, said (7/30/04) that the bylaws do not establish no-build/no-disturb zones. The conservation commission works with developers to try to keep foundations from being built within 25 feet of any wetland. Ms. Willard noted that this is an informal policy to get developers in negotiations with the ConCom to make adjustments to their building plans.

Carver *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes No reference in the Carver wetlands bylaw to limited use zones.

Survey received from Carver on 5/3/05 marks:

"Yes - need a variance within 65 feet"

Chelmsford

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

25 foot no pavement
50 foot no build on a) lots over 40,000 square feet or b) parking lots with 10 or more spaces

Trill Levine, Chelmsford Conservation Agent, (9/7/04) said that the Chelmsford Conservation Commission enforces a 25 foot no disturb zone around resource areas.

From section 187-4. Limitations on construction, "A. The construction of any building, as defined herein, on any lot having an area of 40,000 square feet or more or any parking lot containing 10 or more parking spaces shall be prohibited within 50 feet of any resource area. The Conservation Commission may, at its discretion, exempt a shed, playhouse or other structure from this definition, provided that is built on footings requiring no more than four square feet cumulative ground disturbance and has a footprint no larger than 144 square feet... D.The Commission may waive the fifty-foot construction prohibition contained herein where the Commission specifically finds that literal enforcement of the prohibition would involve substantial hardship, financial or otherwise, to an applicant and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter [Amended 10-21-1999 ATM by Art. 48] E. The Commission shall not allow any impervious surface within 25 feet of any resource area. The Commission may waive this requirement if it specifically finds that the interests of this chapter are protected. [Added 3-27-2000 STM by Art.4]"

(Chelmsford Conservation Commission Wetlands Bylaw and Regulations)

Cohasset

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

50 foot no disturbance

Researcher spoke with Nancy Noonan, Cohasset Conservation Commission Secretary, on 8/20/04. She stated that there is a 50-foot no disturbance zone around wetlands resource areas, with variances available.

From Section 27. Buffer Zones,
"A. 100' Buffer Zone

The commission may find that activities within the One Hundred Foot (100') Buffer Zone are significant to protection of the Resource Area and, therefore, may regulate activities within One Hundred Feet (100') of the Resource Area. The One Hundred Foot Buffer Zone is comprised of the Fifty Foot (50') Inner Buffer Zone and the Fifty Foot (50') Outer Buffer Zone.

(1)Inner Buffer Zones (RBA)

Inner Buffer Zones (RBA) (Consists of not less than 50') serve a number of important functions in relation to protection of Resource Areas.... There will be no alterations in the 50' Inner Buffer Zone except as necessary to access a crossing over a Resource Area if such crossing is permitted pursuant to Section 32(B) and unless a variance is issued by the Conservation Commission.

If the RBA is already disturbed the Conservation Commission may require that it be revegetated with indigenous vegetative species of habitat value.

Notwithstanding the above, the Conservation Commission may grant a waiver or variance only upon a clear showing that the proposed activity will have no adverse impact on the Resource Area and the protected interests."

(Cohasset Wetland Regulations, Adopted 2001)

Danvers

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

25 foot no disturbance
35 foot no build

The Town of Danvers Wetlands By-law Regulations, Section 7.01(1)(1999, Revised 2003), addresses no-build and no-disturbance zones as follows:
"When proposing alterations of land within 100 feet of a wetland, the applicant must overcome a strong presumption of adverse impact on the adjacent wetlands and their functions and values. The Commission will require a 25-foot no-disturbance zone and a 35-foot no construct zone extending from all wetland resource areas except for riverfront area. No activity is allowed in the no-disturbance zone. Building construction of any kind is prohibited in the no-building zone. This includes, but is not limited to, home construction, porches, decks, additions and sheds."

Alter is defined in the Town of Danvers Wetlands By-law Regulations, Section 1.04 (1999, Revised 2003), as: The term "alter" shall include, without limitation, the following actions, when undertaken in resource areas subject to this By-Law:

- a. removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- b. changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- c. drainage or other disturbance of water level or water table;
- d. dumping, discharging or filling with any material which may degrade water quality;
- e. placing of fill or removal of material which would change elevation;
- f. driving of piles, erection of buildings or structures of any kind;
- g. placing of obstructions or objects in water or waterways;
- h. destruction of or injury to plant life including cutting of trees or their branches or roots; (with the exception of those activities allowed in agricultural use);
- i. changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water;
- j. any activities, changes or other work which pollute any body of water or groundwater."

The regulations do not specifically address variances to the no-build, no-disturbance zones, but they do include provisions for variances generally. According to the Town of Danvers Wetlands By-law Regulations, Section 2.01(1999, Revised 2003), variances are allowed in the following situations:

(1) The Commission may, in its discretion, grant variances from the operation of one or more of these regulations pursuant to this Section. Such variances are intended to be granted only in rare and unusual cases, and shall be granted only in accordance with the provisions of this section.

(2) A variance may be granted only for the following reasons and upon the following conditions:

(a) The Commission may grant a variance from these regulations upon a clear and convincing showing by the applicant that any proposed work, or its natural and consequential impacts and effects, will not have any adverse effect upon any of the interests protected in the By-Law. It shall be the responsibility of the applicant to provide the Commission with any and all information which the Commission may, in writing, request in order to enable the Commission to ascertain such adverse effects, and the failure of the applicant to furnish any information which has been so requested shall result in the denial of a request for a variance pursuant to this subsection.

(b) The Commission may grant a variance from these regulations when it is necessary to avoid so restricting the use of the property as to constitute an unconstitutional taking without compensation. If an application for a variance pursuant to the subsection is received by the Commission, the Commission may request an opinion from Town Counsel as to whether the application of these regulations to a particular case will result in such a taking without compensation.

Dedham

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

30 foot no disturbance
(single family dwelling)
40 foot no disturbance
(multi-units/subdivisions)
50 foot no disturbance
(pavement/parking lots)

In Section 16. Buffer Zone Regulations, the town outlines Undisturbed Buffer Area (UBA) for certain uses and structures on lands abutting a resource area. The UBA is defined as the "required minimum depth of the Undisturbed Buffer from the edge of the Resource Area." There are no references to variances. Table 4 (titled "Values to be Utilized in Calculation of UBA") lists then minimum UBA for certain structures. For a Single Family Dwelling (SFD) and accessories the minimum UBA is 30 feet. For Commercial/Retail/Industrial/Multi-Unit Residential Building/New Subdivisions the minimum UBA is 40 feet. For Paved Parking Lots and Access Ways the minimum UBA is 50 feet.

In addition, same section, "e.) No work shall be conducted within the Undisturbed Buffer Area with the exception of removal of debris or other maintenance/restoration work or as instructed or approved by the Commission. Such exceptions may be granted for planting and landscaping within this area.

1. No trees over 12 inches in caliper at a height 3 feet above the existing ground shall be cut within the UBA for the construction of drainage or stormwater management facilities located within the UBA. No proposed grading within the UBA shall have an adverse impact on such areas.
2. With the exception of a discharge structure/channel, no grading associated with a stormwater management or drainage basin shall be located with 20 feet of the resource area which the UBA borders."

(Conservation Commission Rules and Regulations, Adopted 1996, Amended 2002)

Dighton

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

50 foot no build
25 foot no disturbance

From Section VII, Setbacks,

B. "No dwelling or structure shall be built less than 50 feet from the outer edge of any wetland." and

C. "A 25-foot minimum undisturbed vegetated buffer zone will be required to protect wetlands and wildlife."

(Dighton Regulations, By-Law and Policies)

The researcher did not find any reference to variances.

Douglas

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

From policy #1, "[w]etland protection requires that certain limits not be exceeded if the resource is to be preserved and therefore a fifty (50) foot no build zone will be maintained. Where the wetland is actually a river or stream a one hundred (100) foot no build zone will be maintained."

(Conservation Commission Town of Douglas Policy, Adopted 2000, Amended 2003)

The researcher did not find any reference to variance provisions.

Dover

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

GW-1 and WP Steep (structure setback: 50 feet, no disturbance: 30 feet)
GW-1 and WP Shallow (structure setback: 40 feet, no disturbance: 25 feet)
GW-2 Steep (structure setback: 40 feet, no disturbance: 25 feet)
GW-2 Shallow (structure setback: 30 feet, no disturbance: 25 feet)

The Rules and Regulations of the Dover Wetlands Bylaw, Section 263-5(J)(2), establish setback requirements from the wetlands resource area for work within the buffer zone.

"Setbacks. This chapter presumes that work in close proximity to a Vegetated Wetland, Bank or Vernal Pool has a high likelihood of causing direct or indirect alterations to those resource areas. Therefore, any project proposing work in the Buffer Zone must maintain certain setbacks from the resource areas. These setbacks, summarized in Table 3, include both structure setbacks and disturbance setbacks and are dependent upon the Groundwater Protection District in which the site is located and whether it is located on a steep or shallow slope. In the event that the applicant can demonstrate that no reasonable alternative exists and proposes to take all necessary measures to prevent both short- and long-term impacts to the wetland, the Commission may, at its discretion, modify or waive this provision. The terms "Groundwater Protection District," "steep slope," "shallow slope," "structure" and "disturbance" are defined within § 263-6 of this chapter and are summarized below:

GW-1 and WP Steep 50 ft. 30 ft.
GW-1 and WP Shallow 40 ft. 25 ft.
GW-2 Steep 40 ft. 25 ft.
GW-2 Shallow 30 ft. 25 ft.

The first number (example: 50) represents the structure setback while the second number (example: 30) represents the no disturbance zone area.

Rules and Regulations of the Dover Wetlands Bylaw, Section 263-5(J)(2) states, "[i]n the event that the applicant can demonstrate that no reasonable alternative exists and proposes to take all necessary measures to prevent both short- and long-term impacts to the wetland, the Commission may, at its discretion, modify or waive this provision."

Dracut

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes 50 foot - no construction

There is a 50 foot no construction zone around most wetlands resource areas.

"Except as permitted by the Conservation Commission pursuant to this bylaw, or as otherwise allowed in this bylaw, no person shall fill, dredge, build upon, degrade, discharge into or otherwise alter any Resource Area or Buffer Zone as defined in Section IX of this bylaw. It shall be assumed that significant adverse effect on the wetland values protected by this bylaw will result from any filling, dredging, building or other alteration within a Resource Area, land subject to flooding or inundation by groundwater or surface water, or within 50 feet of the edge of any freshwater wetland, vernal pool, bank, reservoir, pond of any size, land under waterbodies, or any marsh, wet meadow, bog or swamp. Said resource areas shall be protected whether or not they border surface waters.

The construction of any building may be prohibited within 50 feet of any bank, fresh water wetland, beach, marsh, wet meadow, bog, swamp, or lands bordering or on any estuary, creek, river, stream, or lake or any land under said waters." From the Town of Dracut Wetlands Bylaw, Section II (Adopted 1993).

Email from Lori Cahill (12/6/04):

"50' is the Dracut bylaw, but building may take place within 50' of the resource area, with the discretion of the board, and a very strict order of conditions.

Vernal pools are very heavily protected, yet the board still has the discretion to allow building closer than 50', although that rarely happens."

...

"The bylaw gives the Conservation Commission the flexibility to grant permits within the 50' buffer. Generally, the Commission like to see an honest effort by the applicant to keep everything outside of the 50'. In hardship cases, if protection of the resource area is adequate, permits will be granted.

Lori Cahill
Conservation Agent
Town of Dracut"

Dunstable

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes The researcher did not find any reference to limited use zones in the bylaw or regulations. Marilyn Pike, member of the Dunstable Conservation Commission, said (11/08/04) that this was in the regulations and perhaps the researcher did not have the updated regulations. Ms. Pike says the Commission enforces a 60 foot no disturbance policy and did not mention any waiver provisions.

Duxbury

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes 50 foot - no structure with wall type foundation; no variances
35 foot - no structure with an open pile foundation; no variances
25 foot - no disturbance (landscaping)

Duxbury's setbacks include a 50 foot setback for structures with wall type foundations, a 35 foot setback for structures with open pile foundations, and a 25 foot setback for landscaping. Mitigation of a setback is not possible in most cases.

"9.00 Project-Specific Performance Standards

The following performance standards can be applied to projects that take place in one or more of the resource areas as defined herein. The Conservation Commission has frequently reviewed certain activities and as a result has developed standards that the Commission feels are sufficient in most cases to protect the interests of each affected resource area. In addition to the following specific performance standards, the Conservation Commission may require a Conservation Restriction on land associated with new projects in any resource area defined herein, if the Commission deems it necessary to protect the interests of the resource area. The intent of the Conservation Commission is to move all structures and activities as far away as possible from any Resource Area.

9.1.0 Structures

(1) The Commission may at its discretion allow a proposed structure on a wall-type foundation within 100 to 50 feet of the resource area, as defined in

Section 3.00 (1), (2), and (3), if satisfied that mitigation required in the Order of Conditions is sufficient to protect the resource area.

(2) No mitigation is sufficient to allow a structure on a wall-type foundation less than 50 feet to a resource area, as defined in Section 3.00 (1), (2), and (3).

(3) The Commission may at its discretion allow a structure on an open pile foundation within 100 to 35 feet of a resource area, as defined in Section 3.00 (1), (2), and (3), if satisfied that mitigation required in the Order of Conditions is sufficient to protect the resource area.

(4) No mitigation is sufficient to allow a structure on an open pile foundation less than 35 feet to a resource area, as defined in Section 3.00 (1), (2), and (3).

9.2.0 Septic Systems

(1) Septic systems that are in any resource area which pre-exist these regulations may be maintained and repaired but not enlarged (no additional flow), unless allowed by the Duxbury Board of Health.

(2) For new dwellings, no part of a septic system shall be constructed in any resource area.

9.3.0 Pools and Tennis Courts

(1) The Commission may at its discretion allow a proposed pool or tennis courts and all associated structures and facilities within 100 to 50 feet of a resource area, as defined in Section 3.00 (1), (2), and (3), if satisfied that mitigation required in the Order of Conditions is sufficient to protect the resource area.

(2) No mitigation is sufficient to allow a pool or tennis court less than 50 feet to a resource area, as defined in Section 3.00 (1), (2), and (3).

(3) No water from the swimming pool shall be discharged closer than 50 feet to a resource area.

9.4.0 Landscaping

(1) No new lawns may be constructed within 25 feet of any resource area, as defined in Section 3.00 (1), (2), and (3).

9.5.0 Impervious Cover

9.5.1 Beach Front- Gurnet Road Area

(1) The Conservation Commission wishes to limit hardened surfaces on Duxbury's barrier beaches. During coastal flood events flowing floodwaters move sediment as part of the natural cycle of the barrier beach. The energy in these floodwaters is dissipated by soft relatively flat surfaces. Limiting the amount of hard impervious surfaces is necessary to preserve barrier beach values of flood control, prevention of storm damage, prevention of pollution, and public safety. In light of this the Duxbury Conservation Commission has established the following regulation. This is a regulation for the installation of impervious driveways and walkways in the Duxbury Beach Area as shown on Assessors Maps 210b, 211, and 212. Applicants must file an application with the Conservation Commission and obtain approval for the project prior to the commencement of any work.

(2) Beachfront Properties - V & AO zones (as defined herein) along the seawall

(a) Impervious driveways and walkways for the beachfront properties along the seawall--overwash zones may be installed from the roadway to the house only. (b) The total combined area of the impervious driveway and walkways shall not be more than 500 square feet.

(c) Impervious walkways shall be no more than 36-inches wide.

(d) The area between the house and seawall shall be pervious material.

(3) Non-Beach Front Properties - A zone (as defined herein) - Still Water Flood Zones

(a) Impervious driveways and walkways may be installed on the lot.

(b) The total combined area of the impervious driveway and walkways shall not be more than 500 square feet.

(c) Impervious walkways shall be no more than 36-inches wide.

9.5.2 Other Areas

(1) Total impervious cover of any type shall not exceed 15% in residential zoned areas in the resource areas as defined in Section 3.00 (4) & (6).

Impervious coverage calculations shall include, but not be limited to all structures, impervious driveways, impervious walkways, impervious roadways, decks, pools, tennis courts, and any other similar surfaces that cover the ground.

9.6.0 Piers

(1) Construction of piers shall be accomplished as determined by the Commission so as not to change shoreline movement of sediments, harm significant shellfish interests, and shall not destroy or pollute fisheries and shellfish habitat or nutrient sources for those interests, obstruct shellfishing, or obstruct the reserved public rights of fishing, fowling, navigation, or passage, or significantly destroy a public view or degrade aesthetic value. No solid fill piers shall be permitted. No creosote wood shall be permitted.

(2) Any post or pile permitted shall be driven, not washed or jetted, into any salt marsh resource.

(3) No walkway or pier shall extend any greater distance than necessary to reach just beyond vegetated salt marsh.

(4) The intent of the Commission is to have the size of the structures as small as possible to minimize impacts. The Commission may allow at its discretion, a walkway no greater than 4 feet wide at any point; 200 feet long; a platform no greater than 6 feet by 8 feet including the walkway; and a float no greater than 10 feet by 20 feet, if satisfied that mitigation required in the Order of Conditions is sufficient to protect the resource area.

(5) Piers shall be constructed using procedures determined by the Commission to be the best available measures to minimize adverse effects on Interests Protected by the Bylaw.

9.7.0 Underground Storage Tanks

(1) No underground storage tank for oil or hazardous material is permitted in any resource area.

9.8.0 Filling

(1) No fill shall be placed in the resource area as defined in Section 3.00 (4), (5), and (6) that will alter the flow of surface water in a way that the Conservation Commission feels will alter any resource area.

- (2) Salt marshes shall not be filled.
 - (3) The Commission at its discretion may allow the filling of up to 2,500 square feet of Vegetated Wetland for a limited project, if satisfied that mitigation required in the Order of Conditions is sufficient to protect the resource area. If filling is allowed, the applicant must replicate at a ratio of at least 2:1. A bridge covering a resource area is considered fill.
 - (4) Compatible fill may be used for beach and dune nourishment projects.
 - (5) No dumping of lawn wastes, brush or leaves is permitted in resource areas.
 - (6) The Commission may also deny any filling of any resource area." From the Town of Duxbury Rules and Regulations, Section 9.
-

Easton *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes The Easton Town Code creates several no build and no disturb zones.
Section 503-16C = 50 foot no build zone around banks
Section 503-17C = 50 foot no build zone around vegetated wetlands
Section 503-18C = 50 foot no build zone around land under water
Section 503-19C = 50 foot no build zone around land subject to flooding
Each of 503-16 - 503-19 has a subsection E which creates a 50 foot no disturb for such areas if the abut a "estimated habitat area" as certified by the Massachusetts Natural Heritage and Endangered Species Program.

Variations are available under Section 503-21 of the Easton Wetlands Bylaw.

Foxborough *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 25 foot no disturbance

"No activity other than the maintenance of an already existing structure which will result in the building within or upon, removing, filling, or altering of land within 25 feet of a bordering vegetated wetland or an inland bank –will 1 be permitted by the Conservation Commission.

The only exceptions to the above twenty-five (25') foot buffer zone will be for: (1) a wetland crossing permitted under M.G.L. Chapter 131, Section 40 and Article IX, the Town of Foxborough Conservation By-Laws, 1 and/or (2) when the commission determines that there are no reasonable conditions or alternatives that would allow the project to proceed in compliance with the by-laws; and that the mitigating measures are proposed that will allow the project to be conditioned by the Commission so as to contribute to the protection of the interests identified in M.G.L. Chapter 131, Section 40 and Article IX, the Town of Foxborough Conservation By-Laws."

David Risch, Foxboro Conservation Agent, stated (9/9/04) that the Commission enforces this no cut-no build zone around all wetlands resource areas.

Framingham *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No In the Framingham Wetlands Bylaw, the Framingham Conservation Commission may create such zones, as Article V, Section 18.2 of the Framingham town bylaws states: "The Commission may establish a no work/no alteration zone as appropriate to each application."

According to Michelle Grzenda, Framingham's Conservation Administrator, the Framingham Conservation Commission has an unwritten policy for a 30 foot no touch around resource areas. The commission hopes to promulgate formal regulations detailing a no touch/no build zone rule this fall.

Franklin *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 25 foot no disturbance

Rich Vacca, Franklin Conservation Agent, stated (8/3/04) that the Franklin bylaws (Section 181-3) empower the commission to establish a no-build zone within its 100 foot jurisdiction around wetland resource areas (200 feet from rivers). Franklin has chosen to enforce a 25 foot no-build zone (leaving an undisturbed vegetated buffer) from a resource area. Mr. Vacca said that no variances are available.

Additionally, in Section XIV - Performance Standards of the regulations, part A. Minor Zone Activity specifies "[t]he Conservation Commission (Commission) shall presume that activity proposed to occur: ... 4. At a minimum, a 25 foot wide area is preserved between the activity and the resource area boundary ..."

(Rules & Regulations - Town of Franklin Conservation Commission, Adopted 1997)

Freetown *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No The researcher did not find any specific reference to "no build" or "no disturbance" zones in the wetland bylaws.

Survey received from Freetown on 6/10/05:

"No but request 20' no touch zones."

Georgetown *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes No cut zone-50 ft.
Any new non-vegetated area or
structure must be setback 75 ft.

From Table 14 "Required Minimum No Disturbance Zones" and Table 15 "Required Minimum Setbacks" in the Town of Georgetown's Wetlands Protection Regulations (Adopted June 2003, Amended 2004).

Variances can be obtained.

"The Commission shall not grant any exception to these regulations unless a request for such exception is specifically made in writing by the applicant. Such a request must include a rationale for the exception along with proposed compensation or mitigation for the exception. Requested exceptions must be prominently [sic] noted in the written narrative and must show on the submitted plan for the project. No exception to these regulations shall be valid unless it is specifically noted in writing by the Commission in the Findings or Determination or Permit or Order it issues regarding a project, and any such exception is specifically noted in writing on any final approved referenced plans." From The Town of Georgetown's Wetlands Protection Regulations, Section 16.2 (Adopted June 2003, Amended 2004).

Gloucester *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No No reference in the Gloucester Ordinance to limited use zones.

Grafton *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No The researcher found no reference to limited use zoning in the regulations or bylaws.

Groton

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes 50 foot no disturbance

"Therefore this chapter strictly limits any disturbance within adjacent upland areas by prohibiting the following activities or uses:
(a)Disturbance of any existing vegetation within 50 feet of any freshwater wetland, except for removal of invasive vegetation only, if done in compliance with standards provided in the regulations." From the Town of Groton Wetlands Protection Bylaw, Section 215.7 (A.1.a) (Adopted 2001, Amended 2003).

The researcher did not find any reference to variance provisions.

Groveland

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes 25 foot no cut

There are variance provisions within the 100 foot buffer zone. The researcher is unclear whether this applies to the 25 no cut zone.

"There shall be a no cut zone 25 feet in depth (measured horizontally from the mean annual high water mark) adjacent to the protected Resource. Vegetation in this zone shall not be cut or trimmed in any manner. A single path to the Resource area per lot may be created and maintained if limited to seven (7) feet in width. Paths on adjacent lots shall be separated by a minimum of 25 feet." From the Town of Groveland Wetlands Protection Regulations, XIV.4.a.

"Notwithstanding the provisions of paragraphs XIV.2 and XIV.3 herein, the Commission at its sole discretion may issue a Permit for execution of work in the Buffer Zone of the limited range of projects identified in 310. CMR 10.53" From the Town of Groveland Wetlands Protection Regulations, XIV.5.

"Any proposed work in [a] Freshwater Wetland shall not destroy or otherwise impair any portion of said area. However, and at its sole discretion, the Commission may issue a Permit allowing work which results in the loss of up to 5,000 square feet of Freshwater Wetlands when said area is replaced in accordance with the following general conditions and any specific conditions the Commission deems necessary to ensure that the replacement are will function in a manner similar to the area that will be lost." From the Town of Groveland Wetlands Protection Regulations, XIV.5.

Halifax

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes 50 foot - no activity

"No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering a vegetated wetland, or of land within 50 feet of a vegetated wetland, shall be permitted by the Conservation Commission, except for activity which is allowed under a variance from these regulations granted pursuant to Section 4.01." From the Rules and Regulations accompanying Article 6, Section 2.03(Adopted 1989).

"The Conservation Commission may, in its discretion, grant variances from the operation of one or more of these rules and regulations pursuant to this Section. Such variances are intended to be granted only in rare and unusual cases, and shall be granted only in accordance with the provision of this section.

A variance may be granted only for the following reasons and upon the following conditions.

a) The Conservation Commission may grant a variance from these rules and regulation upon a clear and convincing showing by the applicant that any proposed work, or its natural and consequential impacts and effects, will not have any adverse effect upon any of the interests protected in the Bylaw. It shall be the responsibility of the applicant to provide the Conservation Commission with any and all information which the Commission may in writing request in order to enable the Commission to ascertain such adverse effects, and the failure of the applicant furnish any information which as been so requested shall result in the denial of a request for a variance pursuant to this subsection.

b) The Conservation Commission may grant a variance from these rules and regulation when it is necessary to avoid so restricting the use of the property as to constitute an unconstitutional taking without compensation. If an application for a variance pursuant to the subsection is received by the Conservation Commission, the Commission may request an opinion from Town Counsel as to whether the application of these regulation to a particular case will result in such a taking without compensation."

"Land within 100 feet of a vegetated wetland is likely to be significant to the protection and maintenance of vegetated wetlands, and therefore to the protection of the interest which these resource areas serve to protect." From the Rules and Regulations accompanying Article 6, Section 2.02 (1) (Adopted 1989).

"Vegetated Wetlands are freshwater wetlands. The types of freshwater wetlands are wet meadows, marshes, swamps, and bogs. They are areas where the topography is low and flat; and where the soils are annually saturate. The ground and surface water regime and the vegetational community which occur in each type of freshwater wetland are specified in Section 2.02(2)(c)(1) through 2.02 (2)(c)(4)"

From the Rules and Regulations accompanying Article 6, Section 4.01 (Adopted 1989).

Hamilton *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes Section III of the Hamilton Wetlands Regulations creates a 50 foot no build zone and a 25 foot no disturb zone around all wetlands resource areas. Variances are available under Section I.3.E of the Hamilton Wetlands regulations.

Hanover *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes According to Sandra D. MacFarlane, Hanover Conservation Secretary, (8/13/04), Section V, Part C.3, establishes no build and no disturbance zones. They are as follows:
Residential = 25' no-work, 35' no-build
Commercial = 35' no-work, 50' no-build
Vernal Pool Zone = 50' foot no-work, 75' no build.

There are variances with mitigation.

From Section V, 3. Presumption,
"Based on experience to date with projects in the Buffer Zone, the Commission shall presume that work in the categories below, within the tabulated distances from a resource area, will result in alteration of the resource area. This presumption is rebuttable and may be overcome upon a clear showing that the nature of the proposed work, special design measures, construction controls, or site conditions will prevent alteration of the resource area."

(Town of Hanover Wetlands Protection By-Law 6-14 - Rules and Regulations, Adopted 1998)

Hanson *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes Section 8.01 of the Hanson Wetlands Regulations establishes a 50 foot no disturbance zone around all wetland resource areas (95 feet for commercial and industrial structures.)

"8.01 BUFFER ZONE SET BACKS

(1) The Commission, based on its experience, has devised no DISTURB zones (see 1.04) for applicants to use in designing their projects to achieve the resource protection sought by the By-law.

(2) Dimensions for NO DISTURB AREAS:

(a) Single family homes, including decks, porches, garages, asphalt or bituminous concrete parking areas or driveways, swimming pools and tennis courts.

(i) from top of bank of a water body: 50 feet.
(ii) from edge of a vegetated wetland: 50 feet.

... "

Conservation Commission told the researcher (12/20/04) that it would be very difficult for new construction to get a waiver for a no disturbance zone. However, in theory someone could file an application with the board.

Harvard**Does the municipality enforce "no build zones" within the buffer zone around wetlands?****No**

No reference to limited use zones in the wetlands bylaw or regulations.

Haverhill**Does the municipality enforce "no build zones" within the buffer zone around wetlands?****Yes**25 foot no build-no disturbance zone
50 foot-no disturbance zone
variances

"Land within 100 feet of specific resource areas, and 200 feet from sensitive resource areas such as: Kenoza Lake, Crystal Lake, Chadwick Pond, Johnson Pond, and Millvale Reservoir are presumed important to the protection of these resources because activities undertaken in close proximity to wetlands and other resources have a high likelihood of adverse impact upon the wetland or other resources, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover within the 100 foot area, unless the Commission finds that the areas or part of it may be disturbed without harm to the values protected by the ordinance. When proposing alteration of land within 50' of a wetland, the applicant must overcome a strong presumption of adverse impact on the adjacent wetlands and their functions and values. The Commission is empowered to require a 25' no build-no disturbance zone extending from the edge of all wetland resource areas and a 50' no build zone. No activity is allowed in the no-disturbance zone except as allowed by the Commission or this ordinance. Building construction of any kind, except as allowed by the Commission of this Ordinance is prohibited in the no-build zone. Due to the highly sensitive nature of the six waterbodies, mentioned in this section of the ordinance, the size of restricted zone in these areas may be increased to the amount needed to protect the wetlands and reviving water bodies from degradation. The exact size of those zones will be made on a case-by-case basis." From the City of Haverhill Wetlands Protection Ordinance, Section VI (Adopted 1996).

According to conservation agent Rob Moore, variances are granted for setbacks but it is rare for new development. (1/4/05)

Hingham**Does the municipality enforce "no build zones" within the buffer zone around wetlands?****Yes**20 foot no cut
25 foot no pavement
35 foot no accessory bldg
50 foot no build (with heat)

From Section 10.12 Construction Setbacks,

"The following MINIMUM setbacks shall apply between the activity or structure listed and any resource area subject to protection under the By-Law, excluding any proposed filling:

1. Structures to be used for living quarters including breezeways, porches and decks 50'
2. Structures not to be used for living quarters (including commercial and industrial buildings, garages, etc) 35'
3. Swimming pools (both below and above ground) 35'
4. Driveways, roadways, parking areas, any other paved area and any area paved or gravel to be used for the storage, transport or repair of motorized vehicles 25'
5. Clear cutting, grading and/or filling 20'
6. No new construction for the storage of gasoline oil or other fuel or hazardous materials shall be permitted in, or within 100' of any resource area, note: present tanks may be replaced under guidelines as set by the Hazardous Waste Committee of the Town."

(Regulations of Town of Hingham's Wetland's Protection By-Law, Adopted 1987)

The researcher did not find any mention to variances within the appropriate section of the regulations.

Holbrook

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

No

Janet DeLonga, Conservation Agent, said that the setback provisions were removed from the bylaw at town meeting. (8/25/04)

Holden

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

No

No reference to limited use zones in the wetlands bylaw.

Holliston

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

Section 3.4 of the Holliston Wetland Regulations reads:

"NO DISBURBANCE AREA

Unless specified elsewhere in these Regulations, it is presumed that significant adverse effects on the interests protected by the Bylaw result from any filling, dredging, building upon or other alteration within a resource area or within a minimum of 50 feet horizontally outward from the upland edge of a resource area, unless the applicant demonstrates by a preponderance of the credible evidence that such significant adverse effect will not occur, and the Commission accepts and approves such evidence."

(Town Of Holliston Wetlands Administration Bylaw Regulations, Adopted 2001)

Hopkinton

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

50 foot no disturbance

There is a table in Section 10 that depicts setbacks from wetlands.

For "Residential activity, including residential lots and multi-family residential development" the limit of work or disturbance is 50 feet. The limit of structure for this type of work is also 50 feet. The limit of work or disturbance, and the limit of structure for "any activity abutting a vernal pool, whether or not the activity is listed in any other category in this table" is 125 feet.

There are only waiver provisions if the "Applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the Bylaw."

(Hopkinton Wetlands Protection Bylaw - Wetlands Protection Regulations, Adopted 2003)

Ipswich

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

50 foot - no disturbance

65 foot - no build zone

"In evaluating the effect of activities which are proposed in the buffer zone, the Commission shall review the short-term, long-term, and cumulative effects of the activity on the adjacent resource areas. The Commission is concerned with future encroachments on resource areas and therefore requires that a permanent 50-foot No-Disturbance Zone and

a permanent 15-foot No-Build Zone be established on all projects in the buffer zone not otherwise exempted from this provision. For projects or activities proposed on previously developed lots for which neither a subdivision nor a change in use is proposed, or for which a Notice of Intent is filed with the Commission prior to the effective date of this regulation, the No-Disturbance Zone shall be 25-feet. The No-Disturbance Zone is defined as the area horizontally landward of a wetland resource area or an ACEC, other than the buffer zones thereto, in which there shall be no alteration. The No-Build Zone is defined as the 15-foot area landward of the No-Disturbance Zone in which there shall be no structures.

The No-Disturbance Zone shall be marked with permanent monuments and shown on a plan, at the applicant's expense, as defined in Paragraph D. These Zones shall not apply to activities which are exempt or are specifically permitted to occur adjacent to resource areas as defined in 310 CMR 10.00. The Commission, at its discretion, may approve activities in these Zones which will have no impact on the adjacent resource area and serve to protect the Interests of the By-law. Variances to the dimensional requirements of these Zones may be granted by the Commission in situations where the applicant can demonstrate that a substantial hardship, owing to the shape or topography of the applicant's property, would be imposed on the applicant. In cases when a variance is considered, the Commission shall require that an additional No-Disturbance Zone of 1.5 times in area be provided at another location on the applicant's property." From Ipswich Wetlands Regulations, Section C (Adopted 2001).

Kingston *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes There is a 25 foot no disturbance zone around a wetland resource and a 100 foot no disturbance zone around a vernal pool.

"The Conservation Commission requires that an undisturbed Buffer Zone be maintained a minimum of 25 feet in width adjacent to any area subject to protection and a minimum of 100 feet in width adjacent to any vernal pool. No activity of any kind shall be allowed in the undisturbed buffer zone without specific permission of the Commission." From the Town of Kingston Wetlands Protection Regulation. 6.01.

Leicester *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No The researcher did not find any reference to limited use zones in the wetland bylaw.

In response to "does Leicester have a no disturbance or no build zone in the wetlands buffer zone?", Conservation Chair Dianna Provencher responded, "Not at this time." (12/01/04)

Lexington *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes Lexington has buffer zones detailed for New Construction, Existing Structures, and Site Development and Landscaping. Essentially, the Commission has a 25 foot no disturbance zone and a 50 foot zone for new construction.

RULES ADOPTED BY THE LEXINGTON CONSERVATION COMMISSION PURSUANT TO BY-LAWS ARTICLE XXXII, GENERAL BY-LAW FOR WETLAND PROTECTION, SECTION 5(5) (Adopted 1985, Amended 1992)

"New Construction:

1. No setbacks for structures necessary for upland access where reasonable alternative access is unavailable, for wetland dependent structures such as drain outfalls, weirs, etc. and for underground utilities.
2. 25 feet - 100 feet for roads, driveways, retaining walls.
3. 50 feet - 100 feet for all other structures: residential and commercial buildings, garages, parking lots, decks, etc.
4. 100 feet plus for underground storage of gasoline, oil, or other fuels and hazardous materials.

Existing structures:

Properties not presently in compliance with the above will not be permitted to increase their degree of non-conformance.

C. Site Development and Landscaping

1. Of contiguous land within the 100-foot buffer zone, construction activities can disturb no more than 50% or the amount not presently supporting a natural community, whichever is greater.
2. Within 25 feet of a wetland a critical edge shall be required where:
 - a. there shall be no clearcutting of trees and surface vegetation, only selective thinning of trees to a spacing of not more than 20 feet;
 - b. brush may be topped to a height of three feet or replaced with a more desirable species;
 - c. areas disturbed by construction must be planted with a continuous groundcover requiring no fertilizers or pesticides for maintenance.
3. Critical edge may be waived to provide access to bodies of water.

Commentary:

Past experience has shown that construction within these buffer zones is very likely to cause significant harm to the interests sought to be protected by the General By-Law for Wetland Protection. The Conservation Commission will therefore not approve any smaller buffer zone unless it is persuaded by clear and convincing evidence that the smaller buffer zone will secure the protection of those interests."

Lincoln

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

According to Tom Gumbart, the inner 50' buffer zone is an area where there is "no disturbance".

Article XVIII Wetlands Protection, Section 7

"It shall be presumed that significant adverse effect on the resource area values protected by this bylaw will result from any filling, dredging, building upon or other alteration within a wetland resource area or within 50 feet of the edge of any freshwater wetland, marsh, wet meadow, bog, swamp or vernal pool, within 50 feet of the top of the bank of any lake, pond or intermittent stream, or within 100 feet of the top of the bank of any river or perennial stream, unless the applicant demonstrates by convincing evidence that such significant adverse effect will not occur."

According to Gumbart, a developer would have to demonstrate no viable alternative to build within 50'. To build a house within 50' would be hard, he commented.

Littleton

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

No

Barbara Chapin, Littleton Conservation Administrator, on 8/31/04 said that Littleton's wetlands bylaw is new, and does not have a no build or no disturbance zone.

Lowell

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

The researcher found no reference to this limited use zone in the bylaws.

Christine Thomas, Lowell Environmental Officer, 8/27/04, said that the Lowell conservation commission can set up to 100 foot no disturbance area from a wetland resource area. Usually, they will set up a 50 foot no disturbance. A variance to work within 50 feet is available, and requires the approval of both the Lowell conservation commission and the Lowell zoning board.

Survey received from Lowell on 3/21/05:

"Yes 25 ft."

Lunenburg

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

There is a 30 foot no disturbance zone.

"any work undertaken in the Buffer Zone of a Bordering Vegetated Freshwater Wetland shall not in any way damage or destroy the naturally occurring critical edge vegetation within 30 feet of the edge of the wetland, except where no other reasonable alternative is available" From the Lunenburg Wetlands Protection Bylaw and Regulations Part II, Section 10.55.5(b) (Adopted 1983, Amended 1987).

Conservation agent confirmed that variance could be granted in some cases. (1/18/05)

Lynn

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

Lynn Conservation Commission Wetland Protection Bylaws, Section 12, Subsection 7. (Adopted 2000, Last Amended 2001).

The following activities are prohibited on the land within 100' (within the buffer zone):

- Any activity within 25' of a wetland resource area;
- Installation of underground fuel oil storage tanks;
- Rendering 22% or more of the protected lands within 100' resource area impervious (CN greater than 89) on any lot;
- Altering more than 75% of the protected lands within 100' resource area on any lot.
- Altering the protected resources around vernal pools (review may be made on a case by case basis)

The preceding restrictions are intended to represent the limits beyond which the ability of the resource area to function is presumed to be impaired. The presumption may be overcome by a clear showing that the ability of the resource area to function will not be impaired. All work proposed in a protected resource area will be reviewed on a case by case basis.

In addition, the town aims to have no disturbance zone within 100 feet of the water edge of a vernal pool.

From Section XXI. Performance Standards,

"6. Vernal Pools

Vernal pools and vernal pool habitat as defined in this By-Law shall be determined by the Lynn Conservation Commission. The Commission need not identify vernal pool and vernal pool habitat locations prior to application with the Commission... A vernal pool need not be identified or certified (with the Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program) prior to application or Notice of Intent with the Commission...

There shall be no alteration of any vernal pool or its buffer zone. The Buffer Zone is critical to the continued function of a vernal pool, and any work in

this area should be avoided. The protectable area is the vernal pool itself and up to 100 feet beyond the pool's margin. Specific buffers to vernal pools and vernal pool habitat will be assessed on a case by case basis."

(Lynn Conservation Commission Wetlands Protection By-Laws, Rules and Regulations, Adopted 2000, Amended 2001)

Manchester-by- *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 50 foot no disturbance

From Section 5.4.1 Presumptions,
"Based on experience to date with projects within one hundred (100) feet of wetlands, the Commission shall presume that work in the categories below, within the tabulated distances from a Resource Area, will result in alteration of the Resource Area. This presumption is rebuttable and may be overcome upon a showing by a preponderance of credible evidence that the nature of the proposed work, special design measures, construction controls or site conditions will prevent alterations of the Resource Area. For the purposes of the table below, "disturb" means filling, excavation, grading, operation of motorized construction equipment and storage or stockpiling of earth or construction materials, alteration of vegetation, and "building" means a structure requiring a building permit."

The Manchester-by-the-Sea wetlands regulations sets the following no disturb and no build zones around wetland resource areas:

Existing Residential Lot 30 foot no disturb, 50 foot no build;

New Residential Lot 50 foot no disturb, 50 foot no build;

Subdivision lot

(with lot preparation done 50 foot no disturb, 75 foot no build

in conjunction with

road construction);

Commercial/Industrial 50 foot no disturb, 75 foot no build;

Driveways/Utilities

Other roads/Drainage 25 foot no disturb (except for permitted crossings)

(Town of Manchester-by-the-Sea Wetlands Regulations, Amended 2002)

Conservation Commission (12/20/04) told the researcher that waivers to the 50 foot no disturb zone could be granted but that the applicant would have to "jump through a lot of hoops" and "prove with a preponderance of evidence" that they have no alternative. In addition, the Commission would likely require the applicant to offset the disturbance by replicating the wetland elsewhere.

Mansfield *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 25 foot no disturbance
25-50 foot limited use

The conservation agent (10/25/04) said that no new construction would be granted a variance to build in the first 25 feet of a buffer zone. Between 25-50 ft waivers can be granted if a project meets the conditions stipulated by the Commission.

"2.4 To provide minimum protection for the wetlands values and resource areas, no activity, unless permitted in Section 2.5, shall be allowed within 25 feet of any resource area [hereinafter 'the no disturb zone']. Further, the commission reserves the right to prohibit, or significantly condition, through the issuance of an Order of Conditions, work between 25-50 feet away from any resource area. In determining whether to prohibit or condition work within this area, the Commission will take into account factors including, but no limited to, the slope of the adjacent areas, the existing and proposed drainage patterns, the type of the proposed adjacent land use and its potential for creating long-term impacts on the resource areas and the wetland values."

2.5 The following activities may be permitted within 25 feet of a resource area: the creation of wetland replacement or mitigation areas, installation of drainage outfalls, grading work associated with additions to existing single-family homes, the maintenance and construction of trails, resource improvement projects, such as the cleaning of streams or the creation of park areas. These exceptions will be reviewed on a case-by-case basis."

From Mansfield Conservation Commission Rules and Regulations for the Town of Mansfield Wetland Protection Law. Section 2.4-5 (Adopted 1999).

Any work in a resource area and its 100 ft buffer zone must be reviewed by the Commission before obtaining a permit to proceed.

"It is presumed that work which is proposed to occur within any resource area or within the buffer zone of any resource area has the potential to create significant adverse impacts on the resource area. Therefore, any activity will require the filing of a Notice of Intent Application. The Commission may

condition the proposed activity to protect the resource area(s), or if no condition exists to protect the area, then the Commission may deny the project. For activity proposed to occur between 50-100 feet away from any resource area [except a certified Vernal Pool], the applicant may file a Request for Determination of Applicability [RDA]. If a RDA is filed, the Commission may permit with any necessary conditions, the work based on the plans submitted, or can require the filing of a Notice of Intent."

From Mansfield Conservation Commission Rules and Regulations for the Town of Mansfield Wetland Protection Law. Section 2.3 (Adopted 1999).

Marblehead *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 25 foot no disturbance
50 foot no build
100 foot no disturbance (vernal pool)

For the no disturb zone (25 feet), disturb means: filling, excavation, grading, operation of motorized construction equipment and storage or stockpiling of earth or construction materials, alteration of vegetation. In the no building zone (50 feet), building means: a structure requiring a building permit.

The Town of Marblehead Wetlands Protection Bylaw Regulations, Section 5.4.1 (effective 2001) include both a no disturb and a no building zone.

The Town of Marblehead Wetlands Protection Bylaw Regulations, Section 5.4.1 (effective 2001) states that there is a presumption that work that would fall into the disturb or building category will result in alteration of the Resource Area. The section notes that this is a rebuttable presumption which may be overcome by a showing by the applicant of a, "preponderance of credible evidence that the nature of the proposed work, special design measures, and construction controls or site conditions will prevent alterations of the Resource Area."

Note that for alterations within the vernal pool resource area (that area which extends 100 feet around the mean annual boundary of the vernal pool) the applicant must provide compelling evidence to rebut the presumption.

Town of Marblehead Wetlands Protection Bylaw Regulations, Section 5.8 (effective 2001): "Notwithstanding any other provision of these Regulations, the Commission may in its discretion, waive strict compliance with these Regulations when, in the judgment of the Commission, all of the following are met: 1) there are no reasonable conditions or alternatives to allow the proposed activity to proceed in compliance with these Regulations; and 2) mitigating measures are proposed that will allow the proposed activity to be conditioned so as to contribute to the protection of the wetland values protected by the Wetlands Bylaw; and 3) such waiver would either serve a substantial public interest, or strict compliance with these Regulations would so restrict the use of property so as to constitute a taking of the property without compensation."

Marshfield *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 50 foot-no disturbance
100 foot - no disturbance (vernal pools)
75 foot - no building

There is a 50 foot no disturbance zone and a 75 foot no new construction zone. Vernal pools are protected by a 100 foot no disturbance zone. Exemptions are granted for minor projects as well as public works projects. Additionally, alteration to a wetland may be permitted if the proposed project is less than 5,000 square feet and provisions are made to replicate the wetland resource area with an area 200% of the original area in question.

"A set-back zone shall be created so that no disturbance or alteration shall occur within fifty feet (50') and no building or structure shall be placed within seventy-five feet (75') of any area set forth in Paragraph III (A) (i) for any new construction or development. No activity, including but not limited to landscaping, mowing, or removal of vegetation, is allowed in the no disturbance zone.

(i) A set-back zone shall be created so that no disturbance or alteration shall occur within twenty-five feet (25') or any area set forth in Paragraph III (A) (i) for existing lots with existing buildings.

(ii) The following activities shall be exempt from the set-back zone of any area set forth in Paragraph III (A)(i):

- a. Work related to the public water supply or municipal sewer systems;
- b. Structures related to stormwater management such as swales, retention, and detention basins, drainage pipes and headwalls;
- c. Work related to 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, or telephone service, provided that the written notice has been given to the Conservation Commission prior to commencement of work;
- d. Public Open Space nature trails, observation platforms, boardwalks, or footbridges;

- e. Seawalls, bulkheads, revetments;
- f. Docks piers, and associated ramps;
- g. Repairs or improvements to existing onsite septic systems and their related structures in order to comply with current standards where there is no viable alternative. NO increase in the design flow of the dwelling shall be permitted.
- C. A Vernal Pool set-back zone shall be created where no disturbance or alteration shall occur within one-hundred feet (100') of a Vernal Pool." From the Town of Marshfield Wetlands Protection Regulations. Section X (B) (Effective 9/18/03).

"Any alteration of a vegetated wetland may be allowed up to, but not to exceed 5,000 square feet; provided, however, the wetlands so altered is replaced in kind by an area not less than two hundred (200%) percent of the area so altered," from the Town of Marshfield Wetlands Protection Regulations. Section X (F) (Effective 9/18/03).

Maynard *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

- Yes**
- A. Inner 50-Foot No-Disturbance Zone for Undisturbed Lands
 - B. Inner 50-Foot No-Disturbance Zone for Disturbed Lands
 - C. Outer 50-foot Buffer Zone
 - D. 25-foot Isolated Land Subject to Flooding No-Disturbance Zone
 - E. 100-Foot Vernal Pool No-Disturbance Zone

The Maynard Wetlands Regulations in Sections III.C outlines the no build and no disturbance buffer strips for wetlands in Maynard. They read:

"C. PERFORMANCE STANDARDS WITHIN THE BUFFER ZONES

1. Inner 50-Foot No-Disturbance Zone for Undisturbed Lands

Undisturbed Land is land determined by the Commission to be of a predominantly natural character or to have been altered after May 1996 without a permit from the Conservation Commission.

No alterations are permitted within 50-feet of a wetland resource area.

Prohibited alterations include, but are not limited to, grading, landscaping, clearing or cutting of vegetation, filling, excavating, and construction of roads or structures

Structures include, but are not limited to, single family houses, multi-family dwellings, commercial or industrial buildings, porches, decks, house additions, pools, septic systems, and sheds.

Driveways, roadways, fences, and facilities for stormwater management may be allowed in the 50-foot No-Disturbance Zone by waiver when no other feasible alternative exists; see Section IV.

2. Inner 50-Foot No-Disturbance Zone for Disturbed Lands

Disturbed Land is land determined by the Commission to be of a legally modified nature (e.g., parking lot, lawn, non-native landscaping, patio, etc.), modified prior to May 1996 or after May 1996 with a permit from the Conservation Commission).

No alterations resulting in a net increase in impervious surface area, a net increase in non-native or invasive species, a net increase in stormwater runoff, a net increase in lawn area, or net decrease in vegetative cover will be permitted within 50 feet of the edge of the wetland resource area

No structures shall be constructed or placed on pervious surfaces within 50 feet of the edge of the wetland resource area without compensatory restoration and mitigation.

Structures include, but are not limited to, single family houses, multi-family dwellings, commercial or industrial buildings, porches, decks, house additions, pools, septic systems, and sheds.

Driveways, roadways, fences, and facilities for stormwater management may be allowed in the 50-foot No-Disturbance Zone by waiver when no other feasible alternative exists; see Section IV.)

3. Outer 50-foot Buffer Zone: Activities within the outer 50 feet of a Buffer zone shall not adversely affect the form or function of the wetland resource area or the Inner 50-foot No-Disturbance Zone.

4. 25-foot Isolated Land Subject to Flooding No-Disturbance Zone: The entire 25-foot Buffer zone surrounding an isolated land subject to flooding shall be a no-disturbance zone, with the same conditions and performance standards identified above in paragraph 1 (for the Inner 50-foot No-Disturbance Zone for Undisturbed Land).

5. 100-Foot Vernal Pool No-Disturbance Zone: No alteration shall be permitted in the entire 100-foot Buffer Zone of a vernal pool, with the same conditions and performance standards identified above in paragraph 1 (for the Inner 50-foot No-Disturbance Zone for Undisturbed Land.)"

(Town of Maynard Wetlands Administration Bylaw, Adopted 1996, Amended 2003)

Section IV of the Maynard Wetlands Regulation reads:

"The performance standards for wetland resource areas and their Buffer Zones have been adopted to ensure that the interests of the Bylaw are adequately protected. The Commission recognizes that, in certain situations, a waiver of a specific 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. The applicant shall have the burden 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. The following paragraphs describe the waiver and its associated mitigation measures for the Buffer Zone performance standards.

A. WAIVERS

The commission may grant a waiver from these Regulations for an alteration of a Buffer Zone area in situations where no feasible alternative provides less impact to the resource area values. The applicant is responsible for conducting an alternatives analysis to show that there are no such feasible alternatives. The Commission may grant a waiver of a performance standard and impose such additional or substituted mitigation requirements as it deems necessary. The applicant must show, clearly and convincingly that:

1. There are no practicable conditions or alternatives that would allow a project to proceed in compliance with the Regulations; and
2. The project, or its natural and consequential effects, will have the least possible adverse effects upon any of the interests protected by the Bylaw.

B. MITIGATION

In the case where a waiver is granted, the Commission shall require mitigation measures to be implemented to offset potential impacts to the wetland resource areas. The mitigation must maintain or improve the natural capacity of a resource area to protect the interests identified in the Bylaw."

(Town of Maynard Wetlands Administration Bylaw, Adopted 1996, Amended 2003)

Medfield *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 50 foot no disturbance

From the regulations, section 6. Clearing of Contiguous Land, 2. Presumption of 50-Foot Undisturbed Buffer, "The Commission presumes that an undisturbed forest or naturally vegetated buffer at least 50 feet wide between the edge of the resource area and the area the applicant proposes to disturb during a project is necessary to protect interests of the Bylaw, the Act, and the DEP wetlands regulations.

An applicant, proposing to disturb any area within such 50-foot shall have the burden of showing that the work proposed in the application will not harm the interests protected by the Bylaw, the Act and the DEP wetlands regulations... Nothing in this regulation shall prevent the Commission from prohibiting activity anywhere within the 100-foot buffer defined by the Bylaw, the Act, and the DEP wetlands regulations, including without limitation the area between the edge of the 50-foot buffer presumed necessary by this regulation and the 100-foot buffer."

(Medfield Wetlands Bylaw, Rules and Regulations Article IX, Section 6, Adopted 1995)

Medway *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 25 foot no disturbance

Section 21.2(b) of the Medway town bylaws reads:

"(b) Except as permitted by the Commission, no work shall be allowed within 25 feet of wetland resource areas identified in this Bylaw (exclusive of the 100 foot buffer zone). This provision shall establish a permanent vegetative buffer between wetland resource areas and developed areas. No removal of vegetation will be permitted within this 25 foot setback except as specifically waived by the Commission (I.E. Limited Project Wetland Crossings). In cases where the Commission allows the removal of vegetation within the 25 foot setback a comparable area within the 100 foot buffer zone shall be preserved."

(Medway General Wetlands Protection Bylaw)

Merrimac *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 25 foot no disturbance
50 foot no build

50 foot no disturbance
75 foot no build
(vernal pools)

Around wetlands there are 25 foot no disturbance, 50 foot no build zones. Around vernal pools, there are 50 foot no disturbance and 75 foot no build zones. There are waiver provisions.

From the regulations,

Section 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 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.

5.2 No-Build Zones

The Commission may grant a waiver from these regulations for an alteration of a buffer zone resource area in situations where there are no feasible alternatives that provide for less impacts to the resource area values. The applicant is responsible for conducting alternative analysis to show that there are no feasible alternatives. The Commission may grant a waiver of the 50-foot No-Build Zone and 75-foot Vernal Pool No-Build 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.

In the case where a waiver is granted in the No-Build Zone, the Commission shall require mitigation measures to be implemented to offset potential impacts to the wetland resource areas (see Section 6.0)."

(Town of Merrimac, Massachusetts, Wetlands Protection Regulations, Adopted 2004)

Methuen

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

50 foot no disturbance

35 foot no alteration

Between 36-50 ft construction and alteration are only permitted with special permission or if an activity meets the requirements of the grandfather clause.

"THE POLICY

As used herein:

"Alteration" shall mean any removal (grading, filling and/or excavation) of vegetative cover, soil or other naturally occurring materials.

"Construction" shall mean the construction of any permanent or temporary structure or building, including, without limitation, any residential or commercial building, garage, shed, barn, tennis court, deck, swimming pool, parking area, driveway, fence, or landscaping project.

In acting upon Notices of Intent and Determinations of Applicability, the Conservation Commission will presume that any alteration or construction within 50 feet of a wetland boundary would have a significant adverse impact on the wetlands, and such alteration or construction within 35 feet of a wetland boundary shall not be permitted, and such alteration or construction within 50 to 36 feet of a wetland boundary shall not be permitted unless the applicant demonstrates that (1) such activity would not have such an impact, or (2) public benefits, such as health or safety, outweigh any such impact, or (3) the activity involves the maintenance of existing structures, or (4) the activity is the installation of the stormwater outlet structure. The applicant will have the burden of proof by clear and convincing evidence on this issue. Factors to be considered by the Conservation Commission in determining whether the applicant has met this burden shall include, but are not limited to, the following:

1. Slope of the buffer zone.

- 2.Type and structure of vegetation, soil type and hydrology in the buffer zone.
- 3.Degree and scale of past alterations in the buffer zone.
- 4.Ecological integrity of the adjacent wetlands.
- 5.Importance of the buffer zone to wildlife utilizing the wetlands.
- 6.Whether the proposed activity in the buffer zone would be permitted if it were in the wetland.
- 7.Any ecological benefits arising from the proposed activity, such as removal of exotic vegetation or creation of enhanced wildlife habitat.
- 8.Any public benefits arising from the proposed activity.
- 9.Alternatives have been considered and in the judgment of the Commission no practical alternative is available. However, restoration or plantings in the zone may be required, to help define and protect the remainder of the buffer zone.
- 10.Project scope and design minimized the work in close proximity to resource area.
11. Project will not lead to encroachment on the resource area after the project is completed.
- 12.Commission may impose a wider undisturbed buffer zone to ensure protection of wetland resource areas if the project involves: sensitive habitats, steep slopes, highly erodible soils, extensive disturbed area or hydraulic conditions likely to promote significant erosion.

Applicants wishing to rebut the presumption set forth in this policy shall provide the Conservation Commission with the following information, together with any additional relevant information, which the Conservation Commission may require:

- 1.A cross-sectional profile of elevation change in any area of the buffer zone within 50 to 36 feet of a wetland, which would be disturbed by the proposed activity.
- 2.A list of all vascular plant species occurring in the 50 to 36 foot area of the buffer zone and adjacent to wetland areas including data on relative abundance of each species.
- 3.A wildlife habitat evaluation of the 50 to 36 foot area of the buffer zone and adjacent wetlands including data on observed wildlife utilization of such area, such as breeding bird use, occurrence of fish, reptiles, amphibians and mammals.
- 4.A description of the nature of any public or ecological benefits, which may arise from the proposed activities.
- 5.A photograph of the area to be disturbed.

It is the Conservation Commission's policy, where it has discretion, to prohibit any activity in the wetlands except where there are exceptional circumstances, where no practical alternative exists. For example, the Commission may grant a waiver from these regulations for the construction and maintenance of a new roadway or driveway of a 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 provisions of the Act, and where satisfactory replication at a 2.0 to 1 ratio takes place prior to any alteration or construction. Activity within the 100 foot buffer zone will continue to be reviewed on an individual case basis.

EXISTING CONDITIONS EXEMPTIONS

1) Maintenance (but, no further alteration or expansion) of yards which existed on or before 9/30/2004, within the 50 foot buffer will be permitted, however homeowners are encouraged to maintain natural vegetation within 50 feet of the wetland edge to help improve the water quality of wetlands and streams. A list of wetland vegetation, which could enhance wildlife and water quality can be obtained from the Conservation Office at the Quinn Public Safety Building. The Commission encourages homeowners to allow a natural vegetation buffer to establish itself along the edge of streams, ponds and wetlands.

2) Grandfather Provision: The following uses, structures or permits are exempt from the provisions of this policy.

The normal use and routine maintenance of any structure or alteration of land, within wetland resource areas and their buffers, existing at the time of enactment of Chapter 12 (effective date December 2, 1987) and/or subsequent revisions of the ordinance may be continued subject to the following:

- a) existing structures, uses and/or alterations may not be extended and/or modified unless such extension or modification is permitted by a finding of the Commission that such alteration or modification shall have no adverse impact/significant effect to the resource areas and interests protected by the ordinance.
- b) existing structures, uses and/or alterations which have been abandoned for five years or more shall not be reestablished and any future use shall conform with then-current provisions of the ordinance, and
- c) maintenance and/or repair to existing onsite sewage disposal systems and drinking water supply; wells are excluded from this definition.
- d) projects having received a special permit under the comprehensive zoning ordinance where such permits were obtained prior to the effective date of this policy shall not be subject to this policy, however this exemption shall not apply if the permit is not exercised or expires."

From the City of Methuen's Regulations for their Wetlands Ordinance, Section 11 (Adopted 9-30-04).

The conservation agent said (10/25/04) that Methuen does not grant variances. However, a petitioner can file a rebuttal to town regulations to encroach on a wetlands resource up to 35 feet.

Additionally, waivers are automatically granted for normal and routine maintenance or use of structures in a buffer zone if they pre-date the enactment of the Wetlands Ordinance in 1987.

Milford *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes No reference in the Milford wetlands bylaw to "no build zones."

The setbacks do appear in the zoning bylaw:

Zoning Bylaw Town of Milford (Amended 2003) Article II Use and Intensity Regulations Section 2.4 Intensity of Use Regulations
2.4.8 Notwithstanding any other set-back requirement or other provision of the By-Law, there shall be minimum set-back requirement for any structure from a freshwater wetland, pond, stream or detention area as set forth below for various zoning districts. Freshwater wetland, pond and stream, and their limits, shall be defined and determined in accordance with M.G.L. c.131, Section 40 and the regulations adopted thereunder. A detention area is defined as an area, either man- made or natural, which has been designated to detain or retain rainfall runoff. The limits of a detention area shall be the high mark which occurs during a 100 year storm event. This elevation shall be determined by a Registered Engineer using acceptable methods of calculation.

All Residential Districts: 25 feet
All Commercial Districts: 15 feet
All Industrial Districts: 15 feet

Millis *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No There is nothing in the Town of Millis, Article XIX, Wetlands Protection Bylaw, which creates limited use zones.

Millville *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 50 foot no disturbance

12-7-3-1. Presumed Importance of Buffer Zone. Lands within 200 feet of rivers, ponds and lakes, and lands within 100 feet of other resource areas, are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover within the 200-foot [or 100-foot] area, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw.

12-7-3-2. Presumption of 50-Foot Undisturbed Buffer

(1) The Conservation Commission presumes that an undisturbed forest or naturally vegetated buffer at least 50 feet wide between the edge of the resource area and the area the applicant proposes to disturb during a project is necessary to protect the interests of the Bylaw, the Act, and the DEP wetlands regulations.

(2) An applicant proposing to disturb any area within such 50-foot buffer shall have the burden of showing that the work proposed in the application will not harm the interests protected by the Bylaw, the Act and the DEP wetland regulations. Failure to provide adequate evidence satisfactory to the Conservation Commission supporting a determination that the proposed work within such 50-foot buffer will not harm the interests protected by the Bylaw, the Act and the DEP wetland regulations shall be sufficient cause for the Conservation Commission to deny a permit or grant a permit with conditions, including without limitation, such buffer as the Conservation Commission deems appropriate, or, in the Conservation Commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence.

(3) Nothing in this regulation shall prevent the Conservation Commission from prohibiting activity anywhere within the 100-foot buffer defined by

the Bylaw, these regulations, the Act and the DEP wetlands regulations, including, without limitation, the area between the edge of the 50-foot buffer presumed necessary by this regulation and the 100-foot buffer.

(Town of Millville Wetland Protection Bylaw, Adopted 2003)

Milton *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 25 foot no disturbance

Wetlands Bylaws Town of Milton, Chapter 15, Section XI (Amended 2000)

SECTION XI. Non-Disturbance Zone

In order to preserve the quality of certain wetland resources and serve the interests protected by this Bylaw, it is necessary to restrict or limit activities adjacent to any bank, land under water bodies and waterways, and bordering vegetated wetlands, (collectively "resource areas"). To achieve these objectives, a Zone of Non-Disturbance (the "Zone") is hereby established to create a boundary or buffer between the activity proposed and the resource area to be protected.

- (a) The Zone shall extend a distance of twenty-five (25) feet from the edge of the resource area on or adjacent to any proposed to be altered.
 - (b) No person shall engage in any activity within a Zone that alters the Zone or any land, water, animal life within the Zone.
 - (c) Notwithstanding subsection (b) above, a person may engage in water-dependent activities within the Zone (including, but not limited to, construction, maintenance and repair of marinas, docks and wharves) without seeking relief from this Section XI.
 - (d) The Commission may grant relief from this Section XI only if the Commission finds that the granting of such relief will not have a significant adverse impact upon the interests protected by this Bylaw. Such a finding requires an affirmative vote of a majority of the quorum present for the vote.
-

Natick *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 25 foot no disturbance
40 foot no build
100 foot no disturbance (vernal pool)

Wetlands Protection Bylaw Town of Natick, Section 2.6.2(Adopted 2002, on website August 2004)

2.6.2 – No Disturbance and No Build Zones. No Alteration shall occur within a No Disturbance Zone, unless otherwise provided in a permit issued under Section 2. Lands within a No Build Zone may be cleared of vegetation to the extent necessary to construct a permitted Structure located outside of such No Build Zone and the adjacent No Disturbance Zone; provided however that once such Structure is completed, no further Alteration, other than the growing of vegetation, shall occur in the No Build Zone. The Commission may require, as a condition of a permit issued hereunder, that deeds conveying any portion of the previously cleared No Build Zone contain a restriction running in perpetuity preventing any further Alteration in such No Build Zone upon completion of such nearby construction.

Wetlands Protection Bylaw Town of Natick, Section 2.2(Adopted 2002, on website August 2004)

2.2 - Definitions

No Build Zone. Lands within 15 feet of any No Disturbance Zone.

No Disturbance Zone. Lands within 25 feet of any Protected Resource Area except floodplain and Riverfront Area.

Wetland Protection Bylaw & Rules and Regulations, Section 1.2 (On Natick website August 2004)

1.2 Areas Subject to Protection Under the Bylaw

The Bylaw protects the following resource areas in addition to the areas protected by the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, Sec. 40) (hereinafter referred to as the "Act") :

Any freshwater wetland, bank, beach, flat, marsh, swamp, wet meadow, or bog bordering on any creek, river, perennial stream, intermittent stream, pond, lake, or reservoir and any vernal pool, Riverfront Area, floodplain, isolated wetland, lands under any of the water bodies listed above, and lands subject to flooding or inundation by groundwater, surface water or storm water flow.

(Collectively the Protected Resource Areas).

The areas subject to protection under the Bylaw differ from those protected by the Act in that additional areas are protected by the Bylaw. The additional areas subject to protection under the Bylaw include all intermittent streams, land subject to flooding or inundation by groundwater, surface water, or storm flow, isolated wetlands, and all vernal pools.

A buffer zone of 100 ft. around any resource area (except Riverfront Area and 100-year floodplain) is subject to regulation under the Bylaw. Within this buffer zone, setbacks from the edge of Protected Resource Areas are defined. These regulations establish minimum setbacks referred to herein as No Build Zones and No Disturbance Zones. Under the regulations, the commission shall consider whether activities within the buffer zone will likely affect the Protected Resource Areas and will presume that projects that work within specified setbacks from the wetland will so affect the wetlands. This presumption is rebuttable and may be overcome upon a clear showing by a preponderance of the evidence that the nature of the proposed work, special design measures, construction controls and/or site conditions which exceed the norm for work anywhere within the Buffer Zone will prevent alteration of the protected resource area.

Wetland Protection Bylaw & Rules and Regulations, Section 4.4 (On Natick website August 2004)

4.4 LANDS WITHIN 100 FEET

The land area within 100 feet of any freshwater wetland; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; rivers; streams; creeks; beaches; land under water bodies; or surface water is subject to regulation under the Bylaw. Lands within 100 feet of protected resource areas are presumed important to the protection of these resources because activities undertaken in close proximity to wetlands and other resources have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and harm to wildlife habitat. For this reason these buffer zone areas are a valuable resource under this Bylaw.

The following restrictions are intended to represent the limits beyond which the ability of the protected resource area to function is presumed to be impaired. The presumption may be overcome by a clear showing that the ability of the resource area to function will not be impaired.

No Disturbance Zone

The Commission will enforce a No Disturbance Zone measuring 25 feet (measured horizontally) from all resource area boundaries (except riverfront and floodplain). This is an area in which virtually no activities or work, other than passive passage, are permitted (i.e. Boardwalk). No vegetation may be disturbed, leaf litter and debris shall remain in place, and no dumping of grass clippings, brush, leaves or any other debris or trash is allowed. The no disturbance area should remain unchanged from its pre-project state (unless the Commission grants approval to an applicant's proposal to restore a previously altered area). The restrictions associated with a designated No Disturbance Zone shall not be lifted with the issuance of a Certificate of Compliance, but shall remain in force. Where a prior existing structure protrudes into, or a prior existing alteration exists in a No Disturbance Zone, the Commission may permit the extension of such non-conforming structure into, or further alteration in such zone in accordance with its Rules and Regulations.

No Build Zone

The No Build Zone extends 15 feet (measured horizontally) from the edge of the (25-foot) No Disturbance Zone, in the direction upland or away from the resource area. This is an area where no structures are allowed to be placed or constructed. Prohibited structures include buildings, houses, barns, garages, and sheds. Items such as fences, retaining walls, decks, patios, gazebos, lawn furniture, children's toys such as sandboxes and swing-sets, rip-rapped areas, boardwalks, driveways, parking areas and the like are not considered "structures" for the purposes of these regulations. The restrictions associated with a designated No Build Zone shall not be lifted with the issuance of a Certificate of Compliance, but shall remain in force. Where a prior existing structure protrudes into, or a prior existing alteration exists in a No Build Zone, the Commission may permit the extension of such non-conforming structure into, or further alteration in such zone in accordance with its Rules and Regulations.

100-foot of Vernal Pool

The Commission will enforce a No Disturbance Zone measuring at least 100 feet (measured horizontally) from all Vernal Pools. This is an area in which virtually no activities or work, other than passive passage, are permitted. The no disturbance area should remain unchanged from its pre-project state (unless the Commission grants approval to an applicant's proposal to restore a previously altered area). Where a prior existing structure protrudes into, or

a prior existing alteration exists within the 100-foot Buffer Zone of a Vernal Pool, the Commission may permit the extension of such non-conforming structure into, or further alteration within the 100-foot Buffer Zone of a Vernal Pool in accordance with its Rules and Regulations.

Considerations in Setting Disturbance Restrictions

It is presumed that prohibited activities within the No Disturbance Zone, No Build Zone, and within the 100-foot Buffer Zone to Vernal Pools will result in alteration of the resource area. This presumption is rebuttable and may be overcome upon a showing by clear and convincing evidence that the nature of the proposed work, special design measures, construction controls, or site conditions will prevent alteration of the resource area, and will cause no significant harm to the areas or values protected by the Bylaw. Overcoming this presumption is to be granted only in rare and unusual cases.

In considering designation of buffer zone disturbance areas, the types of work and activities allowable, and conditions to apply, the Conservation Commission shall consider, in addition to other relevant criteria consistent with the wetland values:

1. Values and Functions of the Resource Area

The quantity and quality of resource values and functions shall be considered in placing conditions on buffer zone work. Some isolated land subject to flooding, for example, can serve for temporary flood storage only. Minimal buffer zone restrictions within several feet of the resource may be necessary under such circumstances only to prevent erosion.

Other isolated land subject to flooding can provide vernal pool habitat. It might also provide important flood storage capacity and intersect ground water. In such instances significant buffer zone restrictions shall be appropriate because a larger number of functions are involved and some functions, such as habitat, are more sensitive to buffer zone activity and require protection without exception. If rare or endangered species were found within a project area then still greater levels of restrictions would be appropriate, with no disturbance being allowed.

2. Pre-Project Characteristics of the Site

Ground slope, soil conditions, vegetation, and prior disturbance are just a few of the site specific characteristics that shall be considered in setting conditions for work in the buffer zone.

For example land that slopes toward a wetland demands greater restrictions on work and activity and larger no-disturbance distances to prevent pollution and silt from stormwater runoff from harming wetlands values than does land which slopes away from a wetland. Steeper slopes imply greater restrictions.

3. The Character of the Work or Activities Proposed and Alternatives

The applicant shall carry the burden of proof for demonstrating to the Commission's satisfaction that the proposed work or activities in the buffer zone are necessary and that reasonable alternatives, including reducing the scale and scope of the project, do not exist. The Commission shall consider the specific characteristics of the work proposed for immediate and cumulative impact on the wetland resource.

Needham

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

25 foot no disturbance
100 foot no disturbance (vernal pool)

The Commission's regulations under the Bylaw require that any construction within the Buffer Zone must be designed to preserve a minimum of 25 feet of undisturbed natural vegetation and soils adjacent to a waterbody, bank or other wetland. No activities are allowed within 25 feet of the edge of a waterbody or vegetated wetland unless:

- (a) The area where work is proposed is already disturbed and is a lawn, parking lot, or driveway; and
- (b) The Commission issues a waiver after determining that the activity would serve a substantial public interest; that strict compliance would result in severe economic hardship; or that the buffer zone or adjacent wetland does not protect the public interests.

No activities are allowed within 100 feet of a vernal pool (an isolated wetland that provides essential breeding habitat for wood frogs, spotted salamanders, and certain other wildlife species).

In addition to these regulations, the Commission has also established a policy to protect the public's interests in Needham's wetlands. These interests are primarily met by protecting trees and other natural vegetation within the Buffer Zone and by protecting the ability of the Buffer Zone to infiltrate precipitation. For these reasons, the Commission's policy is to protect natural vegetation within the Buffer Zone and to permit disturbance (grading, excavating, erection of

structures) within the wetland Buffer Zone only if it meets one of these criteria: the activity is more than 25 feet from the edge of a wetland, but located entirely within a lawn and does not decrease infiltration; or the activity is more than 50 feet from the edge of a wetland, preserves at least 50 feet of undisturbed vegetation adjacent to the wetland, and there are no alternatives to the proposed project that could be constructed further from the wetland. The burden of proof is on the Applicant to demonstrate that these criteria have been met.

(Needham Conservation Commission Wetland Buffer Zone Regulations and Policy)

Needham does allow a waiver of these provision, but it is the applicant's responsibility to prove that they do not apply.

Newbury

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

Survey received from Doug Packer, Conservation Agent, Town of Newbury, on 5/22/05: "Yes, as a policy. Not a regulation or bylaw."

There is a no-construction zone on coastal dunes and beaches. The setback distance is equal to thirty times the average historical erosion rate of the shoreline. On 12/7/04, the conservation agent emailed that the setback distance is determined using the Massachusetts Office of Coastal Zone Management's shoreline change map.

Variances to the conditions placed on construction within 200 feet of the barrier beach can be granted by the commission after a public hearing.

"In areas where there are coastal banks or primary or frontal dunes, all new buildings and structures shall be set back from the beach dune interface at a distance equal to thirty times the average historical erosion rate as shown by the most current CZM shoreline change map." From the Town of Newbury Wetlands Bylaws, Section 94-3(G),(Adopted 2001).

"95-4. Variance.

A. The Conservation Commission may grant a variance from these special requirements when it finds after opportunity for public hearing that:

- (1) there are no reasonable conditions or alternatives that would allow the project to proceed in compliance with this Bylaw; and
- (2) mitigating measures are proposed that will allow the project to be conditioned so as to contribute to the protection of the wetland resource areas located on the barrier beach; and
- (3) the variance is necessary to accommodate an overriding community public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

B. A request for a variance shall be made in writing and shall include, at a minimum the following information:

- (1) a description of alternatives explored that would allow the project to proceed in compliance with this Bylaw and an explanation of why each is unreasonable; and
- (2) a description of the mitigating measures to be used to contribute to the protection of the wetland resources located on the barrier beach;
- (3) evidence that an overriding public interest is associated with the project which justifies waiver of these requirements or evidence that the decision on this permit application so restricts the use of the land that it constitutes an unconstitutional taking without compensation."

From the Town of Newbury Wetlands Bylaws, Section 94-4, (Adopted 2001).

-----Original Message-----

From: Conservation Commission [mailto:conscom@townofnewbury.org]

Sent: Tuesday, December 07, 2004 9:57 AM

To: adriana@pioneerinstitute.org

Cc: Conservation Commission

Subject: Re: Quick Question

Adriana,

Thank you for your interest. With regard to your question, it is project specific. The figures are taken from the shoreline change map printed by the Massachusetts Office of Coastal Zone Management; Plum Island North is C-4.

I hope that this addresses your question.

Regards,
Doug Packer

Conservation Agent
----- Original Message -----
From: Adriana Nunez <adriana@pioneerinstitute.org>
To: <Conscom@townofnewbury.org>
Sent: Monday, December 06, 2004 3:26 PM
Subject: Quick Question

[...]
>
> Your Wetlands Protection Bylaw states that construction must be setback 30
> times the average erosion rate from the shoreline of a barrier beach. How
> many feet is that?
>
> Thank you for your assistance. I look forward to hearing from you.
>
> Sincerely,
>>
> Adriana C. Nunez
> Research Assistant
> Initiative on Local Housing Regulations
> Pioneer Institute
> 85 Devonshire St
> Boston, MA 02108
> (T)617-723-2277
> (F)617-723-1880

Newburyport *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No Survey received from Newburyport Conservation Administrator on 5/4/05:

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

"No, only velocity zones from 1985 FEMA map."

On 11/16/04 the researcher called to clarify what distance was equal to 30 times the average yearly historical erosion rate. The agent told the researcher that essentially no development was permitted on the southeast corner of Plum Island.

"In areas where there are coastal banks or primary or frontal dunes, all new building and structures shall be set back from the beach dune interface at a distance equal to thirty times the average yearly historical erosion as shown by the most current CZM shoreline change map."

From The City of Newburyport's Wetlands Ordinance, Section III (G) (Adopted 2001).

Newton *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No

Norfolk *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 50 feet no build

According to Marie Simpson, Norfolk Conservation Agent, in a 8/3/04 conversation, the Norfolk wetlands regulations create a 50 foot "no build" zone around protected resource areas.

North Andover *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes North Andover Wetlands Protection Regulation 2.0(4)

- 25' No-Disturbance Zone
- 50' No-Build Zone
- 50' Ephemeral Pool No-Disturbance Zone
- 75' Ephemeral Pool No-Build Zone

25' No-Disturbance Zone: is that portion of the Buffer Zone which extends 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, dumping of landscaping debris, pruning, filling, excavating, roadway construction and/or driveway construction.

50' No-Build Zone: is that portion of the Buffer Zone which extends 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 and sheds. Driveways, roadways, retaining walls and landscape boulder walls may be allowed in the 50' no-build zone when no other feasible location or alternative means of access exists.

50' Ephemeral Pool No-Disturbance Zone: is that portion of the Buffer which extends 50' from the edge of an Ephemeral 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 Ephemeral Pool Habitat (see definition of Ephemeral Pool Habitat and Section 3.1). Disturbance of any kind is prohibited within this Zone including but not limited to grading, landscaping, vegetation removal, pruning, filling, excavating, roadway construction, and/or driveway construction.

75' Ephemeral Pool No-Build Zone: is that portion of the Buffer Zone which extends 75' from the edge of the Ephemeral 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 Ephemeral Pool Habitat (see definition of Ephemeral Pool Habitat and Section 3.1 of the 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, and sheds. Driveways, roadways retaining walls and landscape boulder walls may be allowed in the 75' Ephemeral 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 Ephemeral Pool breeders such as Ambystomid salamanders and wood frogs.

There are waiver provisions for no disturbance and no build zones.

From Section 5.0 Waiver Provisions and Alternatives Analysis Requirements,
"The performance standards for wetland resource areas have been created to ensure that the interested of the Act and Bylaw are adequately protected. The Commission recognizes that, in certain situations, a waiver of a specific wetland resource are 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..."

(North Andover Wetlands Protection Regulations, Adopted 1998, Amended 2003)

North Reading *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes North Reading Conservation Rules and Regulations, section 4.7 (Adopted 1993, Revised 2001)

4.7 LANDS WITHIN 100 FEET

... In order to provide for the protection of the above protected resource area, the following activities are prohibited within the land within 100 feet:

- (a) Any activity within 12 feet of the vegetated wetland resource area...
- (d) Altering more than 75% of the protect "lands within 100' resource area on any lot;
- (e) Altering the protected resources around vernal pools shall be made on a case by case basis;

Researcher contacted the Conservation Commission on 12/20/04 to inquire about waivers. Commission said the requirements are "strict" in the area 12 feet from a resource area.

Northborough *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 15 foot no disturbance
 30 foot no build

The town engineer (11/12/04) said that there is a 30 foot no structure zone and a 15 foot no disturb zone in Section 4.2.3 of the Northborough Regulations.

"No foundation, building, road, sidewalk, or other permanent structure shall be place within thirty (30) feet of any resource area. Furthermore, no grading, filing, excavation, removal of vegetation or other construction activity shall be allowed within fifteen (15) feet of said resource areas.

Notwithstanding the above, the Commission may allow work closer to resource areas is needed: (a) to provide access to an area where an alteration of BVW has been allowed; (b) if the work qualifies as a limited project (310 CMR 10.53 (3) as amended) or (c) for storm water outlet structures. In other projects the Commission may allow work closer to a resource are if the applicant demonstrates: (1) alternatives have been considered and in the judgment of the Commission no practical alternative is available; (2) project scope and design minimize work In close proximity to resource areas; (3) site conditions (including but not limited to slope, soil type and hydrology) will allow prevention of wetland damage from such work; and (4) such work will not lead to encroachment on the resource area after completion of the project. For projects involving steep slopes, highly erodable soils, extensive disturbed areas, or hydrologic conditions likely to promote significant erosion, the Commission may require a wider undisturbed buffer to ensure protection of wetland resource areas. Furthermore, the presumption of wetland resource alteration from fertilizer and pesticide may be overcome by providing qualified technical data to the Commission indicating that the chemical products will not alter wetland resource areas." From the Town of Northborough Wetlands Bylaw and Regulations, Section 1.3 (Adopted 1993, Amended 2000).

Northbridge *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes The researcher did not find any reference to limited use zones in the wetlands bylaws and thus determined it to be the same as the state. However, Bob Anderson, member of the Conservation Commission, (10/25/04) said that the town of Northbridge aims to maintain a 25 foot no disturbance buffer, unless there are no other feasible alternatives. However, this policy is not in writing.

Norwell

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

The Norwell wetlands regulations contains a "Fifty Foot Buffer Strip Regulation" that reads in part: "No activity or alteration shall be permitted within a fifty foot (50') buffer strip between a bordering vegetated wetland or isolated wetland, and any proposed site disturbance.

Prohibited activities include, but are not limited to, new construction (with the exception of water dependent structures approved by the Commission) of buildings, sheds, driveways, and alterations to existing structures; or activities resulting in the removal, filling or altering of land within the buffer zone adjacent to a bordering vegetated wetland or isolated wetland, as defined by this bylaw regulation.

This regulation shall not be constructed to preclude maintenance of an already existing structure within the fifty foot (50') buffer strip.

The Norwell Conservation Commission may allow the prohibited activities when the applicant makes a clear and convincing showing that the proposed work or its natural and consequential impacts and effects will not adversely affect the wetlands."

(Norwell Conservation Commission Rules and Regulations for Town of Norwell Wetlands Bylaw Article XVI-a, Amended 2000)

Norwood

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

25 foot no disturbance 50 foot no build variances-yes

According to Al Goetz, Norwood Conservation Commission Administrator, (6/30/04) the wetland regulations create both a no disturbance and a no build zone.

On 12/22/04 the researcher spoke to Al Goetz, the town's conservation agent. He told the researcher that no regulation was set in stone and that town and developers were on a two way street. The researcher concluded that variances could be obtained in some instances.

Peabody

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

Ordinance Establishing the Wetlands and Rivers Protection Regulations in the City of Peabody, Chapter 32 of the Code of the City of Peabody, Section 32-33(Adopted, 1986, as amended)

Sec. 32-33. No Disturb Zone Presumption

Lands within two hundred (200) feet of rivers, streams, creeks, and brooks, and lands within one hundred (100) feet of all other resource areas, are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas are presumed to result in alteration of the resource area and to have adverse impact upon the wetland values protected by this ordinance, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss or impairment of groundwater recharge or flood control, poor water quality, and loss of wildlife habitat. The Commission, therefore, may require that the applicant maintain a strip or buffer of continuous, undisturbed vegetative cover within 200 feet of resource areas defined in Sec. 32-2 Definitions Resource Area (I), and within 100 feet of resource areas defined in Sec. 32-2 Definitions Resource Area (A-H), respectively, unless the applicant convinces the Commission by a preponderance of the credible evidence that the area or part of it may be disturbed without harm to the wetland values protected by this ordinance. Said buffer shall be known as the "No Disturb Zone." Within the No Disturb Zone established by the Commission, no grading, planting, site work, construction, or storage of materials is allowed. Vegetation in the No Disturb Zone shall not be cut or trimmed in any manner.

In the review of proposed work within 200 feet of resource areas defined in Sec. 32-2 Definitions Resource Area (I), and within 100 feet of resource areas defined in Sec. 32-2 Definitions Resource Area (A-H), no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this ordinance, has proved by a preponderance of the evidence that 1) there is no technically demonstrated feasible alternative to the project with less adverse effects and that 2) such activities, including proposed mitigation measures, will have no significant adverse impact on the wetland values protected by this ordinance. The closer an activity is

proposed to a resource area, the more scrutiny will be given to the potential impacts of a proposed project.

No activity which will result in the alteration of land within the presumptive No Disturb Zone shall be permitted by the Conservation Commission with the following exceptions:

A Planting of native vegetation or habitat management techniques designed to enhance the wetland values protected by the Bylaw;

B Construction and maintenance of unpaved pedestrian access paths not more than 4' in width;

C Maintenance of existing structures, utilities, stormwater management structures and paved areas;

D Construction and maintenance of water dependent structures and uses;

E Vista pruning and removal of dead and diseased vegetation consistent with Conservation Commission standards;

F Construction of new utility lines where the proposed route is the best environmental alternative;

G Septic system maintenance and, if a system has failed, repair/replacement meeting state/local standards where the maximum feasible buffer is maintained;

H Construction of accessory structures/uses associated with lawfully existing single family houses where the Conservation Commission finds that alternatives outside the buffer area are not available; the size and impacts of the proposed structure/use have been minimized; and the structure/use is located as far from the resource as possible;

I Where a buffer zone is already altered such that the required buffer cannot be provided without removal of structures and/or pavement, this requirement may be modified by the Conservation Commission provided that it finds that the proposed alteration will not increase adverse impacts on that specific portion of the buffer area or associated wetland and that there is no technically demonstrated feasible construction alternative;

J Where a lot is located entirely within buffer area, the Commission may permit activities within the buffer area when the applicant has demonstrated that the proposed work has been designed to minimize impacts to the buffer area. As mitigation, the Commission may require the applicant to plant or maintain a naturally vegetated buffer of the maximum feasible width given the size, topography, and configuration of the lot.

Ordinance Establishing the Wetlands and Rivers Protection Regulations in the City of Peabody, Chapter 32 of the Code of the City of Peabody, Article XIV Variances (Adopted, 1986, as amended)

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ARTICLE XIV. VARIANCES

Sec. 32-60. Generally

The Conservation Commission may, in its discretion, grant variances from the specific requirements of these regulations pursuant to this Section. The Conservation Commission may grant a variance from these regulations when an overriding public interest is demonstrated or when it is necessary to avoid so restricting the use of the property as to constitute an unconstitutional taking without compensation pursuant to Federal and State laws. The intent of this section is to ensure that reasonable use may be made of such property; however, the extent of use shall be limited in so far as is necessary to protect the wetland values protected by this ordinance, and to ensure that there is no foreseeable danger to the public health or safety. In all cases, the burden of proof shall be on the applicant to demonstrate maximum feasible compliance with the requirements of this ordinance. The Conservation Commission may require mitigation to offset adverse impacts to resource areas protected by this ordinance.

The Commission may waive the application of any performance standard herein when it finds, after opportunity for a hearing that:

A There are no reasonable conditions or alternatives that would allow the project to proceed in compliance with these regulations;

B Mitigating measures are proposed that will allow the project to be conditioned so as to contribute to the protection of the wetland values protected by this ordinance; and

C That the project is necessary to accommodate an overriding public interest or that it is necessary to avoid a decision that so restricts the use of property as to constitute an unconstitutional taking without compensation.

Sec. 32-61. Procedure

A request for a variance or waiver shall be made in writing and shall include, at a minimum, the following information:

A A description of the alternatives explored that would allow the project to proceed in compliance with the performance standards in these regulations and an explanation of why each is not feasible;

B A description of the mitigating measures to be used to contribute to the protection of the wetland values protected by this ordinance.

C Evidence that an overriding public interest is associated with the project which justifies

modifying one or more performance standards in these regulations, or evidence that the decision regarding the permit application would so restrict the use of the land that it constitutes an unconstitutional taking without compensation.

D In the event a taking claim is being made, the following additional information shall be submitted:

1. Documentation that the subject property is legally and/or equitably owned by the applicant, including the date of acquisition. Also, identification of all property in contiguous ownership, including contiguous properties in which the Applicant has a present, future or past fee interest or beneficial interest and documentation of the assessed value of the said contiguous property.

2. Documentation of the assessed value of the property subject to regulation as well as documentation of acquisition costs, proceeds received to date, expected proceeds (including copies of purchase and sales agreements, expenditures, and any other financial and economic data relevant to the waiver/variance request.

3. Documentation of the value of the loss alleged to result from compliance with the relevant performance standards from which a waiver/variance is sought.

E The request for waiver/variance shall be sent to the Commission by certified mail or hand delivered and a copy thereof shall at the same time be sent by certified mail or hand delivered to any other parties in interest.

F Within 21 days of the close of the public hearing, the Commission shall issue a decision as to whether to grant the waiver/variance request. Such decision shall set forth the findings as required herein.

Pepperell *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 50 foot no disturbance

There is a 50-foot no disturbance setback from state-certified vernal pools and wetland resource areas. From section 2 of the bylaw, "[r]esource protection setback: in addition to the requirements of the Wetlands Protection Act, there shall be a 50-foot wide undisturbed, vegetated strip of naturally occurring plant species maintained between certified vernal pools (Certified by Massachusetts Division of Fisheries and Wildlife) or wetland resource areas (310 CMR 10.02(1), excluding land subject to flooding and riverfront area) and activities, as defined in the Wetlands Protection Act Regulations."

(Town of Pepperell Wetlands Protection Bylaw)

The researcher did not find any reference to waiver provisions.

Plainville *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 35 foot - no construction

There is a 35 foot no construction zone. The conservation agent (12/2/04) said that by January, the regulations will be changed to include the Commission's defacto policy of a 35 foot disturbance zone, with variance provisions.

"The following minimums for construction include housing, commercial buildings, garages, and other similar structures, but exclude driveways, fences, and water dependent structures such as piers and marina facilities.

4.1 From any surface water body, 100 ft. horizontally from high water line, 2 ft vertically.

4.2 From any wetlands, 35 ft. horizontally, 2 ft. vertically

4.3 No underground storage of gasoline, oil, or other fuels and hazardous materials within 100 ft. of any surface water or wetland.

4.4 No on-site septic systems within 100 ft. of any surface water or wetland." From the Submission Guidelines for Town of Plainville Wetland Protection Bylaw, Section 4.

"The Conservation Commission may vary these regulations at its discretion after making a finding that proposed work will not cause significant adverse impact on the interests protected by section 23 of the Bylaws of the Town of Plainville." From the Submission Guidelines for Town of Plainville Wetland Protection Bylaw, Section 9.

Plymouth

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes 25 foot no disturbance

From the regulations, Section 5. Performance Standards, H. Buffer Zone Protection

"1. Bordering any wetland, the Commission may require a zone of natural vegetation of sufficient width to assure that silt, soil, fertilizer in solution, organic chemicals, herbicides, organic manures, oils or petroleum products which may be carried by surface runoff, shall not reach that wetland, but instead will be trapped by the natural mulch, soil and roots. Under most conditions, a zone width of 25 feet would be considered sufficient to accomplish this purpose, however, that width would depend on slope, soil type, ground cover and the project proposed. In addition to the above, the Commission may require a zone of natural vegetation of sufficient width, in areas with mapped endangered species, that the habitat is protected and the species requirements are met. Under most conditions, a zone width of fifty (50) feet would be considered sufficient to accomplish this purpose, however, that width would depend on the type of habitat for plant species, and the vegetation types and area needed by the animal species for foot, shelter, breeding, migration, and/or overwintering. The Commission shall encourage stabilization of upgradient areas beyond the 100-foot line.

2. Notwithstanding the provisions of Section 5(A) through (S) and in particular Section 5(H)(1), certain activities are allowed provided the activity is not conducted within any resource area if:

- (a)Alteration within the buffer zone is less than 5000 square feet or 10% of the buffer zone on the lot, whichever is less;
- (b)At a minimum, a 50-foot wide area of undisturbed vegetation in the buffer zone along the resource area is provided;
- (C)The buffer zone does not contain estimated wildlife habitat of rare species;
- (d)Stormwater is managed accordingly to MA DEP standards;
- (e)Erosion and sedimentation controls are provided at the limit of work to protect the resource area;
- (f)The buffer zone does not border an Outstanding Resource Water, vernal pool, public water supply or ACEC;
- (g)A site visit is conducted to verify the project is limited to the buffer zone and the criteria are met."

(Rules and Regulations for Plymouth Wetlands Protection Bylaw, Article #27, Adopted 1999, Amended 2001)

Quincy

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

No There is no reference in the ordinance or regulations of such zones.

Reading

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes 25 foot no disturbance

Town of Reading, Wetlands Protection Regulations, Section 3, subsection D (2002).

D. Zone of Natural Vegetation

1. Bordering any wetland, the Commission may require a Zone of Natural Vegetation (ZNV) of sufficient width and vegetative community type to assure that silt, soil, fertilizer in solution, organic chemicals, herbicides, organic manures, oils or petroleum products which may be carried by surface run-off shall not reach that wetland, but instead will be trapped by the natural mulch, soil and roots; and that light levels and temperature shall be moderated; and that dispersal of seeds of exotic or otherwise disruptive plant species, such as phragmites reed and purple loosestrife (*Lythrum salicaria*) shall be avoided; and that other alterations shall be avoided or mitigated within the wetland.

2. Under most conditions, a zone width of a minimum of twenty-five feet would be considered sufficient to accomplish this purpose. A wider ZNV may be required, depending on specific site conditions, such as grades, soil permeability or other impact potential.

3.Excavations for proposed structures extend beyond the finished limits of the structures. The extent of excavation varies depending on: the nature of the structure; the soil; depth of excavation; type of equipment used; construction techniques; slope; incidence of precipitation; groundwater flow; soil saturation and freeze/thaw cycles; existing vegetative cover; or other ground cover. An area of curtilage is developed around structures as a result of access for finish work, maintenance, foot traffic, and machine travel such as lawnmowers; and to provide a clear area for security; and to prevent moisture damage and physical damage from shading and plant structures such as tree limbs.

SECTION 3 PERFORMANCE STANDARDS FOR RESOURCE AREAS

D. Zone of Natural Vegetation, Continued

4. To protect the integrity of the Zone of Natural Vegetation, including the associated root system and canopy, no new foundations, including footings, frost walls or other in-ground structures, shall be permitted within ten feet of the ZNV. Depending on special site conditions, a greater distance may be required. Associated structures, including but not limited to the following: cantilevered structures, bay windows, eaves, and, garrisons, or other overhangs, may protrude to no closer than seven feet from the ZNV.

5. Notwithstanding the standards of the preceding paragraph, the Commission may grant a reduced setback distance of structures from the ZNV as a

consideration of specific site conditions, such as limited vegetative cover or an existing developed condition, and provided that a permanent physical delineation, such as a solid hedge or an appropriate permanent fence or wall, of sufficient height, shall be provided and shall be maintained between the structure and the ZNV.

6. Permanent markers shall be installed and maintained in convenient locations along the limits of the ZNV, such as at any corners or along a radius, no more than fifty feet apart. Markers may be stone or concrete bounds, metal pipes or rods, trees, shrubs or other structures as approved.

Revere *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No 6/24/04 email response from Mr. DeSantis, Chairman, Revere Conservation Commission.

The researcher found no reference to limited use zones in the wetlands bylaws.

Rockland *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No The researcher did not find any reference to limited use zones in the wetlands bylaw.

Rockport *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No No reference to "no build zones" in the wetlands bylaw.

Rowley *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 25-50 foot no cut/no disturbance zone

"No Cut/No Disturbance Zone shall be determined by a vote of the Commission and shall consist of an area, extending typically 25-50 feet from a resource area as specified in Section III (A) of this Bylaw, (but in no case extending beyond the 100 foot buffer zone), in which virtually no activities or work, other than the non-motorized passage, are permitted. This determination will be made in order to protect the interest and value enumerated in Section I of the Bylaw. Among other site-specific conditions set by the Commission, no vegetation may be disturbed. The no disturbance zone shall remain unchanged from its natural, vegetated stat. No Cut/No Disturbance zones exist only when ordered by a vote by the Commission on an application." From the Town of Rowley Wetlands Protection Bylaw, Section IV (Adopted 2003).

"The Commission may, at its discretion and for good cause shown, grant waivers from the requirement of one or more of the regulation or performance standards. Such waivers are intended to be granted only in rare and unusual cases and only when resource protections would be enhanced relative to preexisting conditions." From the Town of Rowley Wetlands Protection Bylaw, Section XVII (B) (Adopted 2003).

Salem *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No

Salisbury *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 25 foot no disturbance
40 foot no build

Variance provisions are not explicitly mentioned, but each project is considered on a case by case basis.

From Section 7 No Disturbance and No Build Zones,

"When proposing alterations within 50 feet of a wetland, the applicant must overcome a strong presumption of adverse impact on the adjacent wetlands and their functions and values. The Commission will require a 25-foot no disturbance zone extending from the edge of all wetland resource areas. No activity is allowed in the no-disturbance zone. Buildings/structures of any kind are also prohibited in the no-building zone. This includes, but is not limited to, home construction, porches, decks, additions, and sheds. Driveways and fences may be allowed in the no-build zone at the discretion of the Commission.

... Since the Commission cannot allow unregulated alterations of wetlands, these restricted zones will likely be imposed on all projects. The exact size of these zones will be made on a case-by-case basis, but to the maximum benefit to the wetland resource."

(Town of Salisbury Conservation By-Law Regulations, Adopted 1993).

Saugus *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes Answer based on 6/23/04 email response from Mr. Dame:

"Yes - 30 foot no disturb around wetlands"

"30 foot no disturb. presumption of significance can be overcome by a clear showing that avoidance of area is impossible due to hardship or topography, or that no significant impact will occur to wetland."

Scituate *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 125 foot no build (vernal pools)
50 foot no disturbance

The Scituate Wetlands Regulations, in Section 10.05.10.b.(2) states: "Standards and Limitations. In keeping with the foregoing, the Commission hereby establishes the following standards and limitations on significant activities within the 50-foot Buffer Strip as defined in Chapter 310 CMR 10.00:

(1) Buffer Strip: There shall be a continuous undisturbed Buffer Strip (hereafter referred to as the Buffer Strip), a minimum of 50 feet in width, from the edge of all areas subject to protection as defined in the regulations promulgated under Section 30700 of the Town of Scituate Code of Bylaws (with the exception of the Buffer Zone to Bordering Land Subject to Flooding, Isolated Land Subject to Flooding and Land Subject to Coastal Storm Flowage. As a general rule, the Buffer Strip shall be considered undisturbed if it is continuous, unaltered, and left in a natural state.

(2) Exceptions to the 50-Foot Buffer Strip. The foregoing notwithstanding, the Commission may find it appropriate to require a Buffer Strip of greater or less than 50 feet in width on a case-by-case basis. By allowing these exceptions to the 50-foot requirement, the Commission recognizes the need to account for site-specific variables that affect the pollutant removal capabilities of the Buffer Strip, such as slope, soil type, contributing land usage, and the surrounding patterns of land use. The applicant or the Commission must demonstrate the appropriateness of a Buffer Strip of a width other than 50 feet through the use of an appropriate buffer designation method."

In Section 10.05.6, vernal pools are given the following buffer zone/buffer strip:

"(6) The buffer zone for vernal pools shall be the area within a line parallel to the boundary of the vernal pool measuring 250 feet from that boundary; the buffer strip/no-build zone for a vernal pool shall be the area within a line parallel to the boundary of the vernal pool measuring 125 feet from that boundary."

(Town of Scituate Code of Bylaws SECTION 30770, Wetlands Protection Rules and Regulations, Amended 2003)

Seekonk*Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 25 foot no disturbance
50 foot no build

From Section 2.2.2.2 Buffer Strip of the Regulations, "[w]here an activity is proposed within the Buffer Zone to a wetland, vernal pool, bank or beach, or isolated land subject to flooding, the Commission shall require that a continuous Buffer Strip (at least 25 feet wide) of undisturbed, natural vegetation be maintained between the proposed activity and the resource areas(s). In the course of reviewing proposed activities within the buffer zone, the Commission may require that a buffer strip be created where none currently exists, where, in the judgment of the Commission, damage has occurred due to previous activities.

In designing a project to meet this performance standard, the applicant shall take into account not only proposed construction activity, but also realistic future use of the site. As an example, in the case of construction of a single-family residence, it shall be presumed that such future use includes a yard, and that the yard shall extend at least 25 feet horizontally from the structure, exclusive of any portion of the Buffer Strip. Typically, the Commission shall expect new structures sited at least 50 feet from wetland resource area(s), and that a Buffer Strip significantly greater than 25 feet will be provided where slopes exceed 25%.

When partial encroachment of proposed structures into the 25-foot "yard" setback is unavoidable, the applicant may mitigate the encroachment by increasing the Buffer Strip area by an amount equal to or greater than the encroachment into the "yard". The following guidelines are offered: (1) The encroachment should not exceed 10% of the total recommended "yard" setback for the lot; and (2) The encroachment should not exceed one quarter of the recommended width of the total setback from the resource area."

(Seekonk Conservation Commission Regulations, Adopted 1999, Amended 2003)

Sharon*Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 100 foot no build
50 foot no disturbance

RULES AND REGULATIONS OF THE SHARON CONSERVATION COMMISSION, Section 5.06 states, "Minimum Performance Standards

As set forth more specifically below, it is the intent of the Commission to protect, either by condition or by legal restriction, as much of the 100 foot buffer zone as possible. Regardless, the first 50 feet of the buffer zone closest to the wetland line will be considered by the Commission to be of primary concern within the buffer. This 50 foot strip will be regulated as though it were part of the Resource Area.

- (a) No Build Setback. 100 feet from any Resource Area.
- (b) No Disturb Setback.
 - i. A 25 to 50 foot minimum for previously developed lots where any alteration is proposed within an already disturbed area (a lawn area, for example). No additional alteration of the remaining undisturbed buffer will be permitted.
 - ii. A 50 foot minimum for new site development on previously undisturbed land area.
 - iii. A 75 foot minimum under any of the following circumstances:
 - A. the Commission identifies a critical wildlife, fish or plant habitat;
 - B. the Resource Area is located within a Water Resource Protection Overlay District, Zone II, or an ACEC;
 - C. the Resource Area includes a slope greater than 15%; or
 - D. the Commission otherwise identifies a sensitive receptor Resource Area.
- (c) These Rules and Regulations shall not be construed to preclude access paths, vista pruning or construction of water-dependent structures within the buffer zone, any of which may be permitted at the Commission's discretion."

Sherborn*Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes According to Jean Bednor, conservation agent, there are a few minor exceptions, but generally there is no alteration allowed within 50 feet.

From the Town of Sherborn Wetland Regulations,
"3.4 No Alteration Zone

It is presumed that significant adverse effects on the interests protected by the Sherborn By-Law result from any filling, dredging, building upon or other alteration within a resource area or within a minimum of 50 feet horizontally outward from the upland edge of a resource area, unless the applicant

demonstrates by credible evidence that such significant adverse effect will not occur, and the Commission accepts and approves such evidence."

(Town of Sherborn Wetland Regulations, Adopted 1994, Amended 2001)

Shirley *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes No reference in the Shirley bylaw to limited use zones.

Survey received from Shirley Conservation Commission on 6/8/05 marks that the municipality does enforce "no build zones" within the buffer zone around the wetlands. Researcher does not know if this is a policy or if it was adopted in 2005.

Southborough *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 20 foot no disturbance

Section 3.2.3 of the Southborough Wetlands regulations reads in part: "No foundation, building, road, sidewalk or other permanent structure shall be placed within twenty (20) feet of said resource areas. Notwithstanding the above, the Commission may allow work closer to resource areas if needed: (a) to provide access to an area where alteration of a BVW has been allowed; (b) if the work qualifies as a limited project (310 CMR 10.53.3 as amended); or (c) for storm water structures. In other projects, the Commission may allow work within 20 feet of a resource area if the applicant demonstrates: (1) alternatives have been considered and in the judgment of the Commission no practical alternative is available; (2) project scope and design minimize work in close proximity to resource areas; (3) site conditions (including but not limited to slope, soil type, and hydrology) will allow prevention of wetland damage from such work; and (4) such work will not lead to encroachment on the resource area after completion of the project."

(Town of Southborough Wetlands Regulations, Adopted 2002)

Stoneham *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No The Bylaws do not yet have the zones defined. They do make mention of the fact they may need to establish zones, but since they do not have any regulations, zones have not yet been laid out.

Stoneham, Massachusetts Wetland Bylaw, Section VII (May 2004)

These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission may therefore establish performance standards for protection of such lands including without limitation strips of continuous, undisturbed vegetative cover within the 200 foot or 100 foot area, or other form of work limit or setback to buildings, roads, landscaping and other features, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw. The specific size and type of protected area may be established by regulations of the Commission.

Stow *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 35 foot no disturbance.

Section 5.4(A) of the Stow Wetlands Regulations reads:

"An undisturbed vegetative buffer of naturally occurring plant materials shall be left adjacent to all wetlands, water bodies, and watercourses to a minimum width of thirty-five (35) feet."

Sudbury *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes Up to 100 foot no disturbance

"Lands within 100 feet of wetlands resource areas and within 200 feet of perennial streams and rivers are presumed important to the protection of these resources because activities undertaken in close proximity to wetlands and other resources have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and harm to wildlife habitat. For this reason these adjacent upland areas are a valuable resource under this Bylaw. The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover in part or all of the adjacent upland resource area and set other conditions on this area, unless the applicant provides evidence deemed sufficient by the Commission that the area or part of it may be disturbed without harm to the values protected by the law."

(Town of Sudbury Wetlands Administration Bylaw, Adopted 1994, Amended 1998)

Debbie Dineen, Sudbury Conservation Coordinator, (8/13/04) said that this 100' foot no disturbance zone could be negotiated based upon the impact or lack thereof of work on species and habitats.

Sutton *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes From Section 7.2 Considerations in Setting Disturbance Restrictions, "in general, work and activity within 100 feet of wetlands is to be avoided and all reasonable alternatives pursued. The Commission's mission is to lessen and regulate any or all potential adverse impact(s)."

(Sutton Wetlands and Riverfront District Administration Bylaw and its Rules and Regulations, Adopted 1983, Adopted 2000)

7.1 Performance Standards and Design Criteria for Adjacent Upland Resources

"However, the Conservation Commission shall be entitled to consider requests for variances from these performance standards and design criteria, if for good and valuable consideration the applicant provides other forms of resource areas, such as but not necessarily limited to the setting of Conservation Restriction(s), formerly known as a "conservation easement(s)", pursuant to MGL c. 184, Sections 31-33.

Furthermore the Conservation Commission shall consider proposals for work in the adjacent upland resource area in terms of four broad forms of disturbance areas. This approach is intended to allow maximum flexibility for property use while maintaining adequate levels of resource protection by the creation of:

7.1.1 No Disturbance Area

This is an area where no activities or work, other than passive passage are permitted. No vegetation may be disturbed or cut, leaf litter and debris remains in place, no trees taller than 20 feet or greater than 10 inches in diameter may be felled. The no disturbance area should remain unchanged from its pre-project status. The Commission shall have sole, discretion in establishing the limit(s) of a strip(s) of continuous undisturbed vegetative cover. Value, for the purposes of the Bylaw, increases the closer any disturbance is to wetlands.

7.1.2 Temporary Disturbance Area

This is an area in the adjacent upland resource where temporary disturbance for a limited period of time is permitted, such as for regrading or travel by heavy machinery. Once the activity is completed, however, the area will be allowed to return to natural vegetation and function. Any subsequent disturbance or activity shall require a new filing. The Conservation Commission shall establish specific time frames and guideline conditions for allowing temporary disturbances as well as setting criteria for assessing the successful return of the adjacent upland resource area(s) to natural functions.

7.1.3 Limited Disturbance Area

This is an area in the adjacent upland resource where a limited set of activities and work is permitted in perpetuity. For example, recreational and work activities like understory clearing of poison ivy might be allowed, but no clearing of overstory and no planting of lawn. Unlimited (sustainable) harvesting of wood, composting of brush etc., and storing of firewood are other examples of limited activities allowed.

7.1.4 Permanent Disturbance Area

This is an area in the adjacent upland resource in which most, if not all, legal activities and permanent disturbances are permitted: houses, garages, sheds, porches, driveways, gardens, swimming pools, and lawns in the adjacent upland resource area(s) represent permanent disturbance areas.

Nevertheless, within the context of permanent disturbance the Conservation Commission may set specific standards and conditions in prohibiting or restricting those forms of work and activities in the adjacent upland resource area deemed potentially harmful to overall resource area functions and values, such as, but not limited to, the use of herbicides and pesticides, use of interceptor drains, installation of in-ground sprinkler systems for irrigating areas in the adjacent upland resource area, or any work that results, or may result in significant or adverse impact(s) on and/or net loss of wetlands."

Swansea

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

25 foot no disturbance

From 1.06 Performance Standards, Section J. Buffer Zone Protection, "1. Bordering any wetland, the Commission may require a zone of natural vegetation of sufficient width to assure that silt, soil, fertilizer in solutions, organic chemicals, herbicides, organic manure, oils or petroleum products which may be carried by surface runoff shall not reach that wetland, but instead shall be trapped by the natural mulch, soil and roots. Under most conditions, a zone of 25 feet would be considered sufficient to accomplish this purpose, however, the distance would depend on slope, soil type, ground cover and the project proposed. The Commission shall encourage stabilization of upgradient areas beyond the 100-foot line."

The projects that may be waived are called Limited Projects, and from Section 1.06, "H.Limited Projects

1.The Commission may issue an Order of Conditions permitting work which results in the loss of not more than (5000) square feet of wetland only under a limited project provided the following requirements are met:

- a.All design method of mitigation have been utilized to minimize the alteration of the wetlands
- b.There is no reasonable alternative to the proposed project.
- c.Replication and re-vegetation plans has been submitted under the criteria of sections 1.06I and 4.07 describing the construction of the amount of recreated wetland necessary to compensate for that portion which is proposed to be destroyed.
- d.Compensatory wetland area will be provided which in the judgment of the Commission will adequately replicate all of the wetland function to be lost. The minimum ratio shall be 1.5 replicated area to 1.0 area to be disturbed. (Amended March 25, 2002)

2.The project must be included in one of the following categories:

- a.Construction of new road drainage structures including culverts, catchbasins, drainage easements, ditches, watercourses and artificial water conveyances to ensure flow capacities.
- b.Construction of a new roadway or driveway of minimum legal and practical width acceptable to the Planning Board where reasonable alternative means of access from a public way to an upland area of the same owner is unavailable.
- c.New construction of underground and overhead public utilities, such as electrical distribution or transmission lines, or communication, sewer, water and natural gas lines, may be permitted, in accordance with the following general conditions and any additional conditions deemed necessary by the Commission:

- 1) The Commission may require a reasonable alternative route with fewer adverse effects.
- 2) The best available mitigating measures shall be used to minimize adverse effects during construction
- 3) All surface vegetation and contours of the area shall be substantially restored
- 4) All sewer lines shall be constructed to minimize inflow and leakage

3.Proposed roadway/driveway crossings of wetland areas shall include the following:

- a)Wetland replication which, in the determination of the Commission, will compensate for the wetland to be lost with respect to the wetlands values and area.
- b)Headwalls shall be required to minimize the amount of the wetland alteration.
- c)Such roadway or driveway shall be constructed in a manner, which does not restrict the flow of water.
- d)Use of multiple pipes laid side by side in a channel to convey water is not allowed."

(Rules and Regulations Under the Swansea Wetlands Protection Bylaw)

Taunton

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes 25 foot no disturbance

The city of Taunton has created "wetland protection zones" or WPZ. Essentially these zones range from 25 to 100 feet and are designed to limit activities close to the wetland.

From Section II Definitions, " 'Wetland Protection Zone' (WPZ) describes an area of no less than 25 feet and no more than 100 feet from the border of BVWs, vernal pools, lakes, ponds and ILSFs larger than a quarter acre-foot in size. This zone has been established to limit or prohibit activities that may have negative impact on resource areas. Such activities may include but are not limited to the following: clearing, filling, dredging, removal of vegetation, dumping or construction. The size of the WPZ will be determined by the nature of the project and the sensitivity of the area. ILSFs containing less than a quarter acre-foot do not have a protection zone. River front areas outside of the 200-foot outer riparian zone does not have a WPZ. WPZ greater than 25 feet minimum will be required in the following situations:

1. Large, multi-lot developments in undisturbed areas;
2. Projects in which a significant portion of the lot will be converted into impervious surface;
3. Areas in or near rare or endangered species;
4. Wildlife corridors;
5. Areas prone to flooding or excessive run-off.

Exemptions to the 25-foot minimum WPZ may be allowed in the following situations. In these cases the applicant will be expected to present an appropriate mitigation plan.

1. Work the Commission believes is in the interest of public safety (e.g., removal of hazards, clearing sight lines etc) or environmental protection.
2. ILSF of less than one-quarter acre-foot.
3. ILSF of greater than a quarter acre-foot the WPZ may be reduced to less than 25 feet if it can be demonstrated that they do not serve any other function than stormwater retention and recharge.
4. Under certain circumstance, the Commission may grandfather lots in existence prior to enactment of the Ordinance providing the applicant demonstrates, by a preponderance of evidence, the WPZ would represent a hardship and said hardship was not created by or with the consent and/or knowledge of the applicant."

(City of Taunton Conservation Ordinance Regulations)

Tewksbury *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 50 foot no build
25 foot no disturbance

Article 18.04.30 (6) of the Tewksbury town bylaws protects any "Buffer strip where an activity is proposed within the buffer zone, the Commission shall require the applicant to maintain a minimum continuous 25-foot wide buffer strip of undisturbed, natural vegetation between the proposed activity and the resource area(s). The Commission shall also require that the applicant site any proposed structure at least 50 feet from the resource area(s), providing for a further 25-foot "buffer strip" setback between the buffer strip and the structure. When partial encroachment into this 25-foot "buffer strip" setback is unavoidable, the applicant may mitigate this encroachment by increasing the size of the buffer strip area by an amount equal to or greater than the area of the encroachment, using the following guidelines:

- 1) The encroachment shall not exceed 10% of the total area of the "buffer strip" setback for the lot; and
- 2) The encroachment shall not exceed 25% of the recommended width of the total setback from the resource area.

The applicant shall demonstrate to the Commission's satisfaction that future use of the site is not likely to result in intrusion into, or alteration of, the buffer strip. The Commission may require the applicant to submit a use plan and narrative as part of that demonstration. At the Commission's request, the applicant shall demonstrate to the Commission's satisfaction that work or activities proposed at the edge of the buffer strip are necessary and that reasonable alternatives, including reducing the scale and scope of the project or adjusting other setbacks, do not exist.

For lots zoned General Residential (RG), the Commission may reduce or waive the requirements of the "buffer strip" setback for structures, after making every effort to preserve it.

The 25-foot buffer strip and 25-foot "buffer strip" setback shall not be required for the maintenance, repair, or replacement (without substantial enlargement unless required by law) of any existing and lawfully located structure, septic system, water line, utility line, or similar facility in those areas. In these cases, the Commission shall require the applicant to maintain a 10-foot wide buffer strip of undisturbed, natural vegetation between the proposed activity and the resource area(s). Whether a 10 foot or 25 foot buffer strip is required, the Commission shall not permit encroachment into the buffer strip other than as described in the above paragraph. The Commission is not to consider what is expedient for the applicant in its enforcement of the buffer strip provision of this by-law. . (Art. 36, ATM 2002)"

Topsfield *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 100 foot no disturbance

Regulation 10-4.e.1 states in part that: "Setback Areas: The Commission presumes that work within the following Setback Areas will adversely affect the buffer zone's capacity to contribute to the interests of the Bylaw: (a) Within one hundred (100) feet of the boundary of Vernal pools or habitat of rare or endangered species or species of special concern.

(b) Within 100 feet of the boundary of a Freshwater wetland, Bank, or Body of Water; (c) Within 100 feet of the downhill boundary of any wetland or land subject to flooding which is situated on or at the top of a slope of a hill unless it can be proved that all runoff from the wetland on the occurrence of a 100 year storm can be contained within the property and in the upland until it can be percolated into the ground. No work shall occur in the Setback Areas, except as provided pursuant to paragraph g and i."

Topsfield wetlands regulations 10-4 g and i detail the procedure for obtaining a waiver.

Townsend *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 35 foot no disturbance
50 foot no build

The researcher did not find any reference to limited use zones or waivers in the supplemental wetlands bylaws and regulations. However, the conservation administrator (10/28/04) said there is a very strict 35 foot no disturbance zone as well as a 50 foot no construction zone. She also added that the town tries to allow only one wetland crossing (i.e. road) for a new development, even if the development has distinct wetland resource areas.

Tyngsborough *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 50 foot no build
30 foot no disturbance

50' No Build Zone: Within 50' of a resource area, the Commission does not allow building of new structures or impervious surfaces.

30' No Touch Zone: Within 30' of a resource area, the Commission does not allow any disturbance of the land.

(From the Tyngsboro Conservation Commission Website <http://www.tyngsboroughmass.com/conservation.htm>)

Upton *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes The researcher found no reference to limited use zones in the bylaws. According to Margaret Carroll, conservation chair, (11/09/04) Upton tries to enforce a 30 foot no disturbance policy, but admits it is hard to enforce since it is not in the bylaw. Ms. Carroll added that it is likely for these limited use zones to be passed in the regulations early in 2005.

Walpole *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 25 foot no disturbance

The Walpole Wetlands Protection Bylaw states in Section 1.4.1 that: "No Alteration Zone- The Commission shall require the Applicant to maintain a twenty-five (25) foot wide contiguous, undisturbed vegetative buffer measured from, and parallel to, the wetland resource boundary, as a minimum. An Applicant may request a variation from the minimum twenty-five foot "no alteration zone". The Applicant shall provide to the Commission information and evidence of why a variation is needed, and how the Applicant will meet the purpose of the bylaw to protect wetlands, water resources, and adjoining land as stated in Section 1 of the Bylaw."

Watertown

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

According to Bruce Roberts of the Conservation Department (6/28/04):

50 foot - no use
150 foot - regulate

Watertown has a 50 foot area for each of its resource areas in conjunction with the 150 buffer zone.

Section A, B, C, and D part (3) in each section of the Rules and Regulations.

For Banks, Vegetated Wetlands, Land under Water Bodies, and Land Subject to Flooding, Watertown has a 50 foot area where "No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or dredging or altering of land under a waterbody, or of land within 50 feet of a [insert type of resource area] shall be permitted by the Conservation Commission, except for activity which is allowed under a variance from a these regulations granted.

From Section 2. Jurisdiction of the bylaw,

"...Without limiting the foregoing, inles both a permit pursuant to Section 7 and a variance pursuant to Section 8 have been issued for the work in question, no person shall build or enlarge any structure, parking lot or impervious surface upon or within 50 feet of: any wetland, marsh, meadow, bog or swamp; any bank; any lands bordering on any lake, river, pond, stream, or creek; any land under said waters; or any land subject to flooding or inundation by groundwater of surface water."

(Chapter XV Wetlands Ordinance, Adopted 1987)

Then from Section I General Provisions, D Exceptions and Variances,
"(2) Variances

The commission shall have the power ... to grant with respect to a particular project a variance from the terms of this Ordinance where the Commission specifically finds based on clear and convincing evidence adduced by the applicant ... a literal enforcement of the provisions of this Ordinance would involve substantial hardship, financial or otherwise, to the applicant, and that desirable relief may be granted without material detriment to the values protected by this Ordinance and without substantially derogating from the intent or purposes of the Ordinance ... Such variances are intended to be granted only in rare and unusual cases."

(Rules and Regulations for the Administration of the Watertown Wetlands Ordinance of 1987, Adopted 1989)

Wayland

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

30 foot no disturbance

Town of Wayland, Wetlands and Water Resources Bylaw Chapter 194 Rules and Regulations Part A, Section 3 and Part C, Section 1 (Adopted 2004)

A vegetated buffer (i.e. not mowed) of 15 feet for additions and existing dwellings must be kept and/or restored as undisturbed.

For new construction a vegetated buffer of not less than 30 feet with permanent demarcation is required. Slopes, existing vegetation, and soils all may result in the request for an increased buffer. . . . This area may also be referred to as an undisturbed buffer, vegetated buffer, or NO-DISTURB ZONE and permanent demarcation (i.e. boulders, fences, walls etc.) of the limit of lawn is required.

Existing irrigation systems cannot be expanded to within 50 feet of a wetland, are discouraged elsewhere and must comply with all other applicable bylaws. No irrigation systems will be permitted for new projects within the 100-foot buffer zone of a wetland.

No debris, refuse or other materials, including but not limited to landscaping debris, leaves, shrubs, and tree trimmings, logs, bricks, stone or trash shall be deposited within the vegetated wetland or within 50 feet of the vegetated wetland.

No de-icing chemicals shall be used on any paved surface located within the 100-foot buffer zone, except with the prior written permission of the Commission.

No pesticides, herbicides or insecticides shall be used on the lawns or grounds located within the 100-foot buffer zone, except with the prior written permission of the Commission.

No sprinklers within the buffer zone for new construction or within 50 feet of the wetlands for existing structures.

On 12/20/04 the Conservation Commission told the researcher that there are no waivers for new construction.

Wellesley *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 25 foot no disturbance
25 - 100 foot limited disturbance

Town of Wellesley Wetlands Protection Regulations, Section 3.B (3) (Revised 2004)

3.B. Buffer Zone Protection

(3) Performance Standard

The portion of the buffer zone extending 25 feet from the wetland, bank or waterbody defining the buffer zone's inner edge, is designated a No-Disturbance Zone. The remainder of the buffer zone is designated a Limited Disturbance Zone.

(a) No-Disturbance Zone:

- (i) Alterations, including but not limited to grading, landscaping, removing of vegetation, filling, excavating, operation of vehicles or machinery, and paving, shall not be permitted in a No-Disturbance Zone.
- (ii) Structures, including but not limited to porches, decks, and sheds, shall not be constructed or placed within a No-Disturbance Zone.
- (iii) Notwithstanding any of the foregoing prohibitions, the Wetlands Protection Committee may allow certain activities or structures in a No-Disturbance Zone by waiver, as provided in section 3.D. of these regulations, when no other practicable alternative exists. Petitions for a waiver shall be included in writing in the Notice of Intent files under the Bylaw.

(b) Limited-Disturbance Zone: A Limited Disturbance Zone consists of all areas in a buffer zone not located in a No-Disturbance Zone. No activity shall be permitted in a Limited-Disturbance Zone that is more likely than not to harm or eventually harm resource areas, including No-Disturbance Zones, with respect to the interests of this Bylaw.

3.D. Waivers and Mitigation

(1) Waivers

The performance standards for wetland resource areas have been adopted to ensure that the interests protected by the Bylaw are adequately protected. The Wetlands Protection Committee recognizes that, in certain situations, a waiver of a specific performance standard may be appropriate for a particular project when the waiver is consistent with the intent and purpose of the Bylaw and regulations. The applicant shall have the burden of demonstrating that the granting of the waiver is consistent with the intent and purpose of the Bylaw and these Regulations. The applicant shall have the burden of demonstrating that the granting of the waiver is consistent with the intent and purpose of the Bylaw and these Regulations. The Committee shall act on the request for a waiver and shall provide to the applicant its written decision. The following paragraphs describe the waiver and its associated mitigation measures for the Buffer Zone and Vernal Pool performance standards.

(2) Waiver for Buffer Zones

The Wetlands Protection Committee may grant a waiver from these Regulations for an alteration of a buffer zone in situations where no practicable alternative provides less impact to the resource area values and a significant hardship would be imposed upon the applicant in the absence of a waiver. The Wetlands Protection Committee may grant a waiver of a performance standard and impose such additional or substituted mitigation requirements as it deems necessary. The applicant must show, clearly and convincingly that:

1. There is no practicable and substantially equivalent economic alternative to the proposed project with less harmful effects on the buffer one; and
 2. The project, or its natural and consequential effects, will have the least adverse effects on the buffer zone that can be practicably achieved.
 3. The project includes mitigation measures that improve the resource area in accordance with paragraph 3.D.(4) of this regulation.
-

Wenham

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

Section 10.58(3) of the Wenham Water Resources Protection Regulations establishes a variety of no work and no build zones around wetland resource areas. They vary in size depending on the surface area and the proposed activity.

Geralyn Falco, Wenham Conservation Coordinator, (8/24/04) said that there are variances, but they are granted mostly for septics and older buildings.

Section 10.58(3) of the Wenham Water Resources Protection Regulations:

- A. Single Residential Lot: 30 ft.(Horizontal) by 2 foot (Vertical) no work, 50 foot no build.
 - B. Subdivision lot (2+ Units) w/ road construction; 50 foot (H) x 2 foot (V) no work, 50 foot no build.
 - C. Commercial/industrial/Institutional; 50 foot (H) x 2 foot (V) no work, 75 foot no build.
 - D. Driveways and utilities; 20 foot (H) x 2 foot (V) no work and no build;
 - E. Minor street, subdivision roads and other roads;
25 foot (H) x 2 foot (V) no work and no build (except for permitted crossings);
 - F. Septic systems (all elements and components including grading for break-out requirements and clay barriers); 100 foot no build and no work.;
 - G. Underground storage tanks; 200 foot.;
- variances available

West Bridgewater

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

50 foot no disturbance

Sections 8.3.1, 9.3.1, and 10.3.1 of the West Bridgewater wetlands regulations place a 50 foot no alter, no disturb zone around all protected resource areas.

From 8.3.1 "No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of a bank, on land within (50) feet of any bank, shall be permitted by the Conservation Commission, except for activity which is allowed under a variance from these regulations granted pursuant to Section 13.0."

In section 9.3.1 and 10.3.1, the word bank is replaced by "vegetated wetland" or "land under a water body," respectively.

From Part IV Variances, "13.1.1 The Conservation Commission may, in its discretion, grant variances from the operation of one (I) or more of these rules and regulations pursuant to the Section. Such variances are intended to be granted only in rare and unusual cases, and shall be granted only in accordance with the provisions of this section."

(West Bridgewater Conservation Commission, Wetland Protection bylaw plus Rules and Regulations)

Westford

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes

50 foot no disturbance
75 foot no build

Westford Wetlands Regulations Section 235-1.D.

"Work on a lot with an existing structure where work is proposed on an artificial surface area of the lot. No work: 30 feet No build: 55 feet

Work on a lot with an existing structure where work is proposed within an existing non-artificial surface area. No work: 50 feet No build: 75 feet

Work on an undeveloped lot* No work: 50 feet No build: 75 feet

*Where access to the buildable portion of an undeveloped lot can only be provided via a wetlands crossing or by work closer than the prescribed limits, then work in association with only the roadway or driveway only may occur closer than the prescribed limits. Such roads and driveways must be designed to cross or approach wetlands in such a fashion to minimize impact within the wetlands and the applicable no disturb zones within the Buffer Zone."

(Town of Westford Wetlands Rules and Regulations, Chapter 235, Adopted 1989)

Westwood

Does the municipality enforce "no build zones" within the buffer zone around wetlands?

Yes 35 foot no disturbance

From Section 8. Definitions, "The term 'alter' shall include, without limitation, the following activities when undertaken to, upon, within, or affecting resource areas protected by this Bylaw:...(k)Any activity undertaken within thirty-five (35) feet of the boundary of a wetland, bank, pond, vernal pond, stream, or river shall be presumed to alter that resource area. This presumption may be overcome by demonstrating to the satisfaction of two-thirds of the Commission that the proposed activity will materially benefit the resource area."

(Westwood Wetlands Protection Bylaw, Article 18)

Weymouth *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 25 foot-no disturbance

The Town of Weymouth Wetlands Regulations, Part IX, establishes no disturb zones. The regulations establish no disturb zones for single family homes, multiple dwelling structures, and commercial and industrial structures. The zones are as follows: Single Family Homes (top of bank of water body-25 feet; edge of a vegetated wetland-25 feet); Multiple Dwelling Structures (top of bank of water body-25 feet; edge of a vegetated wetland-25 feet); Commercial and Industrial Structures (top of bank of water body-50 feet; edge of a vegetated wetland-50 feet). For single family homes, this includes decks, porches, garages, asphalt or bituminous concrete parking areas or driveways, swimming pools and tennis courts. For Multiple Dwelling Structures, this includes utility buildings and ancillary structures and devices.

The researcher did not find any reference to variance provision in this section specific to the buffer zone. However on 12/20, the conservation commission told the researcher that variances can be granted for new construction per Part 5 of Section .01 of the regulations.

Winchester *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No The researcher found no reference to limited use zones in the wetlands bylaws.

According to Ms. Vreeland (6/25/04) they tried to pass a 25' no build zone, but could not get it past the floor of town meeting. The Conservation Commission developed a policy under order of conditions -- 25' no build; if less than 25', then heavily vegetate remaining area.

When asked if anything is restricted beyond 25', she said that Winchester is so built out that 50' in Winchester is half of the lot.

There have been maybe 4 filings under the local bylaws, not applicable under the Wetlands Protection Act, in Winchester's history. In those cases, the wetlands tended to be on small side - they did not trigger the state's 1/4 acre rule.

Email received from Elaine Vreeland on 4/14/05:

"We do not have a regulation requiring a no build zone, however, as a policy we strongly encourage applicants, and made every effort to see that it is incorporated into the design. If there is less than 25 feet, the applicant must present a landscaping plan showing heavy landscaping with native species, favoring food and cover for wildlife."

Winthrop *Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

No The researcher found no reference to limited use zones in the bylaws. According to Brian Corbett, Environmental Specialist for the Town of Winthrop, (6/16/04) the town does not create limited use zones, although many decisions are made on a case by case basis.

Woburn*Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes According to Theresa Murphy, Woburn Conservation Administrator, (7/2/04) Woburn has a 15 foot no disturb zone.

On 12/22/04 the researcher called the Conservation Commission. The administrative assistant told her that waivers could be obtained on a case-by-case basis.

Worcester*Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 30 feet no build
15 feet no disturbance

There is a 30 foot no building zone and a 15 foot no disturbance zone around any resource area. From Section 4.2.4, General Performance Standards, "A. Structures and Improvements to Land - Except as may be allowed, no permanent or temporary foundation, building, road, sidewalk, bridge, sign, billboard or other permanent or temporary structure shall be placed within 30 feet of any resource area, unless, 1. It is a component of a qualified limited project under the state Wetlands Protection Act and the regulations promulgated pursuant thereto; or 2. It is a component of any storm water, flood control, water conservation, erosion control or soil conservation project otherwise approved. B. Construction Activities - Except as may be allowed below, no grading, filling, excavation, removal of vegetation or other construction activity (hereinafter, collectively the work) shall be allowed within fifteen feet (15') of any resource area, unless, 1. The Work is required to provide access to a resource area where a discretionary taking has been allowed under section 4.1 of these regulations; or 2. The Work is a component of any of the activities cited in (1) or (2) of subsection (A), above. C. Discretionary Allowances - The structures, improvements and Work otherwise prohibited under subsections (A) and (B), above, may be allowed by the Conservation Commission if the applicant demonstrates and the Commission finds: 1. Alternatives to the applicant's proposal have been considered, and no reasonable alternative is available; and 2. The project scope and design minimize work in close proximity to any resource area; and 3. The particular site conditions (including, but not limited to slope, soil type and hydrology) will allow prevention of wetlands damage from such work; and 4. The work will not lead to further encroachments on the resource area after completion of the project; and 5(A) the structure, improvement or activity is a component of any project to provide public access to and within the resource area after completion of the project; or (B) the permitted activity will not materially impair significant conservation interests and is consistent with the interests and purpose of the wetlands protection ordinance. D. Burden of Proof - The applicant shall have the burden of proof that the work proposed in its notice of intent and for which approval is sought under subsection (C), above, satisfies all of the necessary findings set forth therein. Failure to provide adequate evidence shall be sufficient grounds for the Commission to deny or condition the applicant's proposal. E. Waiver - Notwithstanding anything to the contrary in subsection (C), above, the Commission, upon request thereof, and after a public hearing on such request, may waive any of the provisions of this Section 4.2.4 upon making the following findings: 1. There are no reasonable conditions or alternatives that would otherwise allow the project to proceed in compliance with these regulations; and 2. A waiver is necessary to accommodate the project, which will provide a significant general public benefit and will not materially impair significant wetlands interests.

(City of Worcester Wetlands Protection Ordinance and Wetlands Protection Regulations, Adopted September 1990)

Wrentham*Does the municipality enforce "no build zones" within the buffer zone around wetlands?*

Yes 50 foot no disturbance

Article 16, Section 8 of the Wrentham town bylaws states: "The Commission therefore will require that the applicant maintain a fifty-foot wide continuous strip of undisturbed vegetative cover within the 200-foot (researcher note: 200 foot buffer zone for streams) [or 100-foot] area. A variance to this criteria may be granted under three circumstances: 1) if the applicant demonstrates that the proposed project will have no adverse affect on any of the interests protected by this bylaw; 2) if the project is a rare or unusual case; and 3) if the project is not approved by the Commssionthis action will restrict the use of the property to such an extent to constitute a constitutional taking without compensation."

(Town of Wrentham Wetlands Protection Bylaw, Article 16, Adopted 1999)
