

Vernal Pools

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Issue Overview Vernal pools are confined basin depressions that are covered by shallow water usually for at least two months in the late winter, spring and summer, but may be dry during much of the year. They are unsuitable for fish, but may provide habitat for species such as frogs and salamanders. The absence of fish, which prey on amphibian eggs, makes vernal pools suitable breeding habitat for many amphibians.

The state regulations give conservation commissions authority to regulate activities within and around vernal pools that are officially "certified" by the Massachusetts Division of Fisheries and Wildlife – which is a small subset of the total number of vernal pools in the state. Many local bylaws/ordinances also cover vernal pools that are not state-certified. Since the state regulations do not include "vernal pools" in the statement of jurisdiction, the certified vernal pool and its adjacent "habitat" must fall within a protected resource area (as listed in the statement of jurisdiction) to receive protection under the state's authority.

Many bylaws/ordinances explicitly state that vernal pools do not need to be certified to receive protection, often by including in the definition of vernal pool the phrase "regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries." Others implicitly protect non-certified vernal pools by referring generally to "any vernal pool" or "vernal pools" in the statement of jurisdiction. If vernal pools are listed without specification of certification, then usually the conservation commission will extend protection to non-certified vernal pools. Some bylaws/ordinances state that the pools must be certifiable, but need not be certified, while others include a broader definition of what qualifies as a vernal pool than the certification criteria establish. Some bylaws/ordinances include vernal pools in the "statement of jurisdiction," while others include the pools in the definitions of other areas listed in the jurisdiction such as land subject to flooding or vegetated wetlands.

Research Coding The answer is coded Yes if the bylaw/ordinance or regulations (1) list "any vernal pools" in the statement of jurisdiction, (2) specify in the definition of vernal pools that non-certified or certifiable pools will be protected, or (3) include non-certified vernal pools in the definition of other protected wetlands. If there is no explicit reference to vernal pools in the bylaw or regulations, but the conservation agent indicated to the researcher that the commission regulates "non-certified" vernal pools as isolated land subject to flooding or isolated vegetated wetlands, then the researcher coded the answer as No. In a couple of cases, the researchers did not obtain the regulations, and entered the information as described by the conservation agent in a phone conversation.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Issue Overview Some municipalities regulate buffer zones around any vernal pool, whether or not the pool is "state-certified" and regardless of the pool's location (even outside of a wetland resource area).

Under state regulations, conservation commissions can regulate certified vernal pools and the 100-foot habitat extending from the pool's waterline only to the extent that the vernal pool and habitat fall within state defined wetland resources areas.

The state's definition of "vernal pool habitat": "Vernal pool habitat means confined basin depressions which, at least in most years, hold water for a minimum of two continuous months during spring and/or summer, and which are free of adult fish populations, as well as the area within 100 feet of the mean annual boundaries of such depressions, to the extent that such habitat is within an Area Subject to Protection Under M.G.L. c. 131, 40 as specified in 310 CMR 10.02(1)."

Research Coding Researcher coded the answer as Yes if the municipality regulates activities in a buffer zone around non-certified vernal pools (falling within or outside of a resource area) or regulates a buffer around certified vernal pools, even if the pool does not fall within a state-protected resource area.

Many municipalities add vernal pools and a buffer zone to the "statement of jurisdiction." In these cases, whether or not those pools need to be certified, the buffer zone is greater than the state's. If the pool must be certified, but it is listed in the statement of jurisdiction, then the pool and buffer need not fall within another resource area to be protected.

In other municipalities, vernal pools are not included directly in the jurisdiction, but are included in the definition of protected wetlands or lands subject to flooding. In these cases, the pool and the buffer must fall within a protected area to receive protection, but if the pool need not be certified, then the answer was coded Yes. In some of these towns, lands subject to flooding are given a buffer zone, which would also cover the vernal pools.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Issue Overview	<p>Some municipalities define the "vernal pool" to include the 100 foot habitat (around the waterline), and then grant a 100 foot buffer around the "vernal pool," giving the conservation commission 200 feet of jurisdiction from the pool's waterline. In practice, some conservation commissions enforcing bylaws that contain this language give vernal pools only 100 feet of protection from the waterline, while others, interpreting the same language, enforce 200 feet.</p> <p>Some municipalities include vernal pools in the "jurisdiction," and explicitly grant the pools a buffer zone (often 100 or 200 feet). Other municipalities include non-certified vernal pools in the definition of wetlands that are protected, and grant a buffer zone around those wetlands.</p>
Research Coding	<p>In many, but not all, of the ambiguous cases, the researcher confirmed with the conservation commission by phone call or email about its practice. Researcher found the answer in the statement of jurisdiction and the definition of vernal pool or other resource areas that include vernal pools.</p>

Abington

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes	<p>The definition of vernal pools in the Town of Abington Bylaws, Chapter 171-1(B) is, "[t]he term VERNAL POOL shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. "</p> <p>From Town of Abington Bylaws, Chapter 171-1(B): "Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, reservoirs, lakes, ponds of any size, rivers, streams, creeks, beaches, dunes, estuaries, lands under water bodies, lands subject to flooding or inundation by groundwater or surface water, or flooding, and lands abutting any of the aforesaid resource areas as set out in § 171-7 (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters."</p> <p>Then from Town of Abington Bylaws, Chapter 175-7(C): "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 two-hundred-foot or one-hundred-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."</p>
------------	---

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes	<p>All vernal pools are given buffer zones regardless of resource location and state certification.</p> <p>From Town of Abington Bylaws, Chapter 171-1(B): "Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, reservoirs, lakes, ponds of any size, rivers, streams, creeks, beaches, dunes, estuaries, lands under water bodies, lands subject to flooding or inundation by groundwater or surface water, or flooding, and lands abutting any of the aforesaid resource areas as set out in § 171-7 (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters."</p> <p>Then from Town of Abington Bylaws, Chapter 175-7(C): "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 two-hundred-foot or one-hundred-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."</p>
------------	---

The definition of vernal pools in the Town of Abington Bylaws, Chapter 171-1(B) is, "[t]he term VERNAL POOL shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. "

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

200 The jurisdiction includes vernal pools. The definition of vernal pools specifies that they do not need to be certified to receive protection. The definition also includes the habitat area, and vernal pools are given a 100 foot buffer zone. Therefore, the researcher interpreted that the Conservation Commission could have a 200 foot zone of jurisdiction.

The researcher tried to confirm with the Conservation Commission, but was unsuccessful. [The answers were reviewed by the Conservation Commission, and no comments on this question were returned, indicating that the researcher's interpretation was correct.]

From Town of Abington Bylaws, Chapter 171-1(B):

"Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, reservoirs, lakes, ponds of any size, rivers, streams, creeks, beaches, dunes, estuaries, lands under water bodies, lands subject to flooding or inundation by groundwater or surface water, or flooding, and lands abutting any of the aforesaid resource areas as set out in § 171-7 (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters."

Then from Town of Abington Bylaws, Chapter 175-7(C): "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 two-hundred-foot or one-hundred-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."

The definition of vernal pools in the Town of Abington Bylaws, Chapter 171-1(B) is, "[t]he term VERNAL POOL shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. "

Acton

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition of a vernal pool specifies that it does not need to be state certified to be protected.

From Section F3.14, "The term 'vernal pool' as used by this Bylaw shall include, in addition to that already defined under the Massachusetts Wetlands Protection Act and regulations (310 CMR 10.00), any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, driveways that meets the certification criteria established in the Guidelines for Certification of Vernal Pool Habitat published by the Massachusetts Division of Fisheries and Wildlife. The buffer zone for vernal pools shall extend 100 horizontal feet from the mean annual high-water line defining the depression."

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

Section 1.3 of the Acton Wetlands Protection Bylaw Regulations reads in part: "Wetland and buffer zone resource areas protected by this Bylaw include:...

(5) Any vernal pool or pool of water having vernal pool properties or characteristics.

(6) All lands within 100 feet of the wetland resource areas identified in 1.3(1) through (5) (buffer zone resource areas)."

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have buffer zones regardless of state certification and resource location.

Section 1.3 of the Acton Wetlands Protection Bylaw Regulations reads in part: "Wetland and buffer zone resource areas protected by this Bylaw include:...

(5) Any vernal pool or pool of water having vernal pool properties or characteristics.

(6) All lands within 100 feet of the wetland resource areas identified in 1.3(1) through (5) (buffer zone resource areas)."

In addition the definition of a vernal pool specifies that it does not need to be state certified to be protected.

From Section F3.14, "The term 'vernal pool' as used by this Bylaw shall include, in addition to that already defined under the Massachusetts Wetlands Protection Act and regulations (310 CMR 10.00), any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, driveways that meets the certification criteria established in the Guidelines for Certification of Vernal Pool Habitat published by the Massachusetts Division of Fisheries and Wildlife. The buffer zone for vernal pools shall extend 100 horizontal feet from the mean annual high-water line defining the depression."

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The jurisdiction includes vernal pools and the definition specifies that they do not need to be state certified to garner protection.

Section 1.3 of the Acton Wetlands Protection Bylaw Regulations reads in part: "Wetland and buffer zone resource areas protected by this Bylaw include:...

(5) Any vernal pool or pool of water having vernal pool properties or characteristics.

(6) All lands within 100 feet of the wetland resource areas identified in 1.3(1) through (5) (buffer zone resource areas)."

In addition the definition of a vernal pool specifies that it does not need to be state certified to be protected.

From Section F3.14, "The term 'vernal pool' as used by this Bylaw shall include, in addition to that already defined under the Massachusetts Wetlands Protection Act and regulations (310 CMR 10.00), any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, driveways that meets the certification criteria established in the Guidelines for Certification of Vernal Pool Habitat published by the Massachusetts Division of Fisheries and Wildlife. The buffer zone for vernal pools shall extend 100 horizontal feet from the mean annual high-water line defining the depression."

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

Amesbury

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition specifies that vernal pools do not need to be state certified to receive protection.

Under Section IX, Definitions, "[t]he term "vernal pool" shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries."

(Town of Amesbury Wetlands Protection Bylaw)

From Section II, Jurisdiction, "[e]xcept as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; estuaries; lands under waterbeds; lands subject to flooding or inundation by ground water or surface water; lands subject to tidal action, coastal storm flowage, or flooding; and lands within 100 feet of any of the aforesaid resource areas (collectively the "resource areas protected by the bylaw"). Said resource areas shall be protected whether or not they border surface waters."

(Town of Amesbury Wetlands Protection Bylaw)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state

Wetlands Protection Act would cover?

Yes All vernal pools have buffer zones regardless of state certification or vernal pool location.

From Section II, Jurisdiction, "[e]xcept as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; estuaries; lands under waterbeds; lands subject to flooding or inundation by ground water or surface water; lands subject to tidal action, coastal storm flowage, or flooding; and lands within 100 feet of any of the aforesaid resource areas (collectively the "resource areas protected by the bylaw"). Said resource areas shall be protected whether or not they border surface waters."

All vernal pools determined by the Commission or the State are given buffer zones.

From Section II, Jurisdiction, "[e]xcept as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; estuaries; lands under waterbeds; lands subject to flooding or inundation by ground water or surface water; lands subject to tidal action, coastal storm flowage, or flooding; and lands within 100 feet of any of the aforesaid resource areas (collectively the "resource areas protected by the bylaw"). Said resource areas shall be protected whether or not they border surface waters."

(Town of Amesbury Wetlands Protection Bylaw)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

200 The jurisdiction includes vernal pools and the definition of vernal pools includes a 100 foot buffer zone. Therefore, the researcher concluded that the town may have a 200 foot zone of jurisdiction around a vernal pool.

A confirmation call to the Conservation Commission was not returned.

From Section II, Jurisdiction, "[e]xcept as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; estuaries; lands under waterbeds; lands subject to flooding or inundation by ground water or surface water; lands subject to tidal action, coastal storm flowage, or flooding; and lands within 100 feet of any of the aforesaid resource areas (collectively the "resource areas protected by the bylaw"). Said resource areas shall be protected whether or not they border surface waters."

Under Section IX, Definitions, "[t]he term "vernal pool" shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries."

(Town of Amesbury Wetlands Protection Bylaw)

Andover

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes In the section that further discusses vernal pools, it is mentioned that the resource area does not need to be state certified - rather, identified by the Conservation Commission.

Section 7.5.b.5 of the Andover Wetlands Regulations states:

"The boundary of a vernal pool is either the limit of the depression within which it is confined or the limit of the resource area within which is located: ... [specific description of vernal habitat and expected fauna] ... The boundary of a vernal pool habitat is that, for an uncertified vernal pool, determined by the Conservation Commission and that, for a state certified vernal pool, determined by the Massachusetts Division of Fisheries and Wildlife."

Article XIV, Section 2 of the Andover Town Bylaws reads: "Except as permitted by the Conservation Commission or as provided in Section 3 of this By-law, no person shall remove, fill, dredge, build upon, degrade, or otherwise alter the following resource areas: any bank, freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, reservoir, lake, pond, creek, river or stream, or any land under said waters, or any land within 100 feet of any of the aforesaid resource areas, or any land subject to flooding

or inundation by groundwater or surface water, or within 200 feet of any river (collectively, the 'resource areas protected by this by-law')."

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools are given a buffer zone regardless of state certification and location of the resource.

Article XIV, Section 2 of the Andover Town Bylaws reads: "Except as permitted by the Conservation Commission or as provided in Section 3 of this By-law, no person shall remove, fill, dredge, build upon, degrade, or otherwise alter the following resource areas: any bank, freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, reservoir, lake, pond, creek, river or stream, or any land under said waters, or any land within 100 feet of any of the aforesaid resource areas, or any land subject to flooding or inundation by groundwater or surface water, or within 200 feet of any river (collectively, the 'resource areas protected by this by-law')."

(Article XIV, Wetlands Protection By-Law, Adopted 1999)

Section 7.5.b.5 of the Andover Wetlands Regulations states:

"The boundary of a vernal pool is either the limit of the depression within which it is confined or the limit of the resource area within which is located: ... [specific description of vernal habitat and expected fauna] ... The boundary of a vernal pool habitat is that, for an uncertified vernal pool, determined by the Conservation Commission and that, for a state certified vernal pool, determined by the Massachusetts Division of Fisheries and Wildlife."

(Regulations Adopted by the Andover Conservation Commission Pursuant to the Town of Andover's General Bylaw For Wetland Protection, Adopted 2002)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The jurisdiction specifically mentions vernal pools and gives them a 100 foot buffer zone. In the section that further discusses vernal pools, it is mentioned that the resource area does not need to be state certified - rather, identified by the Conservation Commission.

Article XIV, Section 2 of the Andover Town Bylaws reads: "Except as permitted by the Conservation Commission or as provided in Section 3 of this By-law, no person shall remove, fill, dredge, build upon, degrade, or otherwise alter the following resource areas: any bank, freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, reservoir, lake, pond, creek, river or stream, or any land under said waters, or any land within 100 feet of any of the aforesaid resource areas, or any land subject to flooding or inundation by groundwater or surface water, or within 200 feet of any river (collectively, the 'resource areas protected by this by-law')."

(Article XIV, Wetlands Protection By-Law, Adopted 1999)

Section 7.5.b.5 of the Andover Wetlands Regulations states:

"The boundary of a vernal pool is either the limit of the depression within which it is confined or the limit of the resource area within which is located: ... [specific description of vernal habitat and expected fauna] ... The boundary of a vernal pool habitat is that, for an uncertified vernal pool, determined by the Conservation Commission and that, for a state certified vernal pool, determined by the Massachusetts Division of Fisheries and Wildlife."

(Regulations Adopted by the Andover Conservation Commission Pursuant to the Town of Andover's General Bylaw For Wetland Protection, Adopted 2002)

Arlington

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Vernal Pools are included in the jurisdiction and given a 100 foot buffer zone. The researcher could not find any reference (or definition) to whether the vernal pool needs to be certified to receive protection.

On 11/17/04, the researcher called the conservation commission (781-316-3012) to confirm whether or not the vernal pool needs to be certified to receive protection. The staff stated that there are no vernal pools in Arlington. Since the town is fairly developed, this is a moot point. While the vernal pools are in the jurisdiction, the researcher decided that this is not regulated

different from the state.

Wetlands Protection Regulations Town of Arlington, Section 2, (Revised 2001)

Section 2 - Jurisdiction

A.Areas subject to protection under the Bylaw:

- (1)Any marsh, freshwater wetland, vernal pool, wet meadow, bog, swamp.
- (2)Any river, stream, creek, pond, reservoir, or lake.
- (3)Any bank of the areas set forth in A(1) or A(2) above.
- (4)Any land under the areas set forth in A(2) above said waters.
- (5)Any land bordering the areas set forth in A(1) or A(2) or A(3) above.
- (6)Any riverfront area as hereinafter defined.
- (7)Any land subject to flooding or inundation.

Section 4 - Definitions

10.BORDERING shall be defined to include any land within either of the following or the greater thereof:

- a)100 feet horizontally lateral from the edge of any marsh, freshwater wetland, vernal pool, wet meadow, bog, swamp, river, stream, creek, pond, reservoir, or lake; or
- b)within the maximum lateral extent of the water elevation of the statistical 100 year frequency storm.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No Vernal Pools are included in the jurisdiction and given a 100 foot buffer zone. The researcher could not find any reference (or definition) to whether the vernal pool needs to be certified to receive protection.

On 11/17/04, the researcher called the conservation commission (781-316-3012) to confirm whether or not the vernal pool needs to be certified to receive protection. The staff stated that there are no vernal pools in Arlington. Since the town is fairly developed, this is a moot point. While the vernal pools are in the jurisdiction, the researcher decided that this is not regulated different from the state.

Wetlands Protection Regulations Town of Arlington, Section 2, (Revised 2001)

Section 2 - Jurisdiction

A.Areas subject to protection under the Bylaw:

- (1)Any marsh, freshwater wetland, vernal pool, wet meadow, bog, swamp.
- (2)Any river, stream, creek, pond, reservoir, or lake.
- (3)Any bank of the areas set forth in A(1) or A(2) above.
- (4)Any land under the areas set forth in A(2) above said waters.
- (5)Any land bordering the areas set forth in A(1) or A(2) or A(3) above.
- (6)Any riverfront area as hereinafter defined.
- (7)Any land subject to flooding or inundation.

Section 4 - Definitions

10.BORDERING shall be defined to include any land within either of the following or the greater thereof:

- a)100 feet horizontally lateral from the edge of any marsh, freshwater wetland, vernal pool, wet meadow, bog, swamp, river, stream, creek, pond, reservoir, or lake; or
- b)within the maximum lateral extent of the water elevation of the statistical 100 year frequency storm.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Ashland

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No The term "vernal pool" does not appear in Ashland's Wetlands Protection Bylaw. Researcher concluded that Ashland adheres to the state standard.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No The term "vernal pool" does not appear in Ashland's Wetlands Protection Bylaw. Researcher concluded that Ashland adheres to the state standard.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Attleboro

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes "1.3 AREAS SUBJECT TO PROTECTION UNDER THE ORDINANCE
The following Wetland Resource Areas are subject to protection under the Ordinance:
(a) Any freshwater wetlands; including marshes, wet meadows, bogs or swamps;
(b) Any lakes, ponds, reservoirs, rivers, streams, creeks; or their banks and beaches; and lands under waterbodies or waterways;
(c) Any lands subject to flooding or inundation by groundwater or surface water;
(d) Any Vernal Pool including lands within 100 feet of the pool's mean annual high water line;
(e) Any lands abutting or adjoining within 25 feet of the areas set forth above in Section 1.3 (a) (b) (c) or (d)."

From the City of Attleboro Wetlands Protection Rules and Regulations, Section 1.3 (Adopted 2004).

"The term 'vernal pool' shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression. To be classified as a vernal pool, the pool must be certified by the Massachusetts Division of Fisheries and Wildlife (MDFW), or recognized by the Conservation Commission in accordance with MDFW certification criteria during the public hearing process." From the City of Attleboro Wetlands Protection Ordinance, Section 18-1.3 (Adopted 2001).

From the City of Attleboro Wetlands Protection Rules and Regulations:

4.7 VERNAL POOLS

The Ordinance recognizes Vernal Pools as a protected Wetland Resource Area. The area within 100 feet of the mean annual boundary of a vernal pool depression is considered to be part of the Vernal Pool resource area. In areas where there is a disagreement between the applicant and the Commission as to the presence or extent of a Vernal Pool, the burden of proof falls on the applicant. The Commission need not identify a vernal pool and vernal pool habitat locations prior to an application being filed with the Commission. The Commission may postpone vernal pool determination until an appropriate time of year or non-drought year. It shall be the applicant's responsibility to identify the location of potential vernal pools and vernal pool habitats on the subject property during the application process. The Commission shall have the discretion to invalidate any Permit previously issued if the applicant failed to designate an area as a potential vernal pool site. The applicant may submit a Request for Determination of Applicability for the purpose of identifying whether a vernal pool exists on the subject site prior to submitting a Local Wetlands Permit Application.

4.7.1 Presumption of Vernal Pool Habitat

Vernal Pools are afforded protection under various State laws including the Massachusetts Wetlands Protection Act, Massachusetts Surface Water Quality Standards (314 CMR 4.00), Title 5 of the Massachusetts Environmental Code (310 CMR 15.00), and the Forest Cutting Practices Act Regulations (304 CMR 11.00). However, in most instances, Vernal Pools must have been certified through the NHESP or identified by a preponderance of credible evidence presented at a public hearing to be protected. The City of Attleboro's Wetlands Protection Ordinance extends and expands upon this protection, and presumes Vernal Pool habitat exists if a wetland's physical characteristics conform to the definition of a "vernal pool"

set forth in Section 1.4 of these regulations.

Section 18-1.2 of the Ordinance identifies vernal pools as a Wetland Resource Area, and the definition for vernal pools provided in Section 18-1.3 of the Ordinance includes the area within 100 feet of the mean annual high water line of such a depression. This presumptive definition for vernal pools is based on systematic field observations showing that most basins that possess the above characteristics host breeding vernal species. These areas are essential breeding habitat, and provide other important wildlife habitat functions during non-breeding season as well, for a variety of amphibian species such as wood frog (*Rana sylvatica*) and the spotted salamander (*Ambystoma maculatum*), and are important habitat for other wildlife species.

Vernal pools include depressions in uplands, temporary and/or permanent ponds in kettleholes, depressions in swamps and wet meadows, old river oxbows and other floodplain pools, and isolated Lands Subject to Flooding or Inundation, ranging from small depressions to multi-acre expanses. These pools are essential breeding sites for certain amphibians, which require isolated, seasonally wet areas without the presence of predatory fish. Most of these amphibians require areas of undisturbed woodlands as habitat during the nonbreeding seasons. Some species require continuous woody vegetation between woodland habitat and the breeding pools. Depending on the species, during non-breeding seasons these amphibians may remain near the pools or travel one-fourth mile or more from the pools. Reptiles, especially turtles, often require areas

Attleboro Conservation Commission Page 15 of 28
Proposed Wetlands Protection Rules and Regulations Adopted November 17, 2004

along rivers to lay their eggs. Since amphibians and reptiles are less mobile than mammals and birds, maintaining integrity of their habitat is critical. Various kinds of animals, including several amphibian species and a number of invertebrate groups, occur or reproduce only in vernal pools. These animals often live their lives a quarter mile or more from the vernal pool and migrate to the pool only for a few days each year for breeding purposes. Many of these animals only return to their own birth pool to mate, therefore increasing the importance of protecting all vernal pools.

The presumption of vernal pool habitat may be overcome with the presentation of a preponderance of credible evidence, which in the judgment of the Conservation Commission, and if necessary its consultant, demonstrates that the wetland does not provide, or cannot provide, vernal pool habitat functions.

4.7.2 Demonstrating that a Ponding Area Is Not a Vernal Pool

For the purposes of overcoming the presumption of vernal pool habitat, the Commission will consider:

- Evidence that the ponding area does not hold water for at least two continuous months when not in a period of Drought.
- Evidence that vernal pool species do not breed or have not bred in the ponding area, due to incompatible physical, chemical, biological, or other persistent conditions at the site in most years. Such evidence could include, without limitation, several months of pH and dissolved oxygen measurements yielding values incompatible with amphibian or reptile breeding.

4.7.3 Demonstrating that a Ponding Area Is a Vernal Pool

In determining if an area is a vernal pool, the Conservation Commission will rely on the certification criteria published by NHESP and included in the most recent version of their publication titled Guidelines for Certification of Vernal Pool Habitat. A copy of this document is included as Appendix C.

4.7.4 Timing of Evidence Collection.

Many of the indicators of vernal pool habitat are seasonal. For example, certain salamander egg clusters are only found between late March and late May. Wood frog chorusing only occurs between late March and May, and then only at night. Consequently, failure to find evidence of breeding must be tied explicitly to those periods during which the evidence is most likely to be available. Accordingly, in the case of challenges to the presumption of vernal pool habitat the Conservation Commission may require that the determination be postponed until the appropriate time period consistent with the evidence being presented. The Commission may also require its own site visits as necessary to confirm the evidence. It is the Commission's intent that no applicant will be required to wait longer than 12 months for a vernal pool determination except in periods of Drought, in which case the Commission will make its determination as soon as it is practical or possible.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes

"1.3 AREAS SUBJECT TO PROTECTION UNDER THE ORDINANCE

The following Wetland Resource Areas are subject to protection under the Ordinance:

- (a) Any freshwater wetlands; including marshes, wet meadows, bogs or swamps;
- (b) Any lakes, ponds, reservoirs, rivers, streams, creeks; or their banks and beaches; and lands under waterbodies or waterways;
- (c) Any lands subject to flooding or inundation by groundwater or surface water;
- (d) Any Vernal Pool including lands within 100 feet of the pool's mean annual high water line;
- (e) Any lands abutting or adjoining within 25 feet of the areas set forth above in Section 1.3 (a) (b) (c) or (d)."

From the City of Attleboro Wetlands Protection Rules and Regulations, Section 1.3 (Adopted 2004).

"The term 'vernal pool' shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during, the spring an/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression. To be classified as a vernal pool, the pool must be certified by the Massachusetts Division of Fisheries and Wildlife (MDFW), or recognized by the Conservation Commission in accordance with MDFW certification criteria during the public hearing process." From the City of Attleboro Wetlands Protection Ordinance, Section 18-1.3 (Adopted 2001).

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The wording of the regulations and bylaw seems to give a 125 foot buffer, however, the conservation agent told the researcher via email that the jurisdiction around a vernal pool was 100 feet.

1.3 AREAS SUBJECT TO PROTECTION UNDER THE ORDINANCE

The following Wetland Resource Areas are subject to protection under the Ordinance:

- (a) Any freshwater wetlands; including marshes, wet meadows, bogs or swamps;
- (b) Any lakes, ponds, reservoirs, rivers, streams, creeks; or their banks and beaches; and lands under waterbodies or waterways;
- (c) Any lands subject to flooding or inundation by groundwater or surface water;
- (d) Any Vernal Pool including lands within 100 feet of the pool's mean annual high water line;
- (e) Any lands abutting or adjoining within 25 feet of the areas set forth above in Section 1.3 (a) (b) (c) or (d)."

From the City of Attleboro Wetlands Protection Rules and Regulations, Section 1.3 (Adopted 2004).

"From: Edward Tanner [mailto:conservation@cityofattleboro.us]
Sent: Monday, November 29, 2004 12:38 PM
To: adriana@pioneerinstitute.org
Subject: Re: vernal pools

The Conservation Commission approved the regulations at their November 17th meeting with a few edits. The approved version of the document is available and I can mail it to you if you would like. I am told that it will be available on the City's web site in the next day or two. As for vernal pools, the 100 feet mentioned in the regulations is the same as that mentioned in the ordinance. The vernal pool jurisdiction extends 100 feet out from the mean annual high water line of the pool. If you have any other questions, please let me know
Ed Tanner"

"The term 'vernal pool' shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during, the spring an/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression. To be classified as a vernal pool, the pool must be certified by the Massachusetts Division of Fisheries and Wildlife (MDFW), or recognized by the Conservation Commission in accordance with MDFW certification criteria during the public hearing process." From the City of Attleboro Wetlands Protection Ordinance, Section 18-1.3 (Adopted 2001).

"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).

Auburn

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Vernal pools are not specifically discussed in the bylaw and jurisdiction and thus the researcher determined the town follows state regulations regarding vernal pools. On 10/25/04, the researcher confirmed with the conservation administrator, Susan Jolicoeur, that the town follows the state regulations for protection of vernal pools.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Avon

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Answer based on 6/28/04 phone conversation with Gene Guilbault, Avon Conservation Officer -- he remarked that Avon follows the state regs very closely.

According to the jurisdiction, vernal pools are included and given a 100 foot buffer zone of protection. Vernal pools are not further defined in the bylaws. Since vernal pools were added to the jurisdiction, the researcher concluded that the town protect full buffer zones around state certified vernal pools. [This was not confirmed with the Commission]

From Section II: Jurisdiction,

"Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, degrade, or otherwise alter the following resource area: any freshwater wetland; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; streams; creeks; lands under waterbodies; lands subject to flooding or inundation by groundwater or surface water; and lands within 100 feet of any of the aforesaid resource areas (collectively the "resource areas protected by the bylaw").

(Avon, Massachusetts Wetlands Protection Bylaw, Adopted 1991)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes According to the jurisdiction, vernal pools are included and given a 100 foot buffer zone of protection. Vernal pools are not further defined in the bylaws. Since vernal pools were added to the jurisdiction, the researcher concluded that the town protect full buffer zones around state certified vernal pools. [This could be confirmed with the Commission]

From Section II: Jurisdiction,

"Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, degrade, or otherwise alter the following resource area: any freshwater wetland; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; streams; creeks; lands under waterbodies; lands subject to flooding or inundation by groundwater or surface water; and lands within 100 feet of any of the aforesaid resource areas (collectively the "resource areas protected by the bylaw").

(Avon, Massachusetts Wetlands Protection Bylaw, Adopted 1991)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 According to the jurisdiction, vernal pools are included and given a 100 foot buffer zone of protection. Vernal pools are not further defined in the bylaws. Since vernal pools were added to the jurisdiction, the researcher concluded that the town protect full buffer zones around state certified vernal pools. [This could be confirmed with the Commission]

From Section II: Jurisdiction,

"Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, degrade, or otherwise alter the following resource area: any freshwater wetland; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; streams; creeks; lands under waterbodies; lands subject to flooding or inundation by groundwater or surface water; and lands within 100 feet of any of the aforesaid resource areas (collectively the "resource areas protected by the bylaw").

(Avon, Massachusetts Wetlands Protection Bylaw, Adopted 1991)

Bedford

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition indicates that vernal pools do not need to be certified to receive protection.

Town of Bedford Conservation Commission Regulations Pursuant to the Bedford Wetlands Protection Bylaw, Appendix A, Definitions

Vernal Pool - a confined basin depression which provides habitat for Vernal Pool Species, whether or not certified by the Massachusetts Natural Heritage Program. Vernal Pool Species are those vertebrate and invertebrate species listed in the January 1991 edition of Massachusetts Audubon Society's "A Citizen's Step-by-Step Guide to Protecting Vernal Pools."

Town of Bedford General Bylaws, Section 36.2, Wetlands Protection Bylaw (Adopted 1987, Amended 1995)

36.2 Jurisdiction

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, or alter the following resource areas: within 100 feet of any freshwater wetland, marsh, wet meadow, bog, swamp or vernal pool; within 100 feet of any bank or beach; within 100 feet of any lake, river, pond, or stream; and land under said waters; or within 100 feet of any land subject to flooding or inundation by groundwater or surface water.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have buffer zones regardless of state certification and resource location.

Town of Bedford General Bylaws, Section 36.2, Wetlands Protection Bylaw (Adopted 1987, Amended 1995)

36.2 Jurisdiction

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, or alter the following resource areas: within 100 feet of any freshwater wetland, marsh, wet meadow, bog, swamp or vernal pool; within 100 feet of any bank or beach; within 100 feet of any lake, river, pond, or stream; and land under said waters; or within 100 feet of any land subject to flooding or inundation by groundwater or surface water.

Town of Bedford Conservation Commission Regulations Pursuant to the Bedford Wetlands Protection Bylaw.

1.3 Statement of Jurisdiction

1.3.1 Areas Subject to Jurisdiction

Areas subject to jurisdiction of the Bylaw, "resource areas," are:

- any freshwater wetland;
- the bank of any waterbody or watercourse;
- land under any waterbody or watercourse;
- land subject to flooding, or inundation by groundwater or surface water;
- vernal pools;
- Buffer Zone - land within 100 feet in a horizontal straight line of any of the above areas (a) - (e)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Town of Bedford General Bylaws, Section 36.2, Wetlands Protection Bylaw (Adopted 1987, Amended 1995)

36.2 Jurisdiction

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, or alter the following resource areas: within 100 feet of any freshwater wetland, marsh, wet meadow, bog, swamp or vernal pool; within 100 feet of any bank or beach; within 100 feet of any lake, river, pond, or stream; and land under said waters; or

within 100 feet of any land subject to flooding or inundation by groundwater or surface water.

Town of Bedford Conservation Commission Regulations Pursuant to the Bedford Wetlands Protection Bylaw.

1.3 Statement of Jurisdiction

1.3.1 Areas Subject to Jurisdiction

Areas subject to jurisdiction of the Bylaw, "resource areas," are:

- a. any freshwater wetland;
- b. the bank of any waterbody or watercourse;
- c. land under any waterbody or watercourse;
- d. land subject to flooding, or inundation by groundwater or surface water;
- e. vernal pools;
- f. Buffer Zone - land within 100 feet in a horizontal straight line of any of the above areas (a) - (e)

Pursuant to the Bedford Wetlands Protection Bylaw, Appendix A, Definitions

Vernal Pool - a confined basin depression which provides habitat for Vernal Pool Species, whether or not certified by the Massachusetts Natural Heritage Program. Vernal Pool Species, whether or not certified by the Massachusetts Natural Heritage Program. Vernal Pool Species are those vertebrate and invertebrate species listed in the January 1991 edition of Massachusetts Audobon Society's "A Citizen's Step-by-Step Guide to Protecting Vernal Pools."

Beverly

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes	<p>The jurisdiction of the City of Beverly Wetlands Protection Ordinance, Section 24.2 states that any vernal pool is under jurisdiction of the ordinance.</p> <p>From Section I - General Provisions, Part C. Jurisdiction, "The areas subject to protection under the Ordinance differ from those protected solely by the Act in that additional wetland resource areas are protected by the Ordinance, as well as the additional interests previously described. Wetland resource areas protected by the Ordinance include:</p> <ol style="list-style-type: none">1.)any Isolated Vegetated Wetland;2.)any Vernal Pool (certified or uncertified);3.)any vegetated wetlands bordering on any creek, river, stream, pond or lake;4.)any bank, beach, fresh or saltwater marsh, wet meadow, bog or swamp;5.)any land under any creek, river, stream, pond or lake;6.)any 100-foot Buffer Zone of wetland areas 1 through 5 listed above;7.)any land subject to storm flowage, or flooding by groundwater or surface water;8.)the 200-foot Riverfront Area;9.)the ocean. <p>Water bodies located in Beverly, and their contiguous 200-foot Riverfront Areas have been identified by the Commission and include, but are not limited to, the following: Bass River, Danvers River, Lawrence Brook, Chubbs Brook, and Centerville Creek."</p> <p>Then from Section III - Additional Wetland Resource Areas Protected Under the Beverly Wetland Protection Ordinance, "A. Vernal Pool and 100-Foot No-Disturbance Zone I. Preamble Vernal Pools and their associated 100-foot No-Disturbance Zones are likely to be significant to the protection of wildlife habitat and rare plant and animal habitat ... 5. Performance Standards: When the presumption set forth in Section III 4. a. of these Regulations is not overcome, the following standards shall apply to Vernal Pools and their 100-foot No-Disturbance Zones: a. 100-foot No-Disturbance Zone: No activity shall be permitted within 100 feet of the delineated edge of a Vernal Pool, or in the case of a wetland resource area that encompasses the pool,)Section I C. 1,3,4,5), within 100 feet of the delineated edge of the said wetland resource area."</p> <p>Same section, Part C. Buffer Zone "2. Definition, Critical Characteristics, and Boundary: A Buffer Zone is the area of land extending 100 feet horizontally from the delineated edge of the following resource areas: a. Bordering Vegetated Wetlands; b. Isolated Vegetated Wetlands as provided above; c. Bank, beach, fresh or salt water marsh, wet meadow, bog, or swamp;</p>
------------	--

d. Land under any creek, river, brook, stream, pond or lake;

Note that Riverfront Area and Bordering and Isolated Land Subject to Flooding do not have a Buffer Zone."

(City of Beverly Wetlands Protection Regulations, Adopted 2003)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes From Section I - General Provisions, Part C. Jurisdiction,
"The areas subject to protection under the Ordinance differ from those protected solely by the Act in that additional wetland resource areas are protected by the Ordinance, as well as the additional interests previously described. Wetland resource areas protected by the Ordinance include:

- 1.)any Isolated Vegetated Wetland;
- 2.)any Vernal Pool (certified or uncertified);
- 3.)any vegetated wetlands bordering on any creek, river, stream, pond or lake;
- 4.)any bank, beach, fresh or saltwater marsh, wet meadow, bog or swamp;
- 5.)any land under any creek, river, stream, pond or lake;
- 6.)any 100-foot Buffer Zone of wetland areas 1 through 5 listed above;
- 7.)any land subject to storm flowage, or flooding by groundwater or surface water;
- 8.)the 200-foot Riverfront Area;
- 9.)the ocean.

Water bodies located in Beverly, and their contiguous 200-foot Riverfront Areas have been identified by the Commission and include, but are not limited to, the following: Bass River, Danvers River, Lawrence Brook, Chubbs Brook, and Centerville Creek."

Then from Section III - Additional Wetland Resource Areas Protected Under the Beverly Wetland Protection Ordinance,
"A. Vernal Pool and 100-Foot No-Disturbance Zone

I. Preamble

Vernal Pools and their associated 100-foot No-Disturbance Zones are likely to be significant to the protection of wildlife habitat and rare plant and animal habitat ...

5. Performance Standards:

When the presumption set forth in Section III 4. a. of these Regulations is not overcome, the following standards shall apply to Vernal Pools and their 100-foot No-Disturbance Zones:

- a. 100-foot No-Disturbance Zone: No activity shall be permitted within 100 feet of the delineated edge of a Vernal Pool, or in the case of a wetland resource area that encompasses the pool,)Section I C. 1,3,4,5), within 100 feet of the delineated edge of the said wetland resource area."

Same section, Part C. Buffer Zone

"2. Definition, Critical Characteristics, and Boundary:

A Buffer Zone is the area of land extending 100 feet horizontally from the delineated edge of the following resource areas:

- a. Bordering Vegetated Wetlands;
- b. Isolated Vegetated Wetlands as provided above;
- c. Bank, beach, fresh or salt water marsh, wet meadow, bog, or swamp;
- d. Land under any creek, river, brook, stream, pond or lake;

Note that Riverfront Area and Bordering and Isolated Land Subject to Flooding do not have a Buffer Zone."

(City of Beverly Wetlands Protection Regulations, Adopted 2003)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The jurisdiction of the City of Beverly Wetlands Protection Ordinance, Section 24.2 states that any vernal pool is under jurisdiction of the ordinance.

In the City of Beverly Wetlands Protection Regulations, Section I(C)(1-5) (2003, as amended), the jurisdiction includes any Vernal Pool (certified or uncertified). The regulations (Section III) specifically delineate a 100 foot no disturbance zone from the water edge.

From Section I - General Provisions, Part C. Jurisdiction,

"The areas subject to protection under the Ordinance differ from those protected solely by the Act in that additional wetland resource areas are protected by the Ordinance, as well as the additional interests previously described. Wetland resource areas protected by the Ordinance include:

- 1.)any Isolated Vegetated Wetland;
- 2.)any Vernal Pool (certified or uncertified);
- 3.)any vegetated wetlands bordering on any creek, river, stream, pond or lake;
- 4.)any bank, beach, fresh or saltwater marsh, wet meadow, bog or swamp;
- 5.)any land under any creek, river, stream, pond or lake;
- 6.)any 100-foot Buffer Zone of wetland areas 1 through 5 listed above;
- 7.)any land subject to storm flowage, or flooding by groundwater or surface water;
- 8.)the 200-foot Riverfront Area;
- 9.)the ocean.

Water bodies located in Beverly, and their contiguous 200-foot Riverfront Areas have been identified by the Commission and include, but are not limited to, the following: Bass River, Danvers River, Lawrence Brook, Chubbs Brook, and Centerville Creek."

Then from Section III - Additional Wetland Resource Areas Protected Under the Beverly Wetland Protection Ordinance,
"A. Vernal Pool and 100-Foot No-Disturbance Zone

I. Preamble

Vernal Pools and their associated 100-foot No-Disturbance Zones are likely to be significant to the protection of wildlife habitat and rare plant and animal habitat ...

5. Performance Standards:

When the presumption set forth in Section III 4. a. of these Regulations is not overcome, the following standards shall apply to Vernal Pools and their 100-foot No-Disturbance Zones:

- a. 100-foot No-Disturbance Zone: No activity shall be permitted within 100 feet of the delineated edge of a Vernal Pool, or in the case of a wetland resource area that encompasses the pool,)Section I C. 1,3,4,5), within 100 feet of the delineated edge of the said wetland resource area."

Same section, Part C. Buffer Zone

"2. Definition, Critical Characteristics, and Boundary:

A Buffer Zone is the area of land extending 100 feet horizontally from the delineated edge of the following resource areas:

- a. Bordering Vegetated Wetlands;
- b. Isolated Vegetated Wetlands as provided above;
- c. Bank, beach, fresh or salt water marsh, wet meadow, bog, or swamp;
- d. Land under any creek, river, brook, stream, pond or lake;

Note that Riverfront Area and Bordering and Isolated Land Subject to Flooding do not have a Buffer Zone."

(City of Beverly Wetlands Protection Regulations, Adopted 2003)

Billerica

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes

The definition of vernal pools do not specify that they need to be state certified to received protection, although they cite the state's definitions of vernal pool habitat, indicating that the pools should be "certifiable."

From 3.10 (of regulations) Vernal Pools

"A. Definition. The definition of a Vernal Pool is found at 10.04 Vernal Pool Habitat. Such wetland resource area defined under th By-Law, defined at Section 2.1.A, has an adjacent Buffer Zone (wetland buffer resource area).

B. Wetland Values Protected and Performance Standards. The Commission shall regulate this wetland resource area in accordance with this provisions of the regulations of the Department of Environmental Protection at 310 CMR 10.04, 10.28, 10.53(6), 10.57(1)(b)4, 10.57(2)(a)5 and 6, 10.57(2)(b)4 and 5, 10.59, and 10.60. The Commission shall regulate the Buffer Zone to the Vernal Pool in accordance with Section 3.03 of these regulations."

(Billerica Conservation Commission Wetlands Protection Regulations, Adopted 2003)

Article XXII, Section 2.1 of the Billerica town bylaws states:

"A. The Billerica Conservation Commission shall have jurisdiction to regulate all proposed activities and alterations within a wetlands resources area protected by this by-law and within 100 feet from all such resources area...

(1) A 'wetlands resource area protected by this by-law' is: any freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; rivers; streams; creeks; beaches; lands under water bodies; and lands subject to flooding or inundation by groundwater or surface water. Said wetlands resource areas are defined in Section 5 and shall be protected whether or not the wetlands resource areas border surface waters." Section 5 does not define a vernal pool. However, in Part Three of the Regulations, Vernal Pools are further discussed.

(Billerica Conservation Commission Wetlands Protection Regulations, Adopted 2003)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have a buffer zone regardless of state certification and resource location.

Article XXII, Section 2.1 of the Billerica town bylaws states:

"A. The Billerica Conservation Commission shall have jurisdiction to regulate all proposed activities and alterations within a wetlands resources area protected by this by-law and within 100 feet from all such resources area...

(1) A 'wetlands resource area protected by this by-law' is: any freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; rivers; streams; creeks; beaches; lands under water bodies; and lands subject to flooding or inundation by groundwater or surface water. Said wetlands resource areas are defined in Section 5 and shall be protected whether or not the wetlands resource areas border surface waters." Section 5 does not define a vernal pool.

However, in Part Three of the Regulations, Vernal Pools are further discussed. From 3.10 Vernal Pools

"A. Definition. The definition of a Vernal Pool is found at 10.04 Vernal Pool Habitat. Such wetland resource area defined under the By-Law, defined at Section 2.1.A, has an adjacent Buffer Zone (wetland buffer resource area).

B. Wetland Values Protected and Performance Standards. The Commission shall regulate this wetland resource area in accordance with this provisions of the regulations of the Department of Environmental Protection at 310 CMR 10.04, 10.28, 10.53(6), 10.57(1)(b)4, 10.57(2)(a)5 and 6, 10.57(2)(b)4 and 5, 10.59, and 10.60. The Commission shall regulate the Buffer Zone to the Vernal Pool in accordance with Section 3.03 of these regulations."

(Billerica Conservation Commission Wetlands Protection Regulations, Adopted 2003)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

200 The jurisdiction included vernal pools and does not specify that the vernal pools need to be state certified. The definition of vernal pools cites the states definitions of vernal pool habitat, which means the first 100 feet from the mean annual water line is considered the resource area. The definition clearly states that the vernal pool habitat is also given a buffer zone. The researcher concluded that the town of Billerica regulates all vernal pools and has a 200 foot zone of jurisdiction from the mean annual water line (including habitat and buffer zone.) The commission was not contacted by phone to confirm this, but a printed survey sent to Billerica with the answer "200" for this question was returned without revisions to this answer.

Article XXII, Section 2.1 of the Billerica town bylaws states:

"A. The Billerica Conservation Commission shall have jurisdiction to regulate all proposed activities and alterations within a wetlands resources area protected by this by-law and within 100 feet from all such resources area...

(1) A 'wetlands resource area protected by this by-law' is: any freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; rivers; streams; creeks; beaches; lands under water bodies; and lands subject to flooding or inundation by groundwater or surface water. Said wetlands resource areas are defined in Section 5 and shall be protected whether or not the wetlands resource areas border surface waters." Section 5 does not define a vernal pool.

However, in Part Three of the Regulations, Vernal Pools are further discussed. From 3.10 Vernal Pools

"A. Definition. The definition of a Vernal Pool is found at 10.04 Vernal Pool Habitat. Such wetland resource area defined under the By-Law, defined at Section 2.1.A, has an adjacent Buffer Zone (wetland buffer resource area).

B. Wetland Values Protected and Performance Standards. The Commission shall regulate this wetland resource area in accordance with this provisions of the regulations of the Department of Environmental Protection at 310 CMR 10.04, 10.28, 10.53(6), 10.57(1)(b)4, 10.57(2)(a)5 and 6, 10.57(2)(b)4 and 5, 10.59, and 10.60. The Commission shall regulate the Buffer Zone to the Vernal Pool in accordance with Section 3.03 of these regulations."

(Billerica Conservation Commission Wetlands Protection Regulations, Adopted 2003)

Blackstone

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Vernal pools are not explicitly mentioned in the jurisdiction or defined in the bylaws. The researcher assumes that if they do receive protection it would be as an isolated wetland.

From Section 119-2 Notice of intent required prior to certain activities,

"Except as otherwise provided in section 119-4, no person shall remove, dredge, fill or alter within one hundred (100) feet of any wetland, bank, marsh, wet meadow, bog, swamp, creek, river, stream, pond, lake or one-hundred-year floodplain or, when located within the public water supply catchment basin, within one hundred fifty (150) feet of the areas listed above without first filing a written notice of intent, including such plans as may be necessary to describe such proposed activity and its effect on the environment, and obtaining and complying with an order of condition issued pursuant to this chapter."

(Blackstone Code Chapter 119, Wetlands, Adopted 1986)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No Vernal pools are not explicitly mentioned in the jurisdiction or defined in the bylaws. The researcher assumes that if they do receive protection it would be as an isolated wetland.

From Section 119-2 Notice of intent required prior to certain activities,
"Except as otherwise provided in section 119-4, no person shall remove, dredge, fill or alter within one hundred (100) feet of any wetland, bank, marsh, wet meadow, bog, swamp, creek, river, stream, pond, lake or one-hundred-year floodplain or, when located within the public water supply catchment basin, within one hundred fifty (150) feet of the areas listed above without first filing a written notice of intent, including such plans as may be necessary to describe such proposed activity and its effect on the environment, and obtaining and complying with an order of condition issued pursuant to this chapter."

(Blackstone Code Chapter 119, Wetlands, Adopted 1986)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Bolton

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes "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 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.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools and vernal pool habitat receive a buffer zone regardless of state certification and resource location.

"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 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.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Survey received 5/20/05 from Bolton Conservation Commission (completed by Carol Gumbart):

What is the width of the municipality's jurisdiction from the mean annual boundary of a vernal pool?

"100"

The Bolton Wetlands Bylaw specifies that the Conservation Commission's jurisdiction reaches 100 feet from "vernal pool habitat." According to the state regulations, vernal pool habitat includes the vernal pool as well as 100 feet from the mean annual boundary of the depression. Thus, it could be interpreted that the Bolton Bylaw gives 200 feet of jurisdiction from the boundary of the pool. However, the survey completed by the Conservation Commission indicates that they interpret the bylaw as giving 100 feet of jurisdiction from the boundary.

"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 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.

1.18.8 Definitions

Except as otherwise provided in this Bylaw or in regulations of the Commission, the definitions of terms in this Bylaw shall be as set forth in the Wetlands Protection Act, M.G.L. Ch 131 Section 40, and Regulations 310 CMR 10.00.

From the Town of Bolton Wetlands Bylaws, Section 1.18.8.

State wetlands protection act definition of vernal pool habitat:

Vernal pool habitat means confined basin depressions which, at least in most years, hold water for a minimum of two continuous months during the spring and/or summer, and which are free of adult fish populations, as well as the area within 100 feet of the mean annual boundaries of such depressions, to the extent that such habitat is within an Area Subject to Protection Under M.G.L. c. 131, § 40 as specified in 310 CMR 10.02(1). These areas are essential breeding habitat, and provide other extremely important wildlife habitat functions during non breeding season as well, for a variety of amphibian species such as wood frog (*Rana sylvatica*) and the spotted salamander (*Ambystoma maculatum*), and are important habitat for other wildlife species.

Boxborough

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The town of Boxborough regulates certified as well as non-certified vernal pools.

"Vernal Pool: Confined basin depression which holds water in most years for two (2) continuous months in Spring or Summer, does not support adult fish populations and provides breeding habitat for mole salamanders, wood frogs, other amphibians and invertebrates which can only successfully breed in ponds not colonized by fish. It shall be presumed that pools meeting the above characteristics provide vernal pool habitat regardless of whether the site has been certified by the Massachusetts Natural Heritage & Endangered Species Program (MNHESP)." From the Town of Boxborough Regulations for the Wetlands Bylaws.

Section 1.5(22). (Adopted 11/14/01)

From Section 1. General Provisions

"1.4 Areas Subject to Protection under the Bylaw.

The following Resource Areas are subject to protection under the Bylaw:

- a) freshwater wetlands
- b) marshes
- c) wet meadows
- d) bogs
- e) swamps
- f) lakes
- g) ponds
- h) rivers
- i) streams
- j) any land within 100 horizontal feet of above resource areas (a through i). (Hereto known as the Adjacent Land Resource Area; referred to in Section 2.2 as Buffer Zone)

(Town of Boxborough Regulations for the Wetlands Bylaw, Adopted 2001)

"Performance Standards. There shall be no alteration to any vernal pool which either

(a) is located within a Wetlands as defined under the Bylaw; or

(b) is located within an Adjacent Land Resource Area.

There shall be no alteration of any wetland or any Adjacent Land Resource Area within 100 feet of any such vernal pool." From the Town of Boxborough Regulations for the Wetlands Bylaws. Section 2.4(4). (Adopted 11/14/01)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes "Vernal Pool: Confined basin depression which holds water in most years for two (2) continuous months in Spring or Summer, does not support adult fish populations and provides breeding habitat for mole salamanders, wood frogs, other amphibians and invertebrates which can only successfully breed in ponds not colonized by fish. It shall be presumed that pools meeting the above characteristics provide vernal pool habitat regardless of whether the site has been certified by the Massachusetts Natural Heritage & Endangered Species Program (MNHESP)." From the Town of Boxborough Regulations for the Wetlands Bylaws. Section 1.5(22). (Adopted 11/14/01)

"Performance Standards. There shall be no alteration to any vernal pool which either

(a) is located within a Wetlands as defined under the Bylaw; or

(b) is located within an Adjacent Land Resource Area.

There shall be no alteration of any wetland or any Adjacent Land Resource Area within 100 feet of any such vernal pool." From the Town of Boxborough Regulations for the Wetlands Bylaws. Section 2.4(4). (Adopted 11/14/01)

From Section 1. General Provisions

"1.4 Areas Subject to Protection under the Bylaw.

The following Resource Areas are subject to protection under the Bylaw:

- a) freshwater wetlands
- b) marshes
- c) wet meadows
- d) bogs
- e) swamps
- f) lakes
- g) ponds
- h) rivers
- i) streams
- j) any land within 100 horizontal feet of above resource areas (a through i). (Hereto known as the Adjacent Land Resource Area; referred to in Section 2.2 as Buffer Zone)

(Town of Boxborough Regulations for the Wetlands Bylaw, Adopted 2001)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 "Vernal Pool: Confined basin depression which holds water in most years for two (2) continuous months in Spring or Summer, does not support adult fish populations and provides breeding habitat for mole salamanders, wood frogs, other amphibians and invertebrates which can only successfully breed in ponds not colonized by fish. It shall be presumed that pools meeting the above characteristics provide vernal pool habitat regardless of whether the site has been certified by the Massachusetts Natural Heritage & Endangered Species Program (MNHESP)." From the Town of Boxborough Regulations for the Wetlands Bylaws. Section 1.5(22). (Adopted 11/14/01)

"Performance Standards. There shall be no alteration to any vernal pool which either
(a) is located within a Wetlands as defined under the Bylaw; or
(b) is located within an Adjacent Land Resource Area.

There shall be no alteration of any wetland or any Adjacent Land Resource Area within 100 feet of any such vernal pool." From the Town of Boxborough Regulations for the Wetlands Bylaws. Section 2.4(4). (Adopted 11/14/01)

From Section 1. General Provisions

"1.4 Areas Subject to Protection under the Bylaw.

The following Resource Areas are subject to protection under the Bylaw:

- a) freshwater wetlands
- b) marshes
- c) wet meadows
- d) bogs
- e) swamps
- f) lakes
- g) ponds
- h) rivers
- i) streams
- j) any land within 100 horizontal feet of above resource areas (a through i). (Hereto known as the Adjacent Land Resource Area; referred to in Section 2.2 as Buffer Zone)

(Town of Boxborough Regulations for the Wetlands Bylaw, Adopted 2001)

Boxford

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition of vernal pools specifies that the area must meet the definition by the Massachusetts Division of Fisheries and Wildlife, but does not say the area needs to be state certified.

Article 12, Section 8 of the Boxford town bylaws states that a vernal pool "shall include a confined basin depression of any size which, at least in most years, holds water for a minimum of two continuous months during March through August, which is free of naturally occurring fish populations and which contains evidence of breeding by obligate vernal pool species as recognized by Massachusetts Natural Heritage and Endangered Species Program (1996)(1997)."

Article 12, Section 2 of the Boxford town bylaws protects "any...vernal pools;...lands within 100 feet of any of the aforesaid resource areas. ...Said resource areas shall be protected whether or not they border surface waters. "

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have buffer zones regardless of state certification and resource location.

Article 12, Section 2 of the Boxford town bylaws protects "any...vernal pools;...lands within 100 feet of any of the aforesaid resource areas. ...Said resource areas shall be protected whether or not they border surface waters. "

Article 12, Section 8 of the Boxford town bylaws states that a vernal pool "shall include a confined basin depression of any size which, at least in most years, holds water for a minimum of two continuous months during March through August, which is free of naturally occurring fish populations and which contains evidence of breeding by obligate vernal pool species as recognized by Massachusetts Natural Heritage and Endangered Species Program (1996)(1997)."

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100

The jurisdiction includes vernal pools and a 100 foot buffer zone of protection. The definition of vernal pools specifies that the area must meet the definition by the Massachusetts Division of Fisheries and Wildlife, but does not say the area needs to be state certified.

Article 12, Section 2 of the Boxford town bylaws protects "any...vernal pools;...lands within 100 feet of any of the aforesaid resource areas. ...Said resource areas shall be protected whether or not they border surface waters. "

Article 12, Section 8 of the Boxford town bylaws states that a vernal pool "shall include a confined basin depression of any size which, at least in most years, holds water for a minimum of two continuous months during March through August, which is free of naturally occurring fish populations and which contains evidence of breeding by obligate vernal pool species as recognized by Massachusetts Natural Heritage and Endangered Species Program (1996)(1997)."

Braintree

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No No reference to vernal pools in the "Jurisdiction" section of the bylaw:

Town of Braintree Wetland Bylaw Chapter 12.20 Braintree Bylaw, Section II:

II. JURISDICTION

Except as permitted by the Commission or as provided in this Bylaw, no person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter any:

freshwater wetland, coastal wetland, marsh, wet meadow, bog, swamp, bank, dune, beach or land within 100 feet of any of the aforesaid resource areas [the 100 foot buffer zone];

land under a lake, pond, creek, river, stream [whether natural or manmade, intermittent or continuous], estuary or ocean;

land subject to flooding or inundation by groundwater or surface water;

land subject to tidal action, coastal storm flowage or flooding;

land which may cause degradation or change to the physical characteristics of groundwater;

alteration of land which requires the creation of detention or retention ponds or basins, 1000 sf in size or greater, which are required to control drainage for siltation or surface runoff or riverfront area (the "RESOURCE AREAS" protected by this Bylaw). Said resource areas shall be protected whether or not they border surface waters.

According to Peter Lopolla, Director of Planning and Conservation, Braintree does not regulate vernal pools that would not be covered in the state regulations. (7/6/04)

Note, however, vernal pools have been defined in the bylaw and do not indicate they need to be state certified.

From Section X Definitions,

"VERNAL POOL shall mean a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet if the mean annual boundary of such a depression."

(Town of Braintree Wetland Bylaw Chapter 12.20 Braintree Bylaw)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No Town of Braintree Wetland Bylaw Chapter 12.20 Braintree Bylaw, Section II:

II. JURISDICTION

Except as permitted by the Commission or as provided in this Bylaw, no person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter any:

freshwater wetland, coastal wetland, marsh, wet meadow, bog, swamp, bank, dune, beach or land within 100 feet of any of the aforesaid resource areas [the 100 foot buffer zone];

land under a lake, pond, creek, river, stream [whether natural or manmade, intermittent or continuous], estuary or ocean;

land subject to flooding or inundation by groundwater or surface water;

land subject to tidal action, coastal storm flowage or flooding;

land which may cause degradation or change to the physical characteristics of groundwater;

alteration of land which requires the creation of detention or retention ponds or basins, 1000 sf in size or greater, which are required to control drainage for siltation or surface runoff or riverfront area (the "RESOURCE AREAS" protected by this Bylaw). Said resource areas shall be protected whether or not they border surface waters.

According to Peter Lopolla, Director of Planning and Conservation, Braintree does not regulate vernal pools that would not be covered in the state regulations. (7/6/04)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Bridgewater

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Researcher found no reference to vernal pools in the regulations. However, the conservation commission told the researcher that non-certified vernal pools are protected in practice. The staff then reiterated that Bridgewater's wetlands bylaws are in the process of being updated to include this defacto policy on vernal pools. (Phone conversation 10/13, follow-up email 10/13, and follow-up conversation 10/25.)

"Section 2 Jurisdiction

Except as permitted by the Bridgewater Conservation Commission or as provided in this by-law, no person shall remove, fill, dredge, build upon or alter the following areas:

- a. Within 100 feet of any freshwater wetland, marsh, wet meadow, bog, or swamp;
- b. Within 100 feet of any bank, lake, pond, stream;
- c. Any land under said waters;
- d. Within 100 feet of any land subject to flooding or inundation by granddaugther[sic] or surface water."

From Town of Bridgewater Wetlands Bylaws. Section 2 (Adopted 1990).

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No "Section 2 Jurisdiction
Except as permitted by the Bridgewater Conservation Commission or as provided in this by-law, no person shall remove, fill, dredge, build upon or alter the following areas:

- a. Within 100 feet of any freshwater wetland, marsh, wet meadow, bog, or swamp;
- b. Within 100 feet of any bank, lake, pond, stream;
- c. Any land under said waters;
- d. Within 100 feet of any land subject to flooding or inundation by granddaugther[sic] or surface water."

From Town of Bridgewater Wetlands Bylaws. Section 2 (Adopted 1990).

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Burlington

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No According to Randy Newell, Assistant Administrator, the municipality technically does regulate vernal pools that are not certified by the state, but the municipality will regulate them as "isolated vegetated wetlands" or "isolated areas subject to flooding". The bylaw does not specifically give the Conservation Commission authority to regulate vernal pools that would not be covered by state regulations.

From Section 1.1 Procedure, "No person shall remove, fill, dredge, build upon or alter any bank, freshwater wetland, marsh, bog, wet meadow, swamp, creek, river, stream, pond or lake or any land under said waters, or any land bordering thereon as hereinafter defined, or any land subject to flooding or inundation..."

(Burlington Bylaws, Article XIV Environment, 1.0 Wetlands)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No Randy Newell, Assistant Administrator, said that if they were to regulate activities in a buffer zone, it would be the 100 foot buffer zone around isolated vegetated wetlands.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Canton

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Canton regulates vernal pools that are either certified or "susceptible to certification."

Wetlands Rules and Regulations Town of Canton, Section 1.02 Jurisdiction

A. Areas subject to protection under the Bylaw:

(1) Any bank, beach, flat, freshwater wetland, meadow, bog, swamp, vernal pool or River Front.

(2) Any land within 100 feet of any of the areas set forth in Subsection A(1) above.

Wetlands Rules and Regulations Town of Canton, Definitions

Vernal Pool Habitat - means confined basin depressions which, at least during most years, hold water for a minimum of two continuous months during the spring and/or summer, and which are free of adult fish populations, as well as the area within 100 feet of the mean annual boundaries of such depressions and which are certified or susceptible to certification.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Wetlands Rules and Regulations Town of Canton, Section 1.02 Jurisdiction

A. Areas subject to protection under the Bylaw:

- (1) Any bank, beach, flat, freshwater wetland, meadow, bog, swamp, vernal pool or River Front.
- (2) Any land within 100 feet of any of the areas set forth in Subsection A(1) above.

Wetlands Rules and Regulations Town of Canton, Definitions

Vernal Pool Habitat - means confined basin depressions which, at least during most years, hold water for a minimum of two continuous months during the spring and/or summer, and which are free of adult fish populations, as well as the area within 100 feet of the mean annual boundaries of such depressions and which are certified or susceptible to certification.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Wetlands Rules and Regulations Town of Canton, Section 1.02 Jurisdiction

A. Areas subject to protection under the Bylaw:

- (1) Any bank, beach, flat, freshwater wetland, meadow, bog, swamp, vernal pool or River Front.
- (2) Any land within 100 feet of any of the areas set forth in Subsection A(1) above.

Wetlands Rules and Regulations Town of Canton, Definitions

Vernal Pool Habitat - means confined basin depressions which, at least during most years, hold water for a minimum of two continuous months during the spring and/or summer, and which are free of adult fish populations, as well as the area within 100 feet of the mean annual boundaries of such depressions and which are certified or susceptible to certification.

Carlisle

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Article 13, Section 1.5 states:
"It is not the purpose or intent of the Bylaw to exceed Mass. Gen. Laws Ch. 131, Sec. 40 as amended on February 14, 1997 or the Wetland Protection Act Regulations 310 CMR 10.00 as amended on May 12, 2000 except in the following Bylaw sections: 2,10,11." Section 2 is related to fee schedules and work requirements, section 10 is the enforcement section, and section 11 states: "Unless specifically stated otherwise in this Bylaw, the definitions set forth in Mass. Gen. Laws Ch. 131, Sec. 40, as defined on February 14, 1997, and in 310 CMR as defined on May 12, 2000, shall be used for the interpretation and implementation of this Bylaw. Definitions unique to this Bylaw that shall be used for the interpretation and implementation of this Bylaw include:
Ponds"

On 7/30/04, Sylvia Willard, Carlisle Conservation Agent, said that the ConCom goes by the state regulation on such matters. The ConCom had tried to get a vernal pool regulation passed, but had come up a few votes short.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No Article 13, Section 1.5 states:
"It is not the purpose or intent of the Bylaw to exceed Mass. Gen. Laws Ch. 131, Sec. 40 as amended on February 14, 1997 or the Wetland Protection Act Regulations 310 CMR 10.00 as amended on May 12, 2000 except in the following Bylaw sections: 2,10,11." Section 2 is related to fee schedules and work requirements, section 10 is the enforcement section, and section 11 states: "Unless specifically stated otherwise in this Bylaw, the definitions set forth in Mass. Gen. Laws Ch. 131, Sec. 40, as defined on February 14, 1997, and in 310 CMR as defined on May 12, 2000, shall be used for the interpretation and implementation of this Bylaw. Definitions unique to this Bylaw that shall be used for the interpretation and implementation of this Bylaw include:
Ponds"

On 7/30/04, Sylvia Willard, Carlisle Conservation Agent, said that the ConCom goes by the state regulation on such matters.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Carver

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No The jurisdiction does not include vernal pools and there are no supplemental definitions for vernal pools. Sarah Hewins, conservation agent, (10/25/04) said the town of Carver follows state regulations on vernal pools.

From Section I General Provisions, C Statement of Jurisdiction, "(1)Except as authorized by a vote of the Commission as provided by this Bylaw, or as exempted under 310 CMR 10.04 as land in agricultural use, no person shall remove, fill, dredge, alter, or build upon or within 100 feet of: any bank, wetland, marsh, swamp, bog, beach, or wet meadow, pond or lake; any land under said waters; any land subject to flooding or inundation by groundwater or surface water; or the 100 year flood plain."

(Town of Carver By-Laws, Wetlands Protection, Amended 2002)

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

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

"Yes - as wetlands of any size."

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

"Yes, 100 foot buffer; variance needed within 65 ft."

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No The jurisdiction does not include vernal pools and there are no supplemental definitions for vernal pools. Sarah Hewins, conservation agent, (10/25/04) said the town of Carver follows state regulations on vernal pools.

From Section I General Provisions, C Statement of Jurisdiction, "(1)Except as authorized by a vote of the Commission as provided by this Bylaw, or as exempted under 310 CMR 10.04 as land in agricultural use, no person shall remove, fill, dredge, alter, or build upon or within 100 feet of: any bank, wetland, marsh, swamp, bog, beach, or wet meadow, pond or lake; any land under said waters; any land subject to flooding or inundation by groundwater or surface water; or the 100 year flood plain."

(Town of Carver By-Laws, Wetlands Protection, Amended 2002)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Chelmsford

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The jurisdiction of resource areas includes vernal pools, however, the definition for "vernal pool habitat" specifies that it follows state definition (and therefore, certification) [note: no definition is given for "vernal pools"]. The researcher concluded that state certified vernal pools would receive a full 100 foot buffer zone of protection regardless whether it fell outside resource area.

From Section 187-3. Protection of resource areas,
"Except as permitted by the Conservation Commission or as provided in this chapter, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, reservoirs, lakes, ponds of any size, rivers, streams, creeks, beaches, lands under water bodies or lands within 100 feet of the aforesaid resource areas or lands within the one-hundred-year floodplain, either calculated or mapped (collectively the "areas subject to protection by this chapter"). Said resource areas shall be protected whether or not they border surface waters."

Then, Sec. 187-2 of Chelmsford Wetland Bylaw defines Vernal Pool Habitat as "As defined in 310 CMR 10.04."

(Chelmsford Conservation Commission Wetlands Bylaw and Regulations)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes The jurisdiction of resource areas includes vernal pools, however, the definition for "vernal pool habitat" specifies that it follows state definition (and therefore, certification) [note: no definition is given for "vernal pools"]. The researcher concluded that state certified vernal pools would receive a full 100 foot buffer zone of protection regardless whether it fell outside the resource area.

From Section 187-3. Protection of resource areas,
"Except as permitted by the Conservation Commission or as provided in this chapter, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, reservoirs, lakes, ponds of any size, rivers, streams, creeks, beaches, lands under water bodies or lands within 100 feet of the aforesaid resource areas or lands within the one-hundred-year floodplain, either calculated or mapped (collectively the "areas subject to protection by this chapter"). Said resource areas shall be protected whether or not they border surface waters."

Then, Sec. 187-2 of Chelmsford Wetland Bylaw defines Vernal Pool Habitat as "As defined in 310 CMR 10.04."

(Chelmsford Conservation Commission Wetlands Bylaw and Regulations)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The jurisdiction of resource areas includes vernal pools, however, the definition for "vernal pool habitat" specifies that it follows state definition (and therefore, certification) [note: no definition is given for "vernal pools"]. The researcher concluded that state certified vernal pools would receive a full 100 foot buffer zone of protection regardless whether it fell outside the resource area.

From Section 187-3. Protection of resource areas,
"Except as permitted by the Conservation Commission or as provided in this chapter, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, reservoirs, lakes, ponds of any size, rivers, streams, creeks, beaches, lands under water bodies or lands within 100 feet of the aforesaid resource areas or lands within the one-hundred-year floodplain, either calculated or mapped (collectively the "areas subject to protection by this chapter"). Said resource areas shall be protected whether or not they border surface waters."

Then, Sec. 187-2 of Chelmsford Wetland Bylaw defines Vernal Pool Habitat as "As defined in 310 CMR 10.04."

(Chelmsford Conservation Commission Wetlands Bylaw and Regulations)

Cohasset

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Section 26 of the Cohasset Wetlands regulations states:

"A.Regulatory protection hereunder may be extended to any Vernal Pool identified, whether or not it has yet been certified under state certification procedures, and whether or not the vernal pool is located in a resource area. Vernal pools can be isolated, features not contained within another resource area. Identification and certification of Vernal Pools may occur at any time during an application process.

B. It is presumed that Vernal Pools are significant to wildlife habitat interests. The performance standard of "no adverse impact whatsoever" that is applied to ACEC's shall also be applied to any project within 100 feet of a Vernal Pool.

C. No Vernal Pool may be filled, altered or otherwise destroyed, and no work of any kind may be performed in a Vernal Pool.

D. A minimum natural vegetative Buffer Strip of 100 feet must be maintained around all Vernal Pools. Structures within 100 feet of a Vernal Pool which preexist identification or certification of the Vernal Pool may be maintained, but not expanded closer to the Pool. For such structures, restrictions with respect to the stormwater runoff and other pollution sources from that add to the protection of the Vernal pool may be imposed. Likewise, preexisting landscaping may be maintained, but if necessary, the Commission may require that lawn area be replaced with a vegetative buffer of indigenous species to a Vernal Pool, or within the surrounding environment of the vernal pool. Enhancement of the 100' Buffer Zone of vernal pools is encouraged."

(Cohasset Wetland Regulations, Adopted 2001)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Section 26 of the Cohasset Wetlands regulations states:

"A.Regulatory protection hereunder may be extended to any Vernal Pool identified, whether or not it has yet been certified under state certification procedures, and whether or not the vernal pool is located in a resource area. Vernal pools can be isolated, features not contained within another resource area. Identification and certification of Vernal Pools may occur at any time during an application process.

B. It is presumed that Vernal Pools are significant to wildlife habitat interests. The performance standard of "no adverse impact whatsoever" that is applied to ACEC's shall also be applied to any project within 100 feet of a Vernal Pool.

C. No Vernal Pool may be filled, altered or otherwise destroyed, and no work of any kind may be performed in a Vernal Pool.

D. A minimum natural vegetative Buffer Strip of 100 feet must be maintained around all Vernal Pools. Structures within 100 feet of a Vernal Pool which preexist identification or certification of the Vernal Pool may be maintained, but not expanded closer to the Pool. For such structures, restrictions with respect to the stormwater runoff and other pollution sources from that add to the protection of the Vernal pool may be imposed. Likewise, preexisting landscaping may be maintained, but if necessary, the Commission may require that lawn area be replaced with a vegetative buffer of indigenous species to a Vernal Pool, or within the surrounding environment of the vernal pool. Enhancement of the 100' Buffer Zone of vernal pools is encouraged."

(Cohasset Wetland Regulations, Adopted 2001)

From PART 1 - GENERAL REGULATIONS FOR ALL WETLANDS

SECTION 1. JURISDICTION

"... Under the Bylaw, the Commission has the same geographic and subject matter jurisdiction as it has under the State Wetlands Protection Act ("State Act") and Regulations ("Regulations"), as in force from time to time, with the following additions

A. Additional Resource Areas

Additional Resource Areas under the Bylaw are (i) isolated land subject to flooding and isolate, vegetated wetlands, of any size as to each, and (iii) vernal pools, whether or not state-certified, and whether or not they are within a regulated resource area ...

C. Inner Buffer Zone and Outer Buffer Zone

The Commission has jurisdiction over the area within One Hundred (100) feet from the edge of a Resource Area (the Buffer Zone). The area of jurisdiction within the first Fifty Feet (50') of the edge of the Resource Area is the Inner Buffer Zone, the remaining Fifty Feet (50') is the Outer Buffer Zone. All Resource Areas, except isolated land subject to flooding and isolate, vegetated wetlands have a One Hundred Foot (100') Buffer Zone. The Isolated Land Subject to Flooding (ILSF) and Isolated Vegetated Wetlands have a Twenty-Five Foot (25') Buffer Zone. The 100 year Flood Plain does not have a buffer zone.

D. Activities Regulated

(1) Activities within Resource Areas

Any activity proposed or undertaken within a Resource Area as herein defined which, in the judgment of the Commission will remove, fill, dredge or alter an Area Subject to protection under the Bylaw is subject to regulations under the Bylaws and requires the filing of a Notice of Intent....

(3) Activities within the Buffer Zone

Any activity proposed or undertaken within One Hundred Feet (100') of a Resource Area, as herein defined which, in the judgment of the Commission will remove, fill, dredge or alter an Area Subject to protection under the Bylaw is subject to regulation under the Bylaws and requires the filing of a Notice of Intent. If the applicant is in doubt as to whether a hearing shall be required by the Commission, a Request for Determination of Applicability should be filed."

(Cohasset Wetland Regulations, Adopted 2001)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

- 100** Section 26 of the Cohasset Wetlands regulations states:
"A. Regulatory protection hereunder may be extended to any Vernal Pool identified, whether or not it has yet been certified under state certification procedures, and whether or not the vernal pool is located in a resource area. Vernal pools can be isolated, features not contained within another resource area. Identification and certification of Vernal Pools may occur at any time during an application process.
B. It is presumed that Vernal Pools are significant to wildlife habitat interests. The performance standard of "no adverse impact whatsoever" that is applied to ACEC's shall also be applied to any project within 100 feet of a Vernal Pool.
C. No Vernal Pool may be filled, altered or otherwise destroyed, and no work of any kind may be performed in a Vernal Pool.
D. A minimum natural vegetative Buffer Strip of 100 feet must be maintained around all Vernal Pools. Structures within 100 feet of a Vernal Pool which preexist identification or certification of the Vernal Pool may be maintained, but not expanded closer to the Pool. For such structures, restrictions with respect to the stormwater runoff and other pollution sources from that add to the protection of the Vernal pool may be imposed. Likewise, preexisting landscaping may be maintained, but if necessary, the Commission may require that lawn area be replaced with a vegetative buffer of indigenous species to a Vernal Pool, or within the surrounding environment of the vernal pool. Enhancement of the 100' Buffer Zone of vernal pools is encouraged."

(Cohasset Wetland Regulations, Adopted 2001)

From PART 1 - GENERAL REGULATIONS FOR ALL WETLANDS
SECTION 1. JURISDICTION

"... Under the Bylaw, the Commission has the same geographic and subject matter jurisdiction as it has under the State Wetlands Protection Act ("State Act") and Regulations ("Regulations"), as in force from time to time, with the following additions

A. Additional Resource Areas

Additional Resource Areas under the Bylaw are (i) isolated land subject to flooding and isolate, vegetated wetlands, of any size as to each, and (iii) vernal pools, whether or not state-certified, and whether or not they are within a regulated resource area ...

C. Inner Buffer Zone and Outer Buffer Zone

The Commission has jurisdiction over the area within One Hundred (100) feet from the edge of a Resource Area (the Buffer Zone). The area of jurisdiction within the first Fifty Feet (50') of the edge of the Resource Area is the Inner Buffer Zone, the remaining Fifty Feet (50') is the Outer Buffer Zone. All Resource Areas, except isolated land subject to flooding and isolate, vegetated wetlands have a One Hundred Foot (100') Buffer Zone. The Isolated Land Subject to Flooding (ILSF) and Isolated Vegetated Wetlands have a Twenty-Five Foot (25') Buffer Zone. The 100 year Flood Plain does not have a buffer zone.

D. Activities Regulated

(1) Activities within Resource Areas

Any activity proposed or undertaken within a Resource Area as herein defined which, in the judgment of the Commission will remove, fill, dredge or alter an Area Subject to protection under the Bylaw is subject to regulations under the Bylaws and requires the filing of a Notice of Intent....

(3) Activities within the Buffer Zone

Any activity proposed or undertaken within One Hundred Feet (100') of a Resource Area, as herein defined which, in the judgment of the Commission will remove, fill, dredge or alter an Area Subject to protection under the Bylaw is subject to regulation under the Bylaws and requires the filing of a Notice of Intent. If the applicant is in doubt as to whether a hearing shall be required by the Commission, a Request for Determination of Applicability should be filed."

(Cohasset Wetland Regulations, Adopted 2001)

Danvers

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

- No** Researcher posed this question to Kristan Tarricone, Planner, Danvers Dept of Planning and Human Services on 6/10/04 in an email. The response from K. Tarricone is as follows:

"Yes, the bylaw does not specify a minimum size criteria for a wetland. So any wetland, even if it doesn't meet the state's size criteria for a regulated wetland is regulated by the bylaw. This includes but does not specifically call out vernal pools."

The jurisdiction does not specifically include vernal pools. The conservation contact above indicated that vernal pools garner protection but only when classified under a wetland.

From Section 2. Jurisdiction,

"Except as permitted by the Conservation Commission or as provided in this by-law, no person shall remove, fill, dredge, alter or build upon or within 100 feet of any freshwater wetland, coastal wetland, marsh, meadow, bog or swamp; upon or within 100 feet of any bank, beach, or flat; upon or within any river, lake, pond, stream, or estuary; upon any land within 100 feet of any river, lakem pond, stream or estuary; upon or within any land under said water; upon any land subject to flooding or inundation by groundwater, surface water, tidal action, or coastal storm flowage."

(Chapter XXVI Wetlands Protection By-Law)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No From Section 2. Jurisdiction, "Except as permitted by the Conservation Commission or as provided in this by-law, no person shall remove, fill, dredge, alter or build upon or within 100 feet of any freshwater wetland, coastal wetland, marsh, meadow, bog or swamp; upon or within 100 feet of any bank, beach, or flat; upon or within any river, lake, pond, stream, or estuary; upon any land within 100 feet of any river, lakem pond, stream or estuary; upon or within any land under said water; upon any land subject to flooding or inundation by groundwater, surface water, tidal action, or coastal storm flowage."

(Chapter XXVI Wetlands Protection By-Law)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Dedham

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes From Section 17. Vernal Pools, "(c) A vernal pool does not have to be certified by the Massachusetts Heritage & Endangered Species Program in order to qualify as a vernal pool under the Dedham General Wetlands Protection Bylaw."

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

From Section 3. Jurisdiction, "a.)Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, or otherwise alter the following resource areas: any freshwater wetland; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; streams; creeks; beaches; lands under waterbodies; lands subject to flooding or inundation by groundwater or surface water (collectively the "resource areas protected by this bylaw" listed in this section), lands within 100 feet of any of the aforesaid resource areas; and areas within 200 feet of any waterbody which meets the definition of a 'river' under the Massachusetts Wetlands Protection Act, Chapter 131, Section 40. Said resource areas need not border surface waters in order to qualify for protection."

(Chapter XXVIII General Wetlands Protection Bylaw, Adopted 1996, Amended 2002)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Vernal pools are given a full buffer zone.

From Section 3. Jurisdiction, "a.)Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, or otherwise alter the following resource areas: any freshwater wetland; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; streams; creeks; beaches; lands under waterbodies; lands subject to flooding or inundation by groundwater or surface water (collectively the "resource areas protected by this bylaw" listed in this section), lands within 100 feet of any of the aforesaid resource areas; and areas within 200 feet of any waterbody which meets the definition of a 'river' under the Massachusetts Wetlands Protection Act, Chapter 131, Section 40. Said resource areas need not border surface waters in order to qualify for protection."

(Chapter XXVIII General Wetlands Protection Bylaw, Adopted 1996, Amended 2002)

From Section 17. Vernal Pools, "(c) A vernal pool does not have to be certified by the Massachusetts Heritage & Endangered Species Program in order to qualify as a vernal pool under the Dedham General Wetlands Protection Bylaw."

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The jurisdiction includes vernal pools, and the vernal pool section in the regulations specifies that the vernal pools does not need to be certified to receive protection.

From Section 3. Jurisdiction, "a.)Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, or otherwise alter the following resource areas: any freshwater wetland; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; streams; creeks; beaches; lands under waterbodies; lands subject to flooding or inundation by groundwater or surface water (collectively the "resource areas protected by this bylaw" listed in this section), lands within 100 feet of any of the aforesaid resource areas; and areas within 200 feet of any waterbody which meets the definition of a 'river' under the Massachusetts Wetlands Protection Act, Chapter 131, Section 40. Said resource areas need not border surface waters in order to qualify for protection."

(Chapter XXVIII General Wetlands Protection Bylaw, Adopted 1996, Amended 2002)

From Section 17. Vernal Pools, "(c) A vernal pool does not have to be certified by the Massachusetts Heritage & Endangered Species Program in order to qualify as a vernal pool under the Dedham General Wetlands Protection Bylaw."

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

Dighton

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The jurisdiction includes vernal pools. The definition specifies that they do not need to be state certified to receive protection.

From Section II, Jurisdiction, "[e]xcept as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; dunes; estuaries; the ocean; land under water bodies; lands subject to flooding or inundation by groundwater or surface water; land subject to tidal action, coastal storm flowage, or flooding; and lands abutting any of the aforesaid areas. Said resource areas shall be protected whether or not they border surface waters."

From Section IX, Definitions, "[t]he term "vernal pool" shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring/summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife."

Then from Section VI. Permits and Conditions, "[l]ands within 200 feet of rivers, ponds, lakes and lands within 100 feet of other resource areas are presumed important to the protection of these resources... 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 in this bylaw."

Further, from Section VII, Setbacks, D, "[i]solated wetlands and vernal pools will be considered wetlands and afforded the same minimum setback distances for septic systems, construction, and undisturbed vegetative zones."

(Dighton Regulations, By-Law and Policies)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have buffer zones regardless of state certification and location.

The jurisdiction includes vernal pools. The definition specifies that they do not need to be state certified to receive protection. The town has jurisdiction of 100 feet around a resource area.

From Section II, Jurisdiction, "[e]xcept as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; dunes; estuaries; the ocean; land under water bodies; lands subject to flooding or

inundation by groundwater or surface water; land subject to tidal action, coastal storm flowage, or flooding; and lands abutting any of the aforesaid areas. Said resource areas shall be protected whether or not they border surface waters."

From Section IX, Definitions, "[t]he term "vernal pool" shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring/summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife."

Then from Section VI. Permits and Conditions, [l]ands within 200 feet of rivers, ponds, lakes and lands within 100 feet of other resource areas are presumed important to the protection of these resources... 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 in this bylaw."

Further, from Section VII, Setbacks, D, "[i]solated wetlands and vernal pools will be considered wetlands and afforded the same minimum setback distances for septic systems, construction, and undisturbed vegetative zones."

(Dighton Regulations, By-Law and Policies)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The jurisdiction includes vernal pools. The definition of vernal pools specifies that they do not need to be state certified, and "vernal pool" includes the 100 foot habitat extending from the waterline. The town has jurisdiction of 100 feet around resource areas. Therefore, the researcher interprets that the municipality could enforce 200 feet of jurisdiction (100 foot buffer + 100 foot habitat.)

On 11/4/04, the researcher spoke with the conservation agent, Charles Mallow, who said the town gives vernal pools a 100 foot buffer from the edge of the water line.

From Section II, Jurisdiction, "[e]xcept as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; dunes; estuaries; the ocean; land under water bodies; lands subject to flooding or inundation by groundwater or surface water; land subject to tidal action, coastal storm flowage, or flooding; and lands abutting any of the aforesaid areas. Said resource areas shall be protected whether or not they border surface waters."

From Section IX, Definitions, "[t]he term "vernal pool" shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring/summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife."

Then from Section VI. Permits and Conditions, [l]ands within 200 feet of rivers, ponds, lakes and lands within 100 feet of other resource areas are presumed important to the protection of these resources... 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 in this bylaw."

Further, from Section VII, Setbacks, D, "[i]solated wetlands and vernal pools will be considered wetlands and afforded the same minimum setback distances for septic systems, construction, and undisturbed vegetative zones."

(Dighton Regulations, By-Law and Policies)

Douglas

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Vernal pools are not listed in the town's jurisdiction or defined in the bylaw.

From Section 2 of the bylaw, "[n]o person shall remove, fill, dredge, alter or build upon or within one hundred feet of any bank, fresh water wetland, flat, marsh, meadow, bog, swamp or upon or within one hundred feet of any estuary, creek, river, stream, pond or lake, or upon or within one hundred feet of any land under said waters or upon or within one hundred feet of any land subject to flooding or inundation, or within one hundred feet of the 100-year storm flood line ... "

(Town of Douglas Wetland Bylaw, Adopted 1983)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No Vernal pools are not listed in the town's jurisdiction or defined in the bylaw.

From Section 2 of the bylaw, "[n]o person shall remove, fill, dredge, alter or build upon or within one hundred feet of any bank, fresh water wetland, flat, marsh, meadow, bog, swamp or upon or within one hundred feet of any estuary, creek, river, stream, pond or lake, or upon or within one hundred feet of any land under said waters or upon or within one hundred feet of any land subject to flooding or inundation, or within one hundred feet of the 100-year storm flood line ... "

(Town of Douglas Wetland Bylaw, Adopted 1983)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Dover

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Code of the Town of Dover, Part IV, Chapter 263, Section 263-6:
"VERNAL POOL -- A confined basin depression which, at least in most years, holds water for a minimum of 2 continuous months during the spring and/or summer, and which is free of adult fish populations. The Commission may rely on past, observations, engineering calculations or other factors in determining the existence or extent of a Vernal Pool. A Vernal Pool may be any size. The boundary of a Vernal Pool shall be the annual average high-water mark determined from available evidence. [Amended 6-19-1996]."

Vernal pools are mentioned in the definition of a "qualifying wetland" in the town Bylaws.

From section § 181-2. Permit required for work, "No person shall remove, fill, dredge, alter or build upon or within 100 feet of any freshwater wetland, marsh, wet meadow, bog, swamp, bank, beach, dune, lake, river, pond, stream, estuary, upon or within any land under said water, upon any land subject to flooding or inundation by groundwater, surface water or storm flowage or within 100 feet of the one-hundred-year storm line without first applying for, receiving and complying with a Permit issued by the Conservation Commission."

§ 181-10. Definitions.QUALIFYING WETLAND -- Inland fresh water areas, including land under water bodies, or waterways, banks, beaches, vegetated wetlands, land subject to flooding or vernal pools.

(Dover Wetlands Protection Bylaws, Chapter 181, Adopted 1986, Amended 1994)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes On 12/20/04 the conservation agent told the researcher that Dover's vernal policy is stricter than the state's as there is a 100 foot no-work zone around the pool.

Since the agent also told the researcher that vernal pools are resource areas, she concluded that the buffer zone did not need to fall within another resource area (per state standards).

"Vernal Pools. Any work within 100 feet of a Vernal Pool must not impair its capacity to function as a Vernal Pool. This chapter presumes that any work within a Vernal Pool or within undeveloped and unimproved areas within 100 feet thereof will impair the capacity of such Vernal Pool to so function." From the Town of Dover's Code, Chapter 263-5(1) (Amended 1996).

"VERNAL POOL -- A confined basin depression which, at least in most years, holds water for a minimum of 2 continuous months during the spring and/or summer, and which is free of adult fish populations. The Commission may rely on past, observations, engineering calculations or other factors in determining the existence or extent of a Vernal Pool. A Vernal Pool may be any size. The boundary of a Vernal Pool shall be the annual average high-water mark determined from available evidence." From the Dover Wetlands Protection Bylaw, Chapter 263-6 (Last Amended 1996).

The jurisdiction does not include vernal pools as a resource area.

Vernal pools are mentioned in the definition of a "qualifying wetland" in the town Bylaws.

From section § 181-2. Permit required for work, "No person shall remove, fill, dredge, alter or build upon or within 100 feet of any freshwater wetland, marsh, wet meadow, bog, swamp, bank, beach, dune, lake, river, pond, stream, estuary, upon or within any land under said water, upon any land subject to flooding or inundation by groundwater, surface water or storm flowage or within 100 feet of the one-hundred-year storm line without first applying for, receiving and complying with a Permit issued by the Conservation Commission."

§ 181-10. Definitions. QUALIFYING WETLAND -- Inland fresh water areas, including land under water bodies, or waterways, banks, beaches, vegetated wetlands, land subject to flooding or vernal pools.

(Dover Wetlands Protection Bylaws, Chapter 181, Adopted 1986, Amended 1994)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

- 100** "Vernal Pools. Any work within 100 feet of a Vernal Pool must not impair its capacity to function as a Vernal Pool. This chapter presumes that any work within a Vernal Pool or within undeveloped and unimproved areas within 100 feet thereof will impair the capacity of such Vernal Pool to so function." From the Town of Dover's Code, Chapter 263-5(1) (Amended 1996).
- "VERNAL POOL -- A confined basin depression which, at least in most years, holds water for a minimum of 2 continuous months during the spring and/or summer, and which is free of adult fish populations. The Commission may rely on past, observations, engineering calculations or other factors in determining the existence or extent of a Vernal Pool. A Vernal Pool may be any size. The boundary of a Vernal Pool shall be the annual average high-water mark determined from available evidence." From the Dover Wetlands Protection Bylaw, Chapter 263-6 (Last Amended 1996).

Dracut

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

- Yes** "The term 'vernal pool' shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the areas within 100 feet of the mean annual boundary of such depressions, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries." From the Town of Dracut Wetlands Bylaw, Section IX (Adopted 1993).
- "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, freshwater 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).

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

- Yes** There is a 50 foot no-construction zone and a 100 foot buffer zone around vernal pools whether or not they are state certified.
- "The term 'vernal pool' shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the areas within 100 feet of the mean annual boundary of such depressions, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries." From the Town of Dracut Wetlands Bylaw, Section IX (Adopted 1993).
- "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, freshwater 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).

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 According to the conservation agent, Dracut enforces the 100 foot state buffer and a local 50 foot setback around vernal pools. Building can be allowed closer at the discretion of the Commission, although this is rare.

From: LoriCahill@aol.com [mailto:LoriCahill@aol.com]
Sent: Monday, December 06, 2004 3:56 PM
To: adriana@pioneerinstitute.org
Subject: Re: Dracut Wetland Bylaw

"100' is the state law

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.

Lori"

"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).

"The term 'vernal pool' shall include a confined basin depression which, at least most years, hold water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the areas within 100 feet of the mean annual boundary of such depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries." From the Town of Dracut Wetlands Bylaw, Section IX (Adopted 1993).

Note: Since the definition of "vernal pool" includes the "habitat" stretching 100 feet around the annual water-line of the vernal pool, and the "buffer zone" adds another 50-100 feet of jurisdiction around the "vernal pool," the jurisdiction could be interpreted to stretch 150 - 200 feet from the water -line of the vernal pool. Researcher assumes from email communication with the conservation agent that the commission only enforces up to 100 feet of protection from the water-line of the vernal pool.

Dunstable

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Vernal pools are not mentioned in the jurisdiction or defined by the Commission in bylaw and regulations. Marilyn Pike, member of the Dunstable Conservation Commission, (11/08/04) said that they try to, but nothing is written down.

From 1.02: Statement of Jurisdiction,
(1)Areas subject to Protection Under the Bylaw
(a)Any bank, any freshwater wetland, any beach, any dune, any flat, any marsh, or any swamp bordering on any creek, any river,

any stream, any pond, or any lake.

(b) Land under any of the water bodies listed above

(c) Land subject to flooding

(2) Activities Subject to Regulation Under the Bylaw...

(b) Activities Within the Buffer Zone

Any activity proposed or undertaken within 100 feet of an area specified in Section 1.02(1)(a) above (hereinafter called the Buffer Zone) which, in the judgment of the Commission, will alter an Area Subject to Protection Under the Bylaw is subject to regulation under the Bylaw and requires the filing of a Notice of Intent."

(Regulations for the Town of Dunstable, Adopted 1986)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No Vernal pools are not mentioned in the jurisdiction or defined by the Commission in bylaw and regulations. Marilyn Pike, member of the Dunstable Conservation Commission, (11/08/04) said that they try to, but nothing is written down.

From 1.02: Statement of Jurisdiction,

"(1) Areas subject to Protection Under the Bylaw

(a) Any bank, any freshwater wetland, any beach, any dune, any flat, any marsh, or any swamp bordering on any creek, any river, any stream, any pond, or any lake.

(b) Land under any of the water bodies listed above

(c) Land subject to flooding

(2) Activities Subject to Regulation Under the Bylaw...

(b) Activities Within the Buffer Zone

Any activity proposed or undertaken within 100 feet of an area specified in Section 1.02(1)(a) above (hereinafter called the Buffer Zone) which, in the judgment of the Commission, will alter an Area Subject to Protection Under the Bylaw is subject to regulation under the Bylaw and requires the filing of a Notice of Intent."

(Regulations for the Town of Dunstable, Adopted 1986)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Duxbury

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition specifies that a vernal pool does not need to be certified to receive protection.

"The term vernal pool shall include any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. The presumption of essential habitat value may be overcome by the presentation of credible evidence which in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. The buffer zone for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression." From the Town of Duxbury Conservation Commission's Rule & Regulations, Section 8.3.1.

"Resource Areas associated with the Protected Interests are subject to protection under the Bylaw and are ANY of the following:

(1) Land under water bodies, including but not limited to the ocean, ponds, lakes, rivers, streams, creeks, estuaries, and banks;

(2) Land bordering on the ocean, including but not limited to, beaches, dunes, tidal flats, coastal bank, salt marshes, and salt meadows;

(3) Land subject to flooding or inundation by groundwater or surface water, including but not limited to freshwater wetlands, beaches, wet meadows, swamps, bogs, vernal pools, reservoirs or isolated wetlands;

(4) Land within 100 feet of any of the aforementioned Resources Areas (hereinafter referred to as the "Buffer Zone");

(5) Land subject to coastal storm flowage, including but not limited to the coastal floodplain as set forth on the Flood Insurance Rate Maps (FIRM);

(6) Land within 200 feet of any river, stream, or creek continuously flowing throughout the year toward a body of water (hereinafter referred to as the "Riparian Zone")." From the Town of Duxbury Conservation Commission's Rules & Regulations, Section 3.0.

"9.1.2. Jurisdiction. Except as permitted by the Conservation Commission or as provided in this Bylaw, no person shall remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any bank, fresh water or coastal wetland, isolated wetland, beach, dune, flat, marsh, wet meadow, bog, swamp, vernal pool, the ocean, estuary, creek, river, stream, pond or lake, land under water body, land subject to tidal action, coastal storm flowage, or flooding, land subject to flooding or inundation by ground water or surface water, land within a minimum distance of 100 feet from any of the aforesaid resource areas (buffer zone), and land within 200 feet of a river (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters." From Wetlands Protection Bylaw, Town of Duxbury

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools are given a buffer zone regardless of state certification and resource location.

"The term vernal pool shall include any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. The presumption of essential habitat value may be overcome by the presentation of credible evidence which in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. The buffer zone for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression." From the Town of Duxbury Conservation Commission's Rule & Regulations, Section 8.3.1.

"Resource Areas associated with the Protected Interests are subject to protection under the Bylaw and are ANY of the following:
(1) Land under water bodies, including but not limited to the ocean, ponds, lakes, rivers, streams, creeks, estuaries, and banks;
(2) Land bordering on the ocean, including but not limited to, beaches, dunes, tidal flats, coastal bank, salt marshes, and salt meadows;
(3) Land subject to flooding or inundation by groundwater or surface water, including but not limited to freshwater wetlands, beaches, wet meadows, swamps, bogs, vernal pools, reservoirs or isolated wetlands;
(4) Land within 100 feet of any of the aforementioned Resources Areas (hereinafter referred to as the "Buffer Zone");
(5) Land subject to coastal storm flowage, including but not limited to the coastal floodplain as set forth on the Flood Insurance Rate Maps (FIRM);
(6) Land within 200 feet of any river, stream, or creek continuously flowing throughout the year toward a body of water (hereinafter referred to as the "Riparian Zone")." From the Town of Duxbury Conservation Commission's Rules & Regulations, Section 3.0.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The definition of a vernal pool states that the buffer zone is 100 feet from the mean annual water line.

"The term vernal pool shall include any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. The presumption of essential habitat value may be overcome by the presentation of credible evidence which in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. The buffer zone for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression." From the Town of Duxbury Conservation Commission's Rule & Regulations, Section 8.3.1.

"Resource Areas associated with the Protected Interests are subject to protection under the Bylaw and are ANY of the following:
(1) Land under water bodies, including but not limited to the ocean, ponds, lakes, rivers, streams, creeks, estuaries, and banks;
(2) Land bordering on the ocean, including but not limited to, beaches, dunes, tidal flats, coastal bank, salt marshes, and salt meadows;
(3) Land subject to flooding or inundation by groundwater or surface water, including but not limited to freshwater wetlands, beaches, wet meadows, swamps, bogs, vernal pools, reservoirs or isolated wetlands;

- (4) Land within 100 feet of any of the aforementioned Resources Areas (hereinafter referred to as the "Buffer Zone");
- (5) Land subject to coastal storm flowage, including but not limited to the coastal floodplain as set forth on the Flood Insurance Rate Maps (FIRM);
- (6) Land within 200 feet of any river, stream, or creek continuously flowing throughout the year toward a body of water (hereinafter referred to as the "Riparian Zone")." From the Town of Duxbury Conservation Commission's Rules & Regulations, Section 3.0.

Easton

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Vernal pools are not listed under the jurisdiction on the Commission under section 503-2 of the Easton town code. Vernal pools are left undefined in section 503-4 of the Easton Town Code. However, in the online version includes vernal pools in the jurisdiction.

From Section 227-2. Jurisdiction, "Except as permitted by the Easton Commission or as provided in this chapter, no person shall remove, fill, dredge, build upon, degrade, or otherwise alter the following resource areas: any freshwater wetlands; marshes; wet meadows; bogsl swamps; vernal pools; banks; beaches; reservoirs; lakes; ponds of any size; streams; creeks; land under water bodies; lands subject to flooding or inundation by groundwater or surface water; and lands within 100 feet of any of the aforesaid resource areas; rives, streams and creeks whether perennial or intermittent; and lands within 200 feet of any river, stream, or creek (collectively the "resource areas protection / by this chapter"). Said resource areas shall be protected whether or not they border surface waters."

(Legal Code of the Town of Easton, Massachusetts, Chapter 227, Wetlands Protection)

On 11/08/04, the researcher called the Conservation Commission to clarify this. The staff said "yes and no". If the vernal pool is part of the estimated map of resource areas in the town, then it is considered a resource area and given protection as such. If the area is not on the map and under question, the staff said that generally a vernal pool will garner protection as an isolated land subject to flooding since the town does not set a size requirement for these lands.

From 503-19. Land subject to flood (both bordering and isolated areas)

"B.(2) Isolated land subject to flooding:

(a) Isolated land subject to flooding is an isolated or closed basin without an inlet or an outlet. It is an area which at least once a year confines standing water."

(Easton Town Code, Article I General Provisions and Procedures)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Vernal pools are not listed under the jurisdiction on the Commission under section 503-2 of the Easton town code. Vernal pools are left undefined in section 503-4 of the Easton Town Code. However, in the online version includes vernal pools in the jurisdiction.

From Section 227-2. Jurisdiction, "Except as permitted by the Easton Commission or as provided in this chapter, no person shall remove, fill, dredge, build upon, degrade, or otherwise alter the following resource areas: any freshwater wetlands; marshes; wet meadows; bogsl swamps; vernal pools; banks; beaches; reservoirs; lakes; ponds of any size; streams; creeks; land under water bodies; lands subject to flooding or inundation by groundwater or surface water; and lands within 100 feet of any of the aforesaid resource areas; rives, streams and creeks whether perennial or intermittent; and lands within 200 feet of any river, stream, or creek (collectively the "resource areas protection / by this chapter"). Said resource areas shall be protected whether or not they border surface waters."

(Legal Code of the Town of Easton, Massachusetts, Chapter 227, Wetlands Protection)

On 11/08/04, the researcher called the Conservation Commission to clarify this. The staff said "yes and no". If the vernal pool is part of the estimated map of resource areas in the town, then it is considered a resource area and given protection as such. If the area is not on the map and under question, the staff said that generally a vernal pool will garner protection as an isolated land subject to flooding since the town does not set a size requirement for these lands.

From 503-19. Land subject to flood (both bordering and isolated areas)

"B.(2) Isolated land subject to flooding:

(a) Isolated land subject to flooding is an isolated or closed basin without an inlet or an outlet. It is an area which at least once a year confines standing water."

(Easton Town Code, Article I General Provisions and Procedures)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Vernal pools are not listed under the jurisdiction on the Commission under section 503-2 of the Easton town code. Vernal pools are left undefined in section 503-4 of the Easton Town Code. However, in the online version includes vernal pools in the jurisdiction.

From Section 227-2. Jurisdiction, "Except as permitted by the Easton Commission or as provided in this chapter, no person shall remove, fill, dredge, build upon, degrade, or otherwise alter the following resource areas: any freshwater wetlands; marshes; wet meadows; bogswamps; vernal pools; banks; beaches; reservoirs; lakes; ponds of any size; streams; creeks; land under water bodies; lands subject to flooding or inundation by groundwater or surface water; and lands within 100 feet of any of the aforesaid resource areas; rivers, streams and creeks whether perennial or intermittent; and lands within 200 feet of any river, stream, or creek (collectively the "resource areas protection / by this chapter"). Said resource areas shall be protected whether or not they border surface waters."

(Legal Code of the Town of Easton, Massachusetts, Chapter 227, Wetlands Protection)

On 11/08/04, the researcher called the Conservation Commission to clarify this. The staff said "yes and no". If the vernal pool is part of the estimated map of resource areas in the town, then it is considered a resource area and given protection as such. If the area is not on the map and under question, the staff said that generally a vernal pool will garner protection as an isolated land subject to flooding since the town does not set a size requirement for these lands.

From 503-19. Land subject to flood (both bordering and isolated areas)

"B.(2) Isolated land subject to flooding:

(a) Isolated land subject to flooding is an isolated or closed basin without an inlet or an outlet. It is an area which at least once a year confines standing water."

(Easton Town Code, Article I General Provisions and Procedures)

Foxborough

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes David Risch, Foxboro Conservation Agent, (9/09/04) stated that the Commission protects all vernal pools in Foxboro with a 100 foot buffer.

Section 1, Subsection 11 states: "11. No activity associated with the construction of new subdivisions (including roadways, drainage or utility systems or individual homes) or individual homes or commercial/industrial projects shall be performed within 100' of any certified vernal pool or any isolated wetland which is identified by the Commonwealth of Massachusetts as the habitat of a state listed species. If an addition or renovation to an existing residential structure is proposed within 100' feet of a certified vernal pool, the Conservation Commission will review this activity on a case by case basis and issue conditions necessary to provide for maximum protection to the pool in question."

Note that vernal pools are not in jurisdiction, no definition is given for them, and the aforementioned section indicates state certification.

From Section 1 Wetland and Groundwater Protection By-Law,

"...3. No person shall remove, fill, dredge, drain or alter any bank, fresh water wetland, flat, marsh, meadow, bog, swamp, or lands bordering any creek, river, stream, pond or lake, or any land under said waters or any land subject to flooding, other than in the course of 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 and used to provide electric, gas, water, sanitary sewer, storm drainage, public roadway, telephone, telegraph, and other telecommunication services without filing written notice of his intention to so remove, fill, dredge, drain or alter and without receiving and complying to an order of conditions and provided all appeal periods have elapsed. Such notice shall be sent by certified mail to the Foxborough Conservation Commission, including such plans as may be necessary to describe such proposed activity and its effect on the environment.

4. The same notice of intent, plans and specifications required to be filed by an applicant under Massachusetts General Laws, Chapter 131, Section 40, will be accepted as fulfilling the requirements of

this by-law."

(Foxborough ARTICLE IX WETLAND AND GROUNDWATER PROTECTION, Adopted 1980)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes David Risch, Foxboro Conservation Agent, (9/09/04) stated that the Commission protects all vernal pools in Foxboro with a 100 foot buffer.

Section 1, Subsection 11 states: "11. No activity associated with the construction of new subdivisions (including roadways, drainage or utility systems or individual homes) or individual homes or commercial/industrial projects shall be performed within 100' of any certified vernal pool or any isolated wetland which is identified by the Commonwealth of Massachusetts as the habitat of a state listed species. If an addition or renovation to an existing residential structure is proposed within 100' feet of a certified vernal pool, the Conservation Commission will review this activity on a case by case basis and issue conditions necessary to provide for maximum protection to the pool in question."

Note that vernal pools are not in jurisdiction, no definition is given for them, and the aforementioned section indicates state certification.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 David Risch, Foxboro Conservation Agent, (9/09/04) stated that the Commission protects all vernal pools in Foxboro with a 100 foot buffer.

Section 1, Subsection 11 states: "11. No activity associated with the construction of new subdivisions (including roadways, drainage or utility systems or individual homes) or individual homes or commercial/industrial projects shall be performed within 100' of any certified vernal pool or any isolated wetland which is identified by the Commonwealth of Massachusetts as the habitat of a state listed species. If an addition or renovation to an existing residential structure is proposed within 100' feet of a certified vernal pool, the Conservation Commission will review this activity on a case by case basis and issue conditions necessary to provide for maximum protection to the pool in question."

Note that vernal pools are not in jurisdiction, no definition is given for them, and the aforementioned section indicates state certification.

Framingham

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes There is a definition for vernal pool habitat, which does not specify that the vernal pool needs to be state certified.

From Section 18.9 Definitions,

"Vernal Pool Habitat means confined basin depressions which, at least in most years, hold water for a minimum of two continuous months, and which are free of adult fish population, as well as the area within 125 feet of the mean annual boundaries of such depressions. These areas are essential breeding habitat, and provide other extremely important wildlife habitat functions during non-breeding season as well, for a variety of amphibian species such as wood frog (*Rana sylvatica*) and the spotted salamander (*Ambystoma maculatum*), and are important habitat for other wildlife species."

(Framingham Wetlands Protection Bylaw, Adopted 1992)

From Section 18.2 Jurisdiction, "Except as permitted by the Conservation Commission or as provided by this bylaw, no person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas: freshwater wetland, vernal pool, marsh, wet meadow, bog or swamp; any bank, beach, or flat; any lake, river, pond, or stream; any land under said waters; any land subject to flooding: Riverfront Area; or land subject to inundation by surface water during the 100 year event. Said resource areas shall be protected whether or not they border surface waters. The Commission may establish a no work/no alteration zone as appropriate to each application. Except as otherwise provided in the bylaw, any activity to be undertaken within the Buffer Zone as defined in Section 18.9 requires the filing of an application." Then from Section 18.9 Definitions, "Buffer Zone means that area of land extending one hundred twenty five (125) feet horizontally outward from the boundary of any

resource area specified in this Bylaw (Para. 18.2)."

(Framingham Wetlands Protection Bylaw, Adopted 1992)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Framingham includes vernal pools in its jurisdiction and the buffer zone around resource areas is 125 feet.

There is a definition for vernal pool habitat, which does not specify that the vernal pool needs to be state certified.

The researcher concluded from the jurisdiction and definition that Framingham protects all vernal pools and there is a 125 foot zone of protection from the edge of the mean water line.

From Section 18.2 Jurisdiction, "Except as permitted by the Conservation Commission or as provided by this bylaw, no person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas: freshwater wetland, vernal pool, marsh, wet meadow, bog or swamp; any bank, beach, or flat; any lake, river, pond, or stream: any land under said waters; any land subject to flooding: Riverfront Area; or land subject to inundation by surface water during the 100 year event. Said resource areas shall be protected whether or not they border surface waters. The Commission may establish a no work/no alteration zone as appropriate to each application. Except as otherwise provided in the bylaw, any activity to be undertaken within the Buffer Zone as defined in Section 18.9 requires the filing of an application." Then from Section 18.9 Definitions, "Buffer Zone means that area of land extending one hundred twenty five (125) feet horizontally outward from the boundary of any resource area specified in this Bylaw (Para. 18.2)."

Same section,

"Vernal Pool Habitat means confined basin depressions which, at least in most years, hold water for a minimum of two continuous months, and which are free of adult fish population, as well as the area within 125 feet of the mean annual boundaries of such depressions. These areas are essential breeding habitat, and provide other extremely important wildlife habitat functions during non-breeding season as well, for a variety of amphibian species such as wood frog (*Rana sylvatica*) and the spotted salamander (*Ambystoma maculatum*), and are important habitat for other wildlife species."

(Framingham Wetlands Protection Bylaw, Adopted 1992)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

125 Framingham includes vernal pools in its jurisdiction and the buffer zone around resource areas is 125 feet.

There is a definition for vernal pool habitat, which does not specify that the vernal pool needs to be state certified.

The researcher concluded from the jurisdiction and definition that Framingham protects all vernal pools and there is a 125 foot zone of protection from the edge of the mean water line.

From Section 18.2 Jurisdiction, "Except as permitted by the Conservation Commission or as provided by this bylaw, no person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas: freshwater wetland, vernal pool, marsh, wet meadow, bog or swamp; any bank, beach, or flat; any lake, river, pond, or stream: any land under said waters; any land subject to flooding: Riverfront Area; or land subject to inundation by surface water during the 100 year event. Said resource areas shall be protected whether or not they border surface waters. The Commission may establish a no work/no alteration zone as appropriate to each application. Except as otherwise provided in the bylaw, any activity to be undertaken within the Buffer Zone as defined in Section 18.9 requires the filing of an application." Then from Section 18.9 Definitions, "Buffer Zone means that area of land extending one hundred twenty five (125) feet horizontally outward from the boundary of any resource area specified in this Bylaw (Para. 18.2)."

Same section,

"Vernal Pool Habitat means confined basin depressions which, at least in most years, hold water for a minimum of two continuous months, and which are free of adult fish population, as well as the area within 125 feet of the mean annual boundaries of such depressions. These areas are essential breeding habitat, and provide other extremely important wildlife habitat functions during non-breeding season as well, for a variety of amphibian species such as wood frog (*Rana sylvatica*) and the spotted salamander (*Ambystoma maculatum*), and are important habitat for other wildlife species."

(Framingham Wetlands Protection Bylaw, Adopted 1992)

Franklin

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition of vernal pools in both the bylaw and regulations specify that the vernal pool does not need to be state certified to be protected.

From Section 181-4. Definitions,

"VERNAL POOL -- A confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer and which is free of adult fish populations, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. Where there is a conflict of opinion as to the extent of the vernal pool or the extent of the habitat area, the applicant may submit an opinion certified by a registered professional engineer and/or a competent professional with at least two years experience in wildlife habitat evaluation, following the procedures set forth in MGL c. 131, 40 and 310 CMR 10.00, as to the probable extent of the pool and the habitat area."

(Franklin Wetlands Bylaw, Adopted 1997)

The Franklin Conservation Commission rules and regulations define a vernal pool as "Any isolated wetland subject to flooding which is determined by a vote of the commission to be capable of satisfying the definition of a vernal pool as set forth in the Mass DEP Regulations 310, CMR 10.00."

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

From Section 181-2. Jurisdiction,

"B. Except as permitted by the Conservation Commission or as provided in this chapter, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas: any freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; beaches; intermittent streams; lands under water bodies; lands within 100 feet of any aforesaid wetland or floodplain areas; lands subject to flooding or inundation by groundwater or surface water; rivers and streams; and lands within 200 feet of the mean annual high-water line of any river or stream.

C. The above-referenced areas are the resource areas protected by this chapter. Said resource areas shall be protected whether or not they border surface waters."

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

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools are given buffer zones regardless of state certification and resource location.

From Section 181-2. Jurisdiction,

"B. Except as permitted by the Conservation Commission or as provided in this chapter, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas: any freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; beaches; intermittent streams; lands under water bodies; lands within 100 feet of any aforesaid wetland or floodplain areas; lands subject to flooding or inundation by groundwater or surface water; rivers and streams; and lands within 200 feet of the mean annual high-water line of any river or stream.

C. The above-referenced areas are the resource areas protected by this chapter. Said resource areas shall be protected whether or not they border surface waters."

From Section 181-4. Definitions,

"VERNAL POOL -- A confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer and which is free of adult fish populations, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. Where there is a conflict of opinion as to the extent of the vernal pool or the extent of the habitat area, the applicant may submit an opinion certified by a registered professional engineer and/or a competent professional with at least two years experience in wildlife habitat evaluation, following the procedures set forth in MGL c. 131, 40 and 310 CMR 10.00, as to the probable extent of the pool and the habitat area."

(Franklin Wetlands Bylaw, Adopted 1997)

The Franklin Conservation Commission rules and regulations define a vernal pool as "Any isolated wetland subject to flooding which is determined by a vote of the commission to be capable of satisfying the definition of a vernal pool as set forth in the Mass DEP Regulations 310, CMR 10.00."

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The jurisdiction includes vernal pools and the definition of vernal pools in both the bylaw and regulations specify that the vernal pool does not need to be state certified to be protected. From the regulations, it appears that the Commission has a 100 foot zone of jurisdiction from the mean annual water line.

From Section 181-2. Jurisdiction,

"B. Except as permitted by the Conservation Commission or as provided in this chapter, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas: any freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; beaches; intermittent streams; lands under water bodies; lands within 100 feet of any aforesaid wetland or floodplain areas; lands subject to flooding or inundation by groundwater or surface water; rivers and streams; and lands within 200 feet of the mean annual high-water line of any river or stream.

C. The above-referenced areas are the resource areas protected by this chapter. Said resource areas shall be protected whether or not they border surface waters."

From Section 181-4. Definitions,

"VERNAL POOL -- A confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer and which is free of adult fish populations, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. Where there is a conflict of opinion as to the extent of the vernal pool or the extent of the habitat area, the applicant may submit an opinion certified by a registered professional engineer and/or a competent professional with at least two years experience in wildlife habitat evaluation, following the procedures set forth in MGL c. 131, 40 and 310 CMR 10.00, as to the probable extent of the pool and the habitat area."

(Franklin Wetlands Bylaw, Adopted 1997)

The Franklin Conservation Commission rules and regulations define a vernal pool as "Any isolated wetland subject to flooding which is determined by a vote of the commission to be capable of satisfying the definition of a vernal pool as set forth in the Mass DEP Regulations 310, CMR 10.00."

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

Freetown

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Vernal pools are not mentioned in the jurisdiction and there is no additional definition for this resource.

From the bylaw, "[a] conservation permit is needed whenever any work or alteration falls in or within 100 feet of any of the following resource areas: fresh water wetland (regardless of size); coastal wetland or saltmarsh; beach; dune; (tidal) flat; water-body (including ponds, river, streams, estuaries or the ocean); land under said waters; coastal bank (defined by slope-ratio and including any such slopes within the 100-year flood zone); inland bank (defined by slope-ratio) that leads to a freshwater wetland or water-body, and land subject to flooding or inundation by groundwater, surface water tidal action or storm flowage (the "100-year Flood Zone").

(Freetown Wetland Bylaw)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No Vernal pools are not mentioned in the jurisdiction and there is no additional definition for this resource.

From the bylaw, "[a] conservation permit is needed whenever any work or alteration falls in or within 100 feet of any of the following resource areas: fresh water wetland (regardless of size); coastal wetland or saltmarsh; beach; dune; (tidal) flat; water-body (including ponds, river, streams, estuaries or the ocean); land under said waters; coastal bank (defined by slope-ratio and including any such slopes within the 100-year flood zone); inland bank (defined by slope-ratio) that leads to a freshwater wetland or water-body, and land subject to flooding or inundation by groundwater, surface water tidal action or storm flowage (the "100-year Flood Zone").

(Freetown Wetland Bylaw)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Georgetown

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Non-certified vernal pools are protected. The boundaries are delineated based on the maximum of one of the following: the first observable break in slope, mean annual high water level, or highest known observation of water level recorded.

"The term "vernal pool" shall include, in addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131, §40 and Regulations thereunder, 310 CMR 10.00 as revised, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least fifty (50) cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife or any other appropriate state certifying bodies.

3.6.2. Presumption of Vernal Pool Habitat

Vernal pools are protected as a resource under the Bylaw. Vernal pool habitat exists if a water body's physical characteristics conform with those defined for vernal pools in section 10 (Definitions). This is a presumptive definition of the existence and extent of vernal pools, based on systematic field observations in the Town of Georgetown by the Georgetown Conservation Commission showing that virtually all basins that possess the above characteristics actually host breeding vernal pool species. A vernal pool may have an intermittent inflow, an intermittent outflow, may be contained partially or entirely within a wetland, or may be isolated. The boundary of a vernal pool is, which ever is higher, the first observable break in slope, mean annual high water level, or highest known observation of water level recorded.

The presumption of vernal pool habitat may be overcome, with the presentation of credible evidence, which in the judgment of the Commission demonstrates that the water body does not provide, or cannot provide, vernal pool habitat functions.

3.6.3. Demonstrating that a Ponding Area Is Not a Vernal Pool

a. For the purposes of overcoming the presumption of vernal pool habitat the Commission will consider, as presented by a qualified independent reviewer:

a. Evidence that the ponding area does not hold water for at least two continuous months in most years. As a rule of thumb, the term "most years" shall mean three out of five consecutive years of average rain fall.

b. Evidence that vernal pool species do not breed or have not bred in the ponding area for at least three consecutive years of average rain fall. The Commission shall provide explicit guidelines for this evidence.

c. Evidence that the ponding area could not be a viable breeding site for vernal pool species due to incompatible physical, chemical, biological, or other persistent conditions at the site in most years. Such evidence could include, without limitation, several months of pH and dissolved oxygen measurements yielding values incompatible with breeding of any animal species known to be a vernal pool indicator." From The Town of Georgetown's Wetlands Protection Regulations, Section 3.6.1-3.6.3 (Adopted June 2003).

Although vernal pools are protected as a resource area according to section 3.6.2, they are not expressly addressed in the jurisdiction of the bylaw.

§ 161-2. Jurisdiction. [Amended 6-12-2000 ATM, Art. 21]

Except as permitted by the Conservation Commission or as provided in this chapter, no person shall remove, fill, dredge, build upon or alter the following resource areas: within 100 feet of any freshwater wetland, marsh, wet meadow, bog or swamp; within 100 feet of any bank or flat; any lake, river, pond, stream, or estuary; any land under said waters; or within 100 feet of any land subject to flooding or inundation by groundwater or surface water; and within 200 feet of any river, perennial stream, brook or creek.

(Georgetown Chapter 161, Wetlands Protection, Adopted 1986)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes There is a buffer of 100 feet, except in cases where this zone cuts into preexisting development or landscaping.

"The term "Vernal Pool" shall include, in addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131, §40 and Regulations thereunder, 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The presumption of essential habitat value may be overcome by the presentation of credible evidence, which in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the regulations. The adjacent upland resource area for vernal pools shall extend one hundred (100) horizontal linear feet from the mean annual high-water line defining the depression, or one-half of the distance between the vernal pool and any existing house foundation, whichever is smaller. In either case, the adjacent upland resource area for vernal pools shall not extend over existing lawns, gardens, landscaped or developed areas." From The Town of Georgetown's Wetlands Protection Regulations, Section 10.1.14. (Adopted June 2003).

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 There is a buffer of 100 feet, except in cases where this zone cuts into preexisting development or landscaping.

"The term "Vernal Pool" shall include, in addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131, §40 and Regulations thereunder, 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The presumption of essential habitat value may be overcome by the presentation of credible evidence, which in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the regulations. The adjacent upland resource area for vernal pools shall extend one hundred (100) horizontal linear feet from the mean annual high-water line defining the depression, or one-half of the distance between the vernal pool and any existing house foundation, whichever is smaller. In either case, the adjacent upland resource area for vernal pools shall not extend over existing lawns, gardens, landscaped or developed areas." From The Town of Georgetown's Wetlands Protection Regulations, Section 10.1.14. (Adopted June 2003).

Gloucester

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No According to the ordinance, vernal pools are only protected if they are state certified. The researcher asked the conservation agent if non-certified vernal pools could garner protection under the 2000 isolated lands subject to flooding provision -- the agent told her they would not, but that the researcher should keep an eye for changes to the ordinance in the coming months. (11/1/04)

"Vernal pool is any body of water which has been certified by the Massachusetts Natural Heritage Endangered Species Program as a vernal pool." From the Gloucester Wetlands Ordinance, Section 12.14 (Adopted 1990, Amended 2000).

"The following areas, also referred to as resource areas, are subject to protection under this article:

- (1) Any bank, any freshwater wetland, any coastal wetland, any beach, any dune, any flat, any marsh, or any swamp, bordering on the ocean, any estuary, any creek, any river, any stream, any pond or any lake.
- (2) Land under any of the water bodies listed above.
- (3) Any bog, swamp, marsh or wet meadow, not otherwise included in (1) above.
- (4) Land subject to tidal action.
- (5) Land subject to coastal storm flowage.
- (6) Land subject to flooding.
- (7) Areas designated by the secretary of environmental affairs as Areas of Critical Environmental Concern (ACEC), including without limitation the Parker River/Essex Bay ACEC.
- (8) Land extending one hundred (100) feet horizontally outward from the boundary of an ACEC (hereinafter called the upland edge).
- (9) Vernal pools as defined in section 12-11.
- (10) Isolated land subject to flooding which contains at least one thousand (1,000) cubic feet of water volume at least once annually with an average depth of at least six (6) inches, whether flooded by surface water or rising groundwater. Isolated land subject to flooding lacks a buffer zone." From the Gloucester Wetlands Ordinance, Section 12.11 (Adopted 1990, Amended

2000).

"Buffer zone means the area extending one hundred (100) feet horizontally outward from the resource areas numbered (1) and (2) of section 12-11, subsection (b) and/or two hundred (200) feet horizontally from (8) of section 12-11, subsection (b). From the Gloucester Wetlands Ordinance, Section 12.14 (Adopted 1990, Amended 2000).

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No According to the ordinance, vernal pools are only protected if they are state certified. The researcher asked the conservation agent if non-certified vernal pools could garner protection under the 2000 isolated lands subject to flooding provision -- the agent told her they would not, but that the researcher should keep an eye for changes to the ordinance in the coming months. (11/1/04)

"Vernal pool is any body of water which has been certified by the Massachusetts Natural Heritage Endangered Species Program as a vernal pool." From the Gloucester Wetlands Ordinance, Section 12.14 (Adopted 1990, Amended 2000).

"The following areas, also referred to as resource areas, are subject to protection under this article:

(1) Any bank, any freshwater wetland, any coastal wetland, any beach, any dune, any flat, any marsh, or any swamp, bordering on the ocean, any estuary, any creek, any river, any stream, any pond or any lake.

(2) Land under any of the water bodies listed above.

(3) Any bog, swamp, marsh or wet meadow, not otherwise included in (1) above.

(4) Land subject to tidal action.

(5) Land subject to coastal storm flowage.

(6) Land subject to flooding.

(7) Areas designated by the secretary of environmental affairs as Areas of Critical Environmental Concern (ACEC), including without limitation the Parker River/Essex Bay ACEC.

(8) Land extending one hundred (100) feet horizontally outward from the boundary of an ACEC (hereinafter called the upland edge).

(9) Vernal pools as defined in section 12-11.

(10) Isolated land subject to flooding which contains at least one thousand (1,000) cubic feet of water volume at least once annually with an average depth of at least six (6) inches, whether flooded by surface water or rising groundwater. Isolated land subject to flooding lacks a buffer zone." From the Gloucester Wetlands Ordinance, Section 12.11 (Adopted 1990, Amended 2000).

"Buffer zone means the area extending one hundred (100) feet horizontally outward from the resource areas numbered (1) and (2) of section 12-11, subsection (b) and/or two hundred (200) feet horizontally from (8) of section 12-11, subsection (b). From the Gloucester Wetlands Ordinance, Section 12.14 (Adopted 1990, Amended 2000).

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Grafton

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No The researcher found no reference to vernal pools in the wetlands protection regulations or bylaws. However, a member of Conservation Commission staff was surprised to learn that vernal pools were not already covered under Grafton's bylaw. She told the researcher that she thought even something "looked like it could be a vernal pool" was generally granted a 100 foot buffer. (11/04)

Note: the researcher noted that many vernal pools would likely fit the town definition of LSF and therefore given protection and a buffer zone.

"Except as permitted by the Conservation Commission or as provided in this by-law, no person shall remove, fill, dredge, build upon, or alter the following resource areas: within 100 feet of any freshwater wetland, vegetative wetland, marsh, wet meadow, bog or swamp; within 100 feet of any bank, beach, or flat; any lake, river, pond, stream or estuary; or within 100 feet of any land subject to flooding or inundation by groundwater, surface water, tidal action, or storm flowage." From the Town of Grafton's General Wetlands Protection By-Law Article 26, Section 3 (Adopted 1987, Amended 1990).

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No The researcher found no reference to vernal pools in the wetlands protection regulations or bylaws. However, a member of Conservation Commission staff was surprised to learn that vernal pools were not already covered under Grafton's bylaw. She told the researcher that she thought even something "looked like it could be a vernal pool" was generally granted a 100 foot buffer. (11/04)

Note: the researcher noted that many vernal pools would likely fit the town definition of LSF and therefore given protection and a buffer zone.

"Except as permitted by the Conservation Commission or as provided in this by-law, no person shall remove, fill, dredge, build upon, or alter the following resource areas: within 100 feet of any freshwater wetland, vegetative wetland, marsh, wet meadow, bog or swamp; within 100 feet of any bank, beach, or flat; any lake, river, pond, stream or estuary; or within 100 feet of any land subject to flooding or inundation by groundwater, surface water, tidal action, or storm flowage." From the Town of Grafton's General Wetlands Protection By-Law Article 26, Section 3 (Adopted 1987, Amended 1990).

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Groton

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition of a vernal pool indicates that the local Commission can determine a vernal pool.

"Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter any of the following resource areas protected by this chapter, (collectively, "wetland resource areas"): any wetland, including, but not limited to, any freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, creek, beach or bank, reservoir, lake, pond of any size, land under any water body or within 100 feet of any of the aforesaid resource areas; any river or stream, including land within 200 feet of same; or any land subject to flooding or inundation by stormwater, groundwater or surface water."
From the Town of Groton Wetlands Protection Bylaw, Section 215.2 (Adopted 2001, Amended 2003).

"VERNAL POOL: (1) Shall include any confined basin or depression which, at least in most years, holds water for a minimum of two continuous months during spring and/or summer, and which is free of adult predatory fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, and presumptively includes seasonal wetlands, regardless of whether the site has been certified as a vernal pool by the Massachusetts Division of Fisheries and Wildlife. (2) The adjacent upland resource area for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or one-half of the distance between the vernal pool and any existing house foundation, whichever is smaller. In either case, the adjacent upland resource area for vernal pools shall not extend over lawns, gardens, and landscaped or developed areas existing as of the effective date of this chapter." From the Town of Groton Wetlands Protection Bylaw, Section 215-9 (B) (Adopted 2001, Amended 2003).

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have buffer zones regardless of state certification and resource location.

"Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter any of the following resource areas protected by this chapter, (collectively, "wetland resource areas"): any wetland, including, but not limited to, any freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, creek, beach or bank, reservoir, lake, pond of any size, land under any water body or within 100 feet of any of the aforesaid resource areas; any river or stream, including land within 200 feet of same; or any land subject to flooding or inundation by stormwater, groundwater or surface water."
From the Town of Groton Wetlands Protection Bylaw, Section 215.2 (Adopted 2001, Amended 2003).

"VERNAL POOL: (1) Shall include any confined basin or depression which, at least in most years, holds water for a minimum of two continuous months during spring and/or summer, and which is free of adult predatory fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, and presumptively includes seasonal wetlands, regardless of whether the site has been certified as a vernal pool by the Massachusetts Division of Fisheries and Wildlife. (2) The adjacent upland resource area for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or one-half of the distance between the vernal pool and any existing house foundation, whichever is smaller. In either case, the adjacent upland resource area for vernal pools shall not extend over lawns, gardens, and landscaped or developed areas existing as of the effective date of this chapter." From the Town of Groton Wetlands Protection Bylaw, Section 215-9 (B) (Adopted 2001, Amended 2003).

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The language in the bylaw could be interpreted as 200 feet of protection around the vernal pool (100 foot habitat from the vernal pool definition plus 100 feet of buffer zone.) However, on 11/4/04 the researcher confirmed with the conservation agent that a vernal pool is only granted 100 feet of protection from the water-line.

"Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter any of the following resource areas protected by this chapter, (collectively, "wetland resource areas"): any wetland, including, but not limited to, any freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, creek, beach or bank, reservoir, lake, pond of any size, land under any water body or within 100 feet of any of the aforesaid resource areas; any river or stream, including land within 200 feet of same; or any land subject to flooding or inundation by stormwater, groundwater or surface water."

From the Town of Groton Wetlands Protection Bylaw, Section 215.2 (Adopted 2001, Amended 2003).

"VERNAL POOL: (1) Shall include any confined basin or depression which, at least in most years, holds water for a minimum of two continuous months during spring and/or summer, and which is free of adult predatory fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, and presumptively includes seasonal wetlands, regardless of whether the site has been certified as a vernal pool by the Massachusetts Division of Fisheries and Wildlife. (2) The adjacent upland resource area for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or one-half of the distance between the vernal pool and any existing house foundation, whichever is smaller. In either case, the adjacent upland resource area for vernal pools shall not extend over lawns, gardens, and landscaped or developed areas existing as of the effective date of this chapter." From the Town of Groton Wetlands Protection Bylaw, Section 215-9 (B) (Adopted 2001, Amended 2003).

"VERNAL POOL: (1) Shall include any confined basin or depression which, at least in most years, holds water for a minimum of two continuous months during spring and/or summer, and which is free of adult predatory fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, and presumptively includes seasonal wetlands, regardless of whether the site has been certified as a vernal pool by the Massachusetts Division of Fisheries and Wildlife. (2) The adjacent upland resource area for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or one-half of the distance between the vernal pool and any existing house foundation, whichever is smaller. In either case, the adjacent upland resource area for vernal pools shall not extend over lawns, gardens, and landscaped or developed areas existing as of the effective date of this chapter." From the Town of Groton Wetlands Protection Bylaw, Section 215-9 (B) (Adopted 2001, Amended 2003).

Groveland

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition specifies that vernal pool does not need certification to receive protection by the Commission.

"The term "vernal pool" shall include a confined basin depression, which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries." From the Town of Groveland Wetlands Bylaws, VIII (Adopted 1995).

"The following resource areas are subject to protection under the Bylaw:

- a. Fresh Water Wetlands,
- b. Marshes,
- c. Wet Meadows,
- d. Bogs,
- e. Swamps,
- f. Lakes,
- g. Rivers,

- h. Ponds,
 - i. Streams,
 - j. Land within 100 feet of the above resource areas,
 - k. Land under water in the above areas,
 - l. Land subject to flooding or inundation by groundwater or surface water, and
 - m. Land within 100 feet of said land subject to flooding or inundation,
 - n. Land within 200 feet of the mean high water mark along the Merrimack River.”
- From the Town of Groveland Wetlands Protection Bylaws, II.1 (Adopted 1995).

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Groveland regulates activities in buffer zones around vernal pools regardless of resource location or certification.

“The term “vernal pool” shall include a confined basin depression, which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries.” From the Town of Groveland Wetlands Bylaws, VIII (Adopted 1995).

“The following resource areas are subject to protection under the Bylaw:

- a. Fresh Water Wetlands,
 - b. Marshes,
 - c. Wet Meadows,
 - d. Bogs,
 - e. Swamps,
 - f. Lakes,
 - g. Rivers,
 - h. Ponds,
 - i. Streams,
 - j. Land within 100 feet of the above resource areas,
 - k. Land under water in the above areas,
 - l. Land subject to flooding or inundation by groundwater or surface water, and
 - m. Land within 100 feet of said land subject to flooding or inundation,
 - n. Land within 200 feet of the mean high water mark along the Merrimack River.”
- From the Town of Groveland Wetlands Protection Bylaws, II.1 (Adopted 1995).

Email from Conservation Commission, 11/8/04:

"From: Claudia McKee [mailto:claudia_mckee@comcast.net]
 Sent: Monday, November 08, 2004 3:18 PM
 To: adriana@pioneerinstitute.org
 Cc: btr@shore.net; 'Dorna Caskie'
 Subject: Re: Wetlands Bylaws and Regulation

Hi Adriana,

The Commission's jurisdiction is within 100 feet of the mean annual high water mark, or 100 feet from each flagged edge of the boundary of a vernal pool. The Commission will choose to approve one or the other, only after the applicant files an abbreviated notice of resource area delineation with their proposed boundary line and if we feel it necessary, after re-delineation by one of our approved scientists. We then make the decision of jurisdictional areas.

[...]

Claudia"

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Groveland regulates activities in buffer zones around vernal pools regardless of resource location or certification.

“The term “vernal pool” shall include a confined basin depression, which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within

100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries." From the Town of Groveland Wetlands Bylaws, VIII (Adopted 1995).

"The following resource areas are subject to protection under the Bylaw:

- a. Fresh Water Wetlands,
 - b. Marshes,
 - c. Wet Meadows,
 - d. Bogs,
 - e. Swamps,
 - f. Lakes,
 - g. Rivers,
 - h. Ponds,
 - i. Streams,
 - j. Land within 100 feet of the above resource areas,
 - k. Land under water in the above areas,
 - l. Land subject to flooding or inundation by groundwater or surface water, and
 - m. Land within 100 feet of said land subject to flooding or inundation,
 - n. Land within 200 feet of the mean high water mark along the Merrimack River."
- From the Town of Groveland Wetlands Protection Bylaws, II.1 (Adopted 1995).

Email from Conservation Commission, 11/8/04:

"From: Claudia McKee [mailto:claudia_mckee@comcast.net]
Sent: Monday, November 08, 2004 3:18 PM
To: adriana@pioneerinstitute.org
Cc: btr@shore.net; 'Dorna Caskie'
Subject: Re: Wetlands Bylaws and Regulation

Hi Adriana,

The Commission's jurisdiction is within 100 feet of the mean annual high water mark, or 100 feet from each flagged edge of the boundary of a vernal pool. The Commission will choose to approve one or the other, only after the applicant files an abbreviated notice of resource area delineation with their proposed boundary line and if we feel it necessary, after re-delineation by one of our approved scientists. We then make the decision of jurisdictional areas.

[...]

Claudia"

Halifax

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Researcher found no reference to vernal pools in the bylaw or accompanying regulations. However, the conservation agent (12/22/04) said that vernal pools garnered protection as isolated lands subject to flooding. Lands subject to flooding are included in the jurisdiction of the bylaw.

"Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, or alter the following resource areas: any freshwater wetland including any marsh, wet meadow, bog or swamp, or within 100 feet of any bank, beach, lake, river, pond or stream; any land under said waters, any land subject to flooding or inundation by groundwater or surface water or within 100 feet of such land." From Halifax's Wetlands Protection Bylaws, Jurisdiction (Adopted 1989).

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Hamilton

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition of vernal pools indicates that they do not need to be state certified to receive protection.

Section 2.10 of the Hamilton conservation regulations reads in part:

"Vernal pools are temporary freshwater bodies that annually hold water for a minimum of 2 consecutive months during the spring and/or summer and which are free of adult fish populations...In the absence of certification by the MA Department of Fisheries and Wildlife a "vernal pool" as described in this section must meet both of the following criteria to be protected:

10.1 It must be a minimum of 200 sq. ft. in surface area as defined by the greatest limit of flooding observed or determined by field indicators of hydrology.

10.2 There must be evidence of endangered, rare, or threatened wildlife, "species of special concern" or obligate vernal pool breeders as listed by the MA Natural Heritage program."

(Town of Hamilton Conservation Bylaw Regulations)

Section I of the Hamilton Conservation regulations states:

"C. Jurisdiction

The areas subject to protection under the Bylaw differ from those protected by the Act in that additional areas are protected by this Bylaw. The additional areas subject to protection under the Bylaw include smaller ponds, vernal pools and certain freshwater wetlands that may not meet the definition of bordering vegetated wetland under the Act and including Associated Upland Resource Areas (AURA's) as defined below.

1. Vernal Pools - Such areas are presumed to be significant to the 'wildlife' and 'wildlife habitat' interests of the Bylaw. This presumption of significance can exist in the absence of certification by the MA Division of Fisheries and Wildlife and whether or not the vernal pool is located outside a wetland. Such areas can be regulated by the Bylaw since these areas protect the public interests identified in the Bylaw. See Section II Definitions for more detail.

2. Freshwater Wetland - Certain land may not meet the definition of a bordering vegetated wetland under the Act but still provide identified, important wetland functions and values. Such areas are significant to all of the interests of the Bylaw. Such areas are regulated by the Bylaw since these areas protect the public interests in the Bylaw. See Section II Definitions for more detail.

3. Associated Upland Resource Area - The Associated Upland Resource Area ("AURA" hereafter) means that area of land extending 100 feet horizontally outward from the boundary of any area specified in these Regulations in Article I or Article II, or in 310 CMR 10.02(1)(a-e) as amended... The AURA is a RESOURCE AREA under the By Law. The AURA serves to protect the following interest established in the By Law; public and private water supply, groundwater supply, flood control, storm damage prevention, pollution prevention, protection of wildlife habitat, and preservation of aesthetics. Specifically, public and private water supply benefit from undisturbed, or minimally disturbed, vegetative cover..."

(Town of Hamilton Conservation Bylaw Regulations)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Vernal pools are given a buffer zone regardless of state certification and location of the resource.

Section I of the Hamilton Conservation regulations states:

"C. Jurisdiction

The areas subject to protection under the Bylaw differ from those protected by the Act in that additional areas are protected by this Bylaw. The additional areas subject to protection under the Bylaw include smaller ponds, vernal pools and certain freshwater wetlands that may not meet the definition of bordering vegetated wetland under the Act and including Associated Upland Resource Areas (AURA's) as defined below.

1. Vernal Pools - Such areas are presumed to be significant to the 'wildlife' and 'wildlife habitat' interests of the Bylaw. This presumption of significance can exist in the absence of certification by the MA Division of Fisheries and Wildlife and whether or not the vernal pool is located outside a wetland. Such areas can be regulated by the Bylaw since these areas protect the public interests identified in the Bylaw. See Section II Definitions for more detail.

2. Freshwater Wetland - Certain land may not meet the definition of a bordering vegetated wetland under the Act but still provide

identified, important wetland functions and values. Such areas are significant to all of the interests of the Bylaw. Such areas are regulated by the Bylaw since these areas protect the public interests in the Bylaw. See Section II Definitions for more detail.

3. Associated Upland Resource Area - The Associated Upland Resource Area ("AURA" hereafter) means that area of land extending 100 feet horizontally outward from the boundary of any area specified in these Regulations in Article I or Article II, or in 310 CMR 10.02(1)(a-e) as amended... The AURA is a RESOURCE AREA under the By Law. The AURA serves to protect the following interest established in the By Law; public and private water supply, groundwater supply, flood control, storm damage prevention, pollution prevention, protection of wildlife habitat, and preservation of aesthetics. Specifically, public and private water supply benefit from undisturbed , or minimally disturbed, vegetative cover..."

Section 2.10 of the Hamilton conservation regulations reads in part:

"Vernal pools are temporary freshwater bodies that annually hold water for a minimum of 2 consecutive months during the spring and/or summer and which are free of adult fish populations...In the absence of certification by the MA Department of Fisheries and Wildlife a "vernal pool" as described in this section must meet both of the following criteria to be protected:

10.1 It must be a minimum of 200 sq. ft. in surface area as defined by the greatest limit of flooding observed or determined by field indicators of hydrology.

10.2 There must be evidence of endangered, rare, or threatened wildlife, "species of special concern" or obligate vernal pool breeders as listed by the MA Natural Heritage program."

(Town of Hamilton Conservation Bylaw Regulations)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Vernal pools are protected in the regulations and the definition indicates that they do not need to be state certified to receive protection. Further, the commission defines a 100 foot zone from a resource area as that protected under the bylaw and regulations.

Section I of the Hamilton Conservation regulations states:

"C. Jurisdiction

The areas subject to protection under the Bylaw differ from those protected by the Act in that additional areas are protected by this Bylaw. The additional areas subject to protection under the Bylaw include smaller ponds, vernal pools and certain freshwater wetlands that may not meet the definition of bordering vegetated wetland under the Act and including Associated Upland Resource Areas (AURA's) as defined below.

1. Vernal Pools - Such areas are presumed to be significant to the 'wildlife' and 'wildlife habitat' interests of the Bylaw. This presumption of significance can exist in the absence of certification by the MA Division of Fisheries and Wildlife and whether or not the vernal pool is located outside a wetland. Such areas can be regulated by the Bylaw since these areas protect the public interests identified in the Bylaw. See Section II Definitions for more detail.

2. Freshwater Wetland - Certain land may not meet the definition of a bordering vegetated wetland under the Act but still provide identified, important wetland functions and values. Such areas are significant to all of the interests of the Bylaw. Such areas are regulated by the Bylaw since these areas protect the public interests in the Bylaw. See Section II Definitions for more detail.

3. Associated Upland Resource Area - The Associated Upland Resource Area ("AURA" hereafter) means that area of land extending 100 feet horizontally outward from the boundary of any area specified in these Regulations in Article I or Article II, or in 310 CMR 10.02(1)(a-e) as amended... The AURA is a RESOURCE AREA under the By Law. The AURA serves to protect the following interest established in the By Law; public and private water supply, groundwater supply, flood control, storm damage prevention, pollution prevention, protection of wildlife habitat, and preservation of aesthetics. Specifically, public and private water supply benefit from undisturbed , or minimally disturbed, vegetative cover..."

Section 2.10 of the Hamilton conservation regulations reads in part:

"Vernal pools are temporary freshwater bodies that annually hold water for a minimum of 2 consecutive months during the spring and/or summer and which are free of adult fish populations...In the absence of certification by the MA Department of Fisheries and Wildlife a "vernal pool" as described in this section must meet both of the following criteria to be protected:

10.1 It must be a minimum of 200 sq. ft. in surface area as defined by the greatest limit of flooding observed or determined by field indicators of hydrology.

10.2 There must be evidence of endangered, rare, or threatened wildlife, "species of special concern" or obligate vernal pool breeders as listed by the MA Natural Heritage program."

(Town of Hamilton Conservation Bylaw Regulations)

Jim Hankin, Hamilton Conservation Administrator, (9/02/04) stated that while there is not a traditional 100 foot buffer zone around vernal pools, they are protected by Section III of the Hamilton Wetlands Regulations. They are given a 50 foot no build zone and a 25 foot no disturb zone.

This researcher concluded that the conservation contact was specifying the usual set backs the town provides for vernal pools. However, the regulations clearly state that there is at least a 100 foot zone of jurisdiction around a vernal pool (the AURA) for

which the Conservation Commission has jurisdiction.

Hanover

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition specifies that the vernal pool does not have to be certified to be protected.

According to Section IX of the rules and regulations of the Hanover Wetlands Bylaw, "The term vernal pool shall include a confined basin depression which at least in most years hold water for a minimum of two months in the spring and/or summer and which is free of adult fish populations as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. Vernal pools are breeding habitat for obligate amphibian, reptile, crustacean, mollusk or insect populations. The presumption that an area may represent a vernal pool shall prevail through a minimum of one spring breeding season, for the purposes of documenting the occurrences of breeding activity or the lack of breeding activity of obligate vernal pool species."

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

Section V, Section A.1 of the rules and regulations of the Hanover Wetlands Bylaw states that "Area within 100 feet of any freshwater wetland, swamp, estuary, lake, pond, bank, marsh, wet meadow, vernal pool, stream, storm water storage area or land subject to flooding whether bordering or isolated" are subject to protection under the bylaw.

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

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools are given a buffer zone regardless of state certification and location of the resource.

According to Section IX of the rules and regulations of the Hanover Wetlands Bylaw, "The term vernal pool shall include a confined basin depression which at least in most years hold water for a minimum of two months in the spring and/or summer and which is free of adult fish populations as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. Vernal pools are breeding habitat for obligate amphibian, reptile, crustacean, mollusk or insect populations. The presumption that an area may represent a vernal pool shall prevail through a minimum of one spring breeding season, for the purposes of documenting the occurrences of breeding activity or the lack of breeding activity of obligate vernal pool species."

Section V, Section A.1 of the rules and regulations of the Hanover Wetlands Bylaw states that "Area within 100 feet of any freshwater wetland, swamp, estuary, lake, pond, bank, marsh, wet meadow, vernal pool, stream, storm water storage area or land subject to flooding whether bordering or isolated" are subject to protection under the bylaw.

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

200 The jurisdiction includes vernal pools, and a 100 foot buffer zone.

The definition of a vernal pool is essentially a vernal pool habitat (i.e. with a 100 buffer already). The definition also specifies that the vernal pool does not have to be certified to be protected. On 11/09/04, the researcher called the Conservation Commission to clarify the width of jurisdiction around a vernal pool. The staff said that they have a 200 foot zone of jurisdiction from the mean annual water line of a vernal pool.

According to Section IX of the rules and regulations of the Hanover Wetlands Bylaw, "The term vernal pool shall include a confined basin depression which at least in most years hold water for a minimum of two months in the spring and/or summer and which is free of adult fish populations as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. Vernal pools are breeding habitat for obligate amphibian, reptile, crustacean, mollusk or insect populations. The presumption that an area may represent a vernal pool shall prevail through a minimum of one spring breeding season, for the purposes of documenting the occurrences of breeding activity or the lack of breeding activity of obligate vernal pool species."

Section V, Section A.1 of the rules and regulations of the Hanover Wetlands Bylaw states that "Area within 100 feet of any

freshwater wetland, swamp, estuary, lake, pond, bank, marsh, wet meadow, vernal pool, stream, storm water storage area or land subject to flooding whether bordering or isolated" are subject to protection under the bylaw.

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

Hanson

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition section only includes vernal pool habitat, but does not indicate that they need to be state certified to receive protection.

Section 1.04 of the Hanson Wetlands Regulations defines a "vernal pool habitat" as a "confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which are free of adult fish populations, as well as the area 100 feet of the mean annual boundaries of such depressions."

(Town Wetland Protection By-law with Rules and Regulations)

From the regulations, Section 1.02 Statement of Jurisdiction,

(1) Areas Subject to Protection Under the By-law.

The following areas are subject to protection under the By-law:

(a) Any beach, flat, freshwater wetland, marsh, meadow, bog, bank, swamp or vernal pool.

(b) Any land subject to flooding or inundation by any of the following:

1. groundwater

2. surface water

(c) Any lake, pond, river, stream;

(d) Any land under any of the water bodies set forth in Section 1.02 (c) above;

(e) Any land within 100 feet of any of the areas set forth in Section 1.02 (a) (b) and (c) above."

(Town Wetland Protection By-law with Rules and Regulations)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have buffer zones regardless of state certification and resource location.

From the regulations, Section 1.02 Statement of Jurisdiction,

(1) Areas Subject to Protection Under the By-law.

The following areas are subject to protection under the By-law:

(a) Any beach, flat, freshwater wetland, marsh, meadow, bog, bank, swamp or vernal pool.

(b) Any land subject to flooding or inundation by any of the following:

1. groundwater

2. surface water

(c) Any lake, pond, river, stream;

(d) Any land under any of the water bodies set forth in Section 1.02 (c) above;

(e) Any land within 100 feet of any of the areas set forth in Section 1.02 (a) (b) and (c) above."

Section 1.04 of the Hanson Wetlands Regulations defines a "vernal pool habitat" as a "confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which are free of adult fish populations, as well as the area 100 feet of the mean annual boundaries of such depressions."

(Town Wetland Protection By-law with Rules and Regulations)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Vernal pools are included in the jurisdiction and the definition of vernal pool habitat describes the boundary to be 100 feet from the mean annual water line.

From the regulations, Section 1.02 Statement of Jurisdiction,

(1) Areas Subject to Protection Under the By-law.

The following areas are subject to protection under the By-law:

- (a) Any beach, flat, freshwater wetland, marsh, meadow, bog, bank, swamp or vernal pool.
- (b) Any land subject to flooding or inundation by any of the following:
 - 1. groundwater
 - 2. surface water
- (c) Any lake, pond, river, stream;
- (d) Any land under any of the water bodies set forth in Section 1.02 (c) above;
- (e) Any land within 100 feet of any of the areas set forth in Section 1.02 (a) (b) and (c) above."

Section 1.04 of the Hanson Wetlands Regulations defines a "vernal pool habitat" as a "confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which are free of adult fish populations, as well as the area 100 feet of the mean annual boundaries of such depressions."

(Town Wetland Protection By-law with Rules and Regulations)

Harvard

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No The researcher found no reference to certified or non-certified vernal pools in the Bylaw or Regulations. The conservation agent commented (via email) that some vernal pools will garner protection as an isolated land subject to flooding.

"-----Original Message-----

From: Michele Girard [mailto:michelegirard@charter.net]
Sent: Tuesday, November 30, 2004 6:31 PM
To: adriana@pioneerinstitute.org
Subject: Re: Harvard Wetlands Protection Bylaw

[...]our bylaw protects isolated wetlands as small as 500 sq. feet. That should help cover vernal pools to some degree, but indeed, it doesn't offer any extra protection, such as a 100-ft no disturb, etc."

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Haverhill

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes "Vernal Pool: Shall be the same as in the Wetlands Protection Act; however, if a vernal pool is identified and certified within 90 days of filing a Notice of Intent such vernal pool shall be afforded full protection under this ordinance" From the City of Haverhill Wetlands Protection Ordinance, Section IX (Adopted 1996).

"Except as permitted by the Conservation Commission or as provided in this ordinance, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater or coastal wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, seeps, springs, replication areas, reservoirs, lakes, ponds of any size, rivers, streams, creeks, wetlands not bordering a body of water, lands under waterbodies, lands subject to flooding or inundated (sic) by ground water or surface water, lands subject to tidal action, coastal storm flowage, or flooding,

poorly drained an very poorly drained areas, the potable drinking water and potential drinking water supply areas an Kenoza Lake, Crystal Lake, Chadwick Pond, Johnson Pond, Millville Reservoir, and Round Pond, sensitive wetland areas, rare and endangered wetland areas, rare and endangered species habitats and lands within 100 feet of any of these resource areas. Said resource areas shall be protected whether or not they border surface waters. Said resource areas will be determined by analysis." From the City of Haverhill Wetlands Protection Ordinance, Section II (Adopted 1996).

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes "Vernal Pool: Shall be the same as in the Wetlands Protection Act; however, if a vernal pool is identified and certified within 90 days of filing a Notice of Intent such vernal pool shall be afforded full protection under this ordinance" From the City of Haverhill Wetlands Protection Ordinance, Section IX (Adopted 1996).

"Except as permitted by the Conservation Commission or as provided in this ordinance, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater or coastal wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, seeps, springs, replication areas, reservoirs, lakes, ponds of any size, rivers, streams, creeks, wetlands not bordering a body of water, lands under waterbodies, lands subject to flooding or inundated (sic) by ground water or surface water, lands subject to tidal action, coastal storm flowage, or flooding, poorly drained an very poorly drained areas, the potable drinking water and potential drinking water supply areas an Kenoza Lake, Crystal Lake, Chadwick Pond, Johnson Pond, Millville Reservoir, and Round Pond, sensitive wetland areas, rare and endangered wetland areas, rare and endangered species habitats and lands within 100 feet of any of these resource areas. Said resource areas shall be protected whether or not they border surface waters. Said resource areas will be determined by analysis." From the City of Haverhill Wetlands Protection Ordinance, Section II (Adopted 1996).

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 "Vernal Pool: Shall be the same as in the Wetlands Protection Act; however, if a vernal pool is identified and certified within 90 days of filing a Notice of Intent such vernal pool shall be afforded full protection under this ordinance" From the City of Haverhill Wetlands Protection Ordinance, Section IX (Adopted 1996).

"Except as permitted by the Conservation Commission or as provided in this ordinance, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater or coastal wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, seeps, springs, replication areas, reservoirs, lakes, ponds of any size, rivers, streams, creeks, wetlands not bordering a body of water, lands under waterbodies, lands subject to flooding or inundated (sic) by ground water or surface water, lands subject to tidal action, coastal storm flowage, or flooding, poorly drained an very poorly drained areas, the potable drinking water and potential drinking water supply areas an Kenoza Lake, Crystal Lake, Chadwick Pond, Johnson Pond, Millville Reservoir, and Round Pond, sensitive wetland areas, rare and endangered wetland areas, rare and endangered species habitats and lands within 100 feet of any of these resource areas. Said resource areas shall be protected whether or not they border surface waters. Said resource areas will be determined by analysis." From the City of Haverhill Wetlands Protection Ordinance, Section II (Adopted 1996).

Hingham

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No According to W. Clifford Prentiss, Conservation Officer, Hingham does regulate vernal pools that are smaller areas than the state regulates.

However, vernal pools are not specifically designated in the jurisdiction and therefore only garner protection as an isolated wetland or land subject to flooding (in which the definition is less stringent than the state). Since the town does not distinguish vernal pools from these other areas, the researcher chose 'no' for the answer field.

From Section 10.02 Statement of Jurisdiction,

"(1) Areas subject to Protection

The following areas are subject to protection under the By-Law:

any bank, freshwater wetland, coastal wetland, beach, dune, bog, flat, marsh, meadow, or swamp, or any estuary, creek, river, stream, pond, lake, or the ocean, or land under or bordering on said waters or wetlands, or any land subject to tidal action, coastal storm flowage, or flooding.

(2) Activities Subject to Regulations Under the By-Laws

a. Activities within the Areas Subject to Protection under the By-Law

Any activity proposed or undertaken within an area specified in Section 10.02(1) above, which will remove, fill, dredge or alter that area is subject to regulation under the By-Law and requires the filing of a Notice of Intent."

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

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No Vernal pools are not specifically designated in the jurisdiction and therefore only garner protection as an isolated wetland or land subject to flooding (in which the definition is less stringent than the state). Since the town does not distinguish vernal pools from these other areas, the researcher chose 'no' for the answer field.

From Section 10.02 Statement of Jurisdiction,
"(1) Areas subject to Protection

The following areas are subject to protection under the By-Law:

any bank, freshwater wetland, coastal wetland, beach, dune, bog, flat, marsh, meadow, or swamp, or any estuary, creek, river, stream, pond, lake, or the ocean, or land under or bordering on said waters or wetlands, or any land subject to tidal action, coastal storm flowage, or flooding.

(2) Activities Subject to Regulations Under the By-Laws

a. Activities within the Areas Subject to Protection under the By-Law

Any activity proposed or undertaken within an area specified in Section 10.02(1) above, which will remove, fill, dredge or alter that area is subject to regulation under the By-Law and requires the filing of a Notice of Intent."

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Holbrook

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Town of Holbrook Code, Section 11-7, Wetlands Protection By-Laws.

Section 2. Jurisdiction

Except as permitted by the Holbrook Conservation Commission ("The Commission") or as provided in this bylaw, no person shall remove, fill, dredge, build upon, degrade, or otherwise alter the following resource areas: any bank, freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, reservoir, lake, pond, creek, river or stream, or any land under said waters or any land subject to flooding or inundation by groundwater or surface water, or any land within 100 feet of any of the aforesaid resource areas (collectively, the "resource areas protected by this bylaw").

Note: There is no definition given for vernal pools.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Town of Holbrook Code, Section 11-7, Wetlands Protection By-Laws.

Section 2. Jurisdiction

Except as permitted by the Holbrook Conservation Commission ("The Commission") or as provided in this bylaw, no person shall remove, fill, dredge, build upon, degrade, or otherwise alter the following resource areas: any bank, freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, reservoir, lake, pond, creek, river or stream, or any land under said waters or any land

subject to flooding or inundation by groundwater or surface water, or any land within 100 feet of any of the aforesaid resource areas (collectively, the "resource areas protected by this bylaw").

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Town of Holbrook Code, Section 11-7, Wetlands Protection By-Laws.

Section 2. Jurisdiction

Except as permitted by the Holbrook Conservation Commission ("The Commission") or as provided in this bylaw, no person shall remove, fill, dredge, build upon, degrade, or otherwise alter the following resource areas: any bank, freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, reservoir, lake, pond, creek, river or stream, or any land under said waters or any land subject to flooding or inundation by groundwater or surface water, or any land within 100 feet of any of the aforesaid resource areas (collectively, the "resource areas protected by this bylaw").

Holden

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition of vernal pools specify that it does not have to be state certified to receive protection.

Then from Section IX. Definitions, "[t]he term 'vernal pool' shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Mass. Division of Fisheries and Wildlife."

(Holden Conservation Commission Wetland Bylaws, Adopted 2001)

From Section II. Jurisdiction, "[e]xcept as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas; any freshwater wetlands; marshes; wet meadows; bogs; vernal pools; swamps; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; land under water bodies; lands subject to flooding or inundation by groundwater or surfacewater; and lands abutting any of the aforesaid resource areas as set out in Section VII (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters."

From Section VII. Permits and Conditions, "[l]ands 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 ...The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetation cover within either the 200-foot or 100-foot area, as applicable, 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."

(Holden Conservation Commission Wetland Bylaws, Adopted 2001)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have buffer zones regardless of state certification and location of the vernal pool.

From Section II. Jurisdiction, "[e]xcept as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas; any freshwater wetlands; marshes; wet meadows; bogs; vernal pools; swamps; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; land under water bodies; lands subject to flooding or inundation by groundwater or surfacewater; and lands abutting any of the aforesaid resource areas as set out in Section VII (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters."

Then from Section IX. Definitions, "[t]he term 'vernal pool' shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Mass. Division of Fisheries and Wildlife."

From Section VII. Permits and Conditions, "[l]ands 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 ...The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetation cover within either the 200-foot or 100-foot area, as applicable, 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."

(Holden Conservation Commission Wetland Bylaws, Adopted 2001)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The jurisdiction includes vernal pools. The definition of vernal pool specifies that it does not have to be certified, and also includes a 100 foot habitat in its definition. Researcher could interpret that the Conservation Commission has jurisdiction to regulate 200 feet from the boundary of the pool (100 foot habitat and 100 foot buffer.)

However, on 11/16/04, researcher confirmed with Pam Harding that there is 100 feet of protection around vernal pools and that a building could be put at 100 feet from the mean annual water line.

From Section II. Jurisdiction, "[e]xcept as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas; any freshwater wetlands; marshes; wet meadows; bogs; vernal pools; swamps; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; land under water bodies; lands subject to flooding or inundation by groundwater or surfacewater; and lands abutting any of the aforesaid resource areas as set out in Section VII (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters."

Then from Section IX. Definitions, "[t]he term 'vernal pool' shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Mass. Division of Fisheries and Wildlife."

From Section VII. Permits and Conditions, "[l]ands 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 ...The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetation cover within either the 200-foot or 100-foot area, as applicable, 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."

(Holden Conservation Commission Wetland Bylaws, Adopted 2001)

Holliston

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition specifies that vernal pool does not need to be state certified to receive protection.

Section 2.3 of the Holliston wetlands regulations, "Vernal Pool. The term "vernal pool" shall include, in addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131, §40 and regulations thereunder, 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways, which, at least in most years, holds water for a minimum of one month during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.

Vernal Pool Habitat. A vernal pool and the area within 100 feet (adjacent upland resource) of the mean annual boundaries or highest observed flood level, whichever is higher, of such pool shall be referred to as "vernal pool habitat", regardless of whether or not any portion of this vernal pool habitat comprises a resource area as described in the Bylaw and/or The Massachusetts Wetlands Protection Act or its regulations (310 CMR 10.00). Such an area is an essential breeding habitat for amphibians, reptiles, or other vernal pool community species and provides other extremely important functions including providing food, shelter, migration, aestivation and hibernation habitat during the non-breeding season for a variety of these species as well as other wildlife and shall be a No Disturbance Area.

Vernal Pool Buffer Zone shall include the area within 100 feet of the boundary of the vernal pool habitat, regardless of whether or not any portion of this vernal pool buffer zone comprises a resource area as described in the Bylaw and/or The Massachusetts Wetlands Protection Act or its regulations (310 CMR 10.00). The vernal pool buffer zone is an essential breeding, feeding, migration, aestivation and hibernation habitat for amphibians, reptiles and other wildlife and shall be a No Disturbance Area."

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

From Section 3. Areas Subject to Protection and Regulations,

"3.1 RESOURCE AREAS

The following areas which are referred to as resource areas are subject to protection under the Bylaw:

Land within 100 feet of any:

freshwater wetland, marsh, wet meadow, bog, or swamp

Land within 100 feet of any:

bank, beach, dune, flat, lake, river, pond, or stream.

Any land under said waters listed above; or

Within 100 feet of any land subject to flooding (including vernal pools) or inundation by ground water or surface water

In order to protect these resource areas, any altering activity within 100 feet horizontally outward from the edge of a resource area (200 feet horizontally outward from perennial streams and rivers) and certain adjacent upland areas (collectively "the adjacent upland resource areas protected by these Regulations") shall be reviewed by the Commission."

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

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have a buffer zone regardless of state certification and location of the resource.

From Section 3. Areas Subject to Protection and Regulations,

"3.1 RESOURCE AREAS

The following areas which are referred to as resource areas are subject to protection under the Bylaw:

Land within 100 feet of any:

freshwater wetland, marsh, wet meadow, bog, or swamp

Land within 100 feet of any:

bank, beach, dune, flat, lake, river, pond, or stream.

Any land under said waters listed above; or

Within 100 feet of any land subject to flooding (including vernal pools) or inundation by ground water or surface water

In order to protect these resource areas, any altering activity within 100 feet horizontally outward from the edge of a resource area (200 feet horizontally outward from perennial streams and rivers) and certain adjacent upland areas (collectively "the adjacent upland resource areas protected by these Regulations") shall be reviewed by the Commission."

Section 2.3 of the Holliston wetlands regulations,

"Vernal Pool. The term "vernal pool" shall include, in addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131, §40 and regulations thereunder, 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways, which, at least in most years, holds water for a minimum of one month during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.

Vernal Pool Habitat. A vernal pool and the area within 100 feet (adjacent upland resource) of the mean annual boundaries or highest observed flood level, whichever is higher, of such pool shall be referred to as "vernal pool habitat", regardless of whether or not any portion of this vernal pool habitat comprises a resource area as described in the Bylaw and/or The Massachusetts Wetlands Protection Act or its regulations (310 CMR 10.00). Such an area is an essential breeding habitat for amphibians, reptiles, or other vernal pool community species and provides other extremely important functions including providing food, shelter, migration, aestivation and hibernation habitat during the non-breeding season for a variety of these species as well as other wildlife and shall be a No Disturbance Area.

Vernal Pool Buffer Zone shall include the area within 100 feet of the boundary of the vernal pool habitat, regardless of whether or not any portion of this vernal pool buffer zone comprises a resource area as described in the Bylaw and/or The Massachusetts Wetlands Protection Act or its regulations (310 CMR 10.00). The vernal pool buffer zone is an essential breeding, feeding, migration, aestivation and hibernation habitat for amphibians, reptiles and other wildlife and shall be a No Disturbance Area."

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

200 The jurisdiction includes vernal pools and the definition specifies that vernal pool does not need to be state certified to receive protection. In addition, the boundary of a vernal pool habitat is 100 feet from the mean annual water edge, and the buffer zone indicates that it is 100 feet past this line. Therefore, the researcher concluded that the Holliston Conservation Commission has a 200 foot zone of jurisdiction from the mean annual water line. This was not confirmed with the conservation agent.

From Section 3. Areas Subject to Protection and Regulations,

"3.1 RESOURCE AREAS

The following areas which are referred to as resource areas are subject to protection under the Bylaw:

Land within 100 feet of any:

freshwater wetland, marsh, wet meadow, bog, or swamp

Land within 100 feet of any:

bank, beach, dune, flat, lake, river, pond, or stream.

Any land under said waters listed above; or

Within 100 feet of any land subject to flooding (including vernal pools) or inundation by ground water or surface water

In order to protect these resource areas, any altering activity within 100 feet horizontally outward from the edge of a resource area (200 feet horizontally outward from perennial streams and rivers) and certain adjacent upland areas (collectively "the adjacent upland resource areas protected by these Regulations") shall be reviewed by the Commission."

Section 2.3 of the Holliston wetlands regulations,

"Vernal Pool. The term "vernal pool" shall include, in addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131, §40 and regulations thereunder, 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways, which, at least in most years, holds water for a minimum of one month during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.

Vernal Pool Habitat. A vernal pool and the area within 100 feet (adjacent upland resource) of the mean annual boundaries or highest observed flood level, whichever is higher, of such pool shall be referred to as "vernal pool habitat", regardless of whether or not any portion of this vernal pool habitat comprises a resource area as described in the Bylaw and/or The Massachusetts Wetlands Protection Act or its regulations (310 CMR 10.00). Such an area is an essential breeding habitat for amphibians, reptiles, or other vernal pool community species and provides other extremely important functions including providing food, shelter, migration, aestivation and hibernation habitat during the non-breeding season for a variety of these species as well as other wildlife and shall be a No Disturbance Area.

Vernal Pool Buffer Zone shall include the area within 100 feet of the boundary of the vernal pool habitat, regardless of whether or not any portion of this vernal pool buffer zone comprises a resource area as described in the Bylaw and/or The Massachusetts Wetlands Protection Act or its regulations (310 CMR 10.00). The vernal pool buffer zone is an essential breeding, feeding, migration, aestivation and hibernation habitat for amphibians, reptiles and other wildlife and shall be a No Disturbance Area."

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

Hopkinton

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes From Section 1.1 of the Regulations, "The Town of Hopkinton Wetland Protection Bylaw adds to the areas protected by the state Act any Vegetated freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; lands under waterbodies; lands subject to flooding or inundation by groundwater or surface water; and lands within 100 feet of any of the aforesaid resource areas (collectively the resource areas protected by this bylaw) are protected whether or not they border water bodies. Vernal pools and their 125 foot buffers are protected, regardless of whether they have been certified under the state program or whether the pool and buffer are located within state protected resource areas. The bylaw protects the interests identified in the state act, and adds; erosion and sediment control, wildlife and recreational values."

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

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Vernal pools have a buffer zone regardless of state certification and resource location.

Extends protection to 125 feet instead of the state's 100 foot buffer. From Section 1.1 of the Regulations, "The Town of Hopkinton Wetland Protection Bylaw adds to the areas protected by the state Act any Vegetated freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; lands under waterbodies; lands subject to flooding or inundation by groundwater or surface water; and lands within 100 feet of any of the aforesaid resource areas (collectively the resource areas protected by this bylaw) are protected whether or not they border water bodies. Vernal pools and their 125 foot buffers are protected, regardless of whether they have been certified under the state program or whether the pool and buffer are located within state protected resource areas. The bylaw protects the interests identified in the state act, and adds; erosion and sediment control, wildlife and recreational values."

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

125 From Section 1.1 of the Regulations, "The Town of Hopkinton Wetland Protection Bylaw adds to the areas protected by the state Act any Vegetated freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; lands under waterbodies; lands subject to flooding or inundation by groundwater or surface water; and lands within 100 feet of any of the aforesaid resource areas (collectively the resource areas protected by this bylaw) are protected whether or not they border water bodies. Vernal pools and their 125 foot buffers are protected, regardless of whether they have been certified under the state program or whether the pool and buffer are located within state protected resource areas. The bylaw protects the interests identified in the state act, and adds; erosion and sediment control, wildlife and recreational values."

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

Ipswich

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Ipswich adheres to the state's vernal pool guidelines.

"The term 'vernal pool' shall mean any vernal pool certified by the Massachusetts Division of Fisheries and Wildlife in accordance with 310 CMR 10.57."

From Ipswich Wetlands Protection Bylaw, Section 3 (Adopted 1990).

"Except as permitted by the Conservation Commission or as provided in this By-Law, no person shall remove soil or vegetation from, fill, dredge, build upon, discharge into, or alter the following Resource Areas:

*Coastal Wetlands,

Freshwater Wetlands,

Bank, beach, dune, marsh, meadow, swamp or flat bordering on a water

body;

/or/ land within 100 feet of these resource areas;

/or/ land under a body of water;

/or/ land subject to flooding, tidal action or coastal storm flowage;

/or/ vernal pools within a wetland resource area;

/or /land within 150 feet of the Parker River/Essex Bay Area of

Critical Environmental Concern.*

Any activity proposed or undertaken outside of the above areas is not subject to regulation under this By-Law and does not require the filing of a permit application unless and until that activity actually alters any of the said resources areas."

From Ipswich Wetlands Protection Bylaw, Section 2 (Adopted 1990).

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No "Except as permitted by the Conservation Commission or as provided in this By-Law, no person shall remove soil or vegetation from, fill, dredge, build upon, discharge into, or alter the following Resource Areas:

Coastal Wetlands,
Freshwater Wetlands,
Bank, beach, dune, marsh, meadow, swamp or flat bordering on a water body;
or land within 100 feet of these resource areas;
or land under a body of water;
or land subject to flooding, tidal action or coastal storm flowage;
or vernal pools within a wetland resource area;
or land within 150 feet of the Parker River/Essex Bay Area of Critical Environmental Concern.

Any activity proposed or undertaken outside of the above areas is not subject to regulation under this By-Law and does not require the filing of a permit application unless and until that activity actually alters any of the said resources areas."

From Ipswich Wetlands Protection Bylaw, Section 2 (Adopted 1990).

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Kingston

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition specifies that vernal pools do not need to be state certified to receive protection.

"The term 'vernal pool' shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawn, garden, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous month during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pool shall be 100 feet outward from the mean annual high water line defining the depression, but shall not include existing lawns, garden, landscaped or developed areas." From the town of Kingston Wetlands Bylaws, Section 2.E (Amended 2004).

"The following areas as set forth in Article 3.1 of the By-Law, shall be considered "resource areas" or "areas subject to protection" under the By-Law and the Regulations of the Kingston Wetland Protection By-Law and are subject to protection under the By-Law:

Bank,
Fresh water wetland,
Coastal wetland,
Beach,
Dune,
Flat,
Marsh,

Bog,
Swamp,
Estuary, creek, river or stream,
Pond or lake,
Land under said waters,
Land subject to tidal action, coastal storm flowage, flooding or inundation
Land within the 100-year storm line" From the Town of Kingston Wetlands Protection Regulation. 2.01

"Any activity proposed or undertaken within or within 100 feet of an area specified in 2.01 which, in the judgment of the Conservation Commission, will remove, fill, dredge, alter, or build upon an Area Subject to Protection under the By-Law is subject to regulation under the By-Law and requires the filing of a Notice of Intent and the issuing of an Order of Conditions by the Conservation Commission." From the Town of Kingston Wetlands Protection Regulation. 2.02.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes The definition specifies that vernal pools do not need to be state certified to receive protection.

"The term 'vernal pool' shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawn, garden, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous month during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pool shall be 100 feet outward from the mean annual high water line defining the depression, but shall not include existing lawns, garden, landscaped or developed areas." From the town of Kingston Wetlands Bylaws, Section 2.E (Amended 2004).

"The following areas as set forth in Article 3.1 of the By-Law, shall be considered "resource areas" or "areas subject to protection" under the By-Law and the Regulations of the Kingston Wetland Protection By-Law and are subject to protection under the By-Law:

Bank,
Fresh water wetland,
Coastal wetland,
Beach,
Dune,
Flat,
Marsh,
Bog,
Swamp,
Estuary, creek, river or stream,
Pond or lake,
Land under said waters,
Land subject to tidal action, coastal storm flowage, flooding or inundation
Land within the 100-year storm line" From the Town of Kingston Wetlands Protection Regulation. 2.01

"Any activity proposed or undertaken within or within 100 feet of an area specified in 2.01 which, in the judgment of the Conservation Commission, will remove, fill, dredge, alter, or build upon an Area Subject to Protection under the By-Law is subject to regulation under the By-Law and requires the filing of a Notice of Intent and the issuing of an Order of Conditions by the Conservation Commission." From the Town of Kingston Wetlands Protection Regulation. 2.02.

Survey received from Kingston on 5/17/05 (completed by Maureen Thomas) marks the answer to this question "yes."

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 "The term 'vernal pool' shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawn, garden, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous month during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pool shall be 100 feet outward from the mean annual high water line defining the depression, but shall not include existing lawns, garden, landscaped or developed areas." From the town of Kingston Wetlands Bylaws, Section 2.E (Amended 2004).

"The following areas as set forth in Article 3.1 of the By-Law, shall be considered "resource areas" or "areas subject to protection" under the By-Law and the Regulations of the Kingston Wetland Protection By-Law and are subject to protection under the By-Law:

Bank,
Fresh water wetland,
Coastal wetland,
Beach,
Dune,
Flat,
Marsh,
Bog,
Swamp,
Estuary, creek, river or stream,
Pond or lake,
Land under said waters,
Land subject to tidal action, coastal storm flowage, flooding or inundation
Land within the 100-year storm line" From the Town of Kingston Wetlands Protection Regulation. 2.01

"Any activity proposed or undertaken within or within 100 feet of an area specified in 2.01 which, in the judgment of the Conservation Commission, will remove, fill, dredge, alter, or build upon an Area Subject to Protection under the By-Law is subject to regulation under the By-Law and requires the filing of a Notice of Intent and the issuing of an Order of Conditions by the Conservation Commission." From the Town of Kingston Wetlands Protection Regulation. 2.02.

Leicester

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No The jurisdiction does not specifically mention vernal pools and these areas are not defined in the bylaw.

Conservation Chair, Diana Provencher, (12/01/04) said "We do not regulate vernal pools that are not certified by the state."

From Section 1 of the bylaw,

"The purpose of this by-law is to protect the flood plains and wetland of the Town of Leicester by controlling activities deemed to have a significant effect upon water supply, ground water, flood control, erosion control, storm damage, water pollution, wildlife habitat, recreation, and aesthetics. No person shall remove, fill, dredge, or alter any area within one hundred (100) feet from any bank, fresh water wetland, flat, marsh, meadow, bog, swamp, creek, river, stream, pond, or land, or any land under said waters or any land subject to flooding..."

(Town of Leicester - Wetlands Bylaw)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No The jurisdiction does not specifically mention vernal pools. Generally, the bylaw appears to follow the state code fairly closely. The researcher concluded vernal pool buffer zones would be protected in accordance with state standard.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Lexington

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes According to Karen Mullins, Conservation Administrator (6/29/04), Lexington regulates isolated land subject to flooding beyond the state definition - Lexington might regulate a vernal pool with a 100 foot buffer that is not certified but falls within the definition of land subject to flooding.

In addition, "vernal pool habitat" is included in the resource areas protected in the jurisdiction and the definitions specify that the vernal pool habitat is the same as the state definition, but it would receive a 100 foot buffer zone.

From section 130-2 Notice of intent; permit required (from the bylaws and regulations mailed by the Commission), vernal pool habitat is included in the jurisdiction.

"A.No person shall remove, fill, dredge, build upon or alter any bank, freshwater wetland, marsh, bog, wet meadow, swamp, creek, river, stream, pond, lake, vernal pool habitat, land under water bodies, land subject to flooding, or any land bordering thereon as hereinafter defined, or riverfront area ..."

Then from section 130-8. Definitions

"C. Protected resource areas definitions.

(1)The terms "marsh," "freshwater wetland," "swamp," "wet meadow" and "bog" as used in this by-law shall be defined as set forth in M.G.L. Chapter 131, Section 40 and its regulations 310 CMR 10.04. Said resource areas shall be protected whether or not they border surface waters. The boundary of these wetlands is either the line within which 50% or more of the vegetation community consists of the wetland plant species identified in M.G.L. Chapter 131, Section 40 or the line within which the soil conditions meet the technical criterion of a hydric soil as developed and revised by the National Technical Committee for Hydric Soils, whichever line or segment of line protects more wetlands in situations where two lines exist. [Amended 4-8-2002 ATM by Art.22]

(2)The terms "river" and "riverfront area" as used in this by-law shall be defined as set forth in M.G.L. Chapter 131, Section 40 and its regulations 310 CMR 10.04.

(3)The terms "bank," "creek," "stream," "pond," "lake," "vernal pool habitat," "land under water bodies," and "bordering land subject to flooding" shall be defined as set forth in the regulations 310 CMR 10.04 of the M.G.L. Chapter 131, Section 40. [Amended 4-8-2002 ATM by Art. 22]

(4)"Land bordering thereon" shall be defined including any land within either of the following:

(a)One hundred feet horizontally lateral from the edge of any bank, freshwater wetland, bog, marsh, wet meadow, swamp, creek, river, stream, pond, lake, vernal pool habitat, land under water bodies or land subject to flooding.

(b)One hundred feet horizontally lateral from the water elevation of the one-hundred-year storm or whichever is the greater distance of Subsection C(4)(a) or (b)

(5)The term "isolated land subject to flooding" shall mean an area, depression or basin that holds at minimum one-eighth acre foot of water to an average depth of at least six inches once a year. This shall not include swimming pools, artificially lined ponds or pools, or constructed wastewater lagoons. [Added 4-8-2002 ATM Art. 22]"

(Code of the Town of Lexington, Chapter 130 and Rules, Adopted 1985, Amended 2002)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pool's habitat zone is protected regardless of state certification and resource location.

From section 130-2 Notice of intent; permit required (from the bylaws and regulations mailed by the Commission), vernal pool habitat is included in the jurisdiction.

"A.No person shall remove, fill, dredge, build upon or alter any bank, freshwater wetland, marsh, bog, wet meadow, swamp, creek, river, stream, pond, lake, vernal pool habitat, land under water bodies, land subject to flooding, or any land bordering thereon as hereinafter defined, or riverfront area ..."

Then from section 130-8. Definitions

"C. Protected resource areas definitions.

(1)The terms "marsh," "freshwater wetland," "swamp," "wet meadow" and "bog" as used in this by-law shall be defined as set forth in M.G.L. Chapter 131, Section 40 and its regulations 310 CMR 10.04. Said resource areas shall be protected whether or not they border surface waters. The boundary of these wetlands is either the line within which 50% or more of the vegetation community consists of the wetland plant species identified in M.G.L. Chapter 131, Section 40 or the line within which the soil conditions meet the technical criterion of a hydric soil as developed and revised by the National Technical Committee for Hydric Soils, whichever line or segment of line protects more wetlands in situations where two lines exist. [Amended 4-8-2002 ATM by Art.22]

(2)The terms "river" and "riverfront area" as used in this by-law shall be defined as set forth in M.G.L. Chapter 131, Section 40 and its regulations 310 CMR 10.04.

(3)The terms "bank," "creek," "stream," "pond," "lake," "vernal pool habitat," "land under water bodies," and "bordering land

subject to flooding" shall be defined as set forth in the regulations 310 CMR 10.04 of the M.G.L. Chapter 131, Section 40. [Amended 4-8-2002 ATM by Art. 22]

(4)"Land bordering thereon" shall be defined including any land within either of the following:

(a)One hundred feet horizontally lateral from the edge of any bank, freshwater wetland, bog, marsh, wet meadow, swamp, creek, river, stream, pond, lake, vernal pool habitat, land under water bodies or land subject to flooding.

(b)One hundred feet horizontally lateral from the water elevation of the one-hundred-year storm or whichever is the greater distance of Subsection C(4)(a) or (b)

(5)The term "isolated land subject to flooding" shall mean an area, depression or basin that holds at minimum one-eighth acre foot of water to an average depth of at least six inches once a year. This shall not include swimming pools, artificially lined ponds or pools, or constructed wastewater lagoons. [Added 4-8-2002 ATM Art. 22]"

(Code of the Town of Lexington, Chapter 130 and Rules, Adopted 1985, Amended 2002)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 "Vernal pool habitat" is included in the resource areas protected in the jurisdiction, and the definitions specify that the vernal pool habitat is the same as the state definition. The bylaw grants a 100 foot buffer around the vernal pool habitat.

Note: These sections could be read to interpret 200 feet of jurisdiction from the border of a vernal pool. Karen Mullins, Conservation Administrator, indicated (6/29/04) that the buffer zone from the edge of the vernal pool is 100 feet.

From section 130-2 Notice of intent; permit required (from the bylaws and regulations mailed by the Commission), vernal pool habitat is included in the jurisdiction.

"A.No person shall remove, fill, dredge, build upon or alter any bank, freshwater wetland, marsh, bog, wet meadow, swamp, creek, river, stream, pond, lake, vernal pool habitat, land under water bodies, land subject to flooding, or any land bordering thereon as hereinafter defined, or riverfront area ..."

Then from section 130-8. Definitions

"C. Protected resource areas definitions.

(1)The terms "marsh," "freshwater wetland," "swamp," "wet meadow" and "bog" as used in this by-law shall be defined as set forth in M.G.L. Chapter 131, Section 40 and its regulations 310 CMR 10.04. Said resource areas shall be protected whether or not they border surface waters. The boundary of these wetlands is either the line within which 50% or more of the vegetation community consists of the wetland plant species identified in M.G.L. Chapter 131, Section 40 or the line within which the soil conditions meet the technical criterion of a hydric soil as developed and revised by the National Technical Committee for Hydric Soils, whichever line or segment of line protects more wetlands in situations where two lines exist. [Amended 4-8-2002 ATM by Art.22]

(2)The terms "river" and "riverfront area" as used in this by-law shall be defined as set forth in M.G.L. Chapter 131, Section 40 and its regulations 310 CMR 10.04.

(3)The terms "bank," "creek," "stream," "pond," "lake," "vernal pool habitat," "land under water bodies," and "bordering land subject to flooding" shall be defined as set forth in the regulations 310 CMR 10.04 of the M.G.L. Chapter 131, Section 40. [Amended 4-8-2002 ATM by Art. 22]

(4)"Land bordering thereon" shall be defined including any land within either of the following:

(a)One hundred feet horizontally lateral from the edge of any bank, freshwater wetland, bog, marsh, wet meadow, swamp, creek, river, stream, pond, lake, vernal pool habitat, land under water bodies or land subject to flooding.

(b)One hundred feet horizontally lateral from the water elevation of the one-hundred-year storm or whichever is the greater distance of Subsection C(4)(a) or (b)

(5)The term "isolated land subject to flooding" shall mean an area, depression or basin that holds at minimum one-eighth acre foot of water to an average depth of at least six inches once a year. This shall not include swimming pools, artificially lined ponds or pools, or constructed wastewater lagoons. [Added 4-8-2002 ATM Art. 22]"

(Code of the Town of Lexington, Chapter 130 and Rules, Adopted 1985, Amended 2002)

Lincoln

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition specifies that the vernal pool does not need to be certified to be protected.

Then in Section 9. Definitions, "The term 'vernal pool' shall include, in addition to scientific definitions found in the regulations under the State Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at

least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife, and regardless of whether the site is contained within another resource area. The adjacent upland buffer zone resource area for vernal pools shall extend 100 feet outward from the mean annual high-water line defining the depression."

(Town of Lincoln Bylaws, Article XVIII, Wetlands Protection, Adopted 2003)

From the Town of Lincoln Bylaws, Article XVIII, Wetlands Protection, Section 2 Jurisdiction (2003), "Except as permitted by the Conservation Commission pursuant to this bylaw, or as otherwise allowed in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following wetland resource areas: any freshwater wetland; marsh; wet meadow; bog; swamp; vernal pool; bank; reservoir; lake, pond of any size; river; stream; creek; lands under any water body; land subject to flooding or inundation by groundwater or surface water; or the following upland buffer zone resource areas: lands within 200 feet of any river or perennial stream; and lands within 100 feet of any freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, bank, reservoir, lake, pond, intermittent stream, creek, lands under any water body, and land subject to flooding or inundation by groundwater or surface water (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters."

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools are given buffer zones regardless of state certification and location.

From the Town of Lincoln Bylaws, Article XVIII, Wetlands Protection, Section 2 Jurisdiction (2003), "Except as permitted by the Conservation Commission pursuant to this bylaw, or as otherwise allowed in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following wetland resource areas: any freshwater wetland; marsh; wet meadow; bog; swamp; vernal pool; bank; reservoir; lake, pond of any size; river; stream; creek; lands under any water body; land subject to flooding or inundation by groundwater or surface water; or the following upland buffer zone resource areas: lands within 200 feet of any river or perennial stream; and lands within 100 feet of any freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, bank, reservoir, lake, pond, intermittent stream, creek, lands under any water body, and land subject to flooding or inundation by groundwater or surface water (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters."

Then in Section 9. Definitions, "The term 'vernal pool' shall include, in addition to scientific definitions found in the regulations under the State Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife, and regardless of whether the site is contained within another resource area. The adjacent upland buffer zone resource area for vernal pools shall extend 100 feet outward from the mean annual high-water line defining the depression."

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 According to Tom Gumbart, conservation director in Lincoln, Lincoln regulates activities within a 100' buffer zone.

The jurisdiction includes vernal pools and the definition specifies that the vernal pool does not need to be certified to be protected.

From the Town of Lincoln Bylaws, Article XVIII, Wetlands Protection, Section 2 Jurisdiction (2003), "Except as permitted by the Conservation Commission pursuant to this bylaw, or as otherwise allowed in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following wetland resource areas: any freshwater wetland; marsh; wet meadow; bog; swamp; vernal pool; bank; reservoir; lake, pond of any size; river; stream; creek; lands under any water body; land subject to flooding or inundation by groundwater or surface water; or the following upland

buffer zone resource areas: lands within 200 feet of any river or perennial stream; and lands within 100 feet of any freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, bank, reservoir, lake, pond, intermittent stream, creek, lands under any water body, and land subject to flooding or inundation by groundwater or surface water (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters."

Then in Section 9. Definitions, "The term 'vernal pool' shall include, in addition to scientific definitions found in the regulations under the State Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife, and regardless of whether the site is contained within another resource area. The adjacent upland buffer zone resource area for vernal pools shall extend 100 feet outward from the mean annual high-water line defining the depression."

Littleton

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Chapter 171 of the Littleton Town Code lists the jurisdiction of the commission. This jurisdiction does not mention vernal pools. Barbara Chapin, Littleton Conservation Administrator, confirmed on 8/31/04 that Littleton adheres to the state standard in this matter.

Chapter 171 of the Littleton Town Code lists the jurisdiction of the commission. Section 1B of Chapter 171 states: "Except as permitted by the Littleton Conservation Commission or as provided in this chapter, no person shall remove, fill, dredge, or alter any bank, freshwater wetland, marsh, meadow, bog, or swamp bordering any creek, river, stream, pond, or lake, or land under said waters or any land subject to flooding or riverfront area (collectively, the "areas subject to protection")."

This jurisdiction covers only bordering wetlands, and almost exactly matches the state standard for wetlands covered.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No Chapter 171 of the Littleton Town Code lists the jurisdiction of the commission. This jurisdiction does not mention vernal pools. Barbara Chapin, Littleton Conservation Administrator, confirmed on 8/31/04 that Littleton adheres to the state standard in this matter.

Chapter 171 of the Littleton Town Code lists the jurisdiction of the commission. Section 1B of Chapter 171 states: "Except as permitted by the Littleton Conservation Commission or as provided in this chapter, no person shall remove, fill, dredge, or alter any bank, freshwater wetland, marsh, meadow, bog, or swamp bordering any creek, river, stream, pond, or lake, or land under said waters or any land subject to flooding or riverfront area (collectively, the "areas subject to protection")."

This jurisdiction covers only bordering wetlands, and almost exactly matches the state standard for wetlands covered.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Lowell

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Christine Thomas, Lowell Environmental Officer, (8/27/04) said that Lowell does not protect vernal pools beyond the state standard.

Vernal pools are not mentioned in the Lowell wetlands ordinance.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No Vernal pools are not mentioned in the Lowell wetlands ordinance.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Lunenburg

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Lunenburg regulates seasonal freshwater wetlands, including "temporary and vernal ponds".

Lunenburg Wetlands Protection Bylaw and Regulations (Adopted 1983, Amended 1987)

"The following areas are subject to protection under the By-law:

(a) Any freshwater wetland
any bordering vegetated wetlands
any isolated vegetated wetland
any seasonal freshwater wetland

(b) Any bank

(c) Any beach

(d) Any lank

(e) Any river

(f) Any pond

(g) Any stream

(h) Any land subject to flooding, inundation by surface water, or ground water" From the Lunenburg Wetlands Protection Bylaw and Regulations Part I , Section 10.02(1) (Adopted 1983, Amended 1987).

"Seasonal Wetlands are isolated depressions or closed basins which temporarily confine water during periods of [sic] high water table and high input from spring run-off, snowmelt or heavy precipitation, and support populations of non-transient macro-organisms or serve as breeding habitat for selected species of amphibians. In the absence of such habitat function the areas should be considered under 10.55(B) as isolated wetlands." From the Lunenburg Wetlands Protection Bylaw and Regulations Part II, Section 10.55.2(a) (Adopted 1983, Amended 1987).

"Where a project proposes removing, filling, dredging, or altering a seasonal wetland, the Conservation Commission shall presume that such an area, as well as the area within 100 feet of the mean annual boundaries of said seasonal wetland, as well as the area within 100 feet of the mean annual boundaries of said seasonal wetland, is significant to the protection of wildlife habitat, particularly amphibian breeding habitat. In the that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds." From the Lunenburg Wetlands Protection Bylaw and Regulations Part II, Section 10.55.3 (Adopted 1983, Amended 1987).

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Seasonal wetlands are given a 100 foot buffer.

"Any activity proposed or undertaken within 100 feet of an area specified in Section 10.02 (1) (a-h) above (hereinafter called the Buffer Zone) which will alter an Area Subject to Protection Under the By-law is subject to regulation under the By-law and

requires the filing of a Notice of Intent." From the Lunenburg Wetlands Protection Bylaw and Regulations, Activities Subject to Regulation Under the By-Law Part I, Section 10.02.2(b) (Adopted 1983, Amended 1987).

"The following areas are subject to protection under the By-law:

- (a) Any freshwater wetland
 - any bordering vegetated wetlands
 - any isolated vegetated wetland
 - any seasonal freshwater wetland

(b) Any bank

(c) Any beach

(d) Any lank

(e) Any river

(f) Any pond

(g) Any stream

(h) Any land subject to flooding, inundation by surface water, or ground water" From the Lunenburg Wetlands Protection Bylaw and Regulations Part I , Section 10.02(1) (Adopted 1983, Amended 1987).

"Seasonal Wetlands are isolated depressions or closed basins which temporarily confine water during periods of [sic] high water table and high input from spring run-off, snowmelt or heavy precipitation, and support populations of non-transient macro-organisms or serve as breeding habitat for selected species of amphibians. In the absence of such habitat function the areas should be considered under 10.55(B) as isolated wetlands." From the Lunenburg Wetlands Protection Bylaw and Regulations Part II, Section 10.55.2(a) (Adopted 1983, Amended 1987).

"Where a project proposes removing, filling, dredging, or altering a seasonal wetland, the Conservation Commission shall presume that such an area, as well as the area within 100 feet of the mean annual boundaries of said seasonal wetland, as well as the area within 100 feet of the mean annual boundaries of said seasonal wetland, is significant to the protection of wildlife habitat, particularly amphibian breeding habitat. In the that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds." From the Lunenburg Wetlands Protection Bylaw and Regulations Part II, Section 10.55.3 (Adopted 1983, Amended 1987).

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Conservation agent (1/18/05) confirmed that vernal pools receive a 100-foot buffer.

"Where a project proposes removing, filling, dredging, or altering a seasonal wetland, the Conservation Commission shall presume that such an area, as well as the area within 100 feet of the mean annual boundaries of said seasonal wetland, is significant to the protection of wildlife habitat, particularly amphibian breeding habitat. In the that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds." From the Lunenburg Wetlands Protection Bylaw and Regulations Part II, Section 10.55.3 (Adopted 1983, Amended 1987).

Lynn

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes 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."

From Appendix A Definitions,

"Vernal Pool: The term 'vernal pool' shall include a confined basin depression which, at least, in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries."

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

The Lynn Conservation Commission Wetland Protection Bylaws, Section 2, Jurisdiction include "vernal pools" that are not certified as a protected area.

From Section II. Jurisdiction - Areas Subject to Protection,

"Except as permitted by the Conservation Commission or as provided in these By-Laws, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following (Areas Subject to Protection); any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; dunes; estuaries; oceans; lands under waterbodies; lands subject to flooding or inundation by ground water or surface water; lands subject to tidal action, coastal storm flowage, or flooding; and lands within 100 feet of any of the aforesaid resource areas (collectively the 'resource areas protected by these By-Laws'). Said resource areas shall be protected whether or not they border surface waters."

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Vernal pools are granted buffer zones regardless of certification and location.

From Section II. Jurisdiction - Areas Subject to Protection,

"Except as permitted by the Conservation Commission or as provided in these By-Laws, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following (Areas Subject to Protection); any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; dunes; estuaries; oceans; lands under waterbodies; lands subject to flooding or inundation by ground water or surface water; lands subject to tidal action, coastal storm flowage, or flooding; and lands within 100 feet of any of the aforesaid resource areas (collectively the 'resource areas protected by these By-Laws'). Said resource areas shall be protected whether or not they border surface waters."

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."

From Appendix A Definitions,

"Vernal Pool: The term 'vernal pool' shall include a confined basin depression which, at least, in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries."

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The Lynn Conservation Commission Wetland Protection Bylaws, Section 2, Jurisdiction include "vernal pools" as a protected area that are not certified by the state. A section specifically addressing vernal pools specifies that it does not need to be state certified to receive protection. In addition, the regulations clearly state that the buffer zone is 100 feet from the mean annual water line. (The definition of vernal pool includes the 100 foot zone of habitat. However, since there was a specific section addressing vernal pools with the specific buffer zone of protection, the researcher concluded that in practice the town of Lynn enforces a 100 foot buffer zone from the water edge. Note, however, that the interpretation of the definition and jurisdiction could give the town 200 feet of jurisdiction from the water edge of the vernal pool.)

From Section II. Jurisdiction - Areas Subject to Protection,

"Except as permitted by the Conservation Commission or as provided in these By-Laws, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following (Areas Subject to Protection); any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; dunes; estuaries; oceans; lands under waterbodies; lands subject to flooding or inundation by ground water or surface water; lands subject to tidal action, coastal storm flowage, or flooding; and lands within 100 feet of any of the aforesaid resource areas (collectively the 'resource areas protected by these By-Laws'). Said resource areas shall be protected whether or not they border surface waters."

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."

From Appendix A Definitions,

"Vernal Pool: The term 'vernal pool' shall include a confined basin depression which, at least, in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries."

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

Manchester-by-the-Sea

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition mentions that the vernal pool does not need to be certified by the state to receive protection.

Section 2.15 of the Manchester Wetlands By-Law Regulations reads: "Vernal Pool means an intermittent pond which meets the criteria, either as certified, or as determined by the Commission within its discretion and in accordance with criteria set forth in "Guidelines for Certification of Vernal Pool Habitat" issued by the Massachusetts Division of Fisheries and Wildlife. Prior Certification is not required. Vernal pools function as the only breeding habitat for a variety of amphibian species such as wood frog (*Rana sylvatica*) and various salamander species and provide other important wildlife habitat functions for amphibians and other wildlife. Vernal pool resource area includes the area within 100 feet of the mean annual boundaries of the pool. The buffer zone to a vernal pool resource area shall mean that area extending outward 100 feet horizontally from the mean annual boundary of the resource area (200 feet from the mean annual boundary of the pool)."

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

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have buffer zones regardless of state certification and resource location.

From Section 2.1 Jurisdiction,

"Except as provided by this by-law or permitted by the Manchester Conservation Commission ("the Commission"), no person shall remove, fill, dredge, alter or build upon or within one hundred feet (100) of the following resource areas: any bank, fresh water wetland, coastal wetland, beach, dune, flat, marsh, meadow, bog or swamp; any estuary, creek, river, stream, pond, vernal pool, lake or the ocean, or any land under said waters; any land subject to tidal action, coastal storm flowage, flooding or inundation, or within the 100 year storm line."

(Manchester-by-the-Sea general By-Law, Amended 2003)

Section 2.15 of the Manchester Wetlands By-Law Regulations reads: "Vernal Pool means an intermittent pond which meets the criteria, either as certified, or as determined by the Commission within its discretion and in accordance with criteria set forth in "Guidelines for Certification of Vernal Pool Habitat" issued by the Massachusetts Division of Fisheries and Wildlife. Prior Certification is not required. Vernal pools function as the only breeding habitat for a variety of amphibian species such as wood frog (*Rana sylvatica*) and various salamander species and provide other important wildlife habitat functions for amphibians and other wildlife. Vernal pool resource area includes the area within 100 feet of the mean annual boundaries of the pool. The buffer zone to a vernal pool resource area shall mean that area extending outward 100 feet horizontally from the mean annual boundary of the resource area (200 feet from the mean annual boundary of the pool)."

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

200 The jurisdiction includes vernal pools. The definition mentions that the vernal pool does not need to be certified by the state to receive protection. In addition, the definition includes the habitat area as the resource area, and specifies that the town had jurisdiction of 200 feet from the mean annual water line.

From Section 2.1 Jurisdiction,
"Except as provided by this by-law or permitted by the Manchester Conservation Commission ("the Commission"), no person shall remove, fill, dredge, alter or build upon or within one hundred feet (100) of the following resource areas: any bank, fresh water wetland, coastal wetland, beach, dune, flat, marsh, meadow, bog or swamp; any estuary, creek, river, stream, pond, vernal pool, lake or the ocean, or any land under said waters; any land subject to tidal action, coastal storm flowage, flooding or inundation, or within the 100 year storm line."

(Manchester-by-the-Sea general By-Law, Amended 2003)

Section 2.15 of the Manchester Wetlands By-Law Regulations reads: "Vernal Pool means an intermittent pond which meets the criteria, either as certified, or as determined by the Commission within its discretion and in accordance with criteria set forth in "Guidelines for Certification of Vernal Pool Habitat" issued by the Massachusetts Division of Fisheries and Wildlife. Prior Certification is not required. Vernal pools function as the only breeding habitat for a variety of amphibian species such as wood frog (*Rana sylvatica*) and various salamander species and provide other important wildlife habitat functions for amphibians and other wildlife. Vernal pool resource area includes the area within 100 feet of the mean annual boundaries of the pool. The buffer zone to a vernal pool resource area shall mean that area extending outward 100 feet horizontally from the mean annual boundary of the resource area (200 feet from the mean annual boundary of the pool)."

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

Mansfield

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Non-certified vernal pools are not explicitly covered under the jurisdiction of the Mansfield Wetland bylaw. Certified vernal pools are listed as a resource area.

The Mansfield conservation agent (10/25/04) said that non-certified pools could garner protection as an isolated land subject to flooding since Mansfield does not enforce the same minimum size requirements as listed in the state requirements.

"Except as permitted by the Conservation Commission, or as provided for in this bylaw, no person shall remove, fill, dredge, build upon, or alter in any other way, the following wetland resource areas: any freshwater wetlands, marsh, swamp, bog, or wet meadow [hereinafter 'bordering vegetated wetland' or 'bvw']; any lake or pond, river or stream [hereinafter waterbody or waterway]; a [sic] any bank, beach, or other type of edge adjacent to, or land under, said waterbodies or waterways, any flood zone, as shown on the federal flood maps, or determined by other engineering methodology, associated with said waterbodies or waterways; any vernal pools certified by the State; any isolated wetland area larger than 5,000 sq. ft. and/or any are defined as Isolated Land Subject to Flooding [ISLF] under the Wetlands Protection Act; wetlands which is identified by the State as the habitat site of a state-listed species [collectively, and hereinafter, the 'resource From Mansfield Conservation Commission Rules and Regulations for the Town of Mansfield Wetland Protection Law. Section 2.1 (Adopted 1999). areas']; or any land within 100 feet from the edge of any of the above referenced resource areas [hereinafter the 'buffer zone']".

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes If a non-certified vernal pool gains protection as an isolated land subject to flooding, then a 100 foot buffer zone would apply.

Certified vernal pools have a full 100 foot zone of jurisdiction regardless of the location vernal pool.

"Except as permitted by the Conservation Commission, or as provided for in this bylaw, no person shall remove, fill, dredge, build upon, or alter in any other way, the following wetland resource areas: any freshwater wetlands, marsh, swamp, bog, or wet meadow [hereinafter 'bordering vegetated wetland' or 'bvw']; any lake or pond, river or stream [hereinafter waterbody or waterway]; a [sic] any bank, beach, or other type of edge adjacent to, or land under, said waterbodies or waterways, any flood zone, as shown on the federal flood maps, or determined by other engineering methodology, associated with said waterbodies or waterways; any vernal pools certified by the State; any isolated wetland area larger than 5,000 sq. ft. and/or any are defined as Isolated Land Subject to Flooding [ISLF] under the Wetlands Protection Act; wetlands which is identified by the State as the habitat site of a state-listed species [collectively, and hereinafter, the 'resource areas']; or any land within 100 feet from the edge of any of the above referenced resource areas [hereinafter the 'buffer zone']".

From Mansfield Conservation Commission Rules and Regulations for the Town of Mansfield Wetland Protection Law. Section

2.1 (Adopted 1999).

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Certified vernal pools have a full 100 foot zone of jurisdiction regardless of the location vernal pool.

"Except as permitted by the Conservation Commission, or as provided for in this bylaw, no person shall remove, fill, dredge, build upon, or alter in any other way, the following wetland resource areas: any freshwater wetlands, marsh, swamp, bog, or wet meadow [hereinafter 'bordering vegetated wetland' or 'bwv']; any lake or pond, river or stream [hereinafter waterbody or waterway]; a [sic] any bank, beach, or other type of edge adjacent to, or land under, said waterbodies or waterways, any flood zone, as shown on the federal flood maps, or determined by other engineering methodology, associated with said waterbodies or waterways; any vernal pools certified by the State; any isolated wetland area larger than 5,000 sq. ft. and/or any are defined as Isolated Land Subject to Flooding [ISLF] under the Wetlands Protection Act; wetlands which is identified by the State as the habitat site of a state-listed species [collectively, and hereinafter, the 'resource areas']; or any land within 100 feet from the edge of any of the above referenced resource areas [hereinafter the 'buffer zone'].

From Mansfield Conservation Commission Rules and Regulations for the Town of Mansfield Wetland Protection Law. Section 2.1 (Adopted 1999).

Marblehead

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Town of Marblehead Wetlands Protection Bylaw Regulations, Section 2.13 (effective 2001), indicates that the regulations apply to vernal pools that are not certified by the state. Section 2.13 states as follows: "Vernal pool means an intermittent body of water which meets the criteria, either as certified, or as determined by the Commission within its discretion and in accordance with criteria set forth in "Guidelines for Certification of Vernal Pool Habitat" issued by the Massachusetts Division of Fisheries and Wildlife. Prior Certification is not required. Vernal pools function as the only breeding habitat for a variety of amphibian species such as wood frog (*Rana sylvatica*) and various salamander species and provide other important wildlife habitat functions for amphibians and other wildlife. Vernal pool resource area includes the area within 100 feet of the mean annual boundaries of the pool. The buffer zone to a vernal pool resource area shall mean that area extending outward 100-feet horizontally from the mean annual boundary of the resource area (200-feet from the mean annual boundary of the pool)."

From Sec. 1-25-102. Jurisdiction (of the bylaw)

"Except as permitted by the Conservation Commission or as provided for in this chapter, no person shall remove, fill, dredge, build upon or alter the following resource areas, or land within (100) feet thereof: freshwater wetland, coastal wetland, marsh wet meadow, bog, swamp, vernal pool, bank, beach, dune, flat, river, pond, stream, estuary, ocean, land under water, or land subject to flooding or inundation by groundwater, surface water, tidal action or coastal storm flowage. (5-6-87, Art. 63(s. 2)); (5-8-2001, Art 38)."

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools are given buffer zones regardless of state certification and resource location.

From Sec. 1-25-102. Jurisdiction (of the bylaw)

"Except as permitted by the Conservation Commission or as provided for in this chapter, no person shall remove, fill, dredge, build upon or alter the following resource areas, or land within (100) feet thereof: freshwater wetland, coastal wetland, marsh wet meadow, bog, swamp, vernal pool, bank, beach, dune, flat, river, pond, stream, estuary, ocean, land under water, or land subject to flooding or inundation by groundwater, surface water, tidal action or coastal storm flowage. (5-6-87, Art. 63(s. 2)); (5-8-2001, Art 38)."

Town of Marblehead Wetlands Protection Bylaw Regulations, Section 2.13 (effective 2001), indicates that the regulations apply to vernal pools that are not certified by the state. Section 2.13 states as follows: "Vernal pool means an intermittent body of water which meets the criteria, either as certified, or as determined by the Commission within its discretion and in accordance with criteria set forth in "Guidelines for Certification of Vernal Pool Habitat" issued by the Massachusetts Division of Fisheries and Wildlife. Prior Certification is not required. Vernal pools function as the only breeding habitat for a variety of amphibian species such as wood frog (*Rana sylvatica*) and various salamander species and provide other important wildlife habitat functions for amphibians and other wildlife. Vernal pool resource area includes the area within 100 feet of the mean annual boundaries of the pool. The buffer zone to a vernal pool resource area shall mean that area extending outward 100-feet horizontally from the mean

annual boundary of the resource area (200-feet from the mean annual boundary of the pool)."

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

200 The jurisdiction includes vernal pools, and the definition clearly states that the town has a 200 foot zone of protection from the edge of the water line.

From Sec. 1-25-102. Jurisdiction (of the bylaw)

"Except as permitted by the Conservation Commission or as provided for in this chapter, no person shall remove, fill, dredge, build upon or alter the following resource areas, or land within (100) feet thereof: freshwater wetland, coastal wetland, marsh wet meadow, bog, swamp, vernal pool, bank, beach, dune, flat, river, pond, stream, estuary, ocean, land under water, or land subject to flooding or inundation by groundwater, surface water, tidal action or coastal storm flowage. (5-6-87, Art. 63(s. 2)); (5-8-2001, Art 38)."

Town of Marblehead Wetlands Protection Bylaw Regulations, Section 2.13 (effective 2001), indicates that the regulations apply to vernal pools that are not certified by the state. Section 2.13 states as follows: "Vernal pool means an intermittent body of water which meets the criteria, either as certified, or as determined by the Commission within its discretion and in accordance with criteria set forth in "Guidelines for Certification of Vernal Pool Habitat" issued by the Massachusetts Division of Fisheries and Wildlife. Prior Certification is not required. Vernal pools function as the only breeding habitat for a variety of amphibian species such as wood frog (*Rana sylvatica*) and various salamander species and provide other important wildlife habitat functions for amphibians and other wildlife. Vernal pool resource area includes the area within 100 feet of the mean annual boundaries of the pool. The buffer zone to a vernal pool resource area shall mean that area extending outward 100-feet horizontally from the mean annual boundary of the resource area (200-feet from the mean annual boundary of the pool)."

Marshfield

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes "Vernal Pool- A Fresh water wetland that is a confined basin or depression (not occurring in existing lawns, gardens, or driveways) which in most years: holds water for a minimum of two months in the spring and/or summer; is free of self-sustaining populations of adult predatory fish; and functions as breeding habitat for one or more obligate or two or more facultative amphibian, reptile, crustacean, mollusk or insect populations listed by Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP), regardless of whether the site has been certified by the NHESP and regardless of association with other Resource Areas.

The presumption that any seasonal basis functions as a Vernal Pool shall prevail through a minimum of one spring/summer breeding seasons for the purpose of documenting the occurrence or lack of occurrence of breeding activity of one or more obligate or town or more facultative vernal pool species. The Buffer Zone for Vernal Pools shall extend 100 feet from the highest extent of flooding."

From the Town of Marshfield Wetlands Protection Regulations. Section XVI (Effective 9/18/03).

"III. Jurisdiction

A. Areas Subject to Protection

The following areas area subject to protection under the By-Law:

(i) Any:

- Bank;
- Freshwater wetland;
- Coastal wetland;
- Beach;
- Dune;
- Flat;
- Marsh;
- Wet Meadow;
- Bog;
- Swamp;
- Lands adjoining the Ocean or any:
 - Estuary;
 - Creek;
 - River;
 - Stream;
 - Pond;
 - Lake;

Or any land under said waters;
Or any land subject to:
Tidal Action;
Coastal storm flowage;
Or Flooding.

(ii) Land at or below elevation eleven (11.0) feet above sea level.

B. Activities Subject to Regulation

(i) Any activity proposed or undertaken within 100 feet (Buffer Zone) of any area specified in Paragraph III (A)(i) of these regulations or within an area specified in Paragraph III(A)(ii) of these regulations which will remove, fill dredge, or alter that area is subject to regulation under the By-Law and will require a Notice of Intent and approval by the Conservation Commission.

(ii) Any activity proposed or undertaken which is not set forth in Paragraph III(B)(i), but which will in the opinion of the Marshfield Conservation Commission will alter an area subject to the By-Law will require the filing of Notice of Intent”

From the Town of Marshfield Wetlands Protection Regulations. Section III (Effective 9/18/03).

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes A vernal pool is given a 100 foot buffer zone from the highest point of flooding irrespective of whether it has been state certified.

“Vernal Pool- A fresh water wetland that is a confined basin or depression (not occurring in existing lawns, gardens, or driveways) which in most years: holds water for a minimum of two months in the spring and/or summer; is free of self-sustaining populations of adult predatory fish; and functions as breeding habitat for one or more obligate or two or more facultative amphibian, reptile, crustacean, mollusk or insect populations listed by Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP), regardless of whether the site has been certified by the NHESP and regardless of association with other Resource Areas.

The presumption that any seasonal basis functions as a Vernal Pool shall prevail through a minimum of one spring/summer breeding seasons for the purpose of documenting the occurrence or lack of occurrence of breeding activity of one or more obligate or town or more facultative vernal pool species.

The Buffer Zone for Vernal Pools shall extend 100 feet from the highest extent of flooding.”

From the Town of Marshfield Wetlands Protection Regulations. Section XVI (Effective 9/18/03).

“III. Jurisdiction

A. Areas Subject to Protection

The following areas area subject to protection under the By-Law:

(i) Any:

Bank;
Freshwater wetland;
Coastal wetland;
Beach;
Dune;
Flat;
Marsh;
Wet Meadow;
Bog;
Swamp;
Lands adjoining the Ocean or any:
Estuary;
Creek;
River;
Stream;
Pond;
Lake;

Or any land under said waters;

Or any land subject to:

Tidal Action;
Coastal storm flowage;
Or Flooding.

(ii) Land at or below elevation eleven (11.0) feet above sea level.

B. Activities Subject to Regulation

(i) Any activity proposed or undertaken within 100 feet (Buffer Zone) of any area specified in Paragraph III (A)(i) of these regulations or within an area specified in Paragraph III(A)(ii) of these regulations which will remove, fill dredge, or alter that area is subject to regulation under the By-Law and will require a Notice of Intent and approval by the Conservation Commission.

(ii) Any activity proposed or undertaken which is not set forth in Paragraph III(B)(i), but which will in the opinion of the Marshfield Conservation Commission will alter an area subject to the By-Law will require the filing of Notice of Intent”

From the Town of Marshfield Wetlands Protection Regulations. Section III (Effective 9/18/03).

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Conservation agent confirmed (12/6/04) that the width of jurisdiction around a vernal pool is 100 feet.

"Vernal Pool- A fresh water wetland that is a confined basin or depression (not occurring in existing lawns, gardens, or driveways) which in most years: holds water for a minimum of two months in the spring and/or summer; is free of self-sustaining populations of adult predatory fish; and functions as breeding habitat for one or more obligate or two or more facultative amphibian, reptile, crustacean, mollusk or insect populations listed by Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP), regardless of whether the site has been certified by the NHESP and regardless of association with other Resource Areas.

The presumption that any seasonal basis functions as a Vernal Pool shall prevail through a minimum of one spring/summer breeding seasons for the purpose of documenting the occurrence or lack of occurrence of breeding activity of one or more obligate or town or more facultative vernal pool species.
The Buffer Zone for Vernal Pools shall extend 100 feet from the highest extent of flooding."

From the Town of Marshfield Wetlands Protection Regulations. Section XVI (Effective 9/18/03).

III. Jurisdiction

A. Areas Subject to Protection

The following areas area subject to protection under the By-Law:

(i) Any:

- Bank;
- Freshwater wetland;
- Coastal wetland;
- Beach;
- Dune;
- Flat;
- Marsh;
- Wet Meadow;
- Bog;
- Swamp;
- Lands adjoining the Ocean or any:
 - Estuary;
 - Creek;
 - River;
 - Stream;
 - Pond;
 - Lake;
- Or any land under said waters;
- Or any land subject to:
 - Tidal Action;
 - Coastal storm flowage;
 - Or Flooding.

(ii) Land at or below elevation eleven (11.0) feet above sea level.

B. Activities Subject to Regulation

- (i) Any activity proposed or undertaken within 100 feet (Buffer Zone) of any area specified in Paragraph III (A)(i) of these regulations or within an area specified in Paragraph III(A)(ii) of these regulations which will remove, fill dredge, or alter that area is subject to regulation under the By-Law and will require a Notice of Intent and approval by the Conservation Commission.
- (ii) Any activity proposed or undertaken which is not set forth in Paragraph III(B)(i), but which will in the opinion of the Marshfield Conservation Commission will alter an area subject to the By-Law will require the filing of Notice of Intent"

From the Town of Marshfield Wetlands Protection Regulations. Section III (Effective 9/18/03).

Maynard

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition of a vernal pool specifies that it does not have to be state certified.

Section 9 of the Maynard Wetlands Administration Bylaw defines vernal pools as follows:

"The term "vernal pool" shall include, in addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131 §40, and Regulations thereunder, 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. The presumption of essential habitat value may be overcome by the presentation of credible evidence which in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. The buffer zone for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or one-half of the distance between the vernal pool and any existing house foundation, whichever ever is smaller. In either case the buffer zone for vernal pools shall not extend over existing lawns, gardens, landscaped or developed areas."

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

From Section 2. Jurisdiction, "In accordance with this purpose no person shall remove, fill, dredge, build upon, degrade, pollute, discharge into, or otherwise alter the following resource areas; any freshwater wetland, marshes, wet meadows, bogs, swamps, vernal pools, banks, reservoirs, lakes, ponds, rivers, streams, creeks, lands under waterbodies, lands subject to flooding by groundwater, surface water or storm flow (collectively the resource areas protected by this bylaw); and lands within 100 feet of any of the aforesaid resource areas (the buffer zone) without a permit from the Conservation Commission, or as is provided by this bylaw."

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

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have a buffer zone regardless of state certification and location of the resource.

From Section 2. Jurisdiction, "In accordance with this purpose no person shall remove, fill, dredge, build upon, degrade, pollute, discharge into, or otherwise alter the following resource areas; any freshwater wetland, marshes, wet meadows, bogs, swamps, vernal pools, banks, reservoirs, lakes, ponds, rivers, streams, creeks, lands under waterbodies, lands subject to flooding by groundwater, surface water or storm flow (collectively the resource areas protected by this bylaw); and lands within 100 feet of any of the aforesaid resource areas (the buffer zone) without a permit from the Conservation Commission, or as is provided by this bylaw."

Section 9 of the Maynard Wetlands Administration Bylaw defines vernal pools as follows:

"The term "vernal pool" shall include, in addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131 §40, and Regulations thereunder, 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. The presumption of essential habitat value may be overcome by the presentation of credible evidence which in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. The buffer zone for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or one-half of the distance between the vernal pool and any existing house foundation, whichever ever is smaller. In either case the buffer zone for vernal pools shall not extend over existing lawns, gardens, landscaped or developed areas."

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 From Section 2. Jurisdiction, "In accordance with this purpose no person shall remove, fill, dredge, build upon, degrade, pollute, discharge into, or otherwise alter the following resource areas; any freshwater wetland, marshes, wet meadows, bogs, swamps, vernal pools, banks, reservoirs, lakes, ponds, rivers, streams, creeks, lands under waterbodies, lands subject to flooding by groundwater, surface water or storm flow (collectively the resource areas protected by this bylaw); and lands within 100 feet of any of the aforesaid resource areas (the buffer zone) without a permit from the Conservation Commission, or as is provided by this bylaw."

Section 9 of the Maynard Wetlands Administration Bylaw defines vernal pools as follows:

"The term "vernal pool" shall include, in addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131 §40,

and Regulations thereunder, 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. The presumption of essential habitat value may be overcome by the presentation of credible evidence which in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. The buffer zone for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or one-half of the distance between the vernal pool and any existing house foundation, whichever is smaller. In either case the buffer zone for vernal pools shall not extend over existing lawns, gardens, landscaped or developed areas."

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

Medfield

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Article IX, Section 2 of the Medfield Town Bylaws includes "certifiable vernal pools" in the jurisdiction of the Medfield Conservation Commission.

Leslee Willitts, Medfield Conservation Agent, (8/18/04) said that Medfield protects all certifiable vernal pools, regardless of whether they have been certified or not, with a 100 foot buffer and a 50 foot no disturbance area.

From Article IX, Section 2:

"Application - No person shall remove fill, dredge, build upon or alter the following resource areas: any freshwater wetland, bordering vegetated wetland, certifiable vernal pools, marsh, wet meadow, bog or swamp; any bank, beach, lake, river, pond, stream or any land under said waters; any land subject to flooding or inundation by groundwater, surface water or storm flowage; or any riverfront area; or any fifty(50) foot buffer zone without receiving a permit issued pursuant to the Bylaw. Any proposed work which falls within one hundred (100) feet of any freshwater wetland, bordering vegetated wetland, vernal pool, marsh, wet meadow, bog or swamp; any bank, beach, lake, river, pond, stream or any land under said waters, within one hundred (100) feet of any land subject to flooding or inundation, or within one hundred (100) feet of the one hundred (100) year storm line must be permitted by the Conservation Commission. (ATM 4/26/99)"

(Town of Medfield Bylaw, Article IX, Adopted 1926, Amended 2000)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools are given a buffer zone regardless of state certification or location of resource.

From Article IX, Section 2:

"Application - No person shall remove fill, dredge, build upon or alter the following resource areas: any freshwater wetland, bordering vegetated wetland, certifiable vernal pools, marsh, wet meadow, bog or swamp; any bank, beach, lake, river, pond, stream or any land under said waters; any land subject to flooding or inundation by groundwater, surface water or storm flowage; or any riverfront area; or any fifty (50) foot buffer zone without receiving a permit issued pursuant to the Bylaw. Any proposed work which falls within one hundred (100) feet of any freshwater wetland, bordering vegetated wetland, vernal pool, marsh, wet meadow, bog or swamp; any bank, beach, lake, river, pond, stream or any land under said waters, within one hundred (100) feet of any land subject to flooding or inundation, or within one hundred (100) feet of the one hundred (100) year storm line must be permitted by the Conservation Commission. (ATM 4/26/99)"

(Town of Medfield Bylaw, Article IX, Adopted 1926, Amended 2000)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

- 100** From Article IX, Section 2:
"Application - No person shall remove fill, dredge, build upon or alter the following resource areas: any freshwater wetland, bordering vegetated wetland, certifiable vernal pools, marsh, wet meadow, bog or swamp; any bank, beach, lake, river, pond, stream or any land under said waters; any land subject to flooding or inundation by groundwater, surface water or storm flowage; or any riverfront area; or any fifty(50) foot buffer zone without receiving a permit issued pursuant to the Bylaw. Any proposed work which falls within one hundred (100) feet of any freshwater wetland, bordering vegetated wetland, vernal pool, marsh, wet meadow, bog or swamp; any bank, beach, lake, river, pond, stream or any land under said waters, within one hundred (100) feet of any land subject to flooding or inundation, or within one hundred (100) feet of the one hundred (100) year storm line must be permitted by the Conservation Commission. (ATM 4/26/99)"
- (Town of Medfield Bylaw, Article IX, Adopted 1926, Amended 2000)

Medway

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

- No** The bylaw extends protection to vernal pools. However, it provides no definition of vernal pools, nor does it clarify which pools are protected.

Ginny Briggs, Medway Conservation Administrator, (8/31/04) stated that Medway's bylaws adhere to the state standards in this area.

Note that since vernal pools are listed separately as a resource area, it would probably get the full 100 foot buffer zone regardless if it fell within a resource area or not.

From Section 21.2 Jurisdiction, "Except as permitted by the Conservation Committee, or as provided in this By-Law, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, reservoirs, lakes, ponds of any size, rivers, streams, creeks, land under waterbodies, lands subject to flooding or inundation by ground water or surface water, and lands within 100 feet of any of the above resource areas. Said resource areas shall be protected whether or not they border surface waters. To be afforded protection, Isolated Vegetated Wetlands (not. including vernal pools) must encompass minimum surface areas of 5,000 square feet."

(Medway General Wetlands Protection Bylaw)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

- Yes** State certified vernal pools are given a full buffer zone regardless of resource location.

The bylaw extends protection to vernal pools. However, it provides no definition of vernal pools, nor does it clarify which pools are protected. Ginny Briggs, Medway Conservation Administrator, (8/31/04) stated that Medway's bylaws adhere to the state standards in this area.

From Section 21.2 Jurisdiction, "Except as permitted by the Conservation Committee, or as provided in this By-Law, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, reservoirs, lakes, ponds of any size, rivers, streams, creeks, land under waterbodies, lands subject to flooding or inundation by ground water or surface water, and lands within 100 feet of any of the above resource areas. Said resource areas shall be protected whether or not they border surface waters. To be afforded protection, Isolated Vegetated Wetlands (not. including vernal pools) must encompass minimum surface areas of 5,000 square feet."

(Medway General Wetlands Protection Bylaw)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

- 100** From Section 21.2 Jurisdiction, "Except as permitted by the Conservation Committee, or as provided in this By-Law, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, reservoirs, lakes, ponds of any size, rivers, streams, creeks, land under waterbodies, lands subject to flooding or inundation by ground water or surface water, and lands within 100 feet of any of the above resource areas. Said resource areas shall be protected whether or not they border surface waters. To be afforded protection, Isolated Vegetated Wetlands (not including vernal pools) must encompass minimum surface areas of 5,000 square feet."
- (Medway General Wetlands Protection Bylaw)

Merrimac

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

- Yes** The regulations specify that the vernal pools do not need to fall in a resource area or be certified by the state to garner protection.

From Section 3.1 Vernal Pools and Vernal Pool Habitat, Definition, Critical Characteristics and Boundary,

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

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

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

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

From the regulations, Section 1.3 Jurisdiction,

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

The Town's wetland resource areas consist of:

1. any Isolated Vegetated Wetland;
2. any Vernal Pool and Vernal Pool Habitat;
3. any vegetated wetlands bordering on any creek, river, stream, pond or lake (bordering vegetated wetland);
4. any bank, beach, marsh, wet meadow, bog, or swamp;
5. any land under any creek, river, stream, pond or lake;
6. any 100-foot Buffer Zone of wetland areas 1-5 listed above;
7. any land subject to storm flowage, or flooding by groundwater or surface water;
8. and the 200-foot Riverfront Area."

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

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

- Yes** All vernal pools are given a buffer zone regardless of state certification and location of the resource.

From the regulations, Section 1.3 Jurisdiction,

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

The Town's wetland resource areas consist of:

1. any Isolated Vegetated Wetland;
2. any Vernal Pool and Vernal Pool Habitat;
3. any vegetated wetlands bordering on any creek, river, stream, pond or lake (bordering vegetated wetland);
4. any bank, beach, marsh, wet meadow, bog, or swamp;
5. any land under any creek, river, stream, pond or lake;
6. any 100-foot Buffer Zone of wetland areas 1-5 listed above;
7. any land subject to storm flowage, or flooding by groundwater or surface water;
8. and the 200-foot Riverfront Area."

From Section 2.0 Definitions,

"5. Buffer Zone is that resource area which extends one-hundred feet (100') from the edge of those wetland resource areas identified in Section 1.0. However, it is possible that these resource areas will overlap in some instances (e.g. Riverfront Area and Land Subject to Flooding)..."

C. 50' Vernal Pool No-Disturbance Zone is the portion of the Buffer Zone which extends fifty feet (50') from the edge of a Vernal Pool which is situated in an upland location or, in situations where a wetland resource area encompasses the Pool, that area which extends 50' from the edge of Vernal Pool Habitat (see definition of Vernal Pool Habitat and Section 3.1). Disturbance of any kind is prohibited within this Zone including but not limited to grading, landscaping, vegetation removal, grazing, pruning, filling, excavating, roadway construction and/or driveway construction.

D. 75' Vernal Pool No-Build Zone is that portion of the Buffer Zone which extends seventy five feet (75') from the edge of a Vernal Pool which is situated in an upland location or, in situations where a wetland resource area encompasses the Pool that area which extends 75' from the edge of Vernal Pool Habitat (see definition of Vernal Pool Habitat and Section 3.1 of these Regulations). Construction of any kind is prohibited within this Zone including but not limited to foundations associated with single family homes, multi-family dwellings, commercial and/or industrial buildings, porches, decks (i.e., footing, piling, sonotube), patios, house additions, building additions, pools, septic systems, sheds, and any other impermeable surface. Driveways, roadways retaining walls and landscape builder walls may be allowed in the 75-foot Vernal Pool No-Build Zone when no other feasible location or alternative means of access exists. Any permitted work shall not obstruct the migratory pathways of Vernal Pool breeders such as Ambystomid salamanders and wood frogs.

...

10. Vernal Pool means a confined basin depression which, in most years, holds water for a minimum of two (2) consecutive months and is free of adult fish populations and has no permanently flowing outlet. These areas are essential breeding habitat, and provide other extremely important wildlife habitat functions during non-breeding season as well, for a variety of amphibian species such as wood frog and the spotted salamander, and are important habitat for other wildlife species. See section 3.1 of these regulations.

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

Some of Section 3.1 has already been stated above, so only the critical section is included below. From Section 3.1 Vernal Pools and Vernal Pool Habitat, Definition, Critical Characteristics and Boundary,

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

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

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

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

200 The jurisdiction includes vernal pools and vernal pool habitat, extending the zone of jurisdiction for the Conservation Commission 200 feet from the mean annual water line. This is explicitly discussed in the regulations. Further, the regulations specify that the vernal pools does not need to fall in a resource area or be certified by the state to garner protection. The researcher did not confirm this zone of jurisdiction with the conservation agent as it appeared straightforward in the bylaw and regulations.

From the regulations, Section 1.3 Jurisdiction,

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

The Town's wetland resource areas consist of:

1. any Isolated Vegetated Wetland;
2. any Vernal Pool and Vernal Pool Habitat;
3. any vegetated wetlands bordering on any creek, river, stream, pond or lake (bordering vegetated wetland);
4. any bank, beach, marsh, wet meadow, bog, or swamp;
5. any land under any creek, river, stream, pond or lake;
6. any 100-foot Buffer Zone of wetland areas 1-5 listed above;
7. any land subject to storm flowage, or flooding by groundwater or surface water;
8. and the 200-foot Riverfront Area."

From Section 2.0 Definitions,

"5. Buffer Zone is that resource area which extends one-hundred feet (100') from the edge of those wetland resource areas identified in Section 1.0. However, it is possible that these resource areas will overlap in some instances (e.g. Riverfront Area and Land Subject to Flooding)..."

C. 50' Vernal Pool No-Disturbance Zone is the portion of the Buffer Zone which extends fifty feet (50') from the edge of a Vernal Pool which is situated in an upland location or, in situations where a wetland resource area encompasses the Pool, that area which extends 50' from the edge of Vernal Pool Habitat (see definition of Vernal Pool Habitat and Section 3.1). Disturbance of any kind is prohibited within this Zone including but not limited to grading, landscaping, vegetation removal, grazing, pruning, filling, excavating, roadway construction and/or driveway construction.

D. 75' Vernal Pool No-Build Zone is that portion of the Buffer Zone which extends seventy five feet (75') from the edge of a Vernal Pool which is situated in an upland location or, in situations where a wetland resource area encompasses the Pool that area which extends 75' from the edge of Vernal Pool Habitat (see definition of Vernal Pool Habitat and Section 3.1 of these Regulations). Construction of any kind is prohibited within this Zone including but not limited to foundations associated with single family homes, multi-family dwellings, commercial and/or industrial buildings, porches, decks (i.e., footing, piling, sonotube), patios, house additions, building additions, pools, septic systems, sheds, and any other impermeable surface. Driveways, roadways retaining walls and landscape builder walls may be allowed in the 75-foot Vernal Pool No-Build Zone when no other feasible location or alternative means of access exists. Any permitted work shall not obstruct the migratory pathways of Vernal Pool breeders such as Ambystomid salamanders and wood frogs.

...

10. Vernal Pool means a confined basin depression which, in most years, holds water for a minimum of two (2) consecutive months and is free of adult fish populations and has no permanently flowing outlet. These areas are essential breeding habitat, and provide other extremely important wildlife habitat functions during non-breeding season as well, for a variety of amphibian species such as wood frog and the spotted salamander, and are important habitat for other wildlife species. See section 3.1 of these regulations.

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

Some of Section 3.1 has already been stated above, so only the critical section is included below. From Section 3.1 Vernal Pools and Vernal Pool Habitat, Definition, Critical Characteristics and Boundary,

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

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

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

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

Methuen

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No The researcher found no reference to vernal pools, certified or non-certified, in Methuen's Wetlands Ordinance or the accompanying regulations.

The conservation agent (10/25/04) confirmed this finding, saying that Methuen does not have many vernal pools that fall outside the boundaries of protected wetlands resource areas.

"No person shall remove, fill, dredge, alter or build upon or within one hundred feet of any bank, fresh water wetland, coastal wetland, beach, dune, flat, marsh, meadow, bog, swamp, or on any estuary, creek, river, stream, pond or lake, or any land under said water or any land subject to tidal action, coastal storm flowage, flooding or inundation, or within one hundred feet of the one hundred year storm line, other than in the course of 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 and used to provide electric, gas, water, sanitary sewers, public roadways, storm drainage systems, telephone, telegraph and other telecommunication services, provided however, that such person shall file with the Conservation Commission within forty-eight hours, a notice or as-built plan of such repair or replacement and listing individuals involved, work undertaken, location and date without filing written application for a permit so to remove, fill, dredge, alter or build upon, including such plans as may be necessary to describe such proposed activity and its effect on the environment, and receiving and complying with a permit issued pursuant to this ordinance."

From The City of Methuen's Wetlands Ordinance, Section 12.1 (Adopted 1987).

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No The researcher found no reference to vernal pools, certified or non-certified, in Methuen's Wetlands Ordinance or the accompanying regulations.

The conservation agent (10/25/04) confirmed this finding, saying that Methuen does not have many vernal pools that fall outside the boundaries of protected wetlands resource areas.

"No person shall remove, fill, dredge, alter or build upon or within one hundred feet of any bank, fresh water wetland, coastal wetland, beach, dune, flat, marsh, meadow, bog, swamp, or on any estuary, creek, river, stream, pond or lake, or any land under said water or any land subject to tidal action, coastal storm flowage, flooding or inundation, or within one hundred feet of the one hundred year storm line, other than in the course of 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 and used to provide electric, gas, water, sanitary sewers, public roadways, storm drainage systems, telephone, telegraph and other telecommunication services, provided however, that such person shall file with the Conservation Commission within forty-eight hours, a notice or as-built plan of such repair or replacement and listing individuals involved, work undertaken, location and date without filing written application for a permit so to remove, fill, dredge, alter or build upon, including such plans as may be necessary to describe such proposed activity and its effect on the environment, and receiving and complying with a permit issued pursuant to this ordinance."

From The City of Methuen's Wetlands Ordinance, Section 12.1 (Adopted 1987).

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Milford

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No No reference to vernal pools in the Milford wetlands bylaw.

"No person shall remove, fill, dredge, or alter any bank, freshwater wetland, marsh, wet meadow, bog or swamp or lands bordering on any estuary, creek, river, stream, pond, or lake, or any land subject to flooding, other than in the course of 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 and used to provide electric, gas, water, drainage, telephone, telegraphs, and the telecommunications services,

without filing written notice of his intention so to remove, fill, dredge, or alter and without receiving and complying with an order of conditions and provided all appeal periods have elapsed."

From the Town of Milford Wetlands Bylaw: Article XXX, Section 3.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No No reference to vernal pools in the Milford wetlands bylaw.

"No person shall remove, fill, dredge, or alter any bank, freshwater wetland, marsh, wet meadow, bog or swamp or lands bordering on any estuary, creek, river, stream, pond, or lake, or any land subject to flooding, other than in the course of 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 and used to provide electric, gas, water, drainage, telephone, telegraphs, and the telecommunications services,

without filing written notice of his intention so to remove, fill, dredge, or alter and without receiving and complying with an order of conditions and provided all appeal periods have elapsed."

From the Town of Milford Wetlands Bylaw: Article XXX, Section 3.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Millis

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No There is no mention of vernal pools in the Town of Millis, Article XIX, Wetlands Protection Bylaw (as amended 2004).

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No There is no mention of vernal pools in the Town of Millis, Article XIX, Wetlands Protection Bylaw (as amended 2004).

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Millville

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes 12-9-1-36. Vernal Pool. "Vernal pool" shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. Vernal pools shall include those mapped and certified by the Massachusetts Natural Heritage and Endangered Species Program as well as those areas identified in the field as eligible for certification by a professional wetland biologist or other expert.

(Town of Millville Wetland Protection Bylaw, Adopted 2003)

12-2. Jurisdiction. Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, or discharge into, or otherwise alter the following resource areas: any freshwater or; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; rivers; streams; creeks; tributaries; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; the one-hundred (100) foot Buffer Zone to any of the aforementioned resource areas or lands abutting any of the aforesaid resource areas; and the two-hundred (200) foot

Buffer Zone of rivers, ponds and lakes, (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters.

(Town of Millville Wetland Protection Bylaw, Adopted 2003)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have buffer zones regardless of state certification and resource location.

12-2. Jurisdiction. Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, or discharge into, or otherwise alter the following resource areas: any freshwater or; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; rivers; streams; creeks; tributaries; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; the one-hundred (100) foot Buffer Zone to any of the aforementioned resource areas or lands abutting any of the aforesaid resource areas; and the two-hundred (200) foot Buffer Zone of rivers, ponds and lakes, (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters.

12-9-1-36. Vernal Pool. "Vernal pool" shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. Vernal pools shall include those mapped and certified by the Massachusetts Natural Heritage and Endangered Species Program as well as those areas identified in the field as eligible for certification by a professional wetland biologist or other expert.

(Town of Millville Wetland Protection Bylaw, Adopted 2003)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

200 200 feet was not confirmed with the conservation agent.

12-2. Jurisdiction. Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, or discharge into, or otherwise alter the following resource areas: any freshwater or; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; rivers; streams; creeks; tributaries; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; the one-hundred (100) foot Buffer Zone to any of the aforementioned resource areas or lands abutting any of the aforesaid resource areas; and the two-hundred (200) foot Buffer Zone of rivers, ponds and lakes, (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters.

12-9-1-36. Vernal Pool. "Vernal pool" shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. Vernal pools shall include those mapped and certified by the Massachusetts Natural Heritage and Endangered Species Program as well as those areas identified in the field as eligible for certification by a professional wetland biologist or other expert.

(Town of Millville Wetland Protection Bylaw, Adopted 2003)

Milton

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No There is no mention of vernal pools in the wetlands bylaw.

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

SECTION I. Application.

(Second paragraph) No person shall remove, fill, dredge, alter or build upon or within one hundred feet of any bank, freshwater wetland, coastal wetland, beach, dune, flat, marsh, meadow, bog, swamp, aquifer or upon or within one hundred feet of lands

bordering on the ocean or upon or within one hundred feet of any estuary, creek, river, stream, pond or lake, or upon or within one hundred feet of any land under said waters or upon or within one hundred feet of any land subject to tidal action, coastal storm flowage, flood or inundation, or within one hundred feet of the 100-year storm line, or upon or within 200 feet of the mean annual high water line of a perennial stream unless exempted by the Rivers Protection Act (st. 1996, c. 258), other than in the course of maintaining, repairing or replacing but not substantially changing or enlarging, and existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph and basic telecommunication services, or, in the course of practicing agriculture, forestry or the maintenance of property, essentially in its existing condition, so long as these activities are not detrimental to the interests protected by this Bylaw without filing written application for a permit so to remove, fill, dredge, alter or build upon, including such plans as may be necessary to describe such proposed activity and its effect on the environment, and receiving and complying with a permit issued pursuant to this Bylaw.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No There is no mention of vernal pools in the wetlands bylaw.

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

SECTION I. Application.

(Second paragraph) No person shall remove, fill, dredge, alter or build upon or within one hundred feet of any bank, freshwater wetland, coastal wetland, beach, dune, flat, marsh, meadow, bog, swamp, aquifer or upon or within one hundred feet of lands bordering on the ocean or upon or within one hundred feet of any estuary, creek, river, stream, pond or lake, or upon or within one hundred feet of any land under said waters or upon or within one hundred feet of any land subject to tidal action, coastal storm flowage, flood or inundation, or within one hundred feet of the 100-year storm line, or upon or within 200 feet of the mean annual high water line of a perennial stream unless exempted by the Rivers Protection Act (st. 1996, c. 258), other than in the course of maintaining, repairing or replacing but not substantially changing or enlarging, and existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph and basic telecommunication services, or, in the course of practicing agriculture, forestry or the maintenance of property, essentially in its existing condition, so long as these activities are not detrimental to the interests protected by this Bylaw without filing written application for a permit so to remove, fill, dredge, alter or build upon, including such plans as may be necessary to describe such proposed activity and its effect on the environment, and receiving and complying with a permit issued pursuant to this Bylaw.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Natick

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Natick regulates vernal pools that are certified or certifiable by the state.

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

2.2 Definitions

Protected Resource Area. Any freshwater wetland as defined in M.G.L. Chapter 131, Section 40 and as determined by vegetation community, soil composition or hydrologic regime, bank, beach, marsh, wet meadow; bog or swamp lands bordering any creek, river, perennial stream, intermittent stream, reservoir, pond or lake; vernal pool; Riverfront Area; any floodplain; any lands under or any lands subject to flooding or inundation by groundwater, surface water or storm flow.

Vernal Pool. This term includes all areas defined as vernal pool habitat under the Wetlands Protection Act and Wetlands Protection Regulations and all areas within the mean annual high water level of any confined basin or depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, is free of adult fish populations and provides breeding, rearing or other habitat functions for amphibians, reptiles or other vernal pool community species and the site has been certified or is certifiable by the Massachusetts Division of Fisheries and Wildlife, or any successor organization.

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.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

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

2.2 Definitions

Protected Resource Area. Any freshwater wetland as defined in M.G.L. Chapter 131, Section 40 and as determined by vegetation community, soil composition or hydrologic regime, bank, beach, marsh, wet meadow; bog or swamp lands bordering any creek, river, perennial stream, intermittent stream, reservoir, pond or lake; vernal pool; Riverfront Area; any floodplain; any lands under or any lands subject to flooding or inundation by groundwater, surface water or storm flow.

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

Buffer Zone. Lands within 100 feet of any Protected Resource Area except floodplain land and Riverfront Area. Wetlands Protection Bylaw Town of Natick, Section 2.6.3(Adopted 2002, on website August 2004)

2.6.3 – Vernal pools. No Alteration shall occur within the 100-foot Buffer Zone of a Vernal Pool unless otherwise provided in a permit issued under Section 2, and except as provided in Section 2.13.6.

Wetland Protection Bylaw & Rules and Regulations, Section 4.3 (On Natick website August 2004)

4.3 VERNAL POOLS

Vernal pools and vernal pool habitat as defined in the Bylaw shall be determined by the Natick Conservation Commission. The Commission need not identify vernal pool and vernal pool habitat locations prior to application with the Commission. It shall be the applicant's responsibility to indicate the location of possible vernal pools and vernal pool habitats on the subject property, during the application process. The applicant may request a determination of applicability prior to application for a permit under the Bylaw, if unsure as to whether a vernal pool exists on or near the subject site. The buffer zone of a vernal pool is presumed critical to the function of the pool and work in this area should be avoided. The presumption may be overcome by a clear and convincing showing that the ability of the vernal pool to function will not be impaired.

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.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

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

2.2 Definitions

Protected Resource Area. Any freshwater wetland as defined in M.G.L. Chapter 131, Section 40 and as determined by vegetation community, soil composition or hydrologic regime, bank, beach, marsh, wet meadow; bog or swamp lands bordering any creek, river, perennial stream, intermittent stream, reservoir, pond or lake; vernal pool; Riverfront Area; any floodplain; any lands under or any lands subject to flooding or inundation by groundwater, surface water or storm flow.

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

Buffer Zone. Lands within 100 feet of any Protected Resource Area except floodplain land and Riverfront Area.
Wetlands Protection Bylaw Town of Natick, Section 2.6.3(Adopted 2002, on website August 2004)

2.6.3 – Vernal pools. No Alteration shall occur within the 100-foot Buffer Zone of a Vernal Pool unless otherwise provided in a permit issued under Section 2, and except as provided in Section 2.13.6.

Needham

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Vernal pools are not explicitly mentioned in the jurisdiction. However, in the definition of a vernal pool, it is listed as a synonym of a vegetated wetland and isolated land subject to flooding, which does receive protection in the jurisdiction. The researcher confirmed that the town protects non-certified vernal pools. Ms. McGowan of the Needham Conservation Commission stated that Needham does regulate vernal pools that are not certified by the state and they receive a buffer that would be 100' which matches the buffer size for certified vernal pools.

From Section 1.04 Definitions, "Vernal Pool means any vegetated wetland or isolated area subject to flooding which provides a breeding habit for obligate vernal pool species such as wood frogs (*Rana sylvatica*), spotted salamanders (*Ambystoma maculatum*), or fairy shrimp, and which may be without standing water during late summer."

From 2.02 Vegetated Wetlands, (3)(c), "No alteration of natural vegetation or new structures shall be permitted within 100 feet of a vegetated wetland which meets the definition of Vernal Pool. No stormwater runoff may be allowed to discharge directly into a Vernal Pool."

(Town of Needham Wetlands Protection Regulations, Adopted 1995)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Even though vernal pools are protected as an isolated wetland, the buffer zones of vernal pools are protected regardless of state certification and resource location.

From 1.02 Statement of Jurisdiction,

"(1) Areas Subject to Protection Under the By-Law. The following areas are subject to protection under the By-law:

(a) Any freshwater wetland, including marsh, wet meadow, bog, or swamp.

(b) Any bank of a lake, pond, river, stream, or other watercourse.

(c) Any waterbody or waterway, including any lake, river, pond, stream, or watercourse.

(d) Any land within 100 feet of any of the areas set forth in Section 1.02(1)(a-c) above.

(e)Any land subject to flooding or inundation by groundwater or surface water."

From Section 1.04 Definitions, "Vernal Pool means any vegetated wetland or isolated area subject to flooding which provides a breeding habit for obligate vernal pool species such as wood frogs (*Rana sylvatica*), spotted salamanders (*Ambystoma maculatum*), or fairy shrimp, and which may be without standing water during late summer."

From 2.02 Vegetated Wetlands, (3)(c), "No alteration of natural vegetation or new structures shall be permitted within 100 feet of a vegetated wetland which meets the definition of Vernal Pool. No stormwater runoff may be allowed to discharge directly into a Vernal Pool."

(Town of Needham Wetlands Protection Regulations, Adopted 1995)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Vernal pools are not explicitly mentioned in the jurisdiction. In the definition of a vernal pool, it is listed as a synonym of a vegetated wetland and isolated land subject to flooding, which does receive protection in the jurisdiction. Further, the regulations specifically prohibit work within 100 feet of a vernal pool. The researcher confirmed that the town protects non-certified vernal pools. Ms. McGowan of the Needham Conservation Commission stated that Needham does regulate vernal pools that are not certified by the state and they receive a buffer that would be 100' which matches the buffer size for certified vernal pools.

From 1.02 Statement of Jurisdiction,

"(1) Areas Subject to Protection Under the By-Law. The following areas are subject to protection under the By-law:

- (a)Any freshwater wetland, including marsh, wet meadow, bog, or swamp.
- (b)Any bank of a lake, pond, river, stream, or other watercourse.
- (c)Any waterbody or waterway, including any lake, river, pond, stream, or watercourse.
- (d)Any land within 100 feet of any of the areas set forth in Section 1.02(1)(a-c) above.
- (e)Any land subject to flooding or inundation by groundwater or surface water."

From Section 1.04 Definitions, "Vernal Pool means any vegetated wetland or isolated area subject to flooding which provides a breeding habit for obligate vernal pool species such as wood frogs (*Rana sylvatica*), spotted salamanders (*Ambystoma maculatum*), or fairy shrimp, and which may be without standing water during late summer."

From 2.02 Vegetated Wetlands, (3)(c), "No alteration of natural vegetation or new structures shall be permitted within 100 feet of a vegetated wetland which meets the definition of Vernal Pool. No stormwater runoff may be allowed to discharge directly into a Vernal Pool."

(Town of Needham Wetlands Protection Regulations, Adopted 1995)

Newbury

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No No reference to vernal pools in the wetlands bylaws.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No No reference to vernal pools in the wetlands bylaws.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Newburyport

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No The Conservation Commission confirmed that the Newburyport Wetlands Ordinance does not give added protection to wetlands resources other than the Barrier Beach. (10/20/04)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No The Conservation Commission confirmed that the Newburyport Wetlands Ordinance does not give added protection to wetlands resources other than the Barrier Beach. (10/20/04)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Newton

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No According to Martha J. Aherin Horn, environmental planner at the Newton Conservation Commission, Newton does not regulate vernal pools that are not certified by the state.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Norfolk

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No The term "vernal pool" does not appear in the Norfolk bylaws or rules and regulations. However, Marie Simpson, Norfolk Conservation Agent, said in a 7/23/04 phone conversation that vernal pools, regardless of whether or not they are located in another resource area, are regulated if the conservation commission finds them to be certifiable (presence of vernal pool species).

This researcher concluded that vernal pools must be classified as isolated wetlands or isolated land subject to flooding. Since the town did not distinguish vernal pools in their jurisdiction, this researcher changed the answer field to 'no'.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No From Section B. Jurisdiction,
"Except as permitted by the Conservation Commission (Commission) or as provided in this Bylaw, no person shall remove, fill, dredge, build upon, or alter the following:

1) Resource areas within 100 feet of any freshwater wetland, marsh, wet meadow, bog or swamp; within 100 feet of any bank, beach, or flat; any lake, river, pond, stream, estuary; or Riverfront Area; any land under said waters; or within 100 feet of any land subject to flooding or inundation by groundwater or surface water. (Riverfront Area - May 26, 1998 Annual Town Meeting)"

(Article VII, Section 2.B(1) of the Norfolk Bylaws)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

North Andover

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes In a section dedicated to vernal pools, the regulations specify that the vernal pool does not need to be certified to garner protection.

North Andover Wetlands Protection Regulation 3.1
"An Ephemeral Pool means a confined basin depression which, in most years, holds water for a minimum of two (2) consecutive months and is free of adult fish populations and has no permanently flowing outlet. A confined basin depression is protected under the Bylaw as an Ephemeral Pool if it meets the biological and physical criteria identified in Appendix C and/or this Section of the regulations which provides guidelines for the identification of Ephemeral Pools in the Town of North Andover.

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

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

Chapter 178.2 of North Andover's Town Bylaws reads:
"§178.2 Jurisdiction.
Except as permitted in writing by the Commission, or as provided in this Bylaw, no person shall engage in the following activities ("activities"): removal, filling, dredging, discharging into, building upon, or otherwise altering or degrading the wetland resource areas described in the following sentence. The Town's wetland resource areas consist of:

- 1) any isolated vegetated wetland,
- 2) any ephemeral pool
- 3) any vegetated wetland bordering on any creek, river, stream, pond or lake,
- 4) any bank, beach, marsh, wet meadow, bog, or swamp,
- 5) any land under any creek, river, stream, pond or lake,
- 6) any 100-foot buffer zone of wetland areas 1-5 listed above,
- 7) any land subject to storm flowage, or flooding by groundwater or surface water,
- 8) and the 200-foot riverfront area."

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have buffer zones regardless of state certification and resource location.

Chapter 178.2 of North Andover's Town Bylaws reads:
"§178.2 Jurisdiction.

Except as permitted in writing by the Commission, or as provided in this Bylaw, no person shall engage in the following activities ("activities"): removal, filling, dredging, discharging into, building upon, or otherwise altering or degrading the wetland resource areas described in the following sentence. The Town's wetland resource areas consist of:

- 1) any isolated vegetated wetland,
- 2) any ephemeral pool
- 3) any vegetated wetland bordering on any creek, river, stream, pond or lake,
- 4) any bank, beach, marsh, wet meadow, bog, or swamp,
- 5) any land under any creek, river, stream, pond or lake,
- 6) any 100-foot buffer zone of wetland areas 1-5 listed above,
- 7) any land subject to storm flowage, or flooding by groundwater or surface water,
- 8) and the 200-foot riverfront area."

North Andover Wetlands Protection Regulation 3.1

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

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

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 In a survey returned to researcher from the North Andover planner, the answer was marked "100 feet."

Chapter 178.2 of North Andover's Town Bylaws reads:

"§178.2 Jurisdiction.

Except as permitted in writing by the Commission, or as provided in this Bylaw, no person shall engage in the following activities ("activities"): removal, filling, dredging, discharging into, building upon, or otherwise altering or degrading the wetland resource areas described in the following sentence. The Town's wetland resource areas consist of:

- 1) any isolated vegetated wetland,
- 2) any ephemeral pool
- 3) any vegetated wetland bordering on any creek, river, stream, pond or lake,
- 4) any bank, beach, marsh, wet meadow, bog, or swamp,
- 5) any land under any creek, river, stream, pond or lake,
- 6) any 100-foot buffer zone of wetland areas 1-5 listed above,
- 7) any land subject to storm flowage, or flooding by groundwater or surface water,
- 8) and the 200-foot riverfront area."

North Andover Wetlands Protection Regulation 3.1

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

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

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

North Reading

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition for vernal pools indicates that vernal pools do not need to be state certified to receive protection.

North Reading Conservation Rules and Regulations, Section 4.6 (Adopted 1993, Revised 2001)

4.6 VERNAL POOLS

Vernal pools and vernal pool habitat as defined in this Bylaw shall be determined by the North reading Conservation Commission. The Commission need not identify vernal pool and vernal pool habitat locations prior to application with the Commission. It shall be the applicant's responsibility to indicate the location of possible vernal pools and vernal pool habitats on the subject property, during the application process. The applicant may request a determination of applicability prior to application for permit under the bylaw, if he is unsure as to whether a vernal pool exists on the subject site. There shall be no alteration to any vernal pool. The buffer zone of a vernal pool is critical to the function of the pool and any work in this area should be avoided. Specific buffers to vernal pools and vernal pool habitats will be created on a case by case basis by the Commission.

North Reading General Wetlands Bylaw, Section 196-2 (Adopted 1992)

196-2. Jurisdiction

Except as permitted by the Conservation Commission or as provided in this by-law, no person shall remove, fill, dredge, build upon, degrade, or alter the following resource areas: any freshwater wetland; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; rivers; streams; creeks; beaches; dunes; estuaries; flats; land under water bodies; lands subject to flooding and inundation by groundwater, surface water or tidal action; and lands within 100 feet of any of the aforesaid resource areas (collectively the "resource areas protected by this bylaw").

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have buffer zones regardless of state certification and resource location.

North Reading General Wetlands Bylaw, Section 196-2 (Adopted 1992)

196-2. Jurisdiction

Except as permitted by the Conservation Commission or as provided in this by-law, no person shall remove, fill, dredge, build upon, degrade, or alter the following resource areas: any freshwater wetland; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; rivers; streams; creeks; beaches; dunes; estuaries; flats; land under water bodies; lands subject to flooding and inundation by groundwater, surface water or tidal action; and lands within 100 feet of any of the aforesaid resource areas (collectively the "resource areas protected by this bylaw").

North Reading Conservation Rules and Regulations, Section 4.6 (Adopted 1993, Revised 2001)

4.6 VERNAL POOLS

Vernal pools and vernal pool habitat as defined in this Bylaw shall be determined by the North reading Conservation Commission. The Commission need not identify vernal pool and vernal pool habitat locations prior to application with the Commission. It shall be the applicant's responsibility to indicate the location of possible vernal pools and vernal pool habitats on the subject property, during the application process. The applicant may request a determination of applicability prior to application for permit under the bylaw, if he is unsure as to whether a vernal pool exists on the subject site. There shall be no alteration to any vernal pool. The buffer zone of a vernal pool is critical to the function of the pool and any work in this area should be avoided. Specific buffers to vernal pools and vernal pool habitats will be created on a case by case basis by the Commission.

4.7 LANDS WITHIN 100 FEET

The land within 100 feet of any freshwater wetland; marshes; wet meadows; bogs, swamps, vernal pools, river banks reservoirs, lakes, ponds rivers, streams, creeks, beaches, lands under waterbodies, lands subject to flooding or inundation by groundwater or surface water is considered to be a resource area under the General Wetlands Protection Bylaw and, as such, is subject to protection.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100

The regulations note that the buffer zone around a vernal pool will be 100 feet, but also it is on a "case by case basis."

North Reading General Wetlands Bylaw, Section 196-2 (Adopted 1992)

196-2. Jurisdiction

Except as permitted by the Conservation Commission or as provided in this by-law, no person shall remove, fill, dredge, build upon, degrade, or alter the following resource areas: any freshwater wetland; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; rivers; streams; creeks; beaches; dunes; estuaries; flats; land under water bodies; lands subject to flooding and inundation by groundwater, surface water or tidal action; and lands within 100 feet of any of the aforesaid resource areas (collectively the "resource areas protected by this bylaw").

North Reading Conservation Rules and Regulations, Section 4.6 (Adopted 1993, Revised 2001)

4.6 VERNAL POOLS

Vernal pools and vernal pool habitat as defined in this Bylaw shall be determined by the North reading Conservation Commission. The Commission need not identify vernal pool and vernal pool habitat locations prior to application with the Commission. It shall be the applicant's responsibility to indicate the location of possible vernal pools and vernal pool habitats on the subject property, during the application process. The applicant may request a determination of applicability prior to application for permit under the bylaw, if he is unsure as to whether a vernal pool exists on the subject site. There shall be no alteration to any vernal pool. The buffer zone of a vernal pool is critical to the function of the pool and any work in this area should be avoided. Specific buffers to vernal pools and vernal pool habitats will be created on a case by case basis by the Commission.

4.7 LANDS WITHIN 100 FEET

The land within 100 feet of any freshwater wetland; marshes; wet meadows; bogs, swamps, vernal pools, river banks reservoirs, lakes, ponds rivers, streams, creeks, beaches, lands under waterbodies, lands subject to flooding or inundation by groundwater or surface water is considered to be a resource area under the General Wetlands Protection Bylaw and, as such, is subject to protection.

Northborough

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No The researcher found no reference to vernal pools in the Wetlands Bylaws. The town engineer (11/12/04) said that Northborough had considered including a reference to vernal pools but had not yet done so.

From Section 1 Introduction and Purpose,
"1.3 Applicability

Except as permitted by the Commission or as provided in the Wetlands Bylaw, no person shall remove, fill, dredge, build upon or alter the following resource areas:

- a. Any freshwater wetland, bordering vegetated wetland, marsh, wet meadow, bog or swamp;
- b. Any bank, beach, lake, river, pond, stream or any land under said waters;
- c. Any land subject to flooding or inundation by ground water, surface water run-off or storm flowage; and
- d. Any riverfront area.
- e. Any proposed work, which falls within 100 feet of such resource area, or within the riverfront area, must be approved by the Commission."

(Town of Northborough Wetlands Regulations)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No The researcher found no reference to vernal pools in the Wetlands Bylaws. The town engineer (11/12/04) said that Northborough had considered including a reference to vernal pools but had not yet done so.

From Section 1 Introduction and Purpose,
"1.3 Applicability

Except as permitted by the Commission or as provided in the Wetlands Bylaw, no person shall remove, fill, dredge, build upon or

alter the following resource areas:

- a. Any freshwater wetland, bordering vegetated wetland, marsh, wet meadow, bog or swamp;
- b. Any bank, beach, lake, river, pond, stream or any land under said waters;
- c. Any land subject to flooding or inundation by ground water, surface water run-off or storm flowage; and
- d. Any riverfront area.
- e. Any proposed work, which falls within 100 feet of such resource area, or within the riverfront area, must be approved by the Commission."

(Town of Northborough Wetlands Regulations)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Northbridge

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Vernal pools are not included in the jurisdiction of the bylaw or defined.

Bob Anderson, member of the Conservation Commission, (10/25/04) said that the Commission may determine and protect a vernal pool. A vernal pool would get the 100 foot buffer zone.

Since vernal pools are not specifically designated in the jurisdiction, the researcher concluded that these areas receive protection as isolated land subject to flooding.

From Section 7-702. Jurisdiction, "[e]xcept as permitted by the conservation commission or as provided in this chapter, no person shall remove, fill, dredge, build upon or alter the following resource areas: within one hundred (100) feet of any freshwater wetland, coastal wetland, marsh, wet meadow, bog or swamp; within one hundred (100) feet of any bank, beach, dune or flat; any lake, river, pond, stream, estuary or the ocean; within one hundred (100) feet of any lake, river, pond, stream, estuary or the ocean; any land under said water; or within one hundred (100) feet of any land subject to flooding or inundation by groundwater, surface water, tidal action or coastal storm flowage."

(Town of Northbridge Wetlands Protection By-Law, Section 7-700)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No Vernal pools are not included in the jurisdiction of the bylaw or defined.

Bob Anderson, member of the Conservation Commission, (10/25/04) said that the Commission may determine and protect a vernal pool. A vernal pool would get the 100 foot buffer zone.

Since vernal pools are not specifically designated in the jurisdiction, the researcher concluded that these areas receive protection as isolated land subject to flooding.

From Section 7-702. Jurisdiction, "[e]xcept as permitted by the conservation commission or as provided in this chapter, no person shall remove, fill, dredge, build upon or alter the following resource areas: within one hundred (100) feet of any freshwater wetland, coastal wetland, marsh, wet meadow, bog or swamp; within one hundred (100) feet of any bank, beach, dune or flat; any lake, river, pond, stream, estuary or the ocean; within one hundred (100) feet of any lake, river, pond, stream, estuary or the ocean; any land under said water; or within one hundred (100) feet of any land subject to flooding or inundation by groundwater, surface water, tidal action or coastal storm flowage."

(Town of Northbridge Wetlands Protection By-Law, Section 7-700)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Norwell

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The researcher found no reference to vernal pools in the town bylaw jurisdiction. However, on 11/08/04, the researcher called the Conservation Commission (781-659-8022), and the staff said that vernal pools would be protected even if they were not state certified, as long as there was documentation proving that indeed the area was a vernal pool. The staff also said that these areas would then get a 100 buffer zone of protection from the mean annual water edge.

Survey received from Norwell Conservation Commission (Michele Simoneaux, Conservation Agent) on 4/5/05:

Answer "no" was changed to "yes" with the comment: "Yes under the bylaw."

Under the question "Does the municipality's jurisdiction extend to buffer zones around vernal pools that are not certified by the state?" is written: "100 feet - Vernal Pool Protection Zone."

Researcher obtained the regulations from the Norwell website:

NORWELL WETLANDS BYLAW REGULATIONS

3.00 JURISDICTION – RESOURCE AREAS AND BUFFER ZONES

Resource Areas and Buffer Zones adjacent to the Resource Areas which are associated with the Protected Interests are subject to protection under the Bylaw and are ANY of the following:

- (1) Land under water bodies, including but not limited to ponds, lakes, rivers, streams, creeks, estuaries, and banks;
- (2) Land bordering on the ocean, including but not limited to tidal flats, coastal bank, salt marshes, and salt meadows;
- (3) Land subject to flooding or inundation by groundwater or surface water, including but not limited to freshwater wetlands, beaches, wet meadows, swamps, bogs, vernal pools (both Certified by Natural Heritage and Endangered Species Program or not certified), reservoirs or isolated wetlands;
- (4) Land subject to coastal storm flowage, including but not limited to the coastal floodplain as set forth on the Flood Insurance Rate Maps (FIRM);
- (5) Land within 100 feet of any of the aforementioned Resource Areas (hereinafter referred to as the "Jurisdictional Buffer Zone");
- (6) Land within 200 feet of any river, stream, or creek continuously flowing throughout the year toward a body of water (hereinafter referred to as the "Riparian Zone") including the North River;
- (7) Land within 50 feet of a Bordering Vegetated Wetland or Isolated Vegetated Wetland (hereinafter referred to as the "Buffer Strip" or "No Build Zone");
- (8) Land within 100 feet of a vernal pool (hereinafter referred to as the "Vernal Pool Protection Zone").

8.3.1 Vernal Pools

Vernal Pools are a special type of Land Subject to Flooding which the Commission recognizes as having unique habitat functions. The term "vernal pool" shall include any confined basin or depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or vernal pool community species, regardless whether or not the site has been certified by the Massachusetts Division of Wildlife and Fisheries. This definition does not include Vernal Pools occurring in lawns, gardens, landscaped areas, or driveways which have existed for more than 10 years.

The presumption of essential habitat value may be overcome by the presentation of credible evidence, which in the judgment of the Commission, demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. Protection of the 50 foot "No Build Zone" applies to vernal pools. In addition, a "Vernal Pool Protection Zone" shall

extend 100 feet from the mean annual high-water line defining the depression.

Additional Performance Standard for Vernal Pools

(1) In recognition of the ecological requirement for an undisturbed area around a Vernal Pool for it to maintain its habitat value, the Commission will encourage applicants to minimize disturbance in the 100 foot Vernal Pool Protection Zone around a Vernal Pool.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes The researcher found no reference to vernal pools in the town bylaw jurisdiction. However, on 11/08/04, the researcher called the Conservation Commission (781-659-8022), and the staff said that vernal pools would be protected even if they were not state certified, as long as there was documentation proving that indeed the area was a vernal pool. The staff also said that these areas would then get a 100 buffer zone of protection from the mean annual water edge.

Survey received from Norwell Conservation Commission (Michele Simoneaux, Conservation Agent) on 4/5/05:

Answer "no" was changed to "yes" with the comment: "Yes under the bylaw."

Under the question "Does the municipality's jurisdiction extend to buffer zones around vernal pools that are not certified by the state?" is written: "100 feet - Vernal Pool Protection Zone."

Researcher obtained the regulations from the Norwell website:

NORWELL WETLANDS BYLAW REGULATIONS

3.00 JURISDICTION – RESOURCE AREAS AND BUFFER ZONES

Resource Areas and Buffer Zones adjacent to the Resource Areas which are associated with the Protected Interests are subject to protection under the Bylaw and are ANY of the following:

- (1) Land under water bodies, including but not limited to ponds, lakes, rivers, streams, creeks, estuaries, and banks;
- (2) Land bordering on the ocean, including but not limited to tidal flats, coastal bank, salt marshes, and salt meadows;
- (3) Land subject to flooding or inundation by groundwater or surface water, including but not limited to freshwater wetlands, beaches, wet meadows, swamps, bogs, vernal pools (both Certified by Natural Heritage and Endangered Species Program or not certified), reservoirs or isolated wetlands;
- (4) Land subject to coastal storm flowage, including but not limited to the coastal floodplain as set forth on the Flood Insurance Rate Maps (FIRM);
- (5) Land within 100 feet of any of the aforementioned Resource Areas (hereinafter referred to as the "Jurisdictional Buffer Zone");
- (6) Land within 200 feet of any river, stream, or creek continuously flowing throughout the year toward a body of water (hereinafter referred to as the "Riparian Zone") including the North River;
- (7) Land within 50 feet of a Bordering Vegetated Wetland or Isolated Vegetated Wetland (hereinafter referred to as the "Buffer Strip" or "No Build Zone");
- (8) Land within 100 feet of a vernal pool (hereinafter referred to as the "Vernal Pool Protection Zone").

8.3.1 Vernal Pools

Vernal Pools are a special type of Land Subject to Flooding which the Commission recognizes as having unique habitat functions. The term "vernal pool" shall include any confined basin or depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or vernal pool community species, regardless whether or not the site has been certified by the Massachusetts Division of Wildlife and Fisheries. This definition does not include Vernal Pools occurring in lawns, gardens, landscaped areas, or driveways which have existed for more than 10 years.

The presumption of essential habitat value may be overcome by the presentation of credible evidence, which in the judgment of the Commission, demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. Protection of the 50 foot "No Build Zone" applies to vernal pools. In addition, a "Vernal Pool Protection Zone" shall extend 100 feet from the mean annual high-water line defining the depression.

Additional Performance Standard for Vernal Pools

(1) In recognition of the ecological requirement for an undisturbed area around a Vernal Pool for it to maintain its habitat value, the Commission will encourage applicants to minimize disturbance in the 100 foot Vernal Pool Protection Zone around a Vernal Pool.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The researcher found no reference to vernal pools in the town bylaw jurisdiction. However, on 11/08/04, the researcher called the Conservation Commission (781-659-8022), and the staff said that vernal pools would be protected even if they were not state certified, as long as there was documentation proving that indeed the area was a vernal pool. The staff also said that these areas would then get a 100 buffer zone of protection from the mean annual water edge.

Survey received from Norwell Conservation Commission (Michele Simoneaux, Conservation Agent) on 4/5/05:

Answer "no" was changed to "yes" with the comment: "Yes under the bylaw."

Under the question "Does the municipality's jurisdiction extend to buffer zones around vernal pools that are not certified by the state?" is written: "100 feet - Vernal Pool Protection Zone."

Researcher obtained the regulations from the Norwell website:

NORWELL WETLANDS BYLAW REGULATIONS

Effective Date: December 21, 2004

3.00 JURISDICTION – RESOURCE AREAS AND BUFFER ZONES

Resource Areas and Buffer Zones adjacent to the Resource Areas which are associated with the Protected Interests are subject to protection under the Bylaw and are ANY of the following:

- (1) Land under water bodies, including but not limited to ponds, lakes, rivers, streams, creeks, estuaries, and banks;
- (2) Land bordering on the ocean, including but not limited to tidal flats, coastal bank, salt marshes, and salt meadows;
- (3) Land subject to flooding or inundation by groundwater or surface water, including but not limited to freshwater wetlands, beaches, wet meadows, swamps, bogs, vernal pools (both Certified by Natural Heritage and Endangered Species Program or not certified), reservoirs or isolated wetlands;
- (4) Land subject to coastal storm flowage, including but not limited to the coastal floodplain as set forth on the Flood Insurance Rate Maps (FIRM);
- (5) Land within 100 feet of any of the aforementioned Resource Areas (hereinafter referred to as the "Jurisdictional Buffer Zone");
- (6) Land within 200 feet of any river, stream, or creek continuously flowing throughout the year toward a body of water (hereinafter referred to as the "Riparian Zone") including the North River;
- (7) Land within 50 feet of a Bordering Vegetated Wetland or Isolated Vegetated Wetland (hereinafter referred to as the "Buffer Strip" or "No Build Zone");
- (8) Land within 100 feet of a vernal pool (hereinafter referred to as the "Vernal Pool Protection Zone").

8.3.1 Vernal Pools

Vernal Pools are a special type of Land Subject to Flooding which the Commission recognizes as having unique habitat functions. The term "vernal pool" shall include any confined basin or depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time

during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or vernal pool community species, regardless whether or not the site has been certified by the Massachusetts Division of Wildlife and Fisheries. This definition does not include Vernal Pools occurring in lawns, gardens, landscaped areas, or driveways which have existed for more than 10 years.

The presumption of essential habitat value may be overcome by the presentation of credible evidence, which in the judgment of the Commission, demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. Protection of the 50 foot "No Build Zone" applies to vernal pools. In addition, a "Vernal Pool Protection Zone" shall extend 100 feet from the mean annual high-water line defining the depression.

Additional Performance Standard for Vernal Pools

(1) In recognition of the ecological requirement for an undisturbed area around a Vernal Pool for it to maintain its habitat value, the Commission will encourage applicants to minimize disturbance in the 100 foot Vernal Pool Protection Zone around a Vernal Pool.

Norwood

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No No reference in the Norwood wetlands bylaw to vernal pools.

"2. No person shall remove, fill, dredge, or alter any bank, fresh water wetland, beach, wet meadow, marsh, bog, swamp, or any lands bordering on any creek, river, stream, or pond, or any land under said waters, or any land subject to flooding, other than in the course of maintaining, repairing or replacing, but not substantially enlarging an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, sanitary sewer, storm drainage, public roadway, telephone, telegraph, and other telecommunication services, without filing written notice of his intention to so remove, dredge, fill, or alter, and without receiving and complying with an Order of Conditions, and provided all appeal periods have elapsed. Such Notice shall be sent by certified mail to the Norwood Conservation Commission, including such plans as may be necessary to describe such proposed activity and its effect on the environment. The same Notice of Intent, plans and specifications required to be filed by an applicant under Massachusetts General Laws Chapter 131, Section 40 will be accepted as fulfilling the requirements of this by-law. The said Commission may hear any oral presentation under this by-law at the same public hearing required to be held under Chapter 131, Section 40 of the Massachusetts General Laws. Definitions, time frames, and procedures, insofar as applicable, set forth in said Chapter and Section and in the Regulations promulgated by the Department of Environmental Quality Engineering on July 28, 1978 are hereby made a part of this by-law."

According to Al Goetz, Norwood Conservation Commission Administrator, (6/30/04) Conservation Commission does regulate vernal pools not certified by the state. He said: "isolated vegetated wetlands are protected, that is where many vernal pools are located."

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No No reference in the Norwood wetlands bylaw to vernal pools.

"2. No person shall remove, fill, dredge, or alter any bank, fresh water wetland, beach, wet meadow, marsh, bog, swamp, or any lands bordering on any creek, river, stream, or pond, or any land under said waters, or any land subject to flooding, other than in the course of maintaining, repairing or replacing, but not substantially enlarging an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, sanitary sewer, storm drainage, public roadway, telephone, telegraph, and other telecommunication services, without filing written notice of his intention to so remove, dredge, fill, or alter, and without receiving and complying with an Order of Conditions, and provided all appeal periods have elapsed. Such Notice shall be sent by certified mail to the Norwood Conservation Commission, including such plans as may be necessary to describe such proposed activity and its effect on the environment. The same Notice of Intent, plans and specifications required to be filed by an applicant under Massachusetts General Laws Chapter 131, Section 40 will be accepted as fulfilling the requirements of this by-law. The said Commission may hear any oral presentation under this by-law at the same public hearing required to be held under Chapter 131, Section 40 of the Massachusetts General Laws. Definitions, time frames, and procedures, insofar as applicable, set forth in said Chapter and Section and in the Regulations promulgated by the Department of Environmental Quality Engineering on July 28, 1978 are hereby made a part of this by-law."

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Peabody

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition indicates that a vernal pool may receive protection regardless of state certification.

Ordinance Establishing the wetlands and Rivers Protection Regulations in the City of Peabody, Chapter 32 of the Code of the City of Peabody, Section 32-2

Vernal Pool: Shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring, and/or summer, and which is free of adult fish populations, as well as the area within two hundred (200) feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.

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..."

(Chapter 32 Wetlands and Rivers Protection Regulations, Adopted 1986)

Resource Area: The primary resource being protected by this ordinance, which is the area of jurisdiction defined in Sec. 32-3. Jurisdiction, excluding the one hundred (100) and two hundred (200) foot buffer zones. Resource areas include:

- A. Any coastal or freshwater wetland, bordering vegetated wetland, riverine wetland, marsh, wet meadow, bog or swamp;
- B. Any seasonal wetland, isolated wetland, including kettle holes;
- C. Any land subject to flooding or inundation by groundwater, surface water, or storm flowage.
- D. Any pond, reservoir, lake, natural or man-made;
- E. Any estuary, the ocean, land subject to tidal action, coastal storm flowage or flooding;
- F. Any land under aforesaid waters;
- G. Any bank, beach, dune;
- H. Any vernal pool, whether certified or uncertified;
- I. Any river, stream, creek, brook, whether intermittent or continuous, natural or man-made.

(Chapter 32 Wetlands and Rivers Protection Regulations, Adopted 1986)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Vernal pools have buffer zones regardless of state certification and resource location.

Resource Area: The primary resource being protected by this ordinance, which is the area of jurisdiction defined in Sec. 32-3. Jurisdiction, excluding the one hundred (100) and two hundred (200) foot buffer zones. Resource areas include:

- A. Any coastal or freshwater wetland, bordering vegetated wetland, riverine wetland, marsh, wet meadow, bog or swamp;
- B. Any seasonal wetland, isolated wetland, including kettle holes;
- C. Any land subject to flooding or inundation by groundwater, surface water, or storm flowage.
- D. Any pond, reservoir, lake, natural or man-made;
- E. Any estuary, the ocean, land subject to tidal action, coastal storm flowage or flooding;
- F. Any land under aforesaid waters;

- G. Any bank, beach, dune;
- H. Any vernal pool, whether certified or uncertified;
- I. Any river, stream, creek, brook, whether intermittent or continuous, natural or man-made.

Ordinance Establishing the wetlands and Rivers Protection Regulations in the City of Peabody, Chapter 32 of the Code of the City of Peabody, Section 32-2(Adopted, 1986, as amended)

Vernal Pool: Shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring, and/or summer, and which is free of adult fish populations, as well as the area within two hundred (200) feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.

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..."

(Chapter 32 Wetlands and Rivers Protection Regulations, Adopted 1986)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

200 The jurisdiction specifies that the vernal pool does not need to be certified. The definition of a vernal pool includes a 200 foot zone of habitat area. The jurisdiction first sentence helps clarify that there is a 200 foot zone of jurisdiction from the mean annual water line.

Resource Area: The primary resource being protected by this ordinance, which is the area of jurisdiction defined in Sec. 32-3. Jurisdiction, excluding the one hundred (100) and two hundred (200) foot buffer zones. Resource areas include:

- A. Any coastal or freshwater wetland, bordering vegetated wetland, riverine wetland, marsh, wet meadow, bog or swamp;
- B. Any seasonal wetland, isolated wetland, including kettle holes;
- C. Any land subject to flooding or inundation by groundwater, surface water, or storm flowage.
- D. Any pond, reservoir, lake, natural or man-made;
- E. Any estuary, the ocean, land subject to tidal action, coastal storm flowage or flooding;
- F. Any land under aforesaid waters;
- G. Any bank, beach, dune;
- H. Any vernal pool, whether certified or uncertified;
- I. Any river, stream, creek, brook, whether intermittent or continuous, natural or man-made.

Ordinance Establishing the wetlands and Rivers Protection Regulations in the City of Peabody, Chapter 32 of the Code of the City of Peabody, Section 32-2(Adopted, 1986, as amended)

Vernal Pool: Shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring, and/or summer, and which is free of adult fish populations, as well as the area within two hundred (200) feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.

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..."

(Chapter 32 Wetlands and Rivers Protection Regulations, Adopted 1986)

Pepperell

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No The bylaw gives no mention to protection for non-certified vernal pools and section 6 of the bylaw explicitly states "[u]nless otherwise stated in this Bylaw the areas of jurisdiction, definitions, provisions, procedures, and performance standards of the Wetlands Protection Act (M.G.L. Ch 131) and Regulations (310 CMR 10.00) shall continue to apply."

(Town of Pepperell Wetlands Protection Bylaw)

There is no jurisdiction section of the bylaw.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No The bylaw includes no reference to protection of non-certified vernal pools and section 6 of the bylaw explicitly states "[u]nless otherwise stated in this Bylaw the areas of jurisdiction, definitions, provisions, procedures, and performance standards of the Wetlands Protection Act (M.G.L. Ch 131) and Regulations (310 CMR 10.00) shall continue to apply."

(Town of Pepperell Wetlands Protection Bylaw)

There is no jurisdiction section of the bylaw.

Survey received from Pepperell Conservation Commission (completed by Ellen Fisher, Conservation Administrator) in May 2004:

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

"Yes (for certified vernal pools only)"

If so, what is the width of jurisdiction from the mean annual boundary of a vernal pool?

"50"

Researcher determined that the width of jurisdiction around vernal pools in Pepperell is what is granted by the state. Within that jurisdiction, a "no-build zone" is enforced for 50 feet around the vernal pools.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Plainville

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No No reference to vernal pools in the Plainville regulations.

The conservation agent (12/2/04) confirmed that Plainville follows the state regulations. She said that the town is moving to amend their wetlands bylaw at a town meeting in June--vernal pools will likely be on the agenda.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No No reference to vernal pools in the Plainville regulations.

The conservation agent (12/2/04) confirmed that Plainville follows the state regulations. She said that the town is moving to amend their wetlands bylaw at a town meeting in June--vernal pools will likely be on the agenda.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Plymouth

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Vernal pools are not mentioned in the jurisdiction, there are no additional definitions given for vernal pools. In addition, Michelle Turner, conservation contact, confirmed that the town of Plymouth does not go beyond the state in protection of vernal pools. (10/22/04)

From Section IV. Jurisdiction of the bylaw, "[n]o person shall remove, fill, dredge, or alter within 100 ft. of the following resource areas: surface water body, vegetated wetland or unvegetated wetland, any bank, fresh water wetland, coastal wetland, coastal bank, beach, dune, flat, marsh, meadow, bog, swamp, or isolated land subject to flooding, or lands adjoining the ocean or any estuary creek, river, stream (whether intermittent or continuous; natural or man made), pond, or lake, or any land under said waters or any land subject to tidal action, coastal action, coastal storm flowage, or flooding, as defined by the Federal Emergency Management Act and designated as zone A, A1-A30, V1-V30 and zone B on the town of Plymouth, Massachusetts flood insurance rate maps and the flood boundary and floodway maps as amended, on file with the town clerk and related documents, except as provided in Sections V, VI, or as permitted by the Conservation Commission in Section VII."

(Plymouth Conservation Commission Wetlands Protection Bylaw, Article #27, Adopted 1989, Amended 1994)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No Vernal pools are not mentioned in the jurisdiction, there are no additional definitions given for vernal pools. In addition, Michelle Turner, conservation contact, confirmed that the town of Plymouth does not go beyond the state in protection of vernal pools. (10/22/04)

From Section IV. Jurisdiction of the bylaw, "[n]o person shall remove, fill, dredge, or alter within 100 ft. of the following resource areas: surface water body, vegetated wetland or unvegetated wetland, any bank, fresh water wetland, coastal wetland, coastal bank, beach, dune, flat, marsh, meadow, bog, swamp, or isolated land subject to flooding, or lands adjoining the ocean or any estuary creek, river, stream (whether intermittent or continuous; natural or man made), pond, or lake, or any land under said waters or any land subject to tidal action, coastal action, coastal storm flowage, or flooding, as defined by the Federal Emergency Management Act and designated as zone A, A1-A30, V1-V30 and zone B on the town of Plymouth, Massachusetts flood insurance rate maps and the flood boundary and floodway maps as amended, on file with the town clerk and related documents, except as provided in Sections V, VI, or as permitted by the Conservation Commission in Section VII."

(Plymouth Conservation Commission Wetlands Protection Bylaw, Article #27, Adopted 1989, Amended 1994)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Quincy

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No The bylaw and regulation do not mention vernal pools.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No The bylaw and regulation do not mention vernal pools.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Reading

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Town of Reading Wetlands Protection Regulations, SECTION 3 PERFORMANCE STANDARDS FOR RESOURCE AREAS, Subsection J: Vernal Pools, 2002:
"If the Commission determines that a vernal pool having characteristics set forth in the preceding subsections 3.J.1, 3.J.3, 3.J.4, and 3.J.5 is present in or within 100 feet of a proposed work area, the vernal pool and the land within one hundred feet of the vernal pool shall be presumed to provide significant vernal pool habitat functions. This presumption may be overcome only upon a clear showing by the applicant during the public hearing of sufficient credible evidence for the Commission to determine that the pool does not function as vernal pool habitat. Evaluation of vernal pool habitat functions normally requires observations during and after the springtime breeding season. It is strongly advised that applicants survey sites for potential vernal pool habitat and request a site inspection by the Commission in the springtime prior to filing a Request for Determination, a Notice of Intent, or an Abbreviated Notice of Resource Area Delineation, to avoid postponement until springtime verification can be accomplished."

No reference to vernal pools in the bylaw jurisdiction:

From Section 5.7.3 of the bylaw, "No person shall remove, fill, dredge or alter the following resource areas: bank; fresh water wetland; marsh; meadow; bog; swamp; creek; river; stream; pond; lake; lands under water bodies; land within one hundred feet of any of the preceding resource areas; land subject to flooding; and riverfront area, other than in the course of 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 and used to provide electric, gas, water, sanitary sewer, storm drainage, public roadway, telephone, telegraph and other telecommunication services, without filing written notice of his intention to so remove, fill, dredge or alter and without receiving and complying with an Order of Conditions, and provided all appeal periods have elapsed. Said resource areas shall be protected whether or not they border surface waters. Such notice shall be sent by certified mail or hand delivered to the Reading Conservation Commission, including such plans as may be necessary to describe such proposed activity and its effect on the environment."

(Reading General Bylaws, Article 5 Wetland Protection)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes According to Fran Fink, Conservation Administrator at the Reading Conservation Commission, Reading regulates activities in buffer zones around vernal pools (that would not be regulated according to the state rules). Such standards are set forth in the Reading Wetland Regulations, performance standards.

According to the Town of Reading Wetlands Protection Regulations, SECTION 3 PERFORMANCE STANDARDS FOR RESOURCE AREAS, Subsection J: Vernal Pools, 2002:

"4. Any one of the following will serve to verify the existence of a vernal pool:

- a. The documented presence of water in a confined basin depression for at least eight weeks; and confirmation that the vernal pool area becomes completely dry during a portion of the year;
- b. Documentation providing evidence of the absence of adult fish populations within the depression;
- c. Evidence of reptile, amphibian, mollusk, or invertebrate species in standing water within the basin depression.
- d. Certification by the Massachusetts Natural Heritage and Endangered Species Program.

In addition, subsection as referenced above also states: "If the Commission determines that a vernal pool having characteristics set forth in the preceding subsections 3.J.1, 3.J.3, 3.J.4, and 3.J.5 is present in or within 100 feet of a proposed work area, the vernal pool and the land within one hundred feet of the vernal pool shall be presumed to provide significant vernal pool habitat functions. This presumption may be overcome only upon a clear showing by the applicant during the public hearing of sufficient credible evidence for the Commission to determine that the pool does not function as vernal pool habitat. Evaluation of vernal pool habitat functions normally requires observations during and after the springtime breeding season. It is strongly advised that applicants survey sites for potential vernal pool habitat and request a site inspection by the Commission in the springtime prior to filing a Request for Determination, a Notice of Intent, or an Abbreviated Notice of Resource Area Delineation, to avoid postponement until springtime verification can be accomplished."

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Town of Reading Wetlands Protection Regulations, SECTION 3 PERFORMANCE STANDARDS FOR RESOURCE AREAS, Subsection J: Vernal Pools, 2002:

"4. Any one of the following will serve to verify the existence of a vernal pool:

- a. The documented presence of water in a confined basin depression for at least eight weeks; and confirmation that the vernal pool area becomes completely dry during a portion of the year;
- b. Documentation providing evidence of the absence of adult fish populations within the depression;
- c. Evidence of reptile, amphibian, mollusk, or invertebrate species in standing water within the basin depression.
- d. Certification by the Massachusetts Natural Heritage and Endangered Species Program.

In addition, subsection as referenced above also states: "If the Commission determines that a vernal pool having characteristics set forth in the preceding subsections 3.J.1, 3.J.3, 3.J.4, and 3.J.5 is present in or within 100 feet of a proposed work area, the vernal pool and the land within one hundred feet of the vernal pool shall be presumed to provide significant vernal pool habitat functions. This presumption may be overcome only upon a clear showing by the applicant during the public hearing of sufficient credible evidence for the Commission to determine that the pool does not function as vernal pool habitat. Evaluation of vernal pool habitat functions normally requires observations during and after the springtime breeding season. It is strongly advised that applicants survey sites for potential vernal pool habitat and request a site inspection by the Commission in the springtime prior to filing a Request for Determination, a Notice of Intent, or an Abbreviated Notice of Resource Area Delineation, to avoid postponement until springtime verification can be accomplished."

Revere

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

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

Vernal pools are not specifically mentioned in the town jurisdiction.

From Section 16.04.030 Permit application procedures,

"A. No person shall remove, fill, dredge, alter or build upon or within one hundred feet of any bank, fresh-water wetland, coastal wetland, beach, dune, flat, marsh, meadow, bog, swamp, or upon or within one hundred feet of lands bordering on the ocean or upon or within one hundred feet of any land under said waters or upon or within one hundred feet of any land subject to tidal action, coastal storm flowage, flooding or inundation, or within one hundred feet of the one-hundred-year storm line ..."

(The Revised Ordinances of the City of Revere, MA, Wetlands Bylaw, Title 16 ENVIRONMENT)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Rockland

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No The bylaw does not mention vernal pools or isolated vegetated wetlands.

From Section 2. Application,
"No person shall remove, fill, dredge, alter or build upon or within one hundred (100) feet of any area as defined in the Act without filing a Notice of Intent with the Rockland Conservation Commission."

(Rockland Conservation Commission Wetland By-Law)

Referencing the state Act, Section 10.02 Statement of Jurisdiction

"(1) Areas Subject to Protection Under M.G.L. C. 131 s. 40. The following areas are subject to protection under M.G.L. c. 131, s 40:

- (a) Any bank, any freshwater wetland, any coastal wetland, any beach, any dune, any flat, any marsh, or any swamp bordering on the ocean, any estuary, any creek, any river, any stream, any pond, or any lake
- (b) Land under any of the water bodies listed above
- (c) Land subject to tidal action
- (d) Land subject to coastal storm flowage
- (e) Land subject to flooding
- (f) Riverfront area."

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No The bylaw does not mention vernal pools.

From Section 2. Application,
"No person shall remove, fill, dredge, alter or build upon or within one hundred (100) feet of any area as defined in the Act without filing a Notice of Intent with the Rockland Conservation Commission."

(Rockland Conservation Commission Wetland By-Law)

Referencing the state Act, Section 10.02 Statement of Jurisdiction

"(1) Areas Subject to Protection Under M.G.L. C. 131 s. 40. The following areas are subject to protection under M.G.L. c. 131, s 40:

- (a) Any bank, any freshwater wetland, any coastal wetland, any beach, any dune, any flat, any marsh, or any swamp bordering on the ocean, any estuary, any creek, any river, any stream, any pond, or any lake
- (b) Land under any of the water bodies listed above
- (c) Land subject to tidal action

- (d) Land subject to coastal storm flowage
- (e) Land subject to flooding
- (f) Riverfront area."

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Rockport

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The jurisdiction includes vernal pools, and on 10/25/04 the conservation agent, Suzanne O'Connell, confirmed via email that Rockport protects all vernal pools, whether certified or not. A definition for vernal pools is not specified in the bylaw.

From the email: "1) The Rockport Conservation Commission protects all vernal pools (certified or not)."

From Section II. Jurisdiction, "[e]xcept as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter, within the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; quarry pits and motions; rivers; streams; creeks; beaches; dunes; estuaries; the ocean; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water, lands subject to tidal action; lands within 100 feet of above cited resource areas; coastal storm flowage, or flooding; and lands abutting any of the aforesaid resource areas as set out in VII (collectively the 'resource areas protected by this by law'). Said resource areas shall be protected whether or not they border surface waters."

(Rockport Code of By-Laws, Section A: Wetlands)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Vernal pools are given buffer zones regardless of state certification and location of vernal pool.

From Section II. Jurisdiction, "[e]xcept as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter, within the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; quarry pits and motions; rivers; streams; creeks; beaches; dunes; estuaries; the ocean; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water, lands subject to tidal action; lands within 100 feet of above cited resource areas; coastal storm flowage, or flooding; and lands abutting any of the aforesaid resource areas as set out in VII (collectively the 'resource areas protected by this by law'). Said resource areas shall be protected whether or not they border surface waters."

(Rockport Code of By-Laws, Section A: Wetlands)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 From Section II. Jurisdiction, "[e]xcept as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter, within the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; quarry pits and motions; rivers; streams; creeks; beaches; dunes; estuaries; the ocean; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water, lands subject to tidal action; lands within 100 feet of above cited resource areas; coastal storm flowage, or flooding; and lands abutting any of the aforesaid resource areas as set out in VII (collectively the 'resource areas protected by this by law'). Said resource areas shall be protected whether or not they border surface waters."

(Rockport Code of By-Laws, Section A: Wetlands)

Rowley

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes "Vernal pool habitat shall mean confined basin depression that, at least in most years, hold water for a minimum of two continuous months, that are free of adult fish populations, and provide essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, as well as the area within 100 feet of the mean annual high water of such depression regardless of whether the site has been certified by the Massachusetts Divisions of Wildlife and Fisheries. The presumption of essential habitat value may be overcome by the presentation of credible evidence that in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. From the Town of Rowley Wetlands Protection Bylaw, Section IV (Adopted 2003).

Vernal pools are recognized whether or not they have been certified by the state and are given 100 feet of protection from the mean annual water line.

"The provisions of this Bylaw apply to the following wetlands resource areas and presumptions. Except as otherwise provided in this bylaw, the wetlands resource areas and presumptions shall be set forth in MGL Chapter 131 Section 40 and 310 CMR 10.00. Each resource area or area subject to protection is presumed significant to the protection of the wetlands interests and values enumerated in Section 1.

1. Isolated vegetated wetlands, including replication areas built according to an approved Order of Conditions;
2. Vegetated wetlands bordering on any creek, river, stream, pond or lake, ocean or estuary including replication areas built according to an approved Order of Conditions;
3. Coastal or inland banks, beaches, flats, marshes, wet meadows, bogs, or swamps;
4. Areas of Critical Environmental Concern (ACEC as defined in 301 CMR 12.00, including without limitation the Parker River/Plum Islands Sound ACEC;
5. A 100-foot buffer zone from any area specified in #1-4 listed above;
6. Vernal pool habitat, as defined in this Bylaw;
7. Land under any creek, river, stream, pond or lake, estuary, ocean, and any land subject to tidal flooding;
8. The 200-foot Riverfront Area as defined in 310 CMR 10.58
9. Any areas designated critical or environmentally sensitive, including the approved Department of Environmental Protection Groundwater Protection Area, Zone 1; the Approved Department of Environmental Protection Groundwater Protection Area, Zone 11; habitats of rare wetlands wildlife as defined by the Natural Heritage and Endangered Species Program; or Outstanding Resource Waters (ORW) as defined by the Executive Office of Environmental Affairs." From the Town of Rowley Wetlands Protection Bylaw, Section III (Adopted 2003).

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Vernal pools are recognized whether or not they have been certified by the state and are given 100 feet of protection from the mean annual water line.

"Vernal pool habitat shall mean confined basin depression that, at least in most years, hold water for a minimum of two continuous months, that are free of adult fish populations, and provide essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, as well as the area within 100 feet of the mean annual high water of such depression regardless of whether the site has been certified by the Massachusetts Divisions of Wildlife and Fisheries. The presumption of essential habitat value may be overcome by the presentation of credible evidence that in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. From the Town of Rowley Wetlands Protection Bylaw, Section IV (Adopted 2003).

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Vernal pools are recognized whether or not they have been certified by the state and are given 100 feet of protection from the mean annual water line.

"The provisions of this Bylaw apply to the following wetlands resource areas and presumptions. Except as otherwise provided in this bylaw, the wetlands resource areas and presumptions shall be set forth in MGL Chapter 131 Section 40 and 310 CMR 10.00. Each resource area or area subject to protection is presumed significant to the protection of the wetlands interests and values enumerated in Section 1.

1. Isolated vegetated wetlands, including replication areas built according to an approved Order of Conditions;

2. Vegetated wetlands bordering on any creek, river, stream, pond or lake, ocean or estuary including replication areas built according to an approved Order of Conditions;
3. Coastal or inland banks, beaches, flats, marshes, wet meadows, bogs, or swamps;
4. Areas of Critical Environmental Concern (ACEC as defined in 301 CMR 12.00, including without limitation the Parker River/Plum Islands Sound ACEC;
5. A 100-foot buffer zone from any area specified in #1-4 listed above;
6. Vernal pool habitat, as defined in this Bylaw;
7. Land under any creek, river, stream, pond or lake, estuary, ocean, and any land subject to tidal flooding;
8. The 200-foot Riverfront Area as defined in 310 CMR 10.58
9. Any areas designated critical or environmentally sensitive, including the approved Department of Environmental Protection Groundwater Protection Area, Zone 1; the Approved Department of Environmental Protection Groundwater Protection Area, Zone 11; habitats of rare wetlands wildlife as defined by the Natural Heritage and Endangered Species Program; or Outstanding Resource Waters (ORW) as defined by the Executive Office of Environmental Affairs." From the Town of Rowley Wetlands Protection Bylaw, Section III (Adopted 2003).

"Vernal pool habitat shall mean confined basin depression that, at least in most years, hold water for a minimum of two continuous months, that are free of adult fish populations, and provide essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, as well as the area within 100 feet of the mean annual high water of such depression regardless of whether the site has been certified by the Massachusetts Divisions of Wildlife and Fisheries. The presumption of essential habitat value may be overcome by the presentation of credible evidence that in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. From the Town of Rowley Wetlands Protection Bylaw, Section IV (Adopted 2003).

Salem

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Salisbury

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No From Section 1.02 Statement of Jurisdiction (in the regulations)

"(1) Areas Subject to Protection Under the By-law. The following areas are subject to protection under the By-law:

- (a) Any freshwater wet land,
 - coastal wetland,
 - marsh,
 - wet meadow,
 - bog,
 - swamp,
 - bank,
 - beach,
 - dune,
 - or flat;

- (b) Any land within 100 feet of any of the areas set forth in Section 1.02 (1) (a) above;
- (c) Any river, pond, stream, estuary, watercourse, or the ocean;
- (d) Any land under any of the water bodies set forth in Section 1.02 (1) (c) above;
- (e) Any land within 100 feet of the water bodies set forth in Section 1.02 (1) (c);
- (f) Any land subject to flooding or inundation by: groundwater, surface water, or tidal action;
- (g) Any land within 100 feet of any land subject to flooding or inundation as set forth in Section 1.02 (1) (f) above;
- (h) Any land subject to coastal storm flowage."

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

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No From Section 1.02 Statement of Jurisdiction (in the regulations)

"(1) Areas Subject to Protection Under the By-law. The following areas are subject to protection under the By-law:

- (a) Any freshwater wet land, coastal wetland, marsh, wet meadow, bog, swamp, bank, beach, dune, or flat;
- (b) Any land within 100 feet of any of the areas set forth in Section 1.02 (1) (a) above;
- (c) Any river, pond, stream, estuary, watercourse, or the ocean;
- (d) Any land under any of the water bodies set forth in Section 1.02 (1) (c) above;
- (e) Any land within 100 feet of the water bodies set forth in Section 1.02 (1) (c);
- (f) Any land subject to flooding or inundation by: groundwater, surface water, or tidal action;
- (g) Any land within 100 feet of any land subject to flooding or inundation as set forth in Section 1.02 (1) (f) above;
- (h) Any land subject to coastal storm flowage."

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Saugus

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition specifies that vernal pools do not need to be certified by the state.

Town of Saugus Bylaws, 508.08, Section 2 - Definitions, Part A (8) (February 1998):
The term "vernal pool" shall include a confined basin depression which, at least in most years, holds water for a minimum of two months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries.

Town of Saugus Bylaws, 508.08, Section 3:
"Jurisdiction

No person shall remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any bank; freshwater or costal wetland; beach; dune; flat; marsh; wet meadow; bog; swamp; vernal poo[ll] lake; pond of any size; creek estuary; the ocean; land under water bodies; land subject to flooding or inundation by ground water or surface water; land subject to tidal action, coastal storm flowage, or flooding; lands within (100) feet of any of the aforesaid resource areas; rivers and stream; and lands within two hundred (200) feet of any river or stream, without filing a Notice of Intent with the Saugus Conservation Commission (Commission) and receiving and complying with an Order of Conditions issued by the Commission. Said resource areas shall be protected whether or not they border surface waters."

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Vernal pools have a buffer zone regardless of state certification and resource location.

Town of Saugus Bylaws, 508.08, Section 3:
"Jurisdiction

No person shall remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any bank; freshwater or costal wetland; beach; dune; flat; marsh; wet meadow; bog; swamp; vernal poo[ll] lake; pond of any size; creek estuary; the ocean; land under water bodies; land subject to flooding or inundation by ground water or surface water; land subject to tidal action, coastal storm flowage, or flooding; lands within (100) feet of any of the aforesaid resource areas; rivers and stream; and lands within two hundred (200) feet of any river or stream, without filing a Notice of Intent with the Saugus Conservation Commission (Commission) and receiving and complying with an Order of Conditions issued by the Commission. Said resource areas shall be protected whether or not they border surface waters."

Town of Saugus Bylaws, 508.08, Section 2 - Definitions, Part A (8) (February 1998):
The term "vernal pool" shall include a confined basin depression which, at least in most years, holds water for a minimum of two months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

200 Vernal pools are included in the jurisdiction that receives a 100 foot buffer zone of protection. In the definition of vernal pools, the town indicates the pool does not need to be certified to receive protection. In addition, the definition includes the 100 foot habitat area, and therefore the researcher concluded that the town could enforce a 200 foot jurisdiction zone. On 11/16/04, researcher called the Conservation Commission (781.231.4129) and confirmed that Saugus has a 200 foot zone of jurisdiction from the mean annual water line.

Town of Saugus Bylaws, 508.08, Section 3:
"Jurisdiction

No person shall remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any bank; freshwater or costal wetland; beach; dune; flat; marsh; wet meadow; bog; swamp; vernal poo[ll] lake; pond of any size; creek estuary; the ocean; land under water bodies; land subject to flooding or inundation by ground water or surface water; land subject to tidal action, coastal storm flowage, or flooding; lands within (100) feet of any of the aforesaid resource areas; rivers and stream; and lands within two hundred (200) feet of any river or stream, without filing a Notice of Intent with the Saugus Conservation Commission (Commission) and receiving and complying with an Order of Conditions issued by the Commission. Said resource areas shall be protected whether or not they border surface waters."

Town of Saugus Bylaws, 508.08, Section 2 - Definitions, Part A (8) (February 1998):
The term "vernal pool" shall include a confined basin depression which, at least in most years, holds water for a minimum of two months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by

the Massachusetts Division of Wildlife and Fisheries.

Scituate

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Vernal pools are defined as follows (note subsection 5):
"(1) any confined basin or depression which, at least in most years, holds water for a minimum of two consecutive months during the spring and/or summer,
(2) is free of adult predatory fish populations, and
(3) provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species,
(4) as well as being a source of food and water for other animals (vernal pools are extremely productive, valuable ecosystems).
(5) Sites confirmed as vernal pools, according to criteria used by the Commonwealth, are to be protected as resources under the local bylaw, even if the Massachusetts Division of Wildlife and Fisheries has not certified the sites as vernal pools."

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

From Section 10.02 Statement of Jurisdiction,

"(1)Areas Subject to Protection Under the Bylaw. The following resource areas are subject to protection under this bylaw:

(a)any bank, cliff, or bluff, freshwater wetland, coastal wetland, beach, dune, flat, marsh, wet meadow,bog, swamp;

(b)any lake, pond, river, stream, estuary, or ocean, or vernal pool

(c)an[y] land under any of the water bodies listed in section (b) above;

(d)Any land subject to tidal action or bordering the ocean including but not limited to, beaches, dunes, tidal flats, coastal banks, salt marsh's, salt meadows and dredge spoils areas;

(e)Any land subject to coastal storm flowage, including, but not limited to the coastal floodplain, as set forth on the Flood Insurance Rate Maps;

(f)Any land subject to flooding;

(g)Any land within one hundred (100) feet of any resource area set forth in SWR 10.02 (a)(b) and (c). This land area shall hereinafter be called the BUFFER ZONE.

(h)Land within 200 feet of the bank of any river, stream or creek continuously flowing throughout the year toward a body of water. This area shall hereafter be called the RIVERFRONT AREA."

From Section 10.04 Definitions,

"Buffer Zone: Area of land within 100 feet of a resource area, except in the case of vernal pools, where the buffer zone shall be 250 feet."

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

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Vernal pools have protection regardless of state certification and resource location.

From Section 10.02 Statement of Jurisdiction,

"(1)Areas Subject to Protection Under the Bylaw. The following resource areas are subject to protection under this bylaw:

(a)any bank, cliff, or bluff, freshwater wetland, coastal wetland, beach, dune, flat, marsh, wet meadow,bog, swamp;

(b)any lake, pond, river, stream, estuary, or ocean, or vernal pool

(c)an[y] land under any of the water bodies listed in section (b) above;

(d)Any land subject to tidal action or bordering the ocean including but not limited to, beaches, dunes, tidal flats, coastal banks, salt marsh's, salt meadows and dredge spoils areas;

(e)Any land subject to coastal storm flowage, including, but not limited to the coastal floodplain, as set forth on the Flood Insurance Rate Maps;

(f)Any land subject to flooding;

(g)Any land within one hundred (100) feet of any resource area set forth in SWR 10.02 (a)(b) and (c). This land area shall hereinafter be called the BUFFER ZONE.

(h)Land within 200 feet of the bank of any river, stream or creek continuously flowing throughout the year toward a body of water. This area shall hereafter be called the RIVERFRONT AREA."

From Section 10.04 Definitions,

"Buffer Zone: Area of land within 100 feet of a resource area, except in the case of vernal pools, where the buffer zone shall be 250 feet."

Further, also in Section 10.04, vernal pools are defined as follows (note subsection 5):

"(1) any confined basin or depression which, at least in most years, holds water for a minimum of two consecutive months during the spring and/or summer,
(2) is free of adult predatory fish populations, and
(3) provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species,
(4) as well as being a source of food and water for other animals (vernal pools are extremely productive, valuable ecosystems).
(5) Sites confirmed as vernal pools, according to criteria used by the Commonwealth, are to be protected as resources under the local bylaw, even if the Massachusetts Division of Wildlife and Fisheries has not certified the sites as vernal pools."

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

250 Vernal pools are included in the jurisdiction and the definition clearly states the vernal pools do not have to be certified to be protected. Additionally, the definition of buffer zone specifically gives vernal pools a 250 foot buffer.

From Section 10.02 Statement of Jurisdiction,

"(1) Areas Subject to Protection Under the Bylaw. The following resource areas are subject to protection under this bylaw:

(a) any bank, cliff, or bluff, freshwater wetland, coastal wetland, beach, dune, flat, marsh, wet meadow, bog, swamp;

(b) any lake, pond, river, stream, estuary, or ocean, or vernal pool

(c) any land under any of the water bodies listed in section (b) above;

(d) Any land subject to tidal action or bordering the ocean including but not limited to, beaches, dunes, tidal flats, coastal banks, salt marsh's, salt meadows and dredge spoils areas;

(e) Any land subject to coastal storm flowage, including, but not limited to the coastal floodplain, as set forth on the Flood Insurance Rate Maps;

(f) Any land subject to flooding;

(g) Any land within one hundred (100) feet of any resource area set forth in SWR 10.02 (a)(b) and (c). This land area shall hereinafter be called the BUFFER ZONE.

(h) Land within 200 feet of the bank of any river, stream or creek continuously flowing throughout the year toward a body of water. This area shall hereafter be called the RIVERFRONT AREA."

From Section 10.04 Definitions,

"Buffer Zone: Area of land within 100 feet of a resource area, except in the case of vernal pools, where the buffer zone shall be 250 feet."

Further, also in Section 10.04, vernal pools are defined as follows (note subsection 5):

"(1) any confined basin or depression which, at least in most years, holds water for a minimum of two consecutive months during the spring and/or summer,

(2) is free of adult predatory fish populations, and

(3) provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species,

(4) as well as being a source of food and water for other animals (vernal pools are extremely productive, valuable ecosystems).

(5) Sites confirmed as vernal pools, according to criteria used by the Commonwealth, are to be protected as resources under the local bylaw, even if the Massachusetts Division of Wildlife and Fisheries has not certified the sites as vernal pools."

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

Seekonk

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition of vernal pools specifies that vernal pools do not have to be state certified to receive protections.

From Section 9: Definitions, "[t]he term 'vernal pool' shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife."

(Seekonk Conservation Commission By Laws, Adopted 1980, Amended 2003)

From Section 2: Jurisdiction of the bylaws, "[e]xcept as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, degrade into or otherwise alter the following resource areas; any freshwater wetland; isolated wetland; coastal wetland; marsh; wet meadow; bog swamp or vernal pool; bank; reservoir lake; pond of any size; river; stream or estuary; any land under said waters; land subject to flooding or inundation by groundwater, surface water, tidal action, or coastal storm flowage or flooding; and lands abutting any of the aforesaid resource areas as set out in Section 7.

(Collectively the "resource areas protected by this bylaw"). Said resources shall be protected whether or not they border surface waters."

From Section 7: Permits, Determinations, and Conditions, "[l]ands within 200 feet of rivers, ponds, and lakes, and lands within 100 feet of other resource areas listed in Section 2 are within the jurisdiction of the Seekonk Conservation Commission."

(Seekonk Conservation Commission By Laws, Adopted 1980, Amended 2003)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Vernal pools have buffer zones regardless of state certification and location of the vernal pool.

The jurisdiction includes vernal pools. The definition specifies that they do not have to be state certified.

From Section 2: Jurisdiction of the bylaws, "[e]xcept as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, degrade into or otherwise alter the following resource areas; any freshwater wetland; isolated wetland; coastal wetland; marsh; wet meadow; bog swamp or vernal pool; bank; reservoir lake; pond of any size; river; stream or estuary; any land under said waters; land subject to flooding or inundation by groundwater, surface water, tidal action, or coastal storm flowage or flooding; and lands abutting any of the aforesaid resource areas as set out in Section 7. (Collectively the "resource areas protected by this bylaw"). Said resources shall be protected whether or not they border surface waters."

Then from Section 9: Definitions, "[t]he term 'vernal pool' shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife."

From Section 7: Permits, Determinations, and Conditions, "[l]ands within 200 feet of rivers, ponds, and lakes, and lands within 100 feet of other resource areas listed in Section 2 are within the jurisdiction of the Seekonk Conservation Commission."

(Seekonk Conservation Commission By Laws, Adopted 1980, Amended 2003)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The jurisdiction includes vernal pools. On 11/08/04, the researcher received an email from conservation agent, Bernadette DeBlander, stating that the town has a 100 foot jurisdiction from the mean annual water line of a vernal pool.

(Received 11/08/04)

"To answer your question, the buffer zone for vernal pools under our local regulations is 100 feet. Please let me know if you need anymore info.

Thanks,
Bernadette

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

From: Eva Claire [mailto:evaclaire@pioneerinstitute.org]
Sent: Thursday, November 04, 2004 2:44 PM
To: DeBlander, Bernadette
Subject: vernal pool jurisdiction

Hello Ms. DeBlander,

[...]

I had one final question about your wetlands jurisdiction. I understand from the bylaws and definitions that Seekonk protects all vernal pools. In the definition of vernal pools, it mentions that it includes the 100 foot habitat area around the pool. Since the vernal pool is a resource area that is given a 100 foot buffer zone, does that mean the Commission has a 200 foot zone of jurisdiction? or does the Commission follow a 100 foot zone from the water boundary?

Thank you for your time and clarification of this matter.

Sincerely,

Evaclaire Synkowski
Initiative on Local Housing Regulation
Pioneer Institute"

From Section 9: Definitions, "[t]he term 'vernal pool' shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife."

From Section 2: Jurisdiction of the bylaws, "[e]xcept as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, degrade into or otherwise alter the following resource areas; any freshwater wetland; isolated wetland; coastal wetland; marsh; wet meadow; bog swamp or vernal pool; bank; reservoir lake; pond of any size; river; stream or estuary; any land under said waters; land subject to flooding or inundation by groundwater, surface water, tidal action, or coastal storm flowage or flooding; and lands abutting any of the aforesaid resource areas as set out in Section 7. (Collectively the "resource areas protected by this bylaw"). Said resources shall be protected whether or not they border surface waters."

Then from Section 9: Definitions, "[t]he term 'vernal pool' shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife."

From Section 7: Permits, Determinations, and Conditions, "[l]ands within 200 feet of rivers, ponds, and lakes, and lands within 100 feet of other resource areas listed in Section 2 are within the jurisdiction of the Seekonk Conservation Commission."

(Seekonk Conservation Commission By Laws, Adopted 1980, Amended 2003)

Sharon

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition indicates that vernal pools do not need to be state certified to receive protection.

From Section 2. Definition "2.7 The term 'vernal pool' shall mean a naturally occurring, confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, which is free of adult fish populations and which provides essential breeding habitat for certain amphibians and/or food, shelter, migration and breeding habitat for other wildlife species as well as the area within one hundred (100) feet of the mean annual boundary of such depressions. Such sites shall be protected regardless whether they have been certified by the Massachusetts Division of Fisheries and Wildlife."

(Sharon By-Laws, Article 23 Wetlands Protection, Adopted 1986)

From section 3.0 Jurisdiction, "No person shall remove, fill, dredge, drain, build upon, or alter any bank, freshwater wetland, vernal pool, beach, flat, marsh, wet meadow, bog, swamp, or lands bordering on any creek, river, stream, pond or lake, or any land under said waters, or any land subject to storm flowage, or flooding, or inundation by groundwater or surface water, or the buffer zone, without filing written notice of the intention to do so with the Commission in accordance with the provisions set forth in this By-Law and without receiving and complying with the Order of Conditions issued by the Commission and provided all appeal periods have elapsed, unless the Commission shall have determined that this By-Law does not apply to the activity proposed."

(Sharon By-Laws, Article 23 Wetlands Protection, Adopted 1986)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have buffer zones regardless of state certification and resource location.

From section 3.0 Jurisdiction, "No person shall remove, fill, dredge, drain, build upon, or alter any bank, freshwater wetland, vernal pool, beach, flat, marsh, wet meadow, bog, swamp, or lands bordering on any creek, river, stream, pond or lake, or any land under said waters, or any land subject to storm flowage, or flooding, or inundation by groundwater or surface water, or the buffer zone, without filing written notice of the intention to do so with the Commission in accordance with the provisions set forth

in this By-Law and without receiving and complying with the Order of Conditions issued by the Commission and provided all appeal periods have elapsed, unless the Commission shall have determined that this By-Law does not apply to the activity proposed."

From Section 2. Definition "2.7 The term 'vernal pool' shall mean a naturally occurring, confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, which is free of adult fish populations and which provides essential breeding habitat for certain amphibians and/or food, shelter, migration and breeding habitat for other wildlife species as well as the area within one hundred (100) feet of the mean annual boundary of such depressions. Such sites shall be protected regardless whether they have been certified by the Massachusetts Division of Fisheries and Wildlife."

Then from section 2. Definitions, "2.3 The term 'buffer zone' shall be the land within one hundred (100) feet horizontally landward from the perimeter of outer border of any wetland, floodplain, vernal pool or body of water."

(Sharon By-Laws, Article 23 Wetlands Protection, Adopted 1986)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

200 Vernal pools are listed in the jurisdiction, the definition of a vernal pool specifies that it does not need to be state certified to receive protection, and the definition includes the 100 foot buffer zone.

The researcher concluded that in practice a vernal pool would receive a 200 foot buffer zone from the edge of the water line. This was confirmed with the conservation agent. Researcher spoke with Greg Meister, Sharon Conservation Agent, on 8/2/04. Mr. Meister noted that applicants will come to the conservation commission about a potential vernal pool, the commission will then determine if the pool is certifiable as a vernal pool. The developer must then submit the information to the state environmental authority (Mr. Meister believed that it was MA Fish and Wildlife). Once the vernal pool is deemed certifiable, then the Sharon conservation commission has 200 foot jurisdiction from the depression of the vernal pool.

From section 3.0 Jurisdiction, "No person shall remove, fill, dredge, drain, build upon, or alter any bank, freshwater wetland, vernal pool, beach, flat, marsh, wet meadow, bog, swamp, or lands bordering on any creek, river, stream, pond or lake, or any land under said waters, or any land subject to storm flowage, or flooding, or inundation by groundwater or surface water, or the buffer zone, without filing written notice of the intention to do so with the Commission in accordance with the provisions set forth in this By-Law and without receiving and complying with the Order of Conditions issued by the Commission and provided all appeal periods have elapsed, unless the Commission shall have determined that this By-Law does not apply to the activity proposed."

From Section 2. Definition "2.7 The term 'vernal pool' shall mean a naturally occurring, confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, which is free of adult fish populations and which provides essential breeding habitat for certain amphibians and/or food, shelter, migration and breeding habitat for other wildlife species as well as the area within one hundred (100) feet of the mean annual boundary of such depressions. Such sites shall be protected regardless whether they have been certified by the Massachusetts Division of Fisheries and Wildlife."

Then from section 2. Definitions, "2.3 The term 'buffer zone' shall be the land within one hundred (100) feet horizontally landward from the perimeter of outer border of any wetland, floodplain, vernal pool or body of water."

(Sharon By-Laws, Article 23 Wetlands Protection, Adopted 1986)

Finally, there may be variances for activities within the 100-200 foot zone around a vernal pool.

The RULES AND REGULATIONS OF THE SHARON CONSERVATION COMMISSION, Section 6.03 reads "Any alternation of a vernal pool or the 100 foot buffer adjacent to any vernal pool is prohibited. These regulations notwithstanding, the Commission will consider proposals within the buffer zone of a vernal pool on a site specific basis, but only if all practical alternatives to such alteration have been investigated."

Sherborn

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The Town of Sherborn Amendment to Section 3.1 of the Sherborn Wetlands Regulations Adopted November 20, 1996 that Sherborn does regulate vernal pools. The amendment specifically adds a vernal pool to the list of resource areas protected, specifies that it does not have to be state certified, and gives it a 100 foot buffer zone.

"3.1 Resource Areas

The following resource areas are subject to protection under Chapter 17, Sherborn General Wetlands By-Laws:

a.Banks

b.Freshwater wetlands

1.Wet meadows

2.Marshes

3.Swamps

4.Bogs

5.Areas where groundwater, flowing or standing surface water, or ice provides a significant part of the supporting substrata for a plant community for at least five months of the year

(a)Vernal pool and vernal pool habitat:

(1)Definitions:

a.Vernal pool - a confined basin or depression which, at least in most years, holds water for a minimum of two continuous months during the spring or summer or both, and which is free of adult fish populations. A confined basin or depression occurring in an existing lawn, garden, landscaped area, driveway, cultivated field, or open grazed meadow is not considered a vernal pool.

b.Vernal pool habitat - a vernal pool and the area within 100 feet of the mean annual boundaries of such pool. Such an area is an essential breeding habitat for amphibian, reptile, or other vernal pool community species and provides other extremely important functions during the non-breeding season for a variety of these species as well as other wildlife.

(2)Presumption: Where a freshwater wetland's physical characteristics conform with those defined for vernal pool habitat, the Commission shall presume the existence of a vernal pool and vernal pool habitat. This presumption is unconditional, and shall be made notwithstanding certification or lack thereof by the Massachusetts Division of Wildlife and Fisheries and whether or not the site is located within another wetland resource area.

(3)Presumption Rebuttal: The vernal pool habitat presumption may be overcome only upon a showing by a preponderance of credible evidence which in the judgment of the Commission demonstrates that such freshwater wetland does not provide, or cannot provide, vernal pool habitat functions.

6.Emergent and submergent plant communities in inland waters

7.Banks touching inland waters

c.Bordering land subject to flooding (so defined as the boundary of the 100-year floodplain).

d.Isolated land subject to flooding.

In order to protect these resource areas, any altering activity within 100 feet horizontally outward from the upland edge of a resource area shall be reviewed by the Commission."

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have buffer zones regardless of state certification and resource location.

"3.1 Resource Areas

The following resource areas are subject to protection under Chapter 17, Sherborn General Wetlands By-Laws:

a.Banks

b.Freshwater wetlands

1.Wet meadows

2.Marshes

3.Swamps

4.Bogs

5.Areas where groundwater, flowing or standing surface water, or ice provides a significant part of the supporting substrata for a plant community for at least five months of the year

(a)Vernal pool and vernal pool habitat:

(1)Definitions:

a.Vernal pool - a confined basin or depression which, at least in most years, holds water for a minimum of two continuous months during the spring or summer or both, and which is free of adult fish populations. A confined basin or depression occurring in an existing lawn, garden, landscaped area, driveway, cultivated field, or open grazed meadow is not considered a vernal pool.

b.Vernal pool habitat - a vernal pool and the area within 100 feet of the mean annual boundaries of such pool. Such an area is an essential breeding habitat for amphibian, reptile, or other vernal pool community species and provides other extremely important functions during the non-breeding season for a variety of these species as well as other wildlife.

(2)Presumption: Where a freshwater wetland's physical characteristics conform with those defined for vernal pool habitat, the Commission shall presume the existence of a vernal pool and vernal pool habitat. This presumption is unconditional, and shall be made notwithstanding certification or lack thereof by the Massachusetts Division of Wildlife and Fisheries and whether or not the site is located within another wetland resource area.

(3)Presumption Rebuttal: The vernal pool habitat presumption may be overcome only upon a showing by a preponderance of credible evidence which in the judgment of the Commission demonstrates that such freshwater wetland does not provide, or cannot provide, vernal pool habitat functions.

6.Emergent and submergent plant communities in inland waters

7.Banks touching inland waters

- c. Bordering land subject to flooding (so defined as the boundary of the 100-year floodplain).
- d. Isolated land subject to flooding.

In order to protect these resource areas, any altering activity within 100 feet horizontally outward from the upland edge of a resource area shall be reviewed by the Commission."

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

200 According to Jean Bednor, conservation agent in Sherborn, the buffer zone for "non-certified" vernal pools is technically 200 feet. The first 100 feet is a resource area; the pool and habitat each have 100 foot buffer zone.

The Town of Sherborn Amendment to Section 3.1 of the Sherborn Wetlands Regulations Adopted November 20, 1996 state that Sherborn regulates vernal pools. The amendment adds vernal pools to the list of resource areas protected, specifies that it does not have to be state certified, and gives it a 100 foot buffer zone.

"3.1 Resource Areas

The following resource areas are subject to protection under Chapter 17, Sherborn General Wetlands By-Laws:

a. Banks

b. Freshwater wetlands

1. Wet meadows

2. Marshes

3. Swamps

4. Bogs

5. Areas where groundwater, flowing or standing surface water, or ice provides a significant part of the supporting substrata for a plant community for at least five months of the year

(a) Vernal pool and vernal pool habitat:

(1) Definitions:

a. Vernal pool - a confined basin or depression which, at least in most years, holds water for a minimum of two continuous months during the spring or summer or both, and which is free of adult fish populations. A confined basin or depression occurring in an existing lawn, garden, landscaped area, driveway, cultivated field, or open grazed meadow is not considered a vernal pool.

b. Vernal pool habitat - a vernal pool and the area within 100 feet of the mean annual boundaries of such pool. Such an area is an essential breeding habitat for amphibian, reptile, or other vernal pool community species and provides other extremely important functions during the non-breeding season for a variety of these species as well as other wildlife.

(2) Presumption: Where a freshwater wetland's physical characteristics conform with those defined for vernal pool habitat, the Commission shall presume the existence of a vernal pool and vernal pool habitat. This presumption is unconditional, and shall be made notwithstanding certification or lack thereof by the Massachusetts Division of Wildlife and Fisheries and whether or not the site is located within another wetland resource area.

(3) Presumption Rebuttal: The vernal pool habitat presumption may be overcome only upon a showing by a preponderance of credible evidence which in the judgment of the Commission demonstrates that such freshwater wetland does not provide, or cannot provide, vernal pool habitat functions.

6. Emergent and submergent plant communities in inland waters

7. Banks touching inland waters

c. Bordering land subject to flooding (so defined as the boundary of the 100-year floodplain).

d. Isolated land subject to flooding.

In order to protect these resource areas, any altering activity within 100 feet horizontally outward from the upland edge of a resource area shall be reviewed by the Commission."

Shirley

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Vernal pools are not mentioned in the jurisdiction or further defined in the bylaw. [The Shirley bylaw appears to follow state code throughout and a fee schedule was included. The researcher concluded that the town enacted a bylaw primarily to implement fees.]

From Section 1. Purpose and Jurisdiction,

"1.2 Except as permitted by the Shirley Conservation Commission or as provided in this Bylaw, no person shall remove, fill, dredge, or alter any bank, fresh water wetland, marsh, meadow, bog, or swamp bordering any creek, river, stream, pond, or lake or land under said waters or any land subject to flooding (collectively, the "Area Subject to Protection").

1.3 Any activity proposed or undertaken within the "Buffer Zone" as defined in Massachusetts General Laws Chapter 131, Section 40 and the Wetlands Protection Act Regulations 310 CMR 10.00 or Areas Subject to Protection which, in the judgment

of the Commission, will remove, fill, dredge, or alter an Area Subject to Protection under this Bylaw is subject to regulation under the Bylaw and requires the filing of a Request for Determination ("Request") or Notice of Intent ("Notice")."

(Shirley Non-Zoning Wetland Bylaw, Adopted 1995, Amended 1996)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No Vernal pools are not mentioned in the jurisdiction or further defined in the bylaw. [The Shirley bylaw appears to follow state code throughout and a fee schedule was included. The researcher concluded that the town enacted a bylaw primarily to implement fees.]

From Section 1. Purpose and Jurisdiction,

"1.2 Except as permitted by the Shirley Conservation Commission or as provided in this Bylaw, no person shall remove, fill, dredge, or alter any bank, fresh water wetland, marsh, meadow, bog, or swamp bordering any creek, river, stream, pond, or lake or land under said waters or any land subject to flooding (collectively, the "Area Subject to Protection").

1.3 Any activity proposed or undertaken within the "Buffer Zone" as defined in Massachusetts General Laws Chapter 131, Section 40 and the Wetlands Protection Act Regulations 310 CMR 10.00 or Areas Subject to Protection which, in the judgment of the Commission, will remove, fill, dredge, or alter an Area Subject to Protection under this Bylaw is subject to regulation under the Bylaw and requires the filing of a Request for Determination ("Request") or Notice of Intent ("Notice")."

(Shirley Non-Zoning Wetland Bylaw, Adopted 1995, Amended 1996)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Southborough

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The jurisdiction specifies vernal pools, but does not mention they have to be state certified. There is no definition of vernal pools provided in the bylaw and regulations. Kathy O'Brien, Southborough Conservation Administrator, (8/23/04) said that Southborough only regulates state certified vernal pools.

Note that the vernal pool is given a full 100 foot buffer zone regardless of whether the vernal pool falls within a resource area.

From Section 2. Jurisdiction, "Except as permitted by the Conservation Commission or as provided in this chapter, no person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas or within (20) feet of their borders: any freshwater wetland, bordering vegetated wetland, marsh, wet meadow, bog or swamp, any bank, beach, lake, river, pond, stream or any land under said waters, any vernal pool, and land subject to flooding or inundation by groundwater, surface water or storm flowage (collectively, "the resource areas"). Any proposed work which falls within one hundred (100) feet (the "bufferzone") of the previously mentioned resource areas must be approved by the Conservation Commission."

(Southborough Wetlands By-Law, Adopted 1992, Amended 1995)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes The jurisdiction specifies vernal pools, but does not mention they have to be state certified. Kathy O'Brien, Southborough Conservation Administrator, (8/23/04) said that Southborough only regulates state certified vernal pools.

The vernal pool is given a full 100 foot buffer zone regardless of whether the vernal pool falls within a resource area.

From Section 2. Jurisdiction, "Except as permitted by the Conservation Commission or as provided in this chapter, no person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas or within (20) feet of their borders: any freshwater wetland, bordering vegetated wetland, marsh, wet meadow, bog or swamp, any bank, beach, lake,

river, pond, stream or any land under said waters, any vernal pool, and land subject to flooding or inundation by groundwater, surface water or storm flowage (collectively, "the resource areas"). Any proposed work which falls within one hundred (100) feet (the "bufferzone") of the previously mentioned resource areas must be approved by the Conservation Commission."

(Southborough Wetlands By-Law, Adopted 1992, Amended 1995)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The vernal pool is given a full 100 foot buffer zone regardless of whether the vernal pool falls within a resource area.

From Section 2. Jurisdiction, "Except as permitted by the Conservation Commission or as provided in this chapter, no person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas or within (20) feet of their borders: any freshwater wetland, bordering vegetated wetland, marsh, wet meadow, bog or swamp, any bank, beach, lake, river, pond, stream or any land under said waters, any vernal pool, and land subject to flooding or inundation by groundwater, surface water or storm flowage (collectively, "the resource areas"). Any proposed work which falls within one hundred (100) feet (the "bufferzone") of the previously mentioned resource areas must be approved by the Conservation Commission."

(Southborough Wetlands By-Law, Adopted 1992, Amended 1995)

Stoneham

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Then from Section IX. Definitions,
"The term "vernal pool" shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be 100 feet outward from the mean annual high water line defining the depression, but shall not include existing lawns, gardens, landscaped or developed areas."

(Stoneham, Massachusetts Wetland Bylaw, Adopted May 2004)

From Section II. Jurisdiction,
"Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; dunes; estuaries; the ocean; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water, lands subject to tidal action, coastal storm flowage, or flooding; and lands abutting any of the aforesaid resource areas as set out in Section VII (collectively the 'resource areas protected by this bylaw'). Said resource areas shall be protected whether or not they border surface waters."

Then from Section VII Permits and Conditions,
(third paragraph)

"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 ... 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."

(Stoneham, Massachusetts Wetland Bylaw, Adopted May 2004)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have buffer zones regardless of state certification and resource location.

From Section II. Jurisdiction,

"Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; dunes; estuaries; the ocean; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water, lands subject to tidal action, coastal storm flowage, or flooding; and lands abutting any of the aforesaid resource areas as set out in Section VII (collectively the 'resource areas protected by this bylaw'). Said resource areas shall be protected whether or not they border surface waters."

Then from Section VII Permits and Conditions,
(third paragraph)

"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 ... 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."

Then from Section IX. Definitions,

"The term 'vernal pool' shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be 100 feet outward from the mean annual high water line defining the depression, but shall not include existing lawns, gardens, landscaped or developed areas."

In addition, the Permits and Conditions (Section VII), vernal pools are also addressed.

"The Commission shall presume that all areas meeting the definition of 'vernal pools' under [Section] IX of this bylaw, including the adjacent area, perform essential habitat functions..."

(Stoneham, Massachusetts Wetland Bylaw, Adopted May 2004)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 From Mr. Blake Allison, Conservation Chair, via email, "Regarding your questions about the Stoneham Conservation Commission's policy on vernal pools, our bylaw states that "the boundary of the resource area for vernal pools shall be 100 feet outward from the mean annual high water line defining the depression." I take that to mean we do not claim an additional 100 feet of buffer zone beyond the original 100 feet."

The jurisdiction includes vernal pools, the 'permits and conditions' section gives this resource a 100 foot buffer zone. In addition, the definition of vernal pool includes the 100 foot habitat around the depression. The researcher could interpret the Conservation Commission's jurisdiction to reach 200 feet from the waterline.

From Section II. Jurisdiction,

"Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; dunes; estuaries; the ocean; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water, lands subject to tidal action, coastal storm flowage, or flooding; and lands abutting any of the aforesaid resource areas as set out in Section VII (collectively the 'resource areas protected by this bylaw'). Said resource areas shall be protected whether or not they border surface waters."

Then from Section VII Permits and Conditions,
(third paragraph)

"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 ... 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."

Then from Section IX. Definitions,

"The term "vernal pool" shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be 100 feet outward from the mean annual high water line defining the depression, but shall not include existing lawns, gardens, landscaped or developed areas."

In addition, the Permits and Conditions (Section VII), vernal pools are also addressed.

"The Commission shall presume that all areas meeting the definition of 'vernal pools' under [Section] IX of this bylaw, including the adjacent area, perform essential habitat functions..."

(Stoneham, Massachusetts Wetland Bylaw, Adopted May 2004)

Stow

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Article 9, Section 2 of the Stow Town Bylaws protects "lands bordering on or within two hundred feet of any...vernal pool, or any land under said waters."

(Town of Stow, Wetland Protection General Bylaws Article 9, Adopted 1983, Amended 2003)

Stow Conservation Administrator Pat Perry (8/26/04) confirmed that this bylaw protects all vernal pools, not just state certified vernal pools.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Article 9, Section 2 of the Stow Town Bylaws protects "lands bordering on or within two hundred feet of any...vernal pool, or any land under said waters."

(Town of Stow, Wetland Protection General Bylaws Article 9, Adopted 1983, Amended 2003)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

200 Article 9, Section 2 of the Stow Town Bylaws protects "lands bordering on or within two hundred feet of any...vernal pool, or any land under said waters."

(Town of Stow, Wetland Protection General Bylaws Article 9, Adopted 1983, Amended 2003)

Sudbury

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition of vernal pool specifies that the vernal pool does not need to be certified.

Section 9 of the Sudbury Wetlands Bylaw reads, in part: "The term "vernal pool" shall include, in addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131, §40 and Regulations thereunder, 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for

amphibian, reptile, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. The presumption of essential habitat value may be overcome by the presentation of credible evidence which in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. The adjacent upland resource area for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or one-half of the distance between the vernal pool and any existing house foundation, whichever ever is smaller. In either case the adjacent upland resource area for vernal pools shall not extend over existing lawns, gardens, landscaped or developed areas."

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

From Section 2. Jurisdiction, "In accordance with this purpose no person shall remove, fill, dredge, build upon, degrade, pollute, discharge into, or otherwise alter the following resource areas: any freshwater wetland; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; rivers; streams; creeks; lands under waterbodies; lands subject to flooding by ground water, surface water, or storm flow (collectively the 'wetland resource areas protected by this bylaw') as described in Section 9. Definitions, without a permit from the Conservation Commission, or as provided by this Bylaw."

"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)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Vernal pools are given buffer zones regardless of state certification or location.

From Section 2. Jurisdiction, "In accordance with this purpose no person shall remove, fill, dredge, build upon, degrade, pollute, discharge into, or otherwise alter the following resource areas: any freshwater wetland; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; rivers; streams; creeks; lands under waterbodies; lands subject to flooding by ground water, surface water, or storm flow (collectively the 'wetland resource areas protected by this bylaw') as described in Section 9. Definitions, without a permit from the Conservation Commission, or as provided by this Bylaw."

Section 9 of the Sudbury Wetlands Bylaw reads, in part: "The term "vernal pool" shall include, in addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131, §40 and Regulations thereunder, 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. The presumption of essential habitat value may be overcome by the presentation of credible evidence which in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. The adjacent upland resource area for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or one-half of the distance between the vernal pool and any existing house foundation, whichever ever is smaller. In either case the adjacent upland resource area for vernal pools shall not extend over existing lawns, gardens, landscaped or developed areas."

Additionally, in Section 7. Permits and Conditions, "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)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 On 11/22/04, the administrator for conservation said the Commission, in practice, has a 100 foot width of jurisdiction from the mean annual water line.

From Section 2. Jurisdiction, "In accordance with this purpose no person shall remove, fill, dredge, build upon, degrade, pollute, discharge into, or otherwise alter the following resource areas: any freshwater wetland; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; rivers; streams; creeks; lands under waterbodies; lands subject to flooding by ground water, surface water, or storm flow (collectively the 'wetland resource areas protected by this bylaw') as described in Section 9. Definitions, without a permit from the Conservation Commission, or as provided by this Bylaw."

Section 9 of the Sudbury Wetlands Bylaw reads, in part: "The term "vernal pool" shall include, in addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131, §40 and Regulations thereunder, 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. The presumption of essential habitat value may be overcome by the presentation of credible evidence which in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. The adjacent upland resource area for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or one-half of the distance between the vernal pool and any existing house foundation, whichever is smaller. In either case the adjacent upland resource area for vernal pools shall not extend over existing lawns, gardens, landscaped or developed areas."

Additionally, in Section 7. Permits and Conditions,

"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)

Sutton

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes A vernal pool does not have to be certified by the state to be protected in Sutton.

From Section 2.2 Jurisdiction Over Presumption Of a Vernal Pool Habitat:

"The Bylaw presumes vernal pool habitat exists if a wetlands' physical characteristics conform with those defined for vernal pools in the Wetlands Protection Act, MGL c. 131, Section 40 and Regulations, 310 CMR 10.00, except that State certification as such is not required.

The term "vernal pool" shall include, any confined basin or depression not occurring in existing lawns, gardens, orchards, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, containing at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. This presumptive definition for vernal pools is based on systematic field observations in the Town of Sutton, by the Sutton Conservation Commission showing that virtually all basins that possess the above characteristics actually host or can host

breeding vernal species. Undoubtedly this a particular consequence of Sutton's semi-rural character and enduring woodlands and wetlands.

The presumption of vernal pool habitat may be overcome, however, with the presentation of credible evidence, which in the judgment of the Conservation Commission demonstrates that the wetland does not provide or cannot provide, vernal pool habitat functions:

2.1.1 Demonstrating that a Ponding Area is Not a Vernal Pool

For the purposes of overcoming the presumption of vernal pool habitat the Commission will consider:

2.2.1.1) Evidence that the ponding does not hold water for at least two continuous months in most years. As a rule of thumb the term "most years" shall mean three out of five consecutive years.

2.2.1.2) Evidence that vernal pool species do not breed, or have not bred, in the ponding area. The Conservation Commission shall provide explicit guidelines for this evidence.

2.2.1.3) Evidence that the ponding area could not be a viable breeding or habitat site for vernal pool species due to incompatible physical, chemical, biological or other permanent conditions at the site in most years. Such evidence could include, without limitations, several months of pH and dissolved oxygen measurements yielding values incompatible with amphibian and reptile breeding and/or invertebrate survival.

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

From Section 2.1 Application of Jurisdiction, "Except as permitted by the Conservation Commission, and/or as provided in this Bylaw, no person shall commence to 'alter' (as defined in Section 9.15) in any manner, remove, fill, dredge, build upon, degrade, discharge or dump into any of the following areas: any freshwater wetland, perched wetland, marsh, wet meadow, bog, swamp, vernal pool, bank, reservoir, flat, lake, pond of any size, river, all perennial and intermittent streams, creek, beach, estuary, land under water bodies, land subject to flooding or inundation by groundwater or surface water, and any abutting adjacent upland resource areas as defined in Section 9.12 of this Bylaw. Said resource areas shall be protected whether or not they border waters and if they are within 100 feet of the resource area(s), or of the 100 year storm line, or 200 feet if within a Riverfront District."

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

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools are given buffer zones regardless of state certification and location of the vernal pool.

From Section 9, Definitions, the definition for vernal pool in 9.10 includes the phrase "...regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries.... The adjacent upland resource area for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or one half of the distance between the vernal pool and any existing house foundation, whichever is smaller. In either case, the adjacent upland resource area for vernal pools shall not extend over existing lawns, gardens, orchards, landscaped or developed areas or those already under Permit."

From Section 2.1 Application of Jurisdiction, "Except as permitted by the Conservation Commission, and/or as provided in this Bylaw, no person shall commence to 'alter' (as defined in Section 9.15) in any manner, remove, fill, dredge, build upon, degrade, discharge or dump into any of the following areas: any freshwater wetland, perched wetland, marsh, wet meadow, bog, swamp, vernal pool, bank, reservoir, flat, lake, pond of any size, river, all perennial and intermittent streams, creek, beach, estuary, land under water bodies, land subject to flooding or inundation by groundwater or surface water, and any abutting adjacent upland resource areas as defined in Section 9.12 of this Bylaw. Said resource areas shall be protected whether or not they border waters and if they are within 100 feet of the resource area(s), or of the 100 year storm line, or 200 feet if within a Riverfront District."

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The town of Sutton does not require vernal pools to be certified by the state to be protected. The definition for vernal pools in the regulations includes the adjacent 100 foot zone around it as part of the resource area, although the definition may be treating the "adjacent upland area" as separate from the actual "vernal pool."

On 11/05/04, the researcher spoke with Mark Briggs, member of the Conservation Commission to clarify whether the 100-foot buffer reaches from the boundary of the depression or from the edge of the upland resource. Mr. Briggs said it really depends on the size of the vernal pool. If the vernal pool is large (>10,000 sq ft), then this would be granted a 200 foot buffer zone, otherwise it would have a 100 foot buffer zone (from the edge of the mean annual water line). Mr. Briggs also noted that in Sutton most of the vernal pools would receive a 100 foot buffer zone. This distinction is noted in the definition section of the

bylaws.

From Section 9, Definitions, of the Regulations, the definition for vernal pool in 9.10 includes the phrase "...regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries.... The adjacent upland resource area for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or one half of the distance between the vernal pool and any existing house foundation, whichever is smaller. In either case, the adjacent upland resource area for vernal pools shall not extend over existing lawns, gardens, orchards, landscaped or developed areas or those already under Permit."

Full definition:

"9.10 Vernal Pool

The term "vernal pool" and criteria for such shall include, in addition to that already defined under the Wetlands Protection Act, MGL c. 13 1, Section 40 and Regulations thereunder, 310 CMR 10.00, and in Section 2, Jurisdiction, of this Bylaw, any confined basin or depression not occurring in existing lawns, gardens, orchards, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring/summer, contains at least 200 cubic feet of water at some time during most years, is free of predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool species, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. The presumption of essential habitat value may be overcome by the presentation of credible evidence, which in the judgment of the Commission, demonstrates that the basin or depression does not provide the habitat functions as specified by this Bylaw or its Rules and Regulations.

The adjacent upland resource area for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or one half of the distance between the vernal pool and any existing house foundation, whichever is smaller. In either case, the adjacent upland resource area for vernal pools shall not extend over existing lawns, gardens, orchards, landscaped or developed areas or those already under Permit."

Then Definition 9.12 Adjacent Upland Resource Area(s),

"The term, 'adjacent upland resource area(s)', shall include all lands within 100 feet of wetlands, including but not limited to any watershed containing freshwater wet land, and bordering vegetation associated with and including marshes, wet meadows, bogs, swamps, vernal pools (as defined herein and in Section 9.10), banks, reservoirs; lakes, all perennial and intermittent streams, creeks, rills, springs, lands under water bodies, lands subject to flooding by ground water, surface water, or storm flow, collectively and/or separately. For all perennial streams, great ponds and rivers, it extends 200 feet from the top of the bank. For vernal pools under 10,000 square feet in area, and in isolated land subject to flooding, occurring within or without that two hundred feet, it extends 100 feet."

From Section 2.1 Application of Jurisdiction, "Except as permitted by the Conservation Commission, and/or as provided in this Bylaw, no person shall commence to 'alter' (as defined in Section 9.15) in any manner, remove, fill, dredge, build upon, degrade, discharge or dump into any of the following areas: any freshwater wetland, perched wetland, marsh, wet meadow, bog, swamp, vernal pool, bank, reservoir, flat, lake, pond of any size, river, all perennial and intermittent streams, creek, beach, estuary, land under water bodies, land subject to flooding or inundation by groundwater or surface water, and any abutting adjacent upland resource areas as defined in Section 9.12 of this Bylaw. Said resource areas shall be protected whether or not they border waters and if they are within 100 feet of the resource area(s), or of the 100 year storm line, or 200 feet if within a Riverfront District."

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

Swansea

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Swansea defines vernal pools and does not specify that they need to be certified to receive protection.

From 1.05 Definitions, "Vernal Pool - A confined basin depression, as well as the area within 100 feet of the mean annual boundaries of the such depressions, to the extent that such habitat is within an area subject to protection under this Bylaw ..."

(Rules and Regulations Under the Swansea Wetlands Protection Bylaw)

From Article I General Provisions, 1.03 Jurisdiction, "A. Resource Areas Subject to Protection Under the Bylaw 1. Any freshwater wetland, any coastal wetland, any freshwater marsh, any coastal marsh, any wetland meadow, any bog, any swamp, any bank, any beach, any dune, any flat, any vegetated or un-vegetated wetland 2. Any lake, any pond, any river, perennial or non-perennial, any stream, any creek, any estuary, or the ocean or bay 3. Any land under any of the waterbodies set forth in 1.03(A)(2) above 4. Any land subject to flooding or inundation by: Groundwater, surface water, tidal action, coastal action, or coastal storm flowage."

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No The jurisdiction does not include vernal pools and the definition specifies that the vernal pool must fall within a resource area.

From Article I General Provisions, 1.03 Jurisdiction, "A. Resource Areas Subject to Protection Under the Bylaw 1. Any freshwater wetland, any coastal wetland, any freshwater marsh, any coastal marsh, any wetland meadow, any bog, any swamp, any bank, any beach, any dune, any flat, any vegetated or un-vegetated wetland 2. Any lake, any pond, any river, perennial or non-perennial, any stream, any creek, any estuary, or the ocean or bay 3. Any land under any of the waterbodies set forth in 1.03(A)(2) above 4. Any land subject to flooding or inundation by: Groundwater, surface water, tidal action, coastal action, or coastal storm flowage."

Then from 1.05 Definitions, "Vernal Pool - A confined basin depression, as well as the area within 100 feet of the mean annual boundaries of the such depressions, to the extent that such habitat is within an area subject to protection under this Bylaw ..."

(Rules and Regulations Under the Swansea Wetlands Protection Bylaw)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Taunton

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition of vernal pool does not specify that it has to be state certified to receive protection. Cristine O'Diaga, Conservation Agent, confirmed (11/01/04) that the vernal pool does not need to be state certified.

From Section II Definitions in the regulations, "'vernal pools' are considered to be any confined basin depression that has been certified as such by the Natural Heritage and Endangered Species Program, or has been demonstrated by credible proof to contain obligate vernal pool breeding species. All such pools are protected by the Ordinance and regulations promulgated hereunder including vernal pools contained within ILSF and BVW regardless of size. All vernal pools have a buffer zone of 100 feet and a wetland protection zone of no less than 25 feet and not more than 100 feet from its outermost edge. This edge is defined as the highest observed water level in the pool or its maximum holding capacity in a 100-year storm event which ever is greater. The 'highest observed water level' can be documented through photographs or through the observation of staining. When calculating the maximum holding capacity a '100 year storm event' of 7 inches of rain in a 24-hour period will be used. This calculation will allow for no infiltration."

(City of Taunton Conservation Ordinance Regulations)

From section 16-31. Jurisdiction, "[e]xcept as permitted by the Conservation Commission pursuant to the Act or as provided in this ordinance no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following protectable resource areas: any freshwater marshes; wet meadows; bogs; swamps; vernal pools, banks; reservoirs, lakes, ponds of any size; rivers; streams; creeks, beaches, dunes; estuaries; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water, lands subject to tidal action, coastal storm flowage, or flooding; and lands abutting any of the aforesaid resource areas as set out in VII (collectively the "resource areas protected by this ordinance"). Said resource areas and their applicable buffer zones under the Act, if any, shall be protected whether or not they border surface waters."

(Chapter 16 City of Taunton Conservation Ordinance, Adopted 2001)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes The jurisdiction includes vernal pools, and the definition of vernal pool does not specify that it has to be state certified.

From section 16-31. Jurisdiction, "[e]xcept as permitted by the Conservation Commission pursuant to the Act or as provided in this ordinance no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following protectable resource areas: any freshwater marshes; wet meadows; bogs; swamps; vernal pools, banks; reservoirs,

lakes, ponds of any size; rivers; streams; creeks, beaches, dunes; estuaries; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water, lands subject to tidal action, coastal storm flowage, or flooding; and lands abutting any of the aforesaid resource areas as set out in VII (collectively the "resource areas protected by this ordinance"). Said resource areas and their applicable buffer zones under the Act, if any, shall be protected whether or not they border surface waters."

(Chapter 16 City of Taunton Conservation Ordinance, Adopted 2001)

From Section II Definitions in the regulations, "vernal pools' are considered to be any confined basin depression that has been certified as such by the Natural Heritage and Endangered Species Program, or has been demonstrated by credible proof to contain obligate vernal pool breeding species. All such pools are protected by the Ordinance and regulations promulgated hereunder including vernal pools contained within ILSF and BVW regardless of size. All vernal pools have a buffer zone of 100 feet and a wetland protection zone of no less than 25 feet and not more than 100 feet from its outermost edge. This edge is defined as the highest observed water level in the pool or its maximum holding capacity in a 100-year storm event which ever is greater. The 'highest observed water level' can be documented through photographs or through the observation of staining. When calculating the maximum holding capacity a '100 year storm event' of 7 inches of rain in a 24-hour period will be used. This calculation will allow for no infiltration."

(City of Taunton Conservation Ordinance Regulations)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 From Section II Definitions in the regulations, "vernal pools' are considered to be any confined basin depression that has been certified as such by the Natural Heritage and Endangered Species Program, or has been demonstrated by credible proof to contain obligate vernal pool breeding species. All such pools are protected by the Ordinance and regulations promulgated hereunder including vernal pools contained within ILSF and BVW regardless of size. All vernal pools have a buffer zone of 100 feet and a wetland protection zone of no less than 25 feet and not more than 100 feet from its outermost edge. This edge is defined as the highest observed water level in the pool or its maximum holding capacity in a 100-year storm event which ever is greater. The 'highest observed water level' can be documented through photographs or through the observation of staining. When calculating the maximum holding capacity a '100 year storm event' of 7 inches of rain in a 24-hour period will be used. This calculation will allow for no infiltration."

(City of Taunton Conservation Ordinance Regulations)

Tewksbury

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Vernal pools are listed in the definitions, and the bylaw specifically states they do not require state certification to garner protection. The bylaw does not expressly list vernal pools as a resource area and as a result is unclear. On 8/13/04, the researcher spoke with the agent and was told that vernal pools are a resource area with 100 feet of protection.

Tewksbury's Wetlands Bylaw (Chapter 18.04.020) reads:

"Vernal pools mean a confined depression which provides habitat for vernal pool species, whether or not certified by the Massachusetts Natural Heritage program. Vernal pool species are those vertebrate and invertebrate species listed in the January 1991 edition of Massachusetts Audubon Society's 'A Citizen's Step-by-Step guide to Protecting Vernal Pools'."

According to the conservation agent, the Commission is in the process of reworking their bylaw to include vernal pools. When asked under what section the Commission was protecting the resource, the agent told the researcher that they had just decided it wanted to protect vernal pools. Completion of the amendments are not expected until Fall 2005 (From 1/4/05 phone conversation)

It should be noted that the definition of "flooded" is vague, and vernal pools could garner protection as a land subject to flooding, which is given 100 feet of protection.

From 18.04.30 Jurisdiction, "Except as permitted by the Commission or as provided in this Bylaw, no person shall alter the following local resource areas:

- (1) Within 100 feet of any vegetated wetlands wet meadow, marsh, swamp or bog;
- (2) Within 100 feet of any river, brook stream (intermittent or otherwise), pond or lake;
- (3) Land under any of the bodies of water listed in (1) and (2) above;
- (4) Within 100 feet of bordering or isolated land subject to flooding or inundation by groundwater or surface water. The inundation by groundwater at or near the surface of the ground at least six months of the year (Art. 30 C, ATM 1991)

(5) 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..."

(Wetland Protection By-Law, Adopted 2004)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No Vernal pools do not need certification to receive protection. However, they are not mentioned in the jurisdiction, and the bylaw gives no indication of a buffer zone. The conservation agent told the researcher on 8/13/04 that vernal pools are resource areas and have a 100 foot buffer irrespective of state certification. This practice was confirmed on 1/4/05.

It should be noted that the definition of "flooded" is vague and vernal pools could garner protection as a land subject to flooding, which is given 100 feet of protection.

Tewksbury's Wetlands Bylaw (Chapter 18.04.020) reads:

"Vernal pools' means a confined depression which provides habitat for vernal pool species, whether or not certified by the Massachusetts Natural Heritage program. Vernal pool species are those vertebrate and invertebrate species listed in the January 1991 edition of Massachusetts Audubon Society's 'A Citizen's Step-by-Step guide to Protecting Vernal Protecting Vernal Pools'."

From 18.04.30 Jurisdiction, "Except as permitted by the Commission or as provided in this Bylaw, no person shall alter the following local resource areas:

- (1) Within 100 feet of any vegetated wetlands wet meadow, marsh, swamp or bog;
- (2) Within 100 feet of any river, brook stream (intermittent or otherwise), pond or lake;
- (3) Land under any of the bodies of water listed in (1) and (2) above;
- (4) Within 100 feet of bordering or isolated land subject to flooding or inundation by groundwater or surface water. The inundation by groundwater at or near the surface of the ground at least six months of the year (Art. 30 C, ATM 1991)
- (5) 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..."

(Wetland Protection By-Law, Adopted 2004)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Walter Polchlopek, Tewksbury Conservation Administrator, (8/13/04) said that vernal pools are protected natural resources with a 100 foot buffer zone, whether or not they have been state certified.

Tewksbury's Wetlands Bylaw (Chapter 18.04.020) reads:

"Vernal pools' means a confined depression which provides habitat for vernal pool species, whether or not certified by the Massachusetts Natural Heritage program. Vernal pool species are those vertebrate and invertebrate species listed in the January 1991 edition of Massachusetts Audubon Society's 'A Citizen's Step-by-Step guide to Protecting Vernal Protecting Vernal Pools'."

From 18.04.30 Jurisdiction, "Except as permitted by the Commission or as provided in this Bylaw, no person shall alter the following local resource areas:

- (1) Within 100 feet of any vegetated wetlands wet meadow, marsh, swamp or bog;
- (2) Within 100 feet of any river, brook stream (intermittent or otherwise), pond or lake;
- (3) Land under any of the bodies of water listed in (1) and (2) above;
- (4) Within 100 feet of bordering or isolated land subject to flooding or inundation by groundwater or surface water. The inundation by groundwater at or near the surface of the ground at least six months of the year (Art. 30 C, ATM 1991)
- (5) 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..."

(Wetland Protection By-Law, Adopted 2004)

"Within 100 feet of the subject property, the delineation of all wetlands, lands subject to flooding, water bodies, waterways, ditches, creeks, rivers, streams, and ponds, whether natural or manmade, continually or intermittently flowing. Where applicable, the State water quality classifications of waterways are to be given (M.G.L. C. 21, Clean Waters Act). The upland boundary of all bordering vegetated wetlands, isolated wetlands, vernal pools, and isolated land subject to flooding shall also be shown. The 100-year flood elevation line and in any flood plains showing on the Town's FEMA flood maps shall be shown" From the town of Tewksbury Wetlands Protection Bylaw, Section D.a (2) (2004).

It should be noted that the definition of "flooded" is vague, and vernal pools could garner protection as a land subject to flooding,

which is given 100 feet of protection.

Topsfield

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition indicates that a vernal pool does not need to be state certified to receive protection.

From R:10-2. Definitions,
"Vernal Pool [*] shall mean an intermittent pond that meets the criteria set forth in 'Guidelines for Certification of Vernal Pool Habitat' issued by the Massachusetts Division of Fisheries and Wildlife. Prior certification is not required. Vernal pools function as essential breeding habitat for a variety of amphibian species such as wood frog (*Rana sylvatica*) and mole salamanders, and provide other important wildlife habitat functions for amphibians and other wildlife. Vernal pool habitat includes a 100-foot setback area."

(Chapter R:10 Regulations for Topsfield Wetlands General Bylaw, Amended 2003)

The jurisdiction is somewhat vague and the regulations are used to further clarify resource areas. Under the jurisdiction, a vernal pool is classified as a "body of water", and then vernal pools are specifically classified as such.

From Section 62-2 Jurisdiction,
"Except as permitted by the Conservation Commission or as provided in this By-Law, no person shall remove soil or vegetation from, fill, dredge, build upon, discharge into, or alter the following Resource Areas:

- a. Freshwater wetlands;
- b. Bodies of water;
- c. Land under water;
- d. Banks;
- e. Land within one hundred (100) feet of Freshwater Wetlands, Bodies of Water, Land Under Water, or Banks;
- f. Riverfront Area;
- g. Land Subject to Flooding.

(Chapter LXII General Wetlands Bylaw)

Then from R:10-3 Identification of Resource Areas Protected Under the Bylaw

"b. [*]Bodies of Water include any lake, pond, river or stream, whether intermittent of permanent, man-made or natural. The Bylaw protects certain bodies of water that may not be protected under the State Law, including:
Permanent ponds, even if less than ten thousand (10,000) square feet;
All intermittent streams;
and All vernal pools."

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have a buffer zone regardless of state certification and resource location.

From Section 62-2 Jurisdiction,
"Except as permitted by the Conservation Commission or as provided in this By-Law, no person shall remove soil or vegetation from, fill, dredge, build upon, discharge into, or alter the following Resource Areas:

- a. Freshwater wetlands;
- b. Bodies of water;
- c. Land under water;
- d. Banks;
- e. Land within one hundred (100) feet of Freshwater Wetlands, Bodies of Water, Land Under Water, or Banks;
- f. Riverfront Area;
- g. Land Subject to Flooding.

(Chapter LXII General Wetlands Bylaw)

Then from R:10-3 Identification of Resource Areas Protected Under the Bylaw

"b. [*]Bodies of Water include any lake, pond, river or stream, whether intermittent of permanent, man-made or natural. The Bylaw protects certain bodies of water that may not be protected under the State Law, including:
Permanent ponds, even if less than ten thousand (10,000) square feet;
All intermittent streams;

and All vernal pools."

From R:10-2. Definitions,

"Vernal Pool [*] shall mean an intermittent pond that meets the criteria set forth in 'Guidelines for Certification of Vernal Pool Habitat' issued by the Massachusetts Division of Fisheries and Wildlife. Prior certification is not required. Vernal pools function as essential breeding habitat for a variety of amphibian species such as wood frog (*Rana sylvatica*) and mole salamanders, and provide other important wildlife habitat functions for amphibians and other wildlife. Vernal pool habitat includes a 100-foot setback area."

(Chapter R:10 Regulations for Topsfield Wetlands General Bylaw, Amended 2003)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The jurisdiction is somewhat vague and the regulations are used to further clarify resource areas. Under the jurisdiction, a vernal pool is classified as a "body of water", and then vernal pools are specifically classified as such. The definition of vernal pools indicate that the resource area does not need to be state certified to receive protection, and a 100 foot setback is assumed from the edge of the vernal pool,

From Section 62-2 Jurisdiction,

"Except as permitted by the Conservation Commission or as provided in this By-Law, no person shall remove soil or vegetation from, fill, dredge, build upon, discharge into, or alter the following Resource Areas:

- a. Freshwater wetlands;
- b. Bodies of water;
- c. Land under water;
- d. Banks;
- e. Land within one hundred (100) feet of Freshwater Wetlands, Bodies of Water, Land Under Water, or Banks;
- f. Riverfront Area;
- g. Land Subject to Flooding.

(Chapter LXII General Wetlands Bylaw)

Then from R:10-3 Identification of Resource Areas Protected Under the Bylaw

"b. [*]Bodies of Water include any lake, pond, river or stream, whether intermittent or permanent, man-made or natural. The Bylaw protects certain bodies of water that may not be protected under the State Law, including:
Permanent ponds, even if less than ten thousand (10,000) square feet;
All intermittent streams;
and All vernal pools."

From R:10-2. Definitions,

"Vernal Pool [*] shall mean an intermittent pond that meets the criteria set forth in 'Guidelines for Certification of Vernal Pool Habitat' issued by the Massachusetts Division of Fisheries and Wildlife. Prior certification is not required. Vernal pools function as essential breeding habitat for a variety of amphibian species such as wood frog (*Rana sylvatica*) and mole salamanders, and provide other important wildlife habitat functions for amphibians and other wildlife. Vernal pool habitat includes a 100-foot setback area."

(Chapter R:10 Regulations for Topsfield Wetlands General Bylaw, Amended 2003)

Townsend

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The jurisdiction includes vernal pools. The conservation administrator (10/28/04) said that the town can protect non-certified vernal pools and their buffer zones. The researcher did not find any reference to a definition for vernal pools in the bylaw or regulations.

From 138-1 of the Bylaw, Section B, "[i]n accordance with this purpose no person shall remove, fill, dredge, build upon, degrade, pollute, discharge into, or otherwise alter the following resource areas: banks, freshwater wetlands, marshes, bogs, wet meadows, swamps, creeks, rivers, streams, ponds, lakes, lands under water bodies, lands subject to flooding or inundation, vernal pools, isolated wetlands (collectively, resource areas) and lands within a buffer zone (as defined in 138-7) of any such resource areas without a permit from the Conservation Commission, or as provided by this by-law."

From Section 138-7 Definitions, A(6), " 'Buffer zone' shall be defined as: [Amended 4-29-1997 ATM by Art. 42; 5-1-2001 ATM by Art. 49] (a) An area extending 100 feet horizontally outward from banks, freshwater wetlands, marshes, bogs, wet meadows,

swamps, intermittent creeks, intermittent streams, lands under water bodies, lands subject to flooding or inundation, vernal pools, isolated wetlands and ponds not granted a two-hundred-foot buffer and an area extending 200 feet horizontally from a river or perennial stream (riverfront area) as defined in the Massachusetts Wetlands Protection Act (MGL c. 1313, 40)."

(Townsend Wetlands Bylaw, Adopted 1983, Amended 1987)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have a buffer zone regardless of state certification and location of the resource.

From 138-1 of the Bylaw, Section B, "[i]n accordance with this purpose no person shall remove, fill, dredge, build upon, degrade, pollute, discharge into, or otherwise alter the following resource areas: banks, freshwater wetlands, marshes, bogs, wet meadows, swamps, creeks, rivers, streams, ponds, lakes, lands under water bodies, lands subject to flooding or inundation, vernal pools, isolated wetlands (collectively, resource areas) and lands within a buffer zone (as defined in 138-7) of any such resource areas without a permit from the Conservation Commission, or as provided by this by-law."

From Section 138-7 Definitions, A(6), " 'Buffer zone' shall be defined as: [Amended 4-29-1997 ATM by Art. 42; 5-1-2001 ATM by Art. 49] (a) An area extending 100 feet horizontally outward from banks, freshwater wetlands, marshes, bogs, wet meadows, swamps, intermittent creeks, intermittent streams, lands under water bodies, lands subject to flooding or inundation, vernal pools, isolated wetlands and ponds not granted a two-hundred-foot buffer and an area extending 200 feet horizontally from a river or perennial stream (riverfront area) as defined in the Massachusetts Wetlands Protection Act (MGL c. 1313, 40)."

(Townsend Wetlands Bylaw, Adopted 1983, Amended 1987)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The jurisdiction includes vernal pools. The conservation administrator (10/28/04) said that the town can protect non-certified vernal pools and their buffer zones. The researcher did not find any reference to a definition for vernal pools in the bylaw or regulations.

From 138-1 of the Bylaw, Section B, "[i]n accordance with this purpose no person shall remove, fill, dredge, build upon, degrade, pollute, discharge into, or otherwise alter the following resource areas: banks, freshwater wetlands, marshes, bogs, wet meadows, swamps, creeks, rivers, streams, ponds, lakes, lands under water bodies, lands subject to flooding or inundation, vernal pools, isolated wetlands (collectively, resource areas) and lands within a buffer zone (as defined in 138-7) of any such resource areas without a permit from the Conservation Commission, or as provided by this by-law."

From Section 138-7 Definitions, A(6), " 'Buffer zone' shall be defined as: [Amended 4-29-1997 ATM by Art. 42; 5-1-2001 ATM by Art. 49] (a) An area extending 100 feet horizontally outward from banks, freshwater wetlands, marshes, bogs, wet meadows, swamps, intermittent creeks, intermittent streams, lands under water bodies, lands subject to flooding or inundation, vernal pools, isolated wetlands and ponds not granted a two-hundred-foot buffer and an area extending 200 feet horizontally from a river or perennial stream (riverfront area) as defined in the Massachusetts Wetlands Protection Act (MGL c. 1313, 40)."

(Townsend Wetlands Bylaw, Adopted 1983, Amended 1987)

Tyngsborough

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes "The term 'vernal pool' shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways that, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult fish predatory populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area of vernal pools shall be 100 feet outwards from the mean annual high-water line boundary defining the depression but shall not include existing lawns, gardens, landscaped or developed areas." From the Town of Tyngsboro Wetlands Protection Bylaw, Section 9.1.6 (Effective 10/08/02).

"Except as permitted by the Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; or flooding, and lands abutting, any of the aforesaid resource areas as set out in Section 7 (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters." From the Tyngsboro Wetlands Protection Bylaw, Section 2 (Effective 10/8/02).

"Lands within 200 feet of rivers, 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, degraded water quality, and loss or degradation of wildlife habitat. The Commission therefore may require in its regulations that the applicant maintain a strip of continuous, undisturbed vegetative cover and a strip of continuous area where no permanent structures or impervious surfaces exist within the 200-foot or 100-foot area, unless the applicant presents credible evidence which in the judgement[sic] of the Commission the area or part of it may be disturbed without harm to the values protected by this bylaw." From the Tyngsboro Wetlands Protection Bylaw, Section 7 (Effective 10/8/02).

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools are given a buffer zone regardless of state certification and resource location.

"The term 'vernal pool' shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways that, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult fish predatory populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area of vernal pools shall be 100 feet outwards from the mean annual high-water line boundary defining the depression but shall not include existing lawns, gardens, landscaped or developed areas." From the Town of Tyngsboro Wetlands Protection Bylaw, Section 9.1.6 (Effective 10/08/02).

"Except as permitted by the Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; or flooding, and lands abutting, any of the aforesaid resource areas as set out in Section 7 (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters." From the Tyngsboro Wetlands Protection Bylaw, Section 2 (Effective 10/8/02).

"Lands within 200 feet of rivers, 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, degraded water quality, and loss or degradation of wildlife habitat. The Commission therefore may require in its regulations that the applicant maintain a strip of continuous, undisturbed vegetative cover and a strip of continuous area where no permanent structures or impervious surfaces exist within the 200-foot or 100-foot area, unless the applicant presents credible evidence which in the judgement[sic] of the Commission the area or part of it may be disturbed without harm to the values protected by this bylaw." From the Tyngsboro Wetlands Protection Bylaw, Section 7 (Effective 10/8/02).

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Certified and non-certified vernal pools are considered a resource area under the Wetlands Bylaw and are granted a 100 foot buffer zone. Conservation Director Lori Capone confirmed this answer via email on 6/3/05:

"The Commission has a 100-foot protection area around a vernal pool. There is not an additional 100 feet of protection for this resource area."

Researcher double-checked with the Conservation Commission because the bylaw defines the vernal pool 'resource area' to

include the 100 foot habitat area extending around the boundary of the vernal pool. The bylaw also specified that there is a 100-foot buffer zone around wetlands resource areas. Some towns that have similar language in the bylaw in practice enforce 200 feet of protection around the vernal pool (100 feet of habitat and 100 feet of 'buffer zone') while other towns take this language to mean there is 100 feet of protection from the boundary of the pool. (Tyngsborough is in the second category.)

"The term 'vernal pool' shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways that, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult fish predatory populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area of vernal pools shall be 100 feet outwards from the mean annual high-water line boundary defining the depression but shall not include existing lawns, gardens, landscaped or developed areas." From the Town of Tyngsboro Wetlands Protection Bylaw, Section 9.1.6 (Effective 10/08/02).

"Except as permitted by the Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; or flooding, and lands abutting, any of the aforesaid resource areas as set out in Section 7 (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters." From the Tyngsboro Wetlands Protection Bylaw, Section 2 (Effective 10/8/02).

"Lands within 200 feet of rivers, 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, degraded water quality, and loss or degradation of wildlife habitat. The Commission therefore may require in its regulations that the applicant maintain a strip of continuous, undisturbed vegetative cover and a strip of continuous area where no permanent structures or impervious surfaces exist within the 200-foot or 100-foot area, unless the applicant presents credible evidence which in the judgement[sic] of the Commission the area or part of it may be disturbed without harm to the values protected by this bylaw." From the Tyngsboro Wetlands Protection Bylaw, Section 7 (Effective 10/8/02).

Upton

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition specifies that the vernal pool does not need to be certified to receive protection.

From Section IX. Definitions,

"The term "vernal pool" shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be 100 feet outward from the mean annual high-water line defining the depression, but shall not include existing lawns, gardens, landscaped or developed areas."

From Section II. Jurisdiction,

"Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; flooding; and lands abutting any of the aforesaid resource areas as set out in §VII (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters."

(Town of Upton Proposed Wetlands Protection Bylaw, Adopted 2004)

Note: On 11/09/04, Margaret Carroll, Conservation Chair, said that the proposed bylaw passed.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools are given a buffer zone regardless of state certification and location of the resource.

From Section II. Jurisdiction,

"Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; flooding; and lands abutting any of the aforesaid resource areas as set out in §VII (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters."

Then from section VII. Permits and Conditions,

"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...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."

Finally, from Section IX. Definitions,

"The term "vernal pool" shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be 100 feet outward from the mean annual high-water line defining the depression, but shall not include existing lawns, gardens, landscaped or developed areas."

(Town of Upton Proposed Wetlands Protection Bylaw, Adopted 2004)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

From Section II. Jurisdiction,

"Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; flooding; and lands abutting any of the aforesaid resource areas as set out in §VII (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters."

Then from section VII. Permits and Conditions,

"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...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."

Finally, from Section IX. Definitions,

"The term "vernal pool" shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be 100 feet outward from the mean annual high-water line defining the depression, but shall not include existing lawns, gardens, landscaped or developed areas."

(Town of Upton Proposed Wetlands Protection Bylaw, Adopted 2004)

The bylaw defines the vernal pool 'resource area' to include the 100 foot habitat area extending around the boundary of the vernal pool. The bylaw also specified that there is a 100-foot buffer zone around wetlands resource areas. Some towns interpret this as 100 feet of jurisdiction from the edge of the vernal pools; others interpret it as 200 feet. Upton did not confirm its practice.

Walpole

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The Walpole Wetlands Protection Bylaw Regulations defines a protected resource area, in Section 1.2, as: "Any bank, freshwater wetland, marsh, wet meadow, bog, swamp, stream, river, pond, lake, vernal pool (as defined by the Natural Heritage & Endangered Species Program), or any land bordering thereon, or any land subject to flooding or inundation. Bordering in this context shall mean either (a)100-feet horizontally lateral from any of the foregoing areas; or (b) 100-feet lateral from the water elevation of the 100 year storm, whichever is greater of (a) or (b); and (c) land within 200-feet of the mean annual high-water line of any year round river or stream. Further defined in Section 9 of the Bylaw."

Section 9 does not provide any additional information.

Researcher interprets that a vernal pool site need only be certifiable as a vernal pool by the state's definition of a vernal pool as opposed to being actually certified by the state as one. Also, Walpole's bylaws make no distinction between wetlands or vernal pools in an upland zone, and those in a wetlands resource area. Therefore, researcher assumes that buffer zones around all vernal pools meeting the state definition of a vernal pool will be regulated.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes The Walpole Wetlands Protection Bylaw Regulations defines a protected resource area, in Section 1.2, as: "Any bank, freshwater wetland, marsh, wet meadow, bog, swamp, stream, river, pond, lake, vernal pool (as defined by the Natural Heritage & Endangered Species Program), or any land bordering thereon, or any land subject to flooding or inundation. Bordering in this context shall mean either (a)100-feet horizontally lateral from any of the foregoing areas; or (b) 100-feet lateral from the water elevation of the 100 year storm, whichever is greater of (a) or (b); and (c) land within 200-feet of the mean annual high-water line of any year round river or stream. Further defined in Section 9 of the Bylaw."

Section 9 does not provide any additional information.

Researcher interprets that a vernal pool site need only be certifiable as a vernal pool by the state's definition of a vernal pool as opposed to being actually certified by the state as one. Also, Walpole's bylaws make no distinction between wetlands or vernal pools in an upland zone, and those in a wetlands resource area. Therefore, researcher assumes that buffer zones around all vernal pools meeting the state definition of a vernal pool will be regulated.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The Walpole Wetlands Protection Bylaw Regulations defines a protected resource area, in Section 1.2, as: "Any bank, freshwater wetland, marsh, wet meadow, bog, swamp, stream, river, pond, lake, vernal pool (as defined by the Natural Heritage & Endangered Species Program), or any land bordering thereon, or any land subject to flooding or inundation. Bordering in this context shall mean either (a)100-feet horizontally lateral from any of the foregoing areas; or (b) 100-feet lateral from the water elevation of the 100 year storm, whichever is greater of (a) or (b); and (c) land within 200-feet of the mean annual high-water line of any year round river or stream. Further defined in Section 9 of the Bylaw."

Section 9 does not provide any additional information.

Researcher interprets that a vernal pool site need only be certifiable as a vernal pool by the state's definition of a vernal pool as opposed to being actually certified by the state as one. Also, Walpole's bylaws make no distinction between wetlands or vernal pools in an upland zone, and those in a wetlands resource area. Therefore, researcher assumes that buffer zones around all vernal pools meeting the state definition of a vernal pool will be regulated.

Watertown

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No The jurisdiction does not specifically mention vernal pools, and the conservation contact, Mr. Roberts stated that vernal pools would receive protection as isolated land subject to flooding, if Watertown had vernal pools. The town does not have a size requirement for isolated land subject to flooding. If a vernal pool receives protection as an isolated land subject to flooding, it would receive a 150 foot buffer zone, with a 50 foot no alteration zone.

From the regulations, Section I General Provisions, Part C Statement of Jurisdiction,

"(1) Areas Subject to Protection Under the Ordinance. The following areas are subject to protection under the Ordinance:

- (a) Any freshwater wetland, marsh, wet meadow, bog, beach, swamp, or bank.
- (b) Any land within 150 feet of any of the areas set forth in Section I(C)(1)(a) above;
- (c) Any lake, river, pond, stream, or watercourse;
- (d) Any land under any of the water bodies set forth in Section I(C)(1)(c) above;
- (e) Any land within 150 feet of the water bodies set forth in Section I(C)(1)(c) above;
- (f) Any land subject to flooding or inundation by; groundwater, surface water of the 100-year flood;
- (g) Any land within 150 feet of any land subject to flooding or inundation as set forth in Section I(C)(1)(f) above."

Then from Section IV Standards for Inland Wetlands, Part D Land Subject to Flooding (both Bordering and Isolated Areas), "(2) Definitions, Critical Characteristics and Boundaries ...

(b) Isolated Land Subject to Flooding

1. Isolated land subject to flooding is an isolated depression or closed basin without an inlet or an outlet. It is an area which at least once a year confines standing water....

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

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

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No The jurisdiction does not specifically mention vernal pools, and the conservation contact, Mr. Roberts stated that vernal pools would receive protection as isolated land subject to flooding, if Watertown had vernal pools. The town does not have a size requirement for isolated land subject to flooding. If a vernal pool receives protection as an isolated land subject to flooding, it would receive a 150 foot buffer zone, with a 50 foot no alteration zone.

From the regulations, Section I General Provisions, Part C Statement of Jurisdiction,

"(1) Areas Subject to Protection Under the Ordinance. The following areas are subject to protection under the Ordinance:

- (a) Any freshwater wetland, marsh, wet meadow, bog, beach, swamp, or bank.
- (b) Any land within 150 feet of any of the areas set forth in Section I(C)(1)(a) above;
- (c) Any lake, river, pond, stream, or watercourse;
- (d) Any land under any of the water bodies set forth in Section I(C)(1)(c) above;
- (e) Any land within 150 feet of the water bodies set forth in Section I(C)(1)(c) above;
- (f) Any land subject to flooding or inundation by; groundwater, surface water of the 100-year flood;
- (g) Any land within 150 feet of any land subject to flooding or inundation as set forth in Section I(C)(1)(f) above."

Then from Section IV Standards for Inland Wetlands, Part D Land Subject to Flooding (both Bordering and Isolated Areas), "(2) Definitions, Critical Characteristics and Boundaries ...

(b) Isolated Land Subject to Flooding

1. Isolated land subject to flooding is an isolated depression or closed basin without an inlet or an outlet. It is an area which at least once a year confines standing water....

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

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Wayland

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes From a statement of the home page of the Wayland Conservation Commission' website, "The Wetlands Protection Act prohibit construction, earth-moving, or the alteration of soils or vegetation within 100 feet of the wetlands and/or 200 feet of a perennial stream without the authorization of the Commission. In Wayland, wetlands include ponds, streams, vernal pools, banks, bordering vegetative wetlands, flood plains, and forested wetlands. The Conservation Commission is the sole board that determines whether an area is or is not under their jurisdiction, no other board or department has the authority to do so."
(<http://www.wayland.ma.us/conservation/>, Accessed 11/03)

Further, from the code of Town of Wayland, Massachusetts, Chapter 194.2, 2002:

VERNAL POOL -- Includes, in addition to any vernal pool certified by the Massachusetts Division of Wildlife and Fisheries Natural Heritage and Endangered Species Program, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways, which normally holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species.

From the code of Town of Wayland, Massachusetts, Chapter 194-3:

§ 194-3. Procedure.

A.No person shall remove, fill, dredge, build upon, discharge onto or otherwise or alter any bank, freshwater wetland, marsh, bog, wet meadow, swamp, vernal pool, creek, river, stream, pond or lake or any land under said waters, or any buffer zone, or any land subject to flooding or inundation, or riverfront area other than in the course of 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 and used to provide electric, gas, water, telephone, telegraph and other telecommunication services without first filing either a request for a determination (RDA) of applicability or a notice of intent (NOI) to so remove, fill, dredge, build upon, discharge, or otherwise alter, including such plans as may be necessary to fully describe such proposed activity and its effect on the environment and without receiving and complying with a permit issued by the Conservation Commission. Said applications shall be made in conjunction with any required filings under MGL c. 131, § 40. Said request for determination of applicability or notice of intent shall be sent by certified mail or hand delivered to the Conservation Commission. Each such notice or determination shall be accompanied by a filing fee to be established by the Conservation Commission in accordance with a fee schedule adopted by the Conservation Commission pursuant to MGL c. 40, § 22F, payable to the Town of Wayland.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools are given a buffer zone regardless of state certification and resource location.

From a statement of the home page of the Wayland Conservation Commission' website, "The Wetlands Protection Act prohibit construction, earth-moving, or the alteration of soils or vegetation within 100 feet of the wetlands and/or 200 feet of a perennial stream without the authorization of the Commission. In Wayland, wetlands include ponds, streams, vernal pools, banks, bordering vegetative wetlands, flood plains, and forested wetlands. The Conservation Commission is the sole board that determines whether an area is or is not under their jurisdiction, no other board or department has the authority to do so."
(<http://www.wayland.ma.us/conservation/>, Accessed 11/03)

Further, from the code of Town of Wayland, Massachusetts, Chapter 194.2, 2002:

VERNAL POOL -- Includes, in addition to any vernal pool certified by the Massachusetts Division of Wildlife and Fisheries Natural Heritage and Endangered Species Program, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways, which normally holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species.

Then, from the code of Town of Wayland, Massachusetts, Chapter 194.2, 2002:

BUFFER ZONE -- Unless otherwise specified herein, any land whichever is the greater distance of the following:

(1)One hundred feet horizontally lateral from the edge of any bog, marsh, wet meadow, swamp, pond, vernal pool, bank, streambed, lake, stream or any other resource area specified in this chapter; or

(2)One hundred feet horizontally lateral from the water elevation of the one-hundred-year storm, or land subject to flooding or inundation.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 From a statement of the home page of the Wayland Conservation Commission' website, "The Wetlands Protection Act prohibit construction, earth-moving, or the alteration of soils or vegetation within 100 feet of the wetlands and/or 200 feet of a perennial stream without the authorization of the Commission. In Wayland, wetlands include ponds, streams, vernal pools, banks, bordering vegetative wetlands, flood plains, and forested wetlands. The Conservation Commission is the sole board that determines whether an area is or is not under their jurisdiction, no other board or department has the authority to do so."
(<http://www.wayland.ma.us/conservation/>, Accessed 11/03)

Further, from the code of Town of Wayland, Massachusetts, Chapter 194.2, 2002:

VERNAL POOL -- Includes, in addition to any vernal pool certified by the Massachusetts Division of Wildlife and Fisheries Natural Heritage and Endangered Species Program, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways, which normally holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species.

Then, from the code of Town of Wayland, Massachusetts, Chapter 194.2, 2002:

BUFFER ZONE -- Unless otherwise specified herein, any land whichever is the greater distance of the following:

(1)One hundred feet horizontally lateral from the edge of any bog, marsh, wet meadow, swamp, pond, vernal pool, bank, streambed, lake, stream or any other resource area specified in this chapter; or

(2)One hundred feet horizontally lateral from the water elevation of the one-hundred-year storm, or land subject to flooding or inundation.

Wellesley

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes Town of Wellesley Wetlands Protection Bylaw, Article 44 of Town Bylaws, Section 2 and 3 (Adopted 2002, Amended 2004)

Section 2: Jurisdiction

...vernal pool habitats...

Section 3: Definitions

"Vernal Pool habitat" means confined basin depressions which, at least in most years, hold water for a minimum of two continuous months during the spring or summer, and which are free of adult fish populations. This includes the area within 100 feet of the mean annual boundaries of such depressions. Such areas need not lie within other resource areas subject to this bylaw to be protectable hereby. These areas are essential breeding habitat and provide other extremely important wildlife habitat functions during non-breeding seasons as well as for a variety of amphibian species.

Town of Wellesley Wetlands Protections Regulations, Section 3A Definitions

"Vernal Pool Habitat" means confined basin depressions which, at least in most years, hold water for a minimum of two continuous months during the spring or summer, and which are free of adult fish populations. Vernal pool habitat includes the area within 100 feet of the mean annual boundary of the pool itself. The vernal pool need not be certified and the vernal pool and its surrounding 100-foot area need not be within another resource area to be protected.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools are given buffer zones regardless of state certification and resource location.

Town of Wellesley Wetlands Protection Bylaw, Article 44 of Town Bylaws, Section 2 (Adopted 2002, Amended 2004)

Except as permitted by the Wetlands Protection Committee or as provided in this bylaw, no person shall remove, fill, dredge, build upon, or alter any of the following resource areas: marshes; wet meadows; bogs; swamps; banks; reservoirs; lakes; ponds; rivers; streams; creeks; lands under reservoirs, lakes, ponds, rivers, creeks or streams; any wetlands bordering on any of the aforesaid resource areas; isolated wetlands so long as they cover at least 2,500 square feet of surface area; land within 100 feet of the aforesaid resource areas; vernal pool habitats; lands within 200 feet of perennial streams or rivers; bordering land subject to flooding; or isolated land subject to flooding.

Wellesley regulates a 100-foot habitat area around vernal pools, but no buffer zone around the habitat area. The researcher answered "yes" because the regulated habitat area is similar to a regulated buffer zone.

Town of Wellesley Wetlands Protection Bylaw, Article 44 of Town Bylaws, Section 2 and 3 (Adopted 2002, Amended 2004)

Section 2: Jurisdiction

...vernal pool habitats...

Section 3: Definitions

"Vernal Pool habitat" means confined basin depressions which, at least in most years, hold water for a minimum of two continuous months during the spring or summer, and which are free of adult fish populations. This includes the area within 100 feet of the mean annual boundaries of such depressions. Such areas need not lie within other resource areas subject to this bylaw to be protectable hereby. These areas are essential breeding habitat and provide other extremely important wildlife habitat functions during non-breeding seasons as well as for a variety of amphibian species.

Town of Wellesley Wetlands Protections Regulations, Section 3A Definitions

"Vernal Pool Habitat" means confined basin depressions which, at least in most years, hold water for a minimum of two continuous months during the spring or summer, and which are free of adult fish populations. Vernal pool habitat includes the area within 100 feet of the mean annual boundary of the pool itself. The vernal pool need not be certified and the vernal pool and its surrounding 100-foot area need not be within another resource area to be protected.

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Wellesley regulates a 100-foot habitat area around vernal pools, but no buffer zone around the habitat area.

Town of Wellesley Wetlands Protection Bylaw, Article 44 of Town Bylaws, Section 2 and 3 (Adopted 2002, Amended 2004)

Section 2: Jurisdiction

...vernal pool habitats...

Section 3: Definitions

"Vernal Pool habitat" means confined basin depressions which, at least in most years, hold water for a minimum of two continuous months during the spring or summer, and which are free of adult fish populations. This includes the area within 100 feet of the mean annual boundaries of such depressions. Such areas need not lie within other resource areas subject to this bylaw to be protectable hereby. These areas are essential breeding habitat and provide other extremely important wildlife habitat functions during non-breeding seasons as well as for a variety of amphibian species.

Town of Wellesley Wetlands Protections Regulations, Section 3A Definitions

"Vernal Pool Habitat" means confined basin depressions which, at least in most years, hold water for a minimum of two continuous months during the spring or summer, and which are free of adult fish populations. Vernal pool habitat includes the area within 100 feet of the mean annual boundary of the pool itself. The vernal pool need not be certified and the vernal pool

and its surrounding 100-foot area need not be within another resource area to be protected.

Wenham

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No GERALYN Falco, Wenham Conservation Coordinator, (8/24/04) said that Wenham goes solely by the state standard on vernal pools, protecting only those vernal pools that are state certified.

From Section 2. Jurisdiction,

"Except as permitted in writing by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, discharge into, build upon, otherwise alter or degrade the following resource areas: any freshwater wetland as determined by vegetational community, soils composition or hydrologic regime including any marsh, wet meadow, bog, or swamp; any lake, stream, river, or pond, whether intermittent or continuous, natural or manmade; any land under such waters; any bank or beach; or lands within one hundred (100) feet of any of the aforesaid resource areas; any land subject to flooding or inundation by groundwater, surface water or storm water."

(Town of Wenham Water Resources Protection Bylaw, Amended 1996)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No Vernal pools are not specifically mentioned in the jurisdiction.

From Section 2. Jurisdiction,

"Except as permitted in writing by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, discharge into, build upon, otherwise alter or degrade the following resource areas: any freshwater wetland as determined by vegetational community, soils composition or hydrologic regime including any marsh, wet meadow, bog, or swamp; any lake, stream, river, or pond, whether intermittent or continuous, natural or manmade; any land under such waters; any bank or beach; or lands within one hundred (100) feet of any of the aforesaid resource areas; any land subject to flooding or inundation by groundwater, surface water or storm water."

(Town of Wenham Water Resources Protection Bylaw, Amended 1996)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

West Bridgewater

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No The West Bridgewater Wetlands Bylaw and Regulations do not explicitly mention vernal pools, nor do they create a buffer zone around them. KITTY, West Bridgewater Conservation Secretary, (9/22/04) said that the Commission protects potential vernal pools on a case by case basis, and seeks to get them certified by the state.

Since vernal pools are not specifically included in the bylaw and regulations, they likely receive protection under ILSF.

From Section 3 Jurisdiction,

"3.1 Application of Bylaw

3.1.1 Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill dredge, build upon, or alter the following resource areas:

3.1.1.1 Upon or within one hundred (100) feet of any freshwater wetland, marsh, wet meadow, bog or swamp.

3.1.1.2 Upon or within one hundred (100) feet of any bank, beach, dune or flat.

3.1.1.3 Any lake, river pond, or stream.

3.1.1.4 Upon of within one hundred (100) feet of any lake, river, pond, or stream.

3.1.1.5 Any land under said waters.

3.1.1.6 Upon or within one hundred (100) feet of any land subject to flood[ing] or inundation by groundwater and surface water."

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

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No The West Bridgewater Wetlands Bylaw and Regulations do not explicitly mention vernal pools, nor do they create a buffer zone around them. Kitty, West Bridgewater Conservation Secretary, (9/22/04) said that the Commission protects potential vernal pools on a case by case basis, and seeks to get them certified by the state.

Since vernal pools are not specifically included in the bylaw and regulations, they likely receive protection under ILSF.

From Section 3 Jurisdiction,
"3.1 Application of Bylaw

3.1.1 Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill dredge, build upon, or alter the following resource areas:

3.1.1.1 Upon or within one hundred (100) feet of any freshwater wetland, marsh, wet meadow, bog or swamp.

3.1.1.2 Upon or within one hundred (100) feet of any bank, beach, dune or flat.

3.1.1.3 Any lake, river pond, or stream.

3.1.1.4 Upon or within one hundred (100) feet of any lake, river, pond, or stream.

3.1.1.5 Any land under said waters.

3.1.1.6 Upon or within one hundred (100) feet of any land subject to flood[ing] or inundation by groundwater and surface water."

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Westford

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No Westford town bylaws 171-9 define a vernal pool as follows: "VERNAL POOL – A vernal pool certified by the Massachusetts Natural Heritage and Endangered Species Program. [Added 5-13-1991 ATM, Art. 22]"

(Town of Westford Non-Zoning Wetlands Bylaw, Chapter 171, Adopted 1987)

From 171-2, "A. Except as permitted by the Conservation Commission or as provided by this chapter, no person shall remove, fill, dredge, alter or build upon or within one hundred (100) feet of any bank, freshwater wetland, flat, marsh, wet meadow, bog, swamp, vernal pool or beach; upon or within one hundred (100) feet of any brook, stream, pond or lake or upon or within (100) feet of any land under said waters or within one hundred (100) feet of the one-hundred-year floodline as determined under the Federal Emergency Management Agency (FEMA)."

(Town of Westford Non-Zoning Wetlands Bylaw, Chapter 171, Adopted 1987)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes Westford only regulates state certified vernal pools. However, vernal pools are mentioned in the jurisdiction as a resource area that is given a full 100 foot buffer zone, regardless of whether the vernal pool is inside a resource area or freestanding.

From 171-2, "A. Except as permitted by the Conservation Commission or as provided by this chapter, no person shall remove, fill, dredge, alter or build upon or within one hundred (100) feet of any bank, freshwater wetland, flat, marsh, wet meadow, bog, swamp, vernal pool or beach; upon or within one hundred (100) feet of any brook, stream, pond or lake or upon or within (100)

feet of any land under said waters or within one hundred (100) feet of the one-hundred-year floodline as determined under the Federal Emergency Management Agency (FEMA)."

Westford town bylaws 171-9 define a vernal pool as follows: "VERNAL POOL – A vernal pool certified by the Massachusetts Natural Heritage and Endangered Species Program. [Added 5-13-1991 ATM, Art. 22]"

(Town of Westford Non-Zoning Wetlands Bylaw, Chapter 171, Adopted 1987)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Westford only regulates state certified vernal pools. However, vernal pools are mentioned in the jurisdiction as a resource area that is given a full 100 foot buffer zone, regardless of whether the vernal pool is inside a resource area or freestanding.

From 171-2, "A. Except as permitted by the Conservation Commission or as provided by this chapter, no person shall remove, fill, dredge, alter or build upon or within one hundred (100) feet of any bank, freshwater wetland, flat, marsh, wet meadow, bog, swamp, vernal pool or beach; upon or within one hundred (100) feet of any brook, stream, pond or lake or upon or within (100) feet of any land under said waters or within one hundred (100) feet of the one-hundred-year floodline as determined under the Federal Emergency Management Agency (FEMA)."

Westford town bylaws 171-9 define a vernal pool as follows: "VERNAL POOL – A vernal pool certified by the Massachusetts Natural Heritage and Endangered Species Program. [Added 5-13-1991 ATM, Art. 22]"

(Town of Westford Non-Zoning Wetlands Bylaw, Chapter 171, Adopted 1987)

Westwood

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes From Section 8. Definitions, "The term 'vernal pond' shall mean any naturally-occurring confined basin depression which holds water for a minimum of 2 continuous months during the spring and/or summer."

(Westwood Wetlands Protection Bylaw, Article 18)

From Section 2. Jurisdiction, "Except as permitted by the Conservation Commission or as provided in this Bylaw, no person shall remove, fill, dredge, build upon, or alter the following resource areas: any freshwater wetland, marsh, wet meadow, bog, or swamp; any bank, lake, pond, vernal pond, rive, or stream; any land under said waters; any land subject to flooding; or any riverfront area. Any activity proposed or undertaken within one hundred (100) feet of any freshwater wet- land marsh, wet meadow, bog, swamp, bank, lake, pond, vernal pond, river or stream (here- in after called the Buffer Zone), which, in the judgment of the Commission will alter an area subject to protection under this Bylaw is subject to regulation under this Bylaw."

(Westwood Wetlands Protection Bylaw, Article 18)

According to Alice Smith, conservation agent, (6/22/04) Westwood regulates vernal pools that are not certified by the state. She added that Westwood has a 35' no disturbance zone around vernal pools.

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes According to Alice Smith, conservation agent, Westwood regulates vernal pools that are not certified by the state. She added that Westwood has a 35 foot no disturbance zone around vernal pools. (6/22/04)

From Section 2. Jurisdiction, "Except as permitted by the Conservation Commission or as provided in this Bylaw, no person shall remove, fill, dredge, build upon, or alter the following resource areas: any freshwater wetland, marsh, wet meadow, bog, or swamp; any bank, lake, pond, vernal pond, rive, or stream; any land under said waters; any land subject to flooding; or any riverfront area. Any activity proposed or undertaken within one hundred (100) feet of any freshwater wet- land marsh, wet meadow, bog, swamp, bank, lake, pond, vernal pond, river or stream (here- in after called the Buffer Zone), which, in the judgment of the Commission will alter an area subject to protection under this Bylaw is subject to regulation under this Bylaw."

(Westwood Wetlands Protection Bylaw, Article 18)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 From Section 2. Jurisdiction, "Except as permitted by the Conservation Commission or as provided in this Bylaw, no person shall remove, fill, dredge, build upon, or alter the following resource areas: any freshwater wetland, marsh, wet meadow, bog, or swamp; any bank, lake, pond, vernal pond, rive, or stream; any land under said waters; any land subject to flooding; or any riverfront area. Any activity proposed or undertaken within one hundred (100) feet of any freshwater wet- land marsh, wet meadow, bog, swamp, bank, lake, pond, vernal pond, river or stream (here- in after called the Buffer Zone), which, in the judgment of the Commission will alter an area subject to protection under this Bylaw is subject to regulation under this Bylaw."

(Westwood Wetlands Protection Bylaw, Article 18)

Weymouth

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes The definition specifies that they do not need to be certified to garner protection.

From Section Q. Definitions,
"VERNAL POOL -- Includes a confined basin depression which, at least in most years, holds water for a minimum of two months during the spring and/or summer, and which is fee of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries."

(Town of Weymouth, Chapter 7 - Wetlands Protection)

From Section B. Jurisdiction
"Except as permitted by the Conservation Commission or as provided in this ordinance, no personal shall commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas (collectively, the 'resource areas protected by this ordinance'):

1. Any freshwater wetland or coastal wetland, riverine wetland, marsh, wet meadow, bog, swamp or kettle hole, whether bordering on surface waters or isolated, or whether annual or seasonal.
2. Any bank, beach or dune.
3. Any ocean, bay or estuary.
4. Any reservoir, lake, pond of any size, vernal pool, river, stream or creek, whether intermittent or continuous, natural or manmade.
5. Any land under aforesaid water.
6. Any land subject to flooding or inundation by groundwater or surface water.
7. Any land subject to tidal action, coastal storm flowage of flooding at or below the one-hundred-year storm line.
8. Any land within 100 feet of the aforesaid resource areas (the 'buffer zone')."

(Town of Weymouth, Chapter 7 - Wetlands Protection)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

Yes All vernal pools have buffer zones regardless of state certification and resource location.

From Section B. Jurisdiction
"Except as permitted by the Conservation Commission or as provided in this ordinance, no personal shall commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas (collectively, the 'resource areas protected by this ordinance'):

1. Any freshwater wetland or coastal wetland, riverine wetland, marsh, wet meadow, bog, swamp or kettle hole, whether bordering on surface waters or isolated, or whether annual or seasonal.
2. Any bank, beach or dune.
3. Any ocean, bay or estuary.
4. Any reservoir, lake, pond of any size, vernal pool, river, stream or creek, whether intermittent or continuous, natural or manmade.
5. Any land under aforesaid water.

6. Any land subject to flooding or inundation by groundwater or surface water.
7. Any land subject to tidal action, coastal storm flowage of flooding at or below the one-hundred-year storm line.
8. Any land within 100 feet of the aforesaid resource areas (the 'buffer zone')."

From Section Q. Definitions,

"VERNAL POOL -- Includes a confined basin depression which, at least in most years, holds water for a minimum of two months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries."

(Town of Weymouth, Chapter 7 - Wetlands Protection)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 The jurisdiction includes vernal pools and the definition specifies that they do not need to be certified to garner protection.

The definition of "vernal pool" includes the 100 foot habitat that stretched from the boundary of the depression. Since the section on jurisdiction grants a 100 foot buffer around the vernal pool, the researcher concluded that this could be interpreted such that the Conservation Commission has a 200 foot zone of jurisdiction.

On 11/16/04, the researcher spoke to Mary Ellen Schloss, the Conservation Administrator, and she said that the bylaw could be interpreted as 200 feet of jurisdiction, but in practice, she believes the Commission would only require a 100 foot setback from the mean annual water line.

From Section B. Jurisdiction

"Except as permitted by the Conservation Commission or as provided in this ordinance, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas (collectively, the 'resource areas protected by this ordinance'):

1. Any freshwater wetland or coastal wetland, riverine wetland, marsh, wet meadow, bog, swamp or kettle hole, whether bordering on surface waters or isolated, or whether annual or seasonal.
2. Any bank, beach or dune.
3. Any ocean, bay or estuary.
4. Any reservoir, lake, pond of any size, vernal pool, river, stream or creek, whether intermittent or continuous, natural or manmade.
5. Any land under aforesaid water.
6. Any land subject to flooding or inundation by groundwater or surface water.
7. Any land subject to tidal action, coastal storm flowage of flooding at or below the one-hundred-year storm line.
8. Any land within 100 feet of the aforesaid resource areas (the 'buffer zone')."

From Section Q. Definitions,

"VERNAL POOL -- Includes a confined basin depression which, at least in most years, holds water for a minimum of two months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries."

(Town of Weymouth, Chapter 7 - Wetlands Protection)

Winchester

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No The Winchester wetlands bylaw does not address vernal pools.

From Section 3. Jurisdiction,

"Except as permitted by the commission or as provided in this by-law no person shall remove, fill, dredge, alter, or build upon or within one hundred (100) feet of any freshwater wetland, wet meadow, bog, or swamp; within one hundred (100) feet of any bank; upon or within one hundred (100) feet of any lake, river, pond, stream; upon any land under said waters; upon any land subject to flooding or inundation by groundwater or surface water; or within the foregoing areas in such a way as to detract from visual access to the Aberjona River, Horn Pond Brook, Winter Pond, Judkins Pond, Mill Pond, Smith Pond or Mystic Lake."

(Winchester Wetlands Bylaw, Adopted 1987)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No The Winchester wetlands bylaw does not address vernal pools.

From Section 3. Jurisdiction,

"Except as permitted by the commission or as provided in this by-law no person shall remove, fill, dredge, alter, or build upon or within one hundred (100) feet of any freshwater wetland, wet meadow, bog, or swamp; within one hundred (100) feet of any bank; upon or within one hundred (100) feet of any lake, river, pond, stream; upon any land under said waters; upon any land subject to flooding or inundation by groundwater or surface water; or within the foregoing areas in such a way as to detract from visual access to the Aberjona River, Horn Pond Brook, Winter Pond, Judkins Pond, Mill Pond, Smith Pond or Mystic Lake."

(Winchester Wetlands Bylaw, Adopted 1987)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Winthrop

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes According to Brian Corbett, Environmental Specialist, Town of Winthrop, (6/16/04) the Town of Winthrop does regulate vernal pools that are not certified by the state.

On 12/10/04, the researcher was told that uncertified vernal pools are still subject to state standards, i.e. the pool itself and the 100 feet of habitat must fall within another resource area.

In the jurisdiction, "vernal pools within wetland" are listed as a resource area. The town of Winthrop will protect certified and non-certified vernal pools as long as they fall within a wetland.

From Section 13802. Jurisdiction,

"Except as permitted by the Conservation Commission or provided in this chapter, no person shall remove soil or vegetation from fill, dredge, build upon, discharge into or alter the following resource areas:

A. Coastal wetlands

B. Freshwater wetlands

C. Bank, beach, dune, marsh of flat bordering a water body; or land within 100 feet of these resource areas; or land under a water body; or land subject to flooding, tidal action or coastal storm flowage or vernal pools within a wetland; or land within 100 feet of the Marsh Area of Critical Environmental Concern."

(Town of Winthrop Bylaws, Chapter 138 Wetlands, Adopted 1993)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No The jurisdiction does not give vernal pools in a wetland a 100 foot buffer zone. The researcher also concluded that the clause-- "vernal pools within a wetland,"-- indicates Winthrop will protect the 100 foot habitat zone around a non-certified vernal pool if and only if it falls within the wetland resource area. On 12/10/04 the researcher confirmed this assumption with the conservation commission via email.

From Section 13802. Jurisdiction,

"Except as permitted by the Conservation Commission or provided in this chapter, no person shall remove soil or vegetation from fill, dredge, build upon, discharge into or alter the following resource areas:

A. Coastal wetlands

B. Freshwater wetlands

C. Bank, beach, dune, marsh or flat bordering a water body; or land within 100 feet of these resource areas; or land under a water body; or land subject to flooding, tidal action or coastal storm flowage or vernal pools within a wetland; or land within 100 feet of the Marsh Area of Critical Environmental Concern."

(Town of Winthrop Bylaws, Chapter 138 Wetlands, Adopted 1993)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Woburn

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No According to Theresa Murphy, Woburn Conservation Administrator, (7/2/04) Woburn does not regulate vernal pools not certified by the state.

Vernal pools are not included in the jurisdiction.

From Section 7-2 Jurisdiction,

"Except as permitted by the Conservation Commission or as provided in this Ordinance, no person shall remove, fill, dredge, alter or build within 150 feet of any fresh water wetland, marsh meadow, bog or swamp; upon or within 150 feet of any lake, river, pond, stream; upon or within any land under said waters; or upon any land subject to flooding or inundation by groundwater or surface water. (Prior Ch. 9-A, sec A; new Ord. Dated 06/24/87)."

(Title 7 Wetlands Protection and Conservation)

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No According to Theresa Murphy, Woburn Conservation Administrator, (7/2/04) Woburn does not regulate vernal pools not certified by the state.

Vernal pools are not included in the jurisdiction.

From Section 7-2 Jurisdiction,

"Except as permitted by the Conservation Commission or as provided in this Ordinance, no person shall remove, fill, dredge, alter or build within 150 feet of any fresh water wetland, marsh meadow, bog or swamp; upon or within 150 feet of any lake, river, pond, stream; upon or within any land under said waters; or upon any land subject to flooding or inundation by groundwater or surface water. (Prior Ch. 9-A, sec A; new Ord. Dated 06/24/87)."

(Title 7 Wetlands Protection and Conservation)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Worcester

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

No The ordinance and regulation are very specific about where they have extended the jurisdiction past the state regulations, and vernal pools are not mentioned.

Except as permitted by the Conservation Commission or as provided in this ordinance, no person shall remove, dredge, build

upon, or alter the following areas: within one hundred (100) feet of any freshwater wetland, bordering vegetated wetland, marsh, wet meadow, bog or swamp; within one hundred (100) feet of any bank; any lake, river, pond, or stream; any land under said waters; any land subject to flooding; or within one hundred (100) feet of any existing or proposed inlet to any storm drain, catch basin, or other storm drain system component discharging to any lake, pond, river, stream, or wetland. In addition, any project in progress, which is not serviced by a combined sewer system, and from which a visible occurrence of silted/polluted effluent is entering any of the jurisdictional areas in the previous sentence, regardless of any exceptions in Section 3, shall be placed under the jurisdiction of the Conservation Commission and is subject to the permit and application required by this ordinance.

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

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state Wetlands Protection Act would cover?

No The ordinance and regulation are very specific about where they have extended the jurisdiction past the state regulations, and vernal pools are not mentioned.

Except as permitted by the Conservation Commission or as provided in this ordinance, no person shall remove, dredge, build upon, or alter the following areas: within one hundred (100) feet of any freshwater wetland, bordering vegetated wetland, marsh, wet meadow, bog or swamp; within one hundred (100) feet of any bank; any lake, river, pond, or stream; any land under said waters; any land subject to flooding; or within one hundred (100) feet of any existing or proposed inlet to any storm drain, catch basin, or other storm drain system component discharging to any lake, pond, river, stream, or wetland. In addition, any project in progress, which is not serviced by a combined sewer system, and from which a visible occurrence of silted/polluted effluent is entering any of the jurisdictional areas in the previous sentence, regardless of any exceptions in Section 3, shall be placed under the jurisdiction of the Conservation Commission and is subject to the permit and application required by this ordinance.

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

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

Wrentham

Does the municipality have jurisdiction to regulate vernal pools that are not certified by the state?

Yes From the definitions in the regulations,
"Potential vernal pool - Seasonal water pools of any size that maintain standing water for at least five weeks in the spring time and are suspected to contain breeding populations of salamanders and frogs such as mole salamanders (yellow and blue spotted salamanders, *Ambystoma maculatum* and *A. laterale*, respectively), spring peepers *Hyla crucifer*, or Wood Frogs *Rana sylvatica*, and/or populations of fairy shrimp of the Family Anostraca. Also included are pools that support vernal pool species and that dry up completely during a portion of the year. Any such depressions may be considered potential vernal pools by the Commission. Clear evidence to the contrary may be provided by the applicant.

Vernal Pool - An area certified by the State Natural Heritage Program to serve as fairy shrimp or amphibian breeding habitat. Vernal pools may also be identified by the Commission or its consultants by a show of evidence of certain facultative species, and of seasonal flooding and drying up later in the year, as stated by the Massachusetts Division of Fisheries and Wildlife in 'Guideline for Certification of Vernal Pool Habitat.' In the most recent Step-by-step Guide to Protecting Vernal Pools [Massachusetts Audubon Society]. Certified vernal pools cannot be rebutted."

(Wrentham Conservation Commission Enforcement Regulations, Adopted 2000)

Article 16, Section 2 of the Wrentham town bylaws protects "any...vernal pool (whether certified or potential)...or any land within 100 feet of any of the aforesaid resource areas..."

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

Does the municipality's jurisdiction extend to buffer zones around vernal pools beyond what the jurisdiction granted in the state

Wetlands Protection Act would cover?

Yes Article 16, Section 2 of the Wrentham town bylaws protects "any...vernal pool (whether certified or potential)...or any land within 100 feet of any of the aforesaid resource areas..."

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

From the definitions in the regulations,

"Potential vernal pool - Seasonal water pools of any size that maintain standing water for at least five weeks in the spring time and are suspected to contain breeding populations of salamanders and frogs such as mole salamanders (yellow and blue spotted salamanders, *Ambystoma maculatum* and *A. laterale*, respectively), spring peepers *Hyla crucifer*, or Wood Frogs *Rana sylvatica*, and/or populations of fairy shrimp of the Family Anostraca. Also included are pools that support vernal pool species and that dry up completely during a portion of the year. Any such depressions may be considered potential vernal pools by the Commission. Clear evidence to the contrary may be provided by the applicant.

Vernal Pool - An area certified by the State Natural Heritage Program to serve as fairy shrimp or amphibian breeding habitat. Vernal pools may also be identified by the Commission or its consultants by a show of evidence of certain facultative species, and of seasonal flooding and drying up later in the year, as stated by the Massachusetts Division of Fisheries and Wildlife in 'Guideline for Certification of Vernal Pool Habitat.' In the most recent Step-by-step Guide to Protecting Vernal Pools [Massachusetts Audubon Society]. Certified vernal pools cannot be rebutted."

(Wrentham Conservation Commission Enforcement Regulations, Adopted 2000)

If so, what is the width of jurisdiction from the mean annual water-line of the vernal pool?

100 Article 16, Section 2 of the Wrentham town bylaws protects "any...vernal pool (whether certified or potential)...or any land within 100 feet of any of the aforesaid resource areas..."

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

From the definitions in the regulations,

"Potential vernal pool - Seasonal water pools of any size that maintain standing water for at least five weeks in the spring time and are suspected to contain breeding populations of salamanders and frogs such as mole salamanders (yellow and blue spotted salamanders, *Ambystoma maculatum* and *A. laterale*, respectively), spring peepers *Hyla crucifer*, or Wood Frogs *Rana sylvatica*, and/or populations of fairy shrimp of the Family Anostraca. Also included are pools that support vernal pool species and that dry up completely during a portion of the year. Any such depressions may be considered potential vernal pools by the Commission. Clear evidence to the contrary may be provided by the applicant.

Vernal Pool - An area certified by the State Natural Heritage Program to serve as fairy shrimp or amphibian breeding habitat. Vernal pools may also be identified by the Commission or its consultants by a show of evidence of certain facultative species, and of seasonal flooding and drying up later in the year, as stated by the Massachusetts Division of Fisheries and Wildlife in 'Guideline for Certification of Vernal Pool Habitat.' In the most recent Step-by-step Guide to Protecting Vernal Pools [Massachusetts Audubon Society]. Certified vernal pools cannot be rebutted."

(Wrentham Conservation Commission Enforcement Regulations, Adopted 2000)