



TOWN OF EASTON
EASTON CONSERVATION COMMISSION
136 Elm Street, Easton, Massachusetts 02356

Date: January 25, 2018
To: Conservation Commission
From: Rory Kallfelz, POC Commissioner for Regulation Revisions

**Subject: Potential revisions to wetland regulations, chapter 503 of the Easton Code
Waiver for projects within or abutting Rare Species Habitat**

At previous Conservation Commission meetings, members reached agreement to revise the Town wetland regulations to allow an applicant to request a waiver for a project that is within, or abuts, a rare species habitat. As presently written, there is a prohibition on any work within or abutting rare species habitat in order to ensure wildlife protection. The proposed changes are listed below primarily by modifying section 503-3.B(4) and creating a new section 503-3.B(5), and associated references throughout chapter 503.

The proposed regulatory revision identifies the minimum information necessary that needs to be submitted with the Notice of Intent application and accompanying waiver request. This will assist both the Commission and the Applicant in providing clear expectations of the evidence to consider a waiver request, thereby providing more predictability in the permitting process.

There is also a list of clerical corrections proposed, which are itemized at the base of this memo.

Wildlife habitat is an interest protected by the Town Wetland By-Law. Support for this regulatory revision is found in the Town Wetland By-Law (specifically 227-12 – Burden of proof) which states:

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

Proposed Regulatory Revision to allow a request for a waiver in rare species habitat.

To meet the objective, adhere to the Town and State by-laws and regulations, and provide clear instruction to the Applicant, the following revisions are proposed:

1. Revise 503-3 B(4) to remove prohibition on considering a waiver request for a project that is within, or abuts, a rare species habitat. REMOVE first phrase in first sentence. ADD subsection (d) for clarity. If adopted, 503-3.B(4) will read as follows:

(4) Waiver. ~~With the exception of the rare species performance standard,~~ The Commission may waive a performance standard set forth in these regulations. The person requesting a waiver of a performance standard shall have the burden of demonstrating by clear and convincing evidence that: (a) there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; (b) avoidance, minimization and mitigation have been employed to the maximum extent practicable and the proposed work, including all mitigation measures, and the natural and consequential cumulative effects of the work, will have no significant adverse effects upon any of the Bylaw wetland values as set forth in these regulations; (c) the project provides benefits in the public interest as defined by section 503-4 B and (d) the project is otherwise in compliance with the regulations including all the provisions of 503-22.

2. Create new section in the Town regulations 503-3 B(5) to read as follows:

(5) Waiver for Rare Species Habitat. Notwithstanding 503-3B(4), where the project limit of work is within or abuts an estimated rare species habitat as designated on the most current map prepared by the Massachusetts Natural Heritage & Endangered Species Program (NHESP), the Commission shall be diligent in its review of the proposed activity. The Commission may consider waiving the rare species performance standard when the following conditions are met in addition to the requirements in 503-3 B(4). The Applicant for a waiver of a performance standard shall have the burden of demonstrating by clear and convincing evidence that:

- (a) the MA Natural Heritage and Endangered Species Program (NHESP) has been consulted, and has issued a formal determination, prior to filing a request with the Commission; and
- (b) the project has been designed in accordance with any formal determination of the NHESP to address the standards in the MA Endangered Species Act and its implementing regulations at 321 CMR 10.00; and
- (c) at least 14 days prior to the public hearing, the Applicant must provide to the Commission the NHESP determination and accompanying comments. The Commission cannot close the hearing until the NHESP has been consulted and has submitted written comments.

3. Modify all references to rare species waiver prohibition in other sections of the regulations:

Within the regulations for many of the individual resource areas, a prohibition to a waiver within or abutting a rare species habitat exists. A revision that allows for considering a waiver request requires this prohibition be removed as a separate section and added as a geographic area in which waivers are allowed. This change adds clarity that a waiver may be requested in rare species habitat. Generally, this would be written as:

no activity or work that will result in altering the {resource area} or land within the {50/100} foot buffer zone of any {resource area}, whether or not such lands are within or abut an estimated (rare species) habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage & Endangered Species Program, shall be permitted by the Conservation Commission. The Commission may grant a waiver of this performance standard as provided in §503-22 of the Easton Town Code

The Table below lists the regulatory sections and suggested modification for each resource area.

Citation (delete)	Resource Area	Buffer Zone Distance	Action/Notes
503-13 C(3)	vernal pools	100'	Modify C(2). General Waiver refers back to buffer zone 503-20 C(4);
503-16 C(3)	inland bank	50'	Modify C(1)
503-17 C(3)	vegetated wetland	50'	Modify C(1)
503-18 C(3)	Land under waterbody	50'	Modify C(1)
503-19 C(3)	LST Flooding (Bordering and Isolated)	50'	Modify C(1). Presumption of significance does not mention Wildlife
503-20 C(5)	Buffer Zone	50' from BZ	Modify C(1)c.2 (general waiver) and C(4) for vernal pools. No general waiver- Undisturbed Inner 50'-has prohibited activities; Disturbed Inner 50'- generally No Net Impact; Outer 50'- no adverse effect
503-21.C(8) 503-21 C(2)(b) 503-21 C(3)(b)	Riverfront Perennial Stream Intermittent Stream		Modify C(1). The performance standards for Riverfront Areas does not follow the generic format.

4. Various outstanding housekeeping items: Fix spelling, punctuation, and inaccurate citations

Article I

503-3.B(1) "project proponent" replaced by "Applicant"

503-3.B(2) "project proponent" replaced by "Applicant"

503-3.B(3) "person" replaced by "Applicant"; delete "applying for"

504 Definition of Beach – correct citation

504 Definition of Commission – correct citation

504 Definition of Fisheries – replace "finish" with "fin fish"

504 Definition of Massachusetts Stormwater Handbook – capitalize "Protection"

504 Definition of Pond – correct citation

504 Definition of Storm Damage Prevention – correct punctuation

504 Definition of Vernal Pool – remove second definition

- 503-9.A(2)(d) - replace “or” with “of”
- 503-10B – replace “filling” with “filing”
- 503-11.A – replace “an” with “any”

Article II

- 503-16 – correct citation
- 503-17.B(5) – remove stray “w”
- 503-18.B(1) – correct citation
- 503-19.B(2)(c) – replace “previous” with “pervious”
- 503-19.B(2)(d) – replace “previous” with “pervious”
- 503-20.C(1)(c) – replace “filing” with “filling”
- 503-20.C(2)(c) – replace “previous” with “pervious”
- 503-21.C(2)(c)[1] – replace “cots” with “costs”

Article III

- 503-22.C(1) – reduce number of copies submitted from “eight” to “two” (similar to, but omitted from July 2015 amendments that addressed the online permitting option)
- 503-22.C(1)(c) – replace “effected” with “affected”
- 503-22.C(1)(e) – Commission needs to affirmatively vote to include this statement. Noted that it was amended in Oct. 2014, but not listed in minutes.

Article IV

- 503-24.A(1)(d) – correct citation
- 503-25.A(2)(a) - correct citation
- 503-25.A(2)(b)[1] - correct citation
- 503-25.B(4)(a) – replace “exist” with “existing”
- 503-25.C(1)(a) – replace “comers” with “corners”
- 503-25.C(1)(c) – replace “takes” with “stakes”
- 503-26.A(2)(a) – correct number of copies submitted from “eight” to “two” (similar to, but omitted from, July 2015 amendments that addressed the online permitting option)
- 503-25.D(1) – correct citation
- 503-27.A(1)(a) – correct number of copies submitted from “eight” to “two” (voted in July 2015 but not included in the electronic Easton Code Book)
- 503-27.A(2)(a) – correct number of copies submitted from “eight” to “two” (voted in July 2015 but not included in the electronic Easton Code Book)
- 503-27.A(2)(b) – replace “supply check payable to the “Town of Easton” with “submit payment via the online permitting program”
- 503-27.D(1) – correct citation
- 503-28.F(1) – replace “of” with “or”
- 503-27.G(2)(a) – fix accidental break in sentence, which requires remaining sections need to be renumbered
- 503-28.G(2)(d)[2][f] – capitalize “Summary”