Town of Weymouth Wetlands Protection Regulations

** Note: Subsequent to adopting these regulations, the Town of Weymouth has switched to a city form of government. The former Wetlands Protection Bylaw, Chapter 119 of the Town Code, has been incorporated as the Wetlands Protection Ordinance, Chapter 7, Section 301, Weymouth Code of Ordinances.*

PART I. PREFACE

These regulations are promulgated pursuant to Section 16 of the Weymouth Wetlands Protection Bylaw Chapter 119 of the Code of the Town of Weymouth, and are intended to establish criteria and standards for the uniform and coordinated administration of the provisions of the Bylaw.

1.01 GENERAL PROVISIONS

(1) Authority

These regulations are promulgated under the authority of the Home Rule Amendment Article LXXXIX (89), of the Amendments to the Constitution of Massachusetts, 1966, and shall be effective upon fulfillment of all legal requirements for their effectiveness.

(2) Purpose

These regulations are promulgated to create a uniformity of process and to clarify and define the provisions of the Town of Weymouth Wetlands Protection Bylaw, Chapter 119 Town Code to protect the following interests.

(1) Public water supply
(2) Groundwater
(3) Flood control
(4) Water quality
(5) Erosion and sedimentation control
(6) Storm damage prevention, including coastal storm flowage
(7) Water pollution control
(8) Fisheries
(9) Shellfish
(10) Wildlife habitat
(11) Aesthetics
(12) Recreation
(13) Historic and archaeological preservation
(14) Rare species habitat, including rere plant species
(15) Aquaculture
(16) Riverfront area

1.02 STATEMENT OF JURISDICTION

(1) Areas Subject to Protection Under the Bylaw.

The following areas are subject to protection under the Bylaw:

(a) Any beach,
flat,
freshwater wetland,
coastal wetland,
marsh,
meadow,
bog,
bank
or swamp;

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

groundwater,
surface water,
tidal action,
or coastal storm flowage.

(c) Any lake,
pond,
river,
stream,
estuary,
or the ocean;

(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;

(2) Activities Subject to Regulation Under the Bylaw.

(a) Any activity proposed or undertaken which will constitute removing, dredging, filling, altering, or building upon any area specified in Section 1.02 (1) is subject to regulation under the Bylaw and requires the filing of an application for permit.

(b) The Conservation Commission is empowered to deny permission for any removal, dredging, filling, altering of subject lands within the town if, in its

judgement, such denial is necessary to preserve environmental quality of either or both the subject lands and contiguous lands. Due consideration shall be given to possible effects of the proposal on all values to be protected under this Bylaw and to any demonstrated hardship on the petitioner by reason of denial, as brought forth at the public hearing.

1.03 GENERAL PROVISIONS:

(1) Burden of Proof
The Applicant shall have the burden of going forward with credible evidence from a competent source in support of all matters asserted by the applicant in accordance with his or her burden of proof pursuant to Section 1.03 (2) below;

(2) Burden of Going Forward:
The applicant shall have the burden of going foreward credible evidence from a competent source that the work proposed in the Notice of Intent will not harm the interests protected in the Bylaw. Failure to meet the Burden of Proof shall be cause for the Conservation Commission to deny the Application for Permit along with any work or activity proposed therein.

(3) Title 5; State Sanitary Code
In all cases of Title 5 issues, all State and and Town regulations will be followed except that both bordering and non-bordering wetlands are protected

(4) Watershed Protection Districts
In watershed protection districts, namely zone one and two, thirty percent (30%) of a lot where development is proposed must remain in its natural state and up to sixty percent (60%) must remain pervious. The main purpose of this section is to maintain water recharge capability.

1.04 DEFINITIONS

ABUTTER shall mean those property owners whose land abuts the subject land described in a plan subject to Commission review for a Notice of Intent. It shall also mean those property owners across a street or road, river, stream, brook, creek, or other wetland from the subject land. This definition shall apply to all matters subject to Commission review.

ACTIVITY means any form of draining, dumping, dredging, damming, discharging, excavating, filling or grading; the erection, reconstruction or expansion of any buildings, or structures; the driving of pilings; the construction or improvement of roads and other ways; the changing of run-off characteristics; the intercepting or diverting of ground or surface water; the installation of drainage, sewage or water systems; the discharging of pollutants; the destruction of plant life; and any other changing of the physical characteristics of water.

AESTHETICS means the natural scenery and appearance of any area visually accessible to the public

ALTER means to change the condition of any area Subject to Protection Under the Bylaw. The term "alter" shall include, but not be limited to, the following actions when undertaken in Resource Areas Subject to Protection Under the Bylaw:

(a) Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
(b) Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics;
(c) Drainage or other disturbance of water level or water table;
(d) Dumping, discharging or filling with any material,
(e) Placing of fill, or removal of material;
(f) Driving of piles, erection of building, or structures of any kind;
(g) Placing of obstructions or objects in water;
(h) Destruction of plant life, including cutting of trees;
(i) Changing water temperature, biochemical oxygen demand, or other physical, biological or chemical characteristics of water;
(j) Any activities, changes, or work which pollute in any way any body of water or groundwater.

APPLICANT means any person who files an Application for Permit or Request for Determination of Applicability, or on whose behalf such a notice is filed.

AREA SUBJECT TO PROTECTION Under the Bylaw means any area specified, each one of which is defined in greater detail in Parts II and III.

BANK (coastal) is defined in Part II, Section 2.05.

BANK (inland) is defined in Part III, Section 3.02.

BEACH (COASTAL) is defined in Part II, Section 2.02

BEACH (INLAND): a naturally occurring inland beach means an unvegetated bank as defined in Part III.

BEST AVAILABLE MEASURES means the most up-to-date technology or the best designs, measures or engineering practices that have been developed and that are commercially available.

BEST PRACTICAL MEASURES means technologies, designs, measures or engineering practices that are in general use to protect similar interests.

BORDERING means touching.

BOUNDARY means the boundary of an Area Subject to Protection Under the Bylaw. A description of the boundary of each area is found in the appropriate Section of these regulations.

BUFFER ZONE means land within 100 feet horizontally of any bank, freshwater wetland, coastal wetland, beach, ocean, estuary, creek or river; and bordering on any dune, flat, marsh, swamp, stream, pond or lake.

BYLAW means Weymouth Town Code Chapter 119.

CERTIFICATE OF COMPLIANCE means a written determination by the Conservation Commission that work or a portion thereof has been completed in accordance with a Permit.

CONDITIONS means those requirements set forth in a written Permit issued by a Conservation Commission for the purpose of permitting, regulating or prohibiting any activity that removes, fills, dredges or alters an Area Subject to Protection Under the Bylaw.

CONSERVATION COMMISSION means that body comprised of members lawfully appointed pursuant to M.G.L., Ch. 40, s. 8C.

CREEK means the same as a stream.

DATE OF ISSUANCE means the date of notarization

DATE OF RECEIPT means the date of delivery to an office, home or usual place of business by mail or hand delivery.

DETERMINATION OF APPLICABILITY means a written finding by a conservation commission as to whether a site or the work proposed thereon is subject to the jurisdiction of the Bylaw.

DREDGE means to deepen, widen or excavate, either temporarily or permanently

ESTUARY means:

(a) any area where fresh and salt water mix and tidal effects are evident; or
(b) any partially enclosed coastal body of water where the tide meets the current of any stream or river.

EXTENSION PERMIT means a written extension of time within which the authorized work shall be completed.

FILL means to deposit any material so as to raise an elevation, either temporarily or permanently.

FLAT (tidal) is defined in Part II, Section 2.02

FLOOD CONTROL means the prevention or reduction of flooding and flood damage.

FRESHWATER WETLANDS are defined in Part III.

GROUND WATER means water below the earth's surface in the zone of saturation.

HARDSHIP: Weymouth Conservation Commission
The occasion when a literal enforcement of the provisions of these regulation would involve a substantial hardship, financial or otherwise, to the petitioner or appellant;
The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located; and
Desirable relief may be granted without either substantial detriment to the public good or nullifying or substantially derogation from to the public good or nullifying or substantially derogation from the intent or purpose of the OWP.
Excessive economic burden placed on an applicant as a result of the wetlands regulations may be considered to be a hardship. It is presument that any proposed private activity within the area of jurisdiction will place public resources at risk. An applicant is expected to take steps to protect these public resources. Such steps may place an economic burden on the applicant that would not

be placed on a person working beyond the area of jurisdiction. Some additional economic burden is presumed to be a reasonable requirement necessary to protect the public resource. In order to demonstrate hardship, the applicant must show that the public resource can be equally protected at less cost by some other means. Hardship shall in no case be a condition unique to the applicant. The hardship must be associated with activities on the property for which the proposal is made.

INTERESTS IDENTIFIED in the Bylaw means those interests specified in Section 1 of the Bylaw and Section 1.01 (2) of these regulations.

ISSUING AUTHORITY means the Conservation Commission.

LAKE means any open body of fresh water with a surface area of 10 acres or more, and shall include great ponds.

LAND CONTAINING SHELLFISH is defined in Part II, Section 2.07 (2).

LAND SUBJECT TO COASTAL STORM FLOWAGE means land subject to any inundation caused by coastal storms up to and including that caused by the 100 year storm, surge of record or storm of record, whichever is greater.

LAND SUBJECT TO FLOODING is defined in Part III, Section 3.05.

LAND SUBJECT TO TIDAL ACTION means land subject to the periodic rise and fall of a coastal water body, including spring tides.

LAND UNDER WATER BODIES and Waterways means, the bottom of, or land under the surface of the ocean or any estuary, creek, river, stream, pond or lake. Land under the ocean and estuaries is further defined in Part II, Section 2.01; land under inland water bodies is further defined in Part III, Section 3.04.

MARSH is defined in Part II, Section 2.06 and Part III, Section 3.03.

MEADOW (or Wet Meadow) is defined in Part III, Section 3.03.

MEPA means the Massachusetts Environmental Policy Act, M.G.L. Ch. 30, ss. 61-62H, and the regulations promulgated pursuant thereto, 301 CMR 10.00, et seq.

NOTICE OF INTENT means the written notice filed by any person intending to remove, fill, dredge, alter or build upon an Area Subject to Protection under Chapter 119 of the code of Town of Weymouth.

NOTIFICATION OF NON-SIGNIFICANCE means a written finding by the conservation commission, after a public hearing, that the area on which the proposed work is to be done, or which the proposed work will alter, is not significant to any of the interests of the Bylaw.

OCEAN means the Atlantic Ocean and all contiguous waters subject to tidal action.

ORDER means an Order of Conditions

ORDER OF CONDITIONS means the document issued by the conservation commission containing conditions which regulate or prohibit an activity under Chapter 119 of the Town of Weymouth.

PARTY to any proceeding means the applicant, the conservation commission and pursuant to Section 1.05 may include the owner of the site, any abutter, any person aggrieved, any ten residents of the town and any ten persons pursuant to M.G.L. Ch. 30A, s. 10A.

PERSON AGGRIEVED means any person who, because of an act or failure to act by the Conservation Commission, may suffer an injury in fact which is different either in kind or magnitude from that suffered by the general public and which is within the scope of the interests identified in the Bylaw. Such persons must specify in writing sufficient facts to allow the conservation commission to determine whether or not the person is in fact aggrieved.

PLANS means such data, maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the Conservation Commission to describe the site and/or the work, to determine the applicability of the Bylaw or to determine the impact of the proposed work upon the interests identified in the Bylaw.

POND means an open body of fresh water, natural or man-made, with a surface area of at least 10,000 square feet within the last 10 years, and which has standing water at all times except during extended drought.

PREVENTION OF POLLUTION means the prevention or reduction of contamination of surface or ground water.

PRIVATE WATER SUPPLY means any source or volume of surface or ground water demonstrated to be in any private use or shown to have potential for private use.

PROTECTION OF FISHERIES means protection of the capacity of an Area Subject to Protection Under the Bylaw (a) to prevent or reduce contamination or damage to fish and (b) to serve as their habitat and nutrient source. Fish includes all species of fresh and salt water finfish and shellfish.

PROTECTION OF LAND CONTAINING SHELLFISH means protection of the capacity of an Area Subject to Protection Under the Bylaw (a) to prevent or reduce contamination or damage to shellfish and (b) to serve as their habitat and nutrient source.

PROTECTION OF WILDLIFE means the protection of the habitat which supports animal species native to this area, including migratory water fowl and endangered species, but excluding pests, insects etc., harmful to man or domestic animals. Natural resources, breeding areas, sources of food and sanctuary shall have maximum priority in protected areas.

PUBLIC WATER SUPPLY means any source or volume of surface or ground water demonstrated to be in public use or approved for water supply pursuant to M.G.L. Ch. 111, s. 160 or shown to have a potential for public use.

REMOVE means to take away any type of material, thereby changing an elevation, either temporarily or permanently.

REQUEST FOR DETERMINATION OF APPLICABILITY means a written request made by any person to the conservation commission for a determination as to whether a site or work thereon is subject to the Bylaw.

RESOURCE AREA means any of the areas specified in Part II and Part III. It is used synonymously with Area Subject to Protection Under the Bylaw, each one of which is enumerated in Section 1.02 (1) of this part.

RIVER means a natural, flowing body of water that empties to any ocean, lake or other river and which flows throughout the year. RIVERFRONT AREA means the area of land between a river's mean annual high-water line and a parallel line located 200 feet away (25 feet in areas specified in the Rivers Protection Act) measured horizontally outward from the river's mean annual high-water line. There is no buffer zone to the riverfront area. The riverfront area may include or overlap other resource areas and/or their buffer

zones.

SALT MARSH is defined in Part II, Section 2.06.

SHALL is defined as mandatory.

SHOULD is defined as advisory.

SIGNIFICANT means plays a role. A resource area is significant to an interest identified in the Bylaw when it plays a role in the provision or protection, as appropriate, of that interest.

STORM DAMAGE PREVENTION means the prevention of damage caused by water from storms, including, but not limited to, erosion and sedimentation, damage to vegetation, property or building, or damage caused by flooding, water-borne debris or water-borne ice.

STREAM means a body of running water, including brooks and creeks, which moves in a definite channel in the ground due to a hydraulic gradient and which flows within, into or out of an area subject to protection under the bylaw. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (i.e. which is intermittent) is a stream.

VEGETATED WETLANDS is defined in Part III, Section 3.02.

WORK means the same as activity.

WILDLIFE means all mammals, birds, reptiles amphibians, all vertebrate and invertebrate animal species which are officially listed by the Massachusetts Division of Fisheries and Wildlife under 321 CMR 8 as endangered, threatened, or of special concern.

WORK means the same as activity.

1.05 PROCEDURES

(1) TIME PERIODS. All Time Periods of ten days or less specified in the Bylaw and these regulations shall be computed using business days only. In the case of a Determination or Orders, such period shall commence on the first day after the date of issuance and shall end at the close of business on the tenth business day thereafter. All other time periods specified in the Bylaw and these regulations shall be computed on the basis of calendar day unless the last day falls on a Saturday, Sunday or legal

holiday, in which case the last day shall be the next business day following.

(2) ACTIONS BY THE CONSERVATION COMMISSIONS. Where the Bylaw states that a particular action (except receipt of a request or notice) is to be taken by the Conservation Commission, that action is to be taken by more than half the members present at a meeting of at least a quorum. A quorum is defined as a majority of the members then in office.

(3) DETERMINATIONS OF APPLICABILITY

(a) Requests for Determination of Applicability

1. Any person who desires a determination as to whether the Bylaw applies to land, or to work that may affect an Area Subject to Protection Under the Bylaw, may submit to the Conservation Commission by certified mail or hand delivery a Request for a Determination of Applicability.

2. Any person who proposes to perform work within the Buffer Zone shall submit to the Conservation Commission either a Notice of Intent for such work or a Request for a Determination of Applicability. Said request shall include sufficient information to enable the Conservation Commission to find and view the area and to determine whether the proposed work will alter an Area Subject to Protection Under the Bylaw.

3. A request for a Determination of Applicability shall include certification that the owner of the area subject to the request, if the person making the request is not the owner, has been notified that a determination is being requested under the Bylaw.

(b) Determination Of Applicability

1. Within 21 days after date of receipt of the Request for a Determination of Applicability, the Conservation Commission shall hold a public hearing on the said request. Notice of the time

and place of the public hearing shall be given by the conservation Commission at the expense of the person making the request not less than five (5) days prior to such hearing, by publication in a newspaper of general circulation in the town and by mailing a notice to the person making the request, the owner, the board of health, the planning board, and building inspector. Notice shall also be given in accordance with the open meeting law, M.G.L. Ch. 39, s. 23B, and shall be given to abutters by certified mail at the applicant's expense. Evidence of such notification shall be submitted at the public hearing. Said determination shall be signed by a majority of the Conservation Commission, and copies thereof shall be sent by the Conservation Commission, to the person making the request and to the owner within 21 days of the close of the public hearing or any continuances thereof. Said determination shall be valid for one year from date of issuance.

2. The Conservation Commission shall find that the Bylaw applies to the land, or a portion thereof, if it is an area Subject to Protection Under the Bylaw as defined in Section 1.02 (1) above. The Conservation Commission shall find that the Bylaw applies to the work, if it is an activity Subject to Regulation Under the Bylaw as defined in Section 1.02 (2) above.

3. An Application for Permit shall be filed with the Conservation Commission by submitting a Notice of Intent in the event of a positive determination, and all of the procedures set forth in Section 1.05 (4) shall apply.

(4) APPLICATIONS FOR PERMITS

(a) Any person who proposes to do work that will remove, fill, dredge, alter, or build upon any Area Subject to Protection Under the Bylaw shall submit a Notice of Intent and other application materials in accordance with the submittal requirements set forth in Part VIII, Filing Procedure.

(b) The applicant must submit the original material to the Conservation commission plus seven (7) copies

(total of 8) of the following: the Notice of Intent form, an 8.5 x 11 inch reproduction of the U.S.G.S. quadrangle sheet showing the project locus, and clearly identifying the proposed site and work in addition to the labelled boundaries of the resource areas. All submitted material must be legible.

(c) In the event that only a portion of a proposed project or activity lies within an Area Subject to Protection Under the Bylaw and the remainder of the project or activity lies outside those areas, all aspects of the project must be described in the detail called for in the Part 8, Filing Procedures. The Notice of Intent shall also contain a description and calculation of peak flow and estimated water quality characteristics of discharge from a point source (both closed and open channel) when the point of discharge falls within an area subject to Protection under the Bylaw.

(5) PUBLIC HEARINGS

(a) A public hearing shall be held by the Conservation Commission within 21 days of receipt of the minimum submittal requirements set forth in Section 8 and shall be advertised in accordance with the Bylaw and the requirements of the open meeting law, M.G.L. Ch. 39, s. 23B. In addition, abutters, as identified from the latest available assessor's records, shall be notified by certified mail at the applicant's expense and notification shall be submitted to the Commission.

(b) Public hearings may be continued as follows:

1. without the consent of the applicant, to a "date certain" announced at the hearing, either for receipt of additional information offered by the applicant or others or for information required of the applicant and deemed necessary by the Conservation Commission.

2. with the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing; or

3. with the consent of the applicant for a period not to exceed 21 days after the submission of a

specified piece of information or the occurrence of a specified action. The date, time and place of said continued hearing shall be publicized in accordance with the Bylaw.

(6) PERMITS REGULATING THE WORK

(a) Within 21 days of the close of the public hearing, the Conservation Commission shall either:

1. make a determination that the area on which the work is proposed to be done, or which the proposed work will remove, fill, dredge or alter, or build upon is not significant to any of the interests identified in the Bylaw, and shall so notify the applicant.

2. make a determination that the area on which the work is proposed to be done, or which the proposed work will remove, fill, dredge, or alter, is significant to one or more of the interests identified in the Bylaw and shall issue a Permit for the protection of said interest(s).

(b) The Permit shall impose such conditions as are necessary for the protection of those areas found to be significant to one or more of the interests identified in the Bylaw. The Permit shall prohibit any work or any portion thereof that cannot be so conditioned to protect those areas or which may adversely alter the integrity of contiguous lands. The Permit shall impose conditions upon work or the portion thereof that will in the judgment of the Conservation Commission, result in the filling, dredging, altering or building within or upon an area subject to protection under the Bylaw. The Permit shall impose conditions setting limits on the quantity and quality of discharge from a point source (both closed and open channel) when said limits are necessary to protect the interests identified in the Bylaw.

(c) If the Conservation commission finds that the information submitted by the applicant is not sufficient to describe the site, the work or the effect of the work on the interests identified in the Bylaw, it may issue a Permit prohibiting the work.

The Permit shall specify the information which is lacking and why it is necessary.

(d) A Permit shall be valid for one year from the date of its issuance.

(e) The Permit shall be signed by a majority of the conservation Commission and shall be sent by certified mail or hand delivered to the applicant or the applicant's agent or attorney.

(f) A copy of the plans with latest revisions describing the work and the Permit shall be kept on file by the Conservation Commission and shall be available to the public during normal business hours.

(g) Prior to the commencement of any work permitted or required by the Permit, the Permit shall be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the permit shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the Permit shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. Certification of recording shall be sent to the Commission. If work is undertaken without the applicant first recording the Permit, the Commission may issue an Enforcement Order.

(7) EXTENSIONS OF PERMITS FOR WORK

(a) The Commission may extend a Permit for one or more periods of up to one year each, which shall be made on Form 7 of Part VI. The request for an extension shall be made to the Conservation Commission at least thirty days prior to the expiration of the Permit.

(b) The Commission may deny the request for an extension and require the filing of a new Application for Permit for the remaining work in the following circumstances:

1. where no work has begun on the project, except where such failure is due to an unavoidable

delay, such as appeals, in the obtaining of other necessary permits;

2. where new information, not available at the time the Permit was issued, has become available and indicates that the Permit is not adequate to protect the interests identified in the Bylaw;

3. where incomplete work is causing damage to the interests identified in the Bylaw; or

4. where work has been done in violation of the Permit or these regulations.

(c) An Extension Permit shall be signed by a majority of the Commission.

(d) The Extension Permit shall be recorded in the Land Court or the Registry of Deeds, whichever is appropriate.

Certification of recording shall be sent to the Commission. If work is undertaken without the applicant so recording the Extension Permit, the Conservation Commission may issue an Enforcement Order or may itself record the Extension Permit at the expense of the applicant.

(8) CERTIFICATES OF COMPLIANCE

(a) Upon written request by the applicant, signed and stamped by a Registered Professional Consultant if employed to present plans/and or other documentation, a Certificate of Compliance shall be issued by the Conservation commission within 21 days of receipt thereof, and shall certify that the activity or portions thereof described in the application for Permit and plan has been completed in compliance with the permit. The Certificate shall be signed by a majority of the Commission.

(b) Prior to the issuance of a Certificate of Compliance, a site inspection shall be made by the Conservation Commission or its agent in the presence of the applicant or the applicant's agent.

(c) If the Conservation Commission determines, after review and inspection, that the work has not been

(b) Prior to the issuance of a Certificate of Compliance, a site inspection shall be made by the Conservation Commission or its agent in the presence of the applicant or the applicant's agent.

(c) If the Conservation Commission determines, after review and inspection, that the work has not been done in compliance with the Permit, the Commission may refuse to issue a certificate of Compliance. Such refusal shall be issued within 21 days of receipt of a request for a certificate of compliance, shall be in writing and shall specify the reasons for denial.

(d) If a project has been completed in accordance with plans stamped by a registered professional engineer, landscape architect, or land surveyor, a written statement by such a professional person certifying substantial compliance with the plans and setting forth what deviation, if any, exists from the plans approved in the Permit shall accompany the request for a Certificate of Compliance.

(e) If the Permit contains conditions which continue past the completion of the work, such as maintenance or monitoring, the Certificate of Compliance shall specify which, if any, of such conditions shall continue. The Certificate shall also specify to what portions of the work it applies, if it does not apply to all the work regulated by the Permit.

(f) The Certificate of Compliance shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the Commission. Upon failure of the applicant to so record, the Commission may do so, at the expense of the applicant.

1.06 EMERGENCIES

(1) Any person requesting permission to do an emergency project shall specify why the project is necessary for the protection of the health or safety of the citizens of the Commonwealth and what agency of the Commonwealth or subdivision thereof is to perform the project or has ordered the project to be performed. If the project is certified to be an emergency by the Conservation

Commission, its agents or employees, the certification shall include a description of the work which is to be allowed and shall not include work beyond that necessary to abate the emergency. A site inspection shall be made prior to certification.

(2) An emergency certification shall be issued only for the protection of public health or safety or for the protection of public health or safety or for the protection of any interest specified in the Bylaw.

(3) The time limitation for performance of emergency work shall not exceed 21 days.

1.07 SEVERABILITY

The invalidity of any Section or provision of these regulations shall not invalidate any other Section or provision thereof, nor shall it invalidate any permit which previously has been issued.

If any Court of the Commonwealth shall invalidate any provision of these regulations, the Conservation commission shall promulgate additional regulations designed to comply with any court decision invalidating such provision or regulation, as the case may be.

1.08 EFFECTIVE DATE

The effective date of these regulations shall be immediately upon approval and the provisions of these regulations shall apply to all applications filed after such date.

Approved on June 25, 1997

PART II. REGULATIONS FOR COASTAL WETLANDS

2.01 GENERAL PROVISIONS

(1) Preamble

The regulations contained apply to all work subject to the Wetlands Protection Bylaw which will alter, dredge, fill, or remove any coastal beach, coastal dune, tidal flat, coastal wetland, land subject to coastal storm flowage, coastal bank, land subject to tidal action, or land under an estuary, under a salt pond, under the ocean or under certain streams, ponds, rivers, lakes or creeks within the coastal zone that are anadromous/catadromous fish runs. This Part is in addition to and does not change the provisions set forth in Part I of the regulations. These regulations are intended to ensure that development along the coastline is located, designed, built and maintained in a manner that protects the public interests in the coastal resources listed in the Bylaw. The proponent of the work must submit sufficient information to enable the Conservation Commission to determine whether the proposed work will comply with these regulations. Any proposed work may be subject to the requirements of sections concerning coastal beaches, coastal dunes and land containing shellfish. Thus, in order to determine which provisions apply to a proposed project, the regulations must be read in their entirety. The regulations are divided into sixteen sections, eleven of which deal with specific coastal resources. Each coastal resource Section begins with a preamble. The Preamble identifies the interests of the Bylaw to which that resource is or is likely to be significant and describes characteristics or factors of the resource which are critical to the protection of the interest to which the resource is significant. The regulations are in the form of performance standards and shall be interpreted to protect those characteristics and resources to the maximum extent permissible under the Bylaw.

The performance standards are intended to identify the level of protection the Conservation Commission must impose in order to contribute to the protection of the interests of the Bylaw. It is the responsibility of the Conservation Commission to order specific measures and requirements for each proposed project which will ensure that the project is designed and carried out consistent with the required level of protection.

Such authority must then issue an Order of Conditions which is understandable and enforceable.

(2) Purpose

The regulations are promulgated pursuant to the Bylaw and are intended to implement it. They are further intended to establish criteria and standards for the uniform and coordinated administration of the provisions of the Bylaw; to ensure coordination between the Department and other EOEA agencies; and to ensure consideration by the Department of relevant policies, laws or programs of other EOEA agencies. These regulations are, in addition, intended to be consistent with and form a part of the Commonwealth's Coastal Zone Management Program (hereinafter "CZM Program") as it has been promulgated and defined by the regulations and policy appendix issued pursuant to M.G.L. Ch. 21A and entitled "Establishment of the Coastal Zone Management Program by the Executive Office of Environmental Affairs" (hereinafter "CZM Regulations"). These regulations, however, are adopted independently under the Bylaw and would remain in full force and effect in the absence of the CZM Regulations and Program.

The interpretation and application of these regulations shall be consistent with the policies of the CZM Program to the maximum extent permissible under the Bylaw. The CZM Regulations establish the CZM policies as part of the CZM Program, and the Commission recognizes these policies as state environmental policy, which it will carry out in accordance with M.G.L. Ch. 21A, s. 2. Specifically, policies 1, 2, 3, 4, 5, 6, 9 and 10 are applicable to the administration of this Bylaw, but the provisions of the more specific regulations contained in the following sections shall govern, unless the Secretary, pursuant to the conflict resolution procedures of M.G.L. Ch. 21A and sections 6.20-6.28 of the CZM Regulations, has resolved any conflict and has determined that the CZM policies should or should not apply.

ADDITIONAL DEFINITIONS

The definitions contained in Section 2 of these regulations apply to and are valid for Part II. The following definitions are for terms used throughout Part II. Other terms that are used only in specified sections of Part II are defined in those sections.

ADVERSE EFFECT means a greater than negligible change in the resource area or one of its characteristics or factors that diminishes the value of the resource area to one or more of the specific interests of the Bylaw, as determined by the Conservation Commission. "Negligible" means small enough to be disregarded.

APPLICANT means any person giving notice of intention to remove, fill, dredge or alter under the Bylaw.

AREA OF CRITICAL ENVIRONMENTAL CONCERN (ACEC) means an area which has been so designated by the Secretary in accordance with Sections 6.40-6.55 of the CZM Regulations. The term "Area for Preservation or Restoration" (APR) shall be synonymous with ACEC, as provided in the CZM Regulations.

BUILDING means any residential, commercial, industrial, recreational or other similar structure. For the purposes of these regulations, building may be interpreted to include a large, substantial structure such as a utility tower.

COASTAL ENGINEERING STRUCTURE means, but is not limited to, any breakwater, bulkhead, groin, jetty, revetment, seawall, weir, riprap or any other structure that is designed to alter wave, tidal or sediment transport processes in order to protect inland or upland structures from the effects of such processes.

COASTAL ZONE means that area defined in 301 CMR 20.03.

DMF means the Division of Marine Fisheries.

GRAIN SIZE means a measure of the size of a material or rock particle that makes up sediment.

IMPROVEMENT DREDGING means any dredging under a license in any area which has not previously been dredged or which extends the original dredged width, depth, length or otherwise alters the original boundaries of a previously dredged area.

INTERESTS OF THE BYLAW means the following eight interests specified in the Bylaw: public or private water supply, ground water supply, flood control, storm damage prevention of pollution, protection of land containing shellfish and protection of fisheries and wildlife habitat.

LITTORAL PROCESSES means the movement of sediment, including gravel, sand or cobbles, along the coast caused by waves or currents.

MAINTENANCE DREDGING means dredging under a license in any

previously dredged area which does not extend the originally-dredged dept, width, or length but does not mean improvement dredging or backfilling.

MARINE FISHERIES means any animal life inhabiting the ocean or its adjacent tidal waters or the land thereunder that is utilized by man in a recreational and/or commercial manner or that is part of the food chain for such animal life.

MEAN HIGH WATER LINE means the line where the arithmetic mean of the high water heights observed over a specific 19-year metonic cycle (The National Tidal Datum Epoch) meets the shore and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.

MEAN LOW WATER LINE means the line where the arithmetic mean of the low water heights observed over a specific 19-year metonic cycle (the National Tidal Datum Epoch) meets the shore and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.

MINIMIZE means to achieve the least amount of adverse effect that can be attained using best avoidable measure or best practical measures, whichever, is referred to in the pertinent Section. "Best available measures" means the most up-to-date technology or the best designs, measure or engineering practices that have been developed and that are commercially available. "Best Practical Measures" means technologies, designs, measure or engineering practices that are in general use to protect similar interests.

NPDES (NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM) PERMIT means the permit issued jointly by the federal and state governments, in accordance with 33 U.S.C. 1342 and M.G.L. Ch. 20, s. 43, regulating liquid discharges from a point source.

PRODUCTIVITY means the rate of biomass production over a period of time.

RESOURCE AREA means any coastal bank; coastal wetland; coastal beach; coastal dune; tidal flat; or any land under the ocean or under an estuary or under a salt pond; land subject to tidal action or coastal 100 year storm, flowage; or land under certain streams, ponds, rivers, lakes, or creeks within the coastal zone that are anadromous/catadromous fish runs.

SECRETARY means the Secretary of Environmental Affairs.

SIGNIFICANT means a resource area shall be found to be significant to an interest of the Bylaw when such resource area plays a role in the provision or protection, as appropriate, of public or private water supply, ground water supply, flood control, storm damage prevention, prevention of pollution, land containing shellfish, fisheries, and/or wildlife habitat.

TURBIDITY means the amount of particular matter suspended in water.

WATER CIRCULATION means the pattern of water movement in coastal waters.

PERFORMANCE STANDARDS

(1) If the Conservation Commission determines that a resource area is significant to an interest of the Bylaw for which no presumption is stated in the Preamble to the applicable Section, the Conservation Commission shall impose such conditions as are necessary to contribute to the protection of such interest.

(2) When the Conservation Commission determines that a project in one resources area would adversely affect another resources, area, the Conservation Commission shall impose such conditions as will protect the interest to which each resource are significant to the same degree as required in the regulations concerning each resource area.

(3) A determination which finds that a resource area is not significant to an interest to which it is presumed in these regulations to be significant, or is significant to an interest to which it is presumed to be not significant, shall be made from Form 7. No such determination shall be effective unless a copy of this form and accompanying written explanation for the determination required by these regulations is sent on the day of issuance to the appropriate regional office of the Department.

(4) (a) These regulations do not change the requirement of any other Massachusetts statute or Bylaw. A proposed project must comply with all applicable requirements of other federal, state and local statues and bylaws, in addition to meeting the requirements of these Regulations. Examples of such laws which may be applicable are the Coastal Restrictions Act (M.G.L. Ch. 130, s. 105), the Ocean Sanctuaries Act (M.G.L. Ch. 132A, ss. 13-16 and 18), the Mineral Resources Act (M.G.L. Ch. 21, ss. 54-58), the Massachusetts

Clean Water Act (M.G.L. Ch. 21, ss. 26-53), the Waterways laws (M.G.L. Ch. 91), the Massachusetts Environmental Policy Act (M.G.L. Ch. 30, ss. 61-62H), the act establishing the Martha's Vineyard Commission (St. 1974, Ch. 637) and the Scenic Rivers Act (M.G.L. Ch. 21, s. 2.17B).

(b) When the site of a proposed project is subject to a Restriction Order which has been duly recorded under the provisions of M.G.L. Ch. 130, s. 105, such a project shall conform to these regulations.

(c) If an NPDES permit for any new point-source discharge has or will be obtained prior to the commencement of the discharge, the effluent limitations established in such permit shall be deemed to satisfy the water quality standards established in any Section of these regulations relative to the effects of the new point-source discharge on water quality. Such effluent limitations shall be incorporated or shall be deemed to be incorporated into the Order of Conditions.

(5) (a) When an area subject to these regulations has been designated an Area of Critical Environmental Concern by the Secretary of Environmental Affairs pursuant to 301 CMR 20.00 and the CZM Regulations, and when the Secretary has made a finding of the significance of the area to one or more interests of the Bylaw, the Conservation Commission shall presume that such area is significant to those interests.

(b) When any portion of a designated Area of Critical Environmental Concern is determined by the Conservation Commission to be significant to any of the interests of the Bylaw, any proposed project in or impacting that portion of the Area of Critical Environmental Concern shall have no adverse effect upon those interests, except as provided under 31 CMR 10.15 (4) for maintenance dredging.

(6) Where any Section of these regulations provides that a proposed project "may be permitted" in certain circumstances, no such project shall be undertaken until all of the usual procedures required by the Bylaw and these regulations have been followed and a Final Order has been issued for the work.

The Conservation Commission shall impose such conditions on such projects as may be necessary to contribute to the protection of the interests of the Bylaw.

(7) This Section is not intended to prohibit the Conservation Commission from imposing such additional conditions as are necessary to contribute to the interests of the Bylaw where the indicated minimizing measures are not sufficient.

(a) Notwithstanding any provisions of the Bylaw, wherever an area in which a project is proposed is found to be significant to one or more of the interests of the Bylaw, the construction, reconstruction, operation and maintenance of the following structures associated with and essential to an electric generating facility may be permitted as provided herein (although no such project may be permitted which will have any adverse effect on specified habitat sites of rate vertebrate or invertebrate species, as identified by procedures established under 310 CMR 10.37);

1. conduits for cooling water intake or discharge, which may be emplaced by trenching with a minimum depth of four feet of cover below original grade, except where they traverse salt ponds, salt marshes and barrier beaches, in which cases they may be emplaced only by tunneling;

2. headwalls and other essential structures appurtenant to 310 CMR 10.24 (7) (a) 1 above, except that these structures may not be constructed in salt marshes, salt ponds or barrier beaches;

3. pipelines or other conduits for the transmission of utilities essential to the facility (water, fuel, sewage, and power), which may be emplaced by trenching with a minimum depth of four feet of cover below original grade, or which may be carried above grade on pilings or similar supports, but only if the applicant demonstrates that there will be no adverse effect on the resource area by the construction, operation, and maintenance of such pipelines or other conduits.

If such pipelines or conduits are emplaced through a resource area which adverse effects are required to be minimized by 310 CMR 10.25 through 10.36 of these regulations, then that standard shall be applied, except that in no case shall fuel or sewage lines be operated or be designed to be operated so that they will have an adverse effect on the resource area.

4. structures necessary for navigation, berthing and protection of such vessels and vessel movements as may be necessary to the operation of the facility, but only on coastal banks, coastal beaches, rocky intertidal shores or land under the ocean;

5. structures for maritime dependent accessory activities essential to the facility, but only on coastal banks, coastal beaches, rock intertidal shores or land under the ocean;

6. coastal engineering structures necessary to the protection of such other structures as may be permitted under this Section, but only on coastal banks, coastal beaches, rocky intertidal shores, or land under the ocean;

7. all fuel lines shall be double cased and watertight so as to prevent inflow and leakage;

8. the conduits or structures shall be designed to minimize, using the best available measures, adverse effects on the relevant interests of the Bylaw due to changes in wave action or sediment transport or adjacent coastal banks, coastal beaches, coastal dunes, salt marshes or barrier beaches;

9. in designated port areas the conduits or structures shall be designed to minimize, using best practical measures, adverse effect on the relevant interests of the Bylaw;

10. the provision of 310 CMR 10.24 (7) (b) below shall also apply when applicable.

(b) Notwithstanding any provisions of 310 CMR 10.25 through 10.35, whenever an area in which a project is

proposed is found to be significant to one or more of the interests of the Bylaw, the construction, reconstruction, operation and maintenance of underground and overhead public utilities, limited to electrical distribution or transmission lines, or communication, sewer, water and natural gas lines, may be permitted, (although no such project may be permitted which will have an adverse effect on specified habitat sites of rare vertebrate or invertebrate species, as identified by procedures established under 310 CMR 10.37) provided;

1. for local distribution or connecting lines not reviewed by the Energy Facilities Siting Council, the Conservation Commission determines that alternative routes with fewer adverse effects are not physically or legally feasible;

2. adverse effects during construction are minimized using the best available measures, which may include such equipment as Bailey-bridges and helicopters;

3. the surface vegetation and contours of the area are substantially restores;

4. when a trench is made in a salt marsh, all spoil is removed from the salt marsh upon excavation. Clean sand or other appropriate material shall be used to restore the level of the trench to that of the surrounding undisturbed salt marsh. The surface vegetation shall be restored substantially to its original condition by immediately transplanting appropriate marsh plant nursery stock once construction is completed. Baffles of concrete, clay or other non-porous material shall be placed in the trench, if necessary, to prevent groundwater excursion. During the first growing season, periodic maintenance of the marsh restoration area shall be required and shall include at least the replacement of non-surviving transplants and the removal of all deposits of debris and organic litter. During construction, equipment such as Bailey-bridges and helicopters shall be used to minimize, using best available measures, the adverse effects of construction on the salt marsh. All vehicles shall be used only on swamp mats or in such a way as to prevent tire

marks, trenches, or ruts;

5. no utility shall transverse a salt marsh unless the applicant has shown that any thermal influence on the salt marsh or such line subsequent to the project being completed will not alter the natural freezing and thawing patterns of the top 24 inches of the salt marsh surface. Thermal sand, concrete or other suitable material may be used to backfill the trench to a point no less than 24 inches below grade. Above this level, clean sand shall be used to restore the level of the trench to that of the surrounding undisturbed salt marsh;

6. no permanent access roads shall be permitted except in designated port areas; and

7. all sewer lines shall be constructed so as to be watertight so as to prevent inflow and leakage.

(c) Notwithstanding the provisions of the 310 CMR 10.25 through 10.35 of these regulations, the Conservation Commission may issue an order of Conditions and impose such conditions as well contribute to the interests identified in the Bylaw permitting the following limited project (although no such project may be permitted which will have an adverse effect on specified habitat sites of rare vertebrate or invertebrate species, as identified by procedures established under 310 CMR 10.37);

1. Maintenance and improvement of existing public roadways, but limited to widening less than a single lane, adding shoulders, correcting substandard intersections, and improving drainage systems.

2. The maintenance, repair and improvement (but not substantial enlargement) of structures, including buildings, piers, towers, headwalls, bridges and culverts which existed on November 1, 1987.

3. The routine maintenance and repair of road drainage structures including culverts and catch basins, drainage easements, ditches, watercourses and artificial water conveyances to insure flow capacities which existed on November 1, 1987.

2.02 LAND UNDER THE OCEAN

(1) Preamble.

Land under the ocean is likely to be significant to the protection of wildlife, marine fisheries and, where there are shellfish, to protection of land containing shellfish.

Nearshore areas of land under the ocean are likely to be significant to storm damage prevention and flood control.

Land under the ocean provides feeding areas, spawning and nursery grounds and shelter for many coastal organisms related to marine fisheries.

Nearshore areas of land under the ocean help reduce storm damage and flooding by diminishing and buffering the high energy effects of storm. Submerged bars dissipate storm wave energy. Such areas provide a source of sediment for seasonal rebuilding of coastal beaches and dunes.

When a proposed project involves the dredging, removing, filling or altering of a nearshore area of land under the ocean, the Conservation Commission shall presume that the area is significant to the interests specified above.

When a proposed project involves the dredging, removing, filling or altering of land under the ocean beyond the nearshore area, the conservation commission shall presume that such land is significant to the protection of marine fisheries and, where there are shellfish, to the protection of land containing shellfish and that it is not significant to storm damage prevention or flood control.

These presumptions may be overcome only upon a clear showing that the area or land does not play a role in the protection of wildlife, marine fisheries, land containing shellfish, storm damage prevention or flood control, as appropriate, and if the Conservation Commission makes a written determination to such effect.

When nearshore areas of land under the ocean are significant to storm damage prevention or flood control, the bottom topography of such land is critical to the protection of those interests.

When nearshore areas or other land under the ocean is significant to the protection of marine fisheries, the

following factors are critical to the protection of such interests:

(a) water circulation,
(b) distribution of sediment grain size,
(c) water quality, and
(d) finfish habitat.

(2) Definitions

(a) "Land Under the Ocean" mean land extending from the mean low water line seaward to the boundary of the municipality's jurisdiction.

(b) "Nearshore Areas" of land under the ocean means that land extending from the mean low water line to the seaward limit of the municipality's jurisdiction.

When Land Under the Ocean or Nearshore areas of Land Under the Ocean are Found to be Significant to the Protection of Wildlife, Marine fisheries, Storm Damage Prevention or Flood Control, the following regulations shall apply:

(3) Improvement dredging for navigational purposes affecting land under the ocean shall be designed and carried out using the best available measures so as to minimize adverse effects on such interests caused by changes in:

(a) bottom topography which will result in increased flooding or erosion caused by an increase in the height or velocity of waves impacting the shore.

(b) sediment transport processes which will increase flood or erosion hazards by affecting the natural replenishment of beaches;

(c) water circulation which will result in an adverse change in flushing rate, temperature, or turbidity levels; or

(d) marine productivity which will result from the suspension or transport of pollutants, the smothering of bottom organisms, the accumulation of pollutants by organisms, or the destruction of habitat or nutrient source areas.

(4) Maintenance dredging for navigational purposes affecting land under the ocean shall be designed and carried out

using the best available measures so as to minimize adverse effects on such interests caused by changes in marine productivity which will result from the suspension or transport of pollutants, increases in turbidity, the smothering of bottom organisms, the accumulation of pollutants by organisms, or the destruction of habitat or nutrient source areas.

(5) Projects not included in Section 2.01 (3) or 2.01 (4) which affects near shore areas of land under the ocean shall not cause adverse effects by altering the bottom topography so as to increase storm damage or erosion of coastal beaches, coastal banks, coastal dunes, or salt marshes.

(6) Performance Standards

Projects not included in 2.01 (3) which affect land under the ocean shall be designed and constructed, so as to cause no adverse effects on wildlife, marine fisheries or shellfish caused by:

(a) alterations in water circulation;
(b) destruction of eelgrass (Zostera marina) beds;
(c) alterations in the distribution of sediment grain size; or
(d) changes in water quality, including, but not limited to, other than natural fluctuations in the level of dissolved oxygen, temperature or turbidity, or the addition of pollutants.

2.03 COASTAL BEACHES

(1) Preamble.

Coastal beaches, which are defined to include tidal flats, are significant to wildlife, storm damage prevention and flood control. In addition, tidal flats are likely to be significant to the protection of wildlife, marine fisheries, and, where there are shellfish, to land containing shellfish.

Coastal beaches dissipate wave energy by their gentle slope, their permeability and their granular nature, which permit changes in beach form in response to changes in wave conditions.

Coastal beaches serve as a sediment source for dunes and subtidal areas. Steep storm waves cause beach sediment to move offshore, resulting in a gentler beach slope and greater energy dissipation. Less steep waves cause an onshore return of beach sediment, where it will be available to provide protection against future storm waves.

A coastal beach at any point serves as a sediment source for coastal areas downdrift from that point. The oblique approach of waves moves beach sediment alongshore in the general direction of wave action. Thus, the coastal beach is a body of sediment which is moving along the shore.

Coastal beaches serve the purposes of storm damage prevention and flood control by dissipating wave energy, by reducing the height of storm waves, and by providing sediment to supply other coastal features, including coastal dunes, land under ocean and other coastal beaches. Interruptions of these natural processes by man-made structures reduce the ability of the coastal beach to perform these functions.

Tidal flats are likely to be significant to the protection of marine fisheries because they provide habitats for marine organisms, such as polychaete worms and mollusks, which in turn are food sources for fisheries.

Tidal flats are also sites where organic and inorganic materials may become entraped and then returned to the photosynthetic zone of the water column to support algae and other primary producers of the marine food web, together with the various forms of wildlife which feed on these organisms.

Land within 100 feet of a coastal beach or tidal flat is likely to be significant to the protection and maintenance of coastal beaches and flats, and therefore to the protection of the interests which these resource areas serve to protect.

When a proposed project involves the building upon or within, the dredging, filling, removing or altering of a coastal beach or of land within 100 feet of a coastal beach, the Conservation Commission shall presume that the coastal beach is significant to the interests specified above. This presumption may be overcome only upon a clear showing that a coastal beach does not play a role in storm

damage prevention or flood control, or that tidal flats do not play a role in the protection of land containing shellfish, and if the Conservation Commission makes a written determination to such effect.

When coastal beaches are determined to be significant to storm damage prevention or flood control, the following characteristics are critical to the protection of those interests:

(a) volume (quantity of sediments) and form, and
(b) the ability to respond to wave action.

When coastal beaches are significant to the protection of marine fisheries, the following characteristics are critical to the protection of those interests:

(a) distribution of sediment grain size,
(b) water circulation
(c) water quality, and
4. relief and elevation.

(2) Definitions.

(a) "Coastal Beach" means unconsolidated sediment subject to wave, tidal and coastal storm action which forms the gently sloping shore of a body of salt water and includes tidal flats. Coastal beaches extend from the mean low water line landward to the dune line, coastal bank line or the seaward edge of existing man-made structures, when these structures replace one of the above lines, whichever is closest to the ocean.

(b) "Tidal Flat" means any nearly level part of a coastal beach which usually extends from the mean low water line landward to the more steeply sloping face of the coastal beach or which may be separated from the beach by land under the ocean.

(3) No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of coastal beaches or tidal flats, or of any land within 50 feet of any coastal beach or tidal flat, shall be permitted by the Conservation Commission, except for activity which is allowed under a waiver from these regulations.

2.04 COASTAL DUNES

(1) Preamble.

All coastal dunes are likely to be significant to storm damage prevention and flood control, and all coastal dunes on barrier beaches and the coastal dune closest to the coastal beach in any area are per se significant to storm damage prevention and flood control.

Coastal dunes aid in storm damage prevention and flood control by supplying sand to coastal beaches. Coastal dunes protect inland coastal areas from storm damage and flooding by storm waves and storm elevated sea levels because such dunes are higher than the coastal beaches which they border. In order to protect this function, coastal dune volume must be maintained while allowing the coastal dune shape to conform to natural wind and water flow patterns.

Vegetation cover contributes to the growth and stability of coastal dunes by providing conditions favorable to sand deposition.

On retreating shorelines, the ability of the coastal dunes bordering the coastal beach to move landward at the rate of shoreline retreat allows these dunes to maintain their form and volume, which in turn promotes their function of protecting against storm damage or flooding.

Land within 100 feet of a coastal dune is likely to be significant to the protection and maintenance of coastal dunes, and therefore to the protection of the interests which these resource areas serve to protect.

When a proposed project involves the dredging, filling, removal or alteration of a coastal dune or of land within 100 feet of a coastal dune, the Conservation Commission shall presume that the area is significant to the interests of storm damage prevention and flood control. This presumption may be overcome only upon a clear showing that a coastal dune does not play a role in storm damage prevention or flood control, and if the Conservation Commission makes a written determination to that effect.

When a coastal dune is significant to storm damage prevention or flood control, the following characteristics

are critical to the protection of those interest(s):

(a) the ability of the dune to erode in response to coastal beach conditions;

(b) dune volume;

(c) dune form, which must be allowed to be changed by wind and natural water flow;

(d) vegetative cover; and

(e) the ability of the dune to move landward or laterally.

(2) Definition

"Coastal Dune" means any natural hill, mound or ridge of sediment landward of a coastal beach deposited by wind action or storm overwash. Coastal dune also means sediment deposited by artificial means and serving the purpose of storm damage prevention or flood control.

(3) No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of a coastal dune or of any land within 50 feet of any coastal dune shall be permitted by the Conservation commission, except for activity which is allowed under a waiver from these regulations.

(4) Any activity which is allowed under a waiver granted pursuant to Section 5.01 of these regulations on a coastal dune or within 100 feet of a coastal dune shall not have an adverse effect on the coastal dune by:

(a) affecting the ability of waves to remove sand from the dune:

(b) disturbing the vegetative cover so as to destabilize the dune;

(c) causing any modification of the dune form that would increase the potential for storm or flood damage;

(d) interfering with the landward or lateral movement of the dune; or

(e) causing removal of sand from the dune artificially.

(5) The following projects may be permitted, provided that they adhere to the provisions of Section 2.03 (4):

(a) pedestrian walkways, designed to minimize the disturbance to the vegetative cover;

(b) fencing and other devices designed to increase dune development; and

(c) plantings compatible with the natural vegetative cover.

2.05 COASTAL BANKS

(1) Preamble.

Coastal banks are likely to be significant to storm damage prevention and flood control. Coastal banks that supply sediment to coastal beaches, coastal dunes and barrier beaches are per se significant to storm damage prevention and flood control. Coastal banks that, because of their height, provide a buffer to upland areas from storm waters are significant to storm damage prevention and flood control.

Coastal banks composed of unconsolidated sediment and exposed to vigorous wave action serve as a major continuous source of sediment for beaches, dunes, and barrier beaches (as well as other land forms caused by coastal processes). The supply of sediment is removed from banks by wave action, and this removal takes place in response to beach and sea conditions. It is a naturally occurring process necessary to the continued existence of coastal beaches, coastal dunes and barrier beaches which, in turn, dissipate storm wave energy, thus protecting structures of coastal wetlands landward of them from storm damage and flooding.

Coastal banks, because of their height and stability, may act as a buffer or natural wall, which protects upland areas from storm damage and flooding. While erosion caused by wave action is an integral part of shoreline processes and furnishes important sediment to downdrift landforms, erosion of a coastal bank by wind and rain runoff, which plays only a minor role in beach

nourishment, should not be increased unnecessarily. Therefore disturbances to a coastal bank which reduce its natural resistance to wind and rain erosion cause cuts and gullies in the bank, increase the risk of its collapse, increase the danger to structures at the top of the bank and decrease its value as a buffer.

Bank vegetation tends to stabilize the bank and reduce the rate of erosion due to wind and rain runoff. Pedestrian and vehicular traffic damages the protective vegetation and frequently leads to gully erosion or deep "blowouts" on unconsolidated banks. Therefore, any project permitted on a coastal bank should incorporate, when appropriate, elevated walkways.

A particular coastal bank may serve both as a sediment source and as a buffer, or it may serve only one role.

When a proposed project involves dredging, removing, filling or altering a coastal bank or land within 100 feet of a coastal bank, the Conservation Commission shall presume that the area is significant to storm damage prevention and flood control. This presumption may be overcome only upon a clear showing that a coastal bank does not play a role in storm damage prevention or flood control and if the conservation Commission makes a written determination to that effect.

When the conservation commission determines that a coastal bank is significant to storm damage prevention or flood control because it supplies sediment to coastal beaches, coastal dunes or barrier beaches, the ability of the coastal bank to erode in response to wave action is critical to the protection of that interest(s).

When the Conservation Commission determines that a coastal bank is significant to storm damage prevention or flood control because it is a vertical buffer to storm waters, the stability of the bank, i.e. the natural resistance of the bank to erosion caused by wind and rain runoff is critical to the protection of that interest(s).

(2) Definition.

"Coastal Bank" means the seaward face or side of any elevated landform, other than a coastal dune, which lies at the landward edge of a coastal beach, land subject to tidal action, or other wetland.

(3) No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of a coastal bank or of any land within 50 feet of any coastal bank shall be permitted by the Conservation Commission, except for activity which is allowed under a waiver from the regulations.

(4) Any activity which is allowed under a waiver granted pursuant to Section 5.01 of these regulations on a coastal bank or within 100 feet of a coastal bank shall comply with the following regulations:

(a) No new bulkhead, revetment, seawall, groin or other coastal engineering structure shall be permitted on such a coastal bank except that such a coastal engineering structure may be permitted when required to prevent storm damage to buildings constructed prior to the effective date of these regulations or constructed pursuant to a Notice of Intent filed prior to the effective date of these regulations, including reconstructions of such buildings subsequent to the effective date of these regulations, provided that the following requirements are met:

(i) a coastal engineering structure or a modification thereto shall be designed and constructed so as to minimize, using best available measures, adverse effects on adjacent or nearby coastal beaches due to changes in wave action, and

(ii) the applicant demonstrates that no method of protecting the building other than the proposed coastal engineering structure is feasible.

(iii) protective planting designed to reduce erosion may be permitted.

(b) Any project on a coastal bank or within 100 feet landward of the top of a coastal bank, other than a structure permitted by Section 2.05 (4) (a), shall not have an adverse effect due to wave action on the movement of sediment from the coastal bank to coastal beaches or land subject to tidal action.

(c) The Permit and the Certificate of Compliance for any new building within 100 feet landward of the top of a coastal bank permitted by the Conservation Commission under Town Code Chapter 119 shall contain the specific condition: Section 2.05 of the Wetlands Regulations, promulgated under the Weymouth Wetlands Protection Bylaw, requires that no coastal engineering structure, such as a bulkhead, revetment, or seawall shall be permitted on an eroding bank at any time in the future to protect the project allowed by this Permit.

(d) When a coastal bank is determined to be significant to storm damage prevention or flood control because it is a vertical buffer to storm waters, the following regulation shall apply:

(i) Any project on such a coastal bank or within 100 feet landward of the top of such coastal bank shall have no adverse effects on the stability of the coastal bank.

2.06 SALT MARSHES

(1) Preamble.

Salt marshes are significant to protection of wildlife, marine fisheries, where there are shellfish, to protection of land containing shellfish, and prevention of pollution and are likely to be significant to storm damage prevention and ground water supply.

A salt marsh produces large amounts of organic matter. A significant portion of this material is exported as detritus and dissolved organics to estuarine and coastal waters, where it provides the basis for a large food web that supports many marine organisms, including finfish and shellfish. Salt marshes also provide a spawning and nursery habitat for several important estuarine forage finfish.

Salt marsh plants and substrate remove pollutants from surrounding waters. The network of salt marsh vegetation roots and rhizomes binds sediments together.

The sediments absorb chlorinated hydrocarbons and heavy metals such as lead, copper, and iron. The marsh also

retains nitrogen and phosphorous compounds, which in large amounts can lead to algal blooms in coastal waters.

The underlying peat also serves as a barrier between fresh ground water landward of the salt marsh and the ocean, thus helping to maintain the level of such ground water.

Salt marsh cord grass and underlying peat are resistant to erosion and dissipate wave energy, thereby providing a buffer that reduces wave damage.

Land within 100 feet of a salt marsh is likely to be significant to the protection and maintenance of salt marshes and therefore to the protection of the interests which these resource areas serve to protect.

When a proposed project involves the dredging, filling, removing or altering of a salt marsh, or land within 100 feet of a salt marsh, the Conservation Commission shall presume that such area is significant to the interests specified above. This presumption may be overcome only upon a clear showing that a salt marsh does not play a role in the protection of wildlife, marine fisheries, protection of land containing shellfish, prevention of pollution, ground water supply, or storm damage prevention, and if the Conservation Commission makes a written determination to such effect.

When a salt marsh is significant to one or more of the interests specified above, the following characteristics are critical to the protection of such interests(s):

(a) the growth, composition and distribution of salt marsh
vegetation, (protection of marine fisheries, prevention of pollution, storm damage prevention);

(b) the flow and level of tidal and fresh water (protection of marine fisheries, prevention of pollution); and

(c) the presence and depth of peat (ground water supply, prevention of pollution, storm damage prevention).

(2) Definitions.

(a) "Salt Marsh" means a coastal wetland that extends landward up to the highest Spring Tide line of the

year, and is characterized by a plant community consisting of 50% or more of any of the following species: Salt marsh cord grass (Spartina alterniflora); Salt meadow cord grass (Spartina patens); Spike grass (Distichlis spicata); sea Lavender (Limonium nashii); Seaside Plantago (Plantago juncoides); Aster (Aster subulatus); Seaside Goldenrod (Solidago sempervirens); Salt Bush (Atriplex patula); Sea-Blite (Suaeda maritima); Black-grass (Juncus gerardi); Samphire (Salicornia europaea); Glasswort (S. bigelovii); Reed (Phragmites australis) Saltmarsh Bulrush (Scirpus robustus); or Cattails (Typha spp.) A salt marsh may contain tidal creeks, ditches and pools.

(b) "Spring Tide" means the tide of the greatest amplitude during the approximately 14-day tidal cycle. It occurs at or near the time when the gravitational forces of the sun and the moon are in phase (new and full moons).

3. No activity, other than the maintenance of an already existing structure, which will result in the building within or upon dredging, removing, filling, or altering of a salt marsh or land within 50 feet of any salt marsh shall be permitted by the Conservation Commission, except for activity which is allowed under a waiver from these regulations granted pursuant to Section 5.01.

4. Any activity which is allowed under a waiver granted pursuant to Section 5.01 of these regulations on a salt marsh or within 100 feet of a salt marsh shall be limited to access "through or over" when there is no alternative.

(a) A proposed project "through" a salt marsh shall be limited to a municipal sanitary system, and the marsh shall be restored to its original condition under the direction of a qualified botanist.

(b) A proposed project "over" a salt marsh shall conform to the following:

(i) Notwithstanding the provisions, a small project within a salt marsh, such as an elevated walkway or other structure which has no adverse effects other than blocking sunlight from the underlying vegetation for a portion of each day, may be permitted if such a project

complies with all other applicable requirements of these regulations.

(c) Notwithstanding the provisions of Section 2.06 (3) and (4) a project which will restore or rehabilitate a salt marsh, or create a salt marsh, may be permitted; provided, however, that the Section shall not be construed to allow the alteration of one salt marsh on a given site by (or contingent upon) the creation of another.

2.07 LAND CONTAINING SHELLFISH

(1) Preamble.

Land containing shellfish is found within certain of the resource areas under the jurisdiction of the Bylaw. Shellfish are also specifically one of the interests of the Bylaw. The purpose of this Section is to identify those resource areas likely to contain shellfish and to establish regulations for projects which will affect such land.

Land containing shellfish is significant to the protection of marine fisheries as well as to the protection of shellfish.

Shellfish are a valuable renewable resource. The maintenance of productive shellfish beds not only assures the continuance of shellfish themselves, but also plays a direct role in supporting fish stocks by providing a major food source. The young shellfish in the planktonic larval stage that are produced in large quantities during spring and summer are an important source of food for the young stages of marine fishes and many crustaceans.

When a resource area is found to be significant to the protection of land containing shellfish, and is, therefore, also a significant to marine fisheries, the following factors are critical to the protection of those interests:

(a) shellfish
(b) water quality,
(c) water circulation, and
(d) the natural relief, evaluation or distribution of sediment grain size of such land.

(2) Definitions.

(a) Land containing shellfish means land under the ocean, tidal flats, salt marshes and land under salt ponds when any such land contains shellfish.

(b) "Shellfish" means the following species: Bay scallop (Aegopecten irradians); Blue mussel (Mytilus edulis); Ocean quahog (Artica islandica); Oyster (Crassostrea virginica); Quahog (Mercenaria merceneria); Razor clam (Ensis directus); Sea clam (Spisula solidissima); Sea scallop (Placopecten magellanicus); Soft shell clam (Mya arenaria); Lobster (Homarus americanus); grass shrimp (Palaemonetes, sp.); Sand shrimp (Crangon septemspinosa); Blue crab (Callinectes sapidus); Green crab (Carcinus maenas); fiddler crab (Uca sp.); Rock crab (Cancer irroratus); and Freshwater mussel (Andonata implicata) and (Elliptio complanata)."

(3) Except as provided in Section 2.07 (4) and (5) below, any project on land containing shellfish shall not adversely affect such land or marine fisheries by a change in the productivity of such land caused by:

(a) alterations of water circulation.
(b) alterations in relief elevation,
(c) the compacting of sediment by vehicular traffic,
(d) alterations in the distribution of sediment grain size,
(e) alterations in natural drainage from adjacent land, or
(f) changes in water quality, including, but not limited to other than natural fluctuations in the levels of salinity, dissolved oxygen, nutrients, temperature or turbidity, or the addition of pollutants.

(4) Except in Areas of Critical Environmental Concern, the Conservation Commission may, after consultation with the Shellfish Constable, permit the shellfish to be moved from such area under the guidelines of, and to a suitable location approved by the Division of Marine Fisheries, in order to permit a proposed project on such land. Any such project shall not be commenced until after the moving and replanting of the shellfish have been completed.

(5) Notwithstanding Section 2.07 (3), projects approved by D.M.F. that are specifically intended to increase the productivity of land containing shellfish may be permitted at the discretion of the Conservation commission. Aquaculture projects approved by the appropriate local and state authority may also be permitted at the discretion of the Conservation Commission.

2.08 BANKS OF OR LAND UNDER THE OCEAN, PONDS, STREAMS, RIVERS, LAKES, OR CREEKS THAT UNDERLINE AN ANADROMOUS/ CATADROMOUS FISH RUN (FISH RUN')

(1) Preamble.

The banks of and land under the ocean, ponds, streams, rivers, lakes or creeks that underlie an anadromous/catadromous fish run are significant to protection of marine fisheries and wildlife. Land within 100 feet of such banks is likely to be significant to the protection and maintenance of these banks, and therefore to the protection of the interests which these resource areas serve to protect.

Anadromous and catadromous fish ("the fish") are renewable protein resources that provide recreational, aesthetic and commercial benefits. In addition, throughout their life cycle, such fish are important components of freshwater, estuarine, and marine environments and are food sources for other organisms.

The spawning migrations of such fish also provide a direct link between marine and freshwater ecosystems. This link plays a role in maintaining the productivity of fisheries. When a proposed project involves the dredging, filling, removing, altering or building upon a bank of a fish run, or land under the ocean, or under a pond, stream, river, lake or creek which is a fish run, or of any land within 100 feet of these areas, the Conservation commission shall presume that such bank or land is significant to the protection of marine fisheries. This presumption may be overcome only upon a clear showing that such bank or land does not play a role in the protection of marine fisheries, and if the Conservation Commission makes a written determination to that effect.

When such a bank of a fish run, or land under the ocean or under a pond, stream, river, lake or creek which is a fish

run is significant to the protection of marine fisheries, the following factors are critical to the protection of such interest:

(a) the fish,
(b) accessibility of spawning areas,
(c) the volume or rate of the flow of water within spawning areas or migratory routes,
(d) spawning and nursery grounds.

(2) Definitions.

(a) "Anadromous Fish" means fish that enter fresh water from the ocean to spawn, such as alewives, shad and salmon.

(b) "Catadromous Fish" means fish that enter salt water from fresh water to spawn, such as eels.

(c) "Anadromous/Catadromous Fish Run" means that area within estuaries, ponds, streams, creeks, rivers, lakes or coastal waters, which is a spawning or feeding ground or passageway for anadromous or catadromous fish. Such fish runs shall include those areas which have historically served as fish runs and are either being restored or are planned to be restored at the time the Application for Permit is filed.

(3) No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of the bank of a fish run, land under a fish run, or land within 100 feet of the bank of a fish run shall be permitted by the Conservation Commission, except for activity which is allowed under a waiver granted pursuant to Section 5.01

(4) Any activity which is allowed under a waiver granted pursuant to Section 5.01 of these regulations on the bank of a fish run, land under a fish run, or land within 100 feet of the bank of a fish run shall comply with the following regulations:

(a) any project on such land or bank shall not have an adverse effect on the anadromous or catadromous fish run by:

(i) impending or obstructing the migration of the

fish; or by causing mortality to adult or juvenile fish; or

(ii) changing the volume or rate of flow of water within the fish run; or

(iii) impairing the capacity of spawning or nursery habitats necessary to sustain the various life stages of the fish.

(b) Dredging, disposal of dredged material or filling in a fish run shall be prohibited.

(5) Regular maintenance of the Weymouth Herring Run, under the supervision of the Conservation Commission and the Herring Run subcommittee, to be performed by Town of Weymouth Department of Public Works, the Herring Run Wardens and Assistant Wardens or outside contractors, is permitted by exclusion of filing requirements under this Bylaw.

PART III. REGULATIONS FOR INLAND WETLANDS

3.01 GENERAL PROVISIONS

(1) If the Conservation Commission determines that a resource area is significant to an interest identified in the Bylaw for which no presumption is stated in the Preamble to the applicable Section, the Conservation Commission shall impose such conditions as are necessary to contribute to the protection of such interests.

(2) When the site of a proposed project is subject to a Restriction Order which has been duly recorded under the provisions of M.G.L. Ch. 131, s. 40a, such project shall conform to both the provisions contained in that Order and to Part III of these regulations.

(3) Notwithstanding the provisions of Chapter 119 the Conservation Commission may issue an Order of Conditions and impose such conditions as will contribute to the interests identified in the Bylaw permitting the following limited projects:

(a) Work on land to be used primarily and directly in raising of animals, including but not limited to dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals or on land to be used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals; and work on land to be used primarily and directly in the raising of fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs; or on land to be used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products, provided they are carried out in accordance with the following general conditions and any additional conditions deemed necessary by the Conservation Commission:

(i) there shall occur no change in the existing topography or the existing soil and surface water levels of the area:

(ii) all fertilizers, pesticides, herbicides and

other such materials shall be used in accordance with all applicable state and federal laws and regulations governing their use; and

(iii) all activities shall be undertaken in such a manner as to prevent erosion and siltation of adjacent water bodies and wetlands as specified by the U.S.D.A. Soil Conservation Service, "Guidelines for Soil and Water Conservation". A plan prepared by the U.S.D.A. Soil Conservation Service through a county conservation district for the improvement of land for agriculture shall be deemed adequate to prevent erosion and siltation.

(b) Work on land to be used primarily and directly in the raising of cranberries or on land to be used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products, provided it is carried out in accordance with the following general conditions and any additional conditions deemed necessary by the Conservation Commission.

(i) all fertilizers, pesticides, herbicides and other such materials shall be used in accordance with all applicable state and federal laws and regulations governing their uses; and

(ii) all activities shall be undertaken in such a manner as to prevent erosion and siltation of adjacent water bodies and wetlands as specified by the U.S.D.A. Soil Conservation Service, "Guidelines for Soil and Water Conservation".

(c) Work on land to be used primarily and directly in the raising of forest products under a planned program to improve the quantity and quality of a continuous crop or on land to be used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products, provided it is carried out in accordance with the following general conditions and any additional conditions deemed necessary by the Conservation Commission

(i) there shall occur no change in the existing topography or the existing soil and surface water levels of the area except for temporary access roads;

(ii) the removal of trees shall occur only during those periods when the ground is sufficiently frozen, dry or otherwise stable to support the equipment used; and

(iii) all activities shall be undertaken in such a manner as to prevent erosion and siltation of adjacent water bodies and wetlands as specified by the U.S.D.A. Soil conservation Service, "Guidelines for Soil and Water Conservation."

(iv) the placement of slash, branches and limbs resulting from the cutting and removal operations shall not occur within twenty-five (25) feet of the bank of a water body.

(d) The construction, reconstruction, operation and maintenance of underground and overhead public utilities, such as electrical distribution or transmission lines, or communication, sewer, water and natural gas lines, may be permitted, in accordance with the following general conditions and any additional conditions deemed necessary by the Conservation Commission.

(i) the Conservation Commission may require a reasonable alternative route with fewer adverse effects for a local distribution or connecting line not reviewed by the Energy Facilities Siting Council;

(ii) best available measures shall be used to minimize adverse effects during construction;

(iii) the surface vegetation and contours of the area shall be substantially restored; and

(iv) all sewer lines shall be constructed to minimize inflow and leakage.

(e) The construction and maintenance of a new roadway or

driveway of minimum legal and practical width acceptable to the planning board, where reasonable alternative means of access from a public way to an upland area of the same owner is unavailable. Such roadway or driveway shall be constructed in a manner which does not restrict the flow of water.

(f) Maintenance and improvement of existing public roadways, but limited to widening less than a single lane, adding shoulders and correcting substandard intersections.

(g) The maintenance of beaches and boat launching ramps which existed on the effective date of these regulations

(h) The maintenance, repair and improvement (but not substantial enlargement) of structures, including building, piers, towers and headwalls, which existed on the effective date of these regulations.

(i) The construction and maintenance of catwalks, footbridges, wharves, docks, piers, boathouses, boat shelters, duck blinds, skeet and trap shooting decks and observation decks; provided however, that such structures are constructed on pilings or posts so as to permit the reasonable unobstructed flowage of water and adequate light to maintain vegetation.

(j) The routine maintenance and repair of road drainage structures including culverts and catch basins, drainage easements, ditches, watercourses and artificial water conveyances to insure flow capacities which existed on the effective date of these regulations.

3.02 INLAND BANKS (NATURALLY OCCURRING BANKS AND BEACHES)

(1) Preamble.

Banks are likely to be significant to wildlife, public or private water supply, to ground water supply, to flood control, to storm damage prevention, to the prevention of pollution and to the protection of fisheries. Where banks are composed of concrete, asphalt or other artificial impervious material, said banks are likely to be significant to flood control and storm damage prevention.

Banks are areas where ground water discharges to the surface and where, under some circumstances, surface water recharges the ground water.

Where banks are partially or totally vegetated, the vegetation serves to maintain the banks' stability, which in turn protects water quality by reducing erosion and siltation.

Banks may also provide shade that moderates water temperatures, as well as providing breeding habitat, escape cover and food, all of which are significant to the protection of fisheries and wildlife. Banks which drop off quickly or overhang the water's edge often contain numerous undercuts which are favorite hiding spots for important game species such as large mouth bass (Micropterus salmoides). Banks act to confine floodwaters during the most frequent storms, preventing the spread of water to adjacent land. Because banks confine water during such storms to an established channel, they maintain water temperatures and depths necessary for the protection of fisheries. The maintenance of cool water temperatures during warm weather is critical to the survival of important game species such as brook trout (Salvelinus frontinalis), rainbow trout (Salvelinus gairdneri), and brown trout (Salmo trutta). An alteration of a bank that permits water to frequently and consistently spread over a large and more shallow area increases the amount of property which is routinely flooded, as well as elevating water temperature and reducing fish habitat within the main channel, particularly during warm weather.

Land within 100 feet of a bank is likely to be significant to the protection and maintenance of the bank, and therefore to the protection of the interests which these resource areas serve to protect.

(2) Definition, Critical Characteristics and Boundary

(a) A Bank is the portion of the land surface which normally abuts and confines a water body. It occurs between a water body and a bordering vegetative wetland and adjacent floodplain; or in the absence of these, it occurs between a water body and an upland. A bank may be partially or totally vegetated or its may be comprised of exposed soil, gravel or stone.

(b) The physical characteristics of a bank, as well as its location, as described in the foregoing subsection (2) (a) are critical to the protection of the interests specified in Section 3.01 (1).

(c) The upper boundary of a bank is the first observable break in the slope or the mean annual flood level, whichever is higher. The lower boundary of a bank is the mean annual low flow level.

(3) No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of a bank, or land within 50 feet of any bank, shall be permitted by the Conservation Commission, except for activity which is allowed under a waiver from these regulations granted pursuant to Section 5.01.

(4) Any activity which is allowed under a waiver granted pursuant to Section 5.01 of these regulations on a bank or on land within 100 feet of a bank shall not impair the following:

a. the physical stability of the bank;

b. the water carrying capacity of the existing channel within
the bank;

c. ground water and surface water quality;

d. the capacity of the bank to provide breeding habitat, escape cover and food for fisheries and wildlife

3.03 VEGETATED WETLANDS (WET MEADOWS, MARSHES, SWAMPS AND BOGS)

(1) Preamble.

Vegetated Wetlands are likely to be significant to wildlife, public or private water supply, to ground water supply, to flood control, to storm damage prevention, to prevention of pollution, to the protection of fisheries, and to the protection of shellfish.

The plant communities, soils and associated low, flat topography of Vegetated Wetlands remove or detain

sediments, nutrients, (such as nitrogen and phosphorous) and toxic substances (such as heavy metal compounds) that occur in run-off and flood waters.

Some nutrients and toxic substances are detained for years in plant root systems or in the soils. Others are held by plants during the growing season and released as the plants decay in the fall and winter.

This latter phenomenon delays the impacts of nutrients and toxins until the cold weather period, when such impacts are less likely to reduce water quality.

Vegetated Wetlands are areas where ground water discharges to the surface and where, under some circumstances, surface water discharges to the ground water.

The profusion of vegetation and the low, flat topography of Vegetated Wetlands slow down and reduce the passage of flood waters during periods of peak flows by providing temporary flood water storage, and by facilitating water removal through evaporation and transpiration. This reduces downstream flood crests and resulting damage to private and public property. During dry periods the water retained in Vegetated Wetlands is essential to the maintenance of base flow levels in rivers and streams, which in turn is important to the protection of water quality and water supplies.

Wetland vegetation provides shade that moderates water temperatures important to fish life. Wetlands flooded by adjacent water bodies and waterways provides food, breeding habitat and cover for fish. Fish populations in the larval state are particularly dependent upon food provided by over-bank flooding which occurs during peak flow periods (extreme storms), because most river and stream channels do not provide quantities of the microscopic plant and animal life required.

Wetland vegetation supports a wide variety of insects, reptiles, amphibians, mammals and birds which are a source of food for important game fish. Bluegills (Lepomis macrochirus), pumpkinseeds (Lepomis gibbosus), yellow perch (Perca flavescens), rock bass (Ambloplites rupestris) and all trout species feed upon nonaquatic insects. Largemouth bass (Micropterus salmoides), chain pickerel (Esox niger) and northern pike (Esox lucius) feed upon small mammals, snakes, nonaquatic insects, birds and

amphibians. These Wetlands are also important to the protection of rare and endangered wildlife species.

Vegetated Wetlands, together with land within 100 feet of a vegetated wetland, serve to moderate and alleviate thermal shock and pollution resulting from runoff from impervious surfaces which may be detrimental to wildlife, fisheries, and shellfish downstream of the vegetated wetland.

The maintenance of base flows by vegetated wetlands is likely to be significant to the maintenance of a proper salinity ratio in estuarine areas downstream of the vegetated wetland. A proper salinity ratio, in turn, is essential to the ability of shellfish to spawn successfully, and to therefore provide for the continuing procreation of shellfisheries.

Land within 100 feet of a Vegetated Wetland is likely to be significant to the protection and maintenance of vegetated wetlands, and therefore to the protection of the interests which these resource areas serve to protect.

(2) Definition, Critical Characteristics and Boundary

(a) Vegetated Wetlands are freshwater wetlands. The types of freshwater wetlands are wet meadows, marshes, swamps and bogs. They are areas where the topography is low and flat, and where the soils are annually saturated. The ground and surface water regime and the vegetational community which occur in each type of freshwater wetland are specified in Section 3.03 (2) (c), below.

(b) The physical characteristics of Vegetated Wetlands, as described in the foregoing subsection (2) (a), are critical to the protection of the interests specified in Section 3.03 (1) above.

(c) The boundary of Vegetated Wetlands is the line within which 50 percent or more of the vegetational community consists of the wetland plant species identified in Section 3.03 (2) (c) (1) through 3.03 (2) (c) (iv) below:

(i) The term "bogs" as used in this Section shall mean areas where standing or slowly running water is near or at the surface during a

normal growing season and where a vegetational community has a significant portion of the ground or water surface covered with sphagnum moss (Sphagnum spp.) and where the vegetational community is made up of a significant portion of one or more of, but not limited to nor necessarily including all, of the following plants or groups of plants: aster (Aster nemoralis), azaleas (Rhododendron canadense and R. viscosum), black spruce (Picea mariana), bog cotton (Eriophorum), cranberry (Vaccinium macrocarpon), high-bush blueberry (Vaccinium corymbosom), larch (Larix laricina), laurels (Kalmia augustifolia K. polifolia), leatherleaf (Chamaedaphne calyculata), orchids (Arethusa, alopogon, Pogonia), pitcher plants, (Sarracenia purpurea), sedges (Cyperaceae), sundews (Droseracae), sweet gale (Myrica gale), white cedar (Chamaecyparis thyoides).

(ii) The term "swamps," as used in this Section, shall mean areas where ground water is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface, and where a significant part of the vegetational community is made up of, but not limited to nor necessarily include all of the following plants or groups of plants: alders (Alnus), ashes (Fraxinus), azaleas (Rhodondendron canadense and R. viscosum), black alder (Ilex verticillata), black spruce (Picea mariana), button bush (Cephalanthus occidentalis), American or white elm (Ulmus americana), white Hellebore (Veratrum viride), Hemlock (Tsuga canadensis), highbush blueberry (Vaccinium corymbosum), larch (Larix laricina), Cowslip (Caltha palustris), poison sumac (Toxicodendron vernix), red maple (Acer rubrum), skunk cabbage (Symplocarpus foetidus), sphagnum mosses (Sphagnum), Spicebush (Lindera benzoin), black gum tupelo (Nyssa sylvatica), sweet pepper bush (Clethra alnifolia), white cedar (Chamaecyparis thyoides), willow (Salicaceae).

(iii) The term "wet meadow," as used in this Section where ground water is at the surface for a significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges and rushes; made up of, but not limited to nor necessarily including all, of the following plants or groups of plants: blue flag (Iris), vervain (Verbena), thoroughwort (Eupatorium), dock (Rumex), false loosestrife (Ludwigia), hydrophilic grasses (Poaceae), loosestrife (Lythrum), marsh fern (Dryopteris thelypteris), rushes (Junaceae), sedges (Cyperaceae), sensitive fern (Onoclea sensibilis), smartweed (Polygonum).

(iv) The term "marshes," as used in this Section, shall mean areas where a vegetational community exists in standing or running water during the growing season and where a significant part of the vegetational community is composed of, but not limited to nor necessarily including all, of the following plants or groups of plants: arums (Araceae), bladder worts (Utricularia), bur reeds (Sparganiaceae), button bush (Cephalanthus occidentalis), cattails (Typha), duck weeds (Lemnaceae), eelgrass (Vallisneria), frog bits (Hycrocharitaceae), horsetails (Equisetaceae), hydrophilic grasses (Poaceae), leatherleaf (Chamaedaphne calyculata), pickerel weeds (Pontederiaceae), pipeworts (Eriocaulon), pond weeds (Potamogeton), rushes (Junaceae), sedges (Cyperaceae), smartweeds (Plygonum), sweet gale (Myrica gale) water milfoil (Haloragaceae), water lilies (Nymphreacere), water starworts (Callitrichaceae), water willow (Decodon verticillatus).

(3) No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filling, or altering of a vegetated wetland, or of land within 50 feet of a vegetated wetland, shall be permitted by the Conservation Commission, except for activity which is allowed under a waiver from these regulations granted pursuant to Section 5.01.

(4) Any activity which is allowed under a waiver granted pursuant to Section 5.01 of these regulations upon or within 50 feet of a vegetated wetland shall not impair in any way the vegetated wetland's ability to perform any of the functions set forth in Section 3.03 (1).

(5) Where a proposed activity involves the removing, filling, dredging or altering of a bordering vegetated wetland, the Conservation Commission shall presume that such area is significant to the interests specified in the Bylaw. This presumption is rebuttable and may be overcome upon a clear showing that the bordering vegetated wetland does not play a role in the protection of said interests. In the event that the presumption is deemed to have been overcome, the Conservation Commission shall make a written determination to this effect, setting forth its grounds.

(6) General Performance Standards.

(a) Where the presumption set forth in the Bylaw is not overcome, any proposed work in a bordering vegetated wetland shall not destroy or otherwise impair any portion of said area.

(b) Notwithstanding the provisions of the Bylaw, the Conservation Commission may issue an Order of Conditions permitting work which results in the loss of up to 5,000 square feet of bordering vegetated wetland when said area is replaced in accordance with the following general conditions and any additional, specific conditions the Conservation Commission deems necessary to ensure that the replacement area will function in a manner similar to the area that will be lost:

1. the surface of the replacement area to be created ("the replacement area") shall be 2 to 1 that of the area lost ("the lost area");

2. the ground water and surface elevation of the replacement area shall be approximately equal to that of the lost area;

3. the overall horizontal configuration and location of the replacement area with respect to the bank shall be similar to that of the lost area;

4. the replacement area shall have an unrestricted hydraulic connection to the same water body or waterway associated with the lost area;

5. the replacement area shall be located within the same general area of the water body or reach of the waterway as the lost area;

6. at least 75 percent of the surface of the replacement area shall be reestablished with indigenous wetland plant species within two growing seasons, and prior to said vegetative reestablishment any exposed soil in the replacement area shall be temporarily stabilized to prevent erosion in accordance with standard U.S. Soil Conservation Service methods; and

7. the replacement area shall be provided in a manner which is consistent with all other general performance standards for each resource area in Part III of the Bylaw regulations.

8. a performance bond will be provided by the applicant, the amount to be determined by the Conservation Commission and/or administrator, and will be held for a period of three years to insure compliance with these regulations.

(c) Notwithstanding the provisions of the Bylaw regulations, the Conservation Commission may issue an Order of Conditions permitting work which results in the loss of a portion of bordering vegetated wetland when;

1. said portion has a surface area less than 500 square feet;

2. said portion extends in a distinct linear configuration ("finger-like") into adjacent uplands; and

3. in the judgment of the Conservation Commission it is not reasonable to scale down, redesign or otherwise change the proposed work so that it could be completed without loss of said wetland.

(d) Notwithstanding the provisions of the Bylaw regulations, no project may be permitted which will

have an adverse effect on specified habitat sites of rare vertebrate or invertebrate species, as identified by the procedures established under the Bylaw.

(e)

3.04 LAND UNDER WATER BODIES (UNDER ANY CREEK RIVER, STREAM, POND OR LAKE, AND FLATS)

(1) Preamble.

Land Under Water Bodies and Waterways is likely to be significant to wildlife, public and private water supply, to ground water supply, to flood control, to storm damage prevention, to prevention of pollution and to the protection of fisheries.

Where Land Under Water Bodies and Waterways is composed of pervious material, such land represents a point of exchange between surface and ground water.

The physical nature of Land Under Water Bodies and Waterways is highly variable, ranging from deep organic and fine sedimentary deposits to rocks and bedrock. The organic soils and sediments play an important role in the process of detaining and removing dissolved and particulate nutrients (such as nitrogen and phosphorous) from the surface water above. They also serve as traps for toxic substances (such as heavy metal compounds).

Land Under Water Bodies and Waterways, in conjunction with banks, serves to confine floodwater within a definite channel during the most frequent storms. Filling within this channel blocks flows which in turn causes backwater and overbank flooding during such storms. An alteration of Land Under Water Bodies and Waterways that causes water to frequently spread out over a larger area at a lower depth increases the amount of property which is routinely flooded. Additionally, it results in an elevation of water temperature and a decrease in habitat in the main channel, both of which are detrimental to fisheries, particularly during periods of warm weather and low flows.

Land under rivers, streams and creeks that is composed of gravel allows the circulation of cold, well oxygenated water necessary for the survival of important game fish

species such as brook trout (Salvelinus frontinalis), rainbow trout (Salvelinus gairdneri), brown trout (Salmo trutto) and atlantic salmon (Salmon salar). River, stream and creek bottoms with a diverse structure composed of gravel, large and small boulders and rock outcrops provides escape cover and resting areas for the above mentioned game fish species (salmonids). Such bottom type also provides areas for the production of aquatic insects essential to fisheries.

Land under ponds and lakes is vital to a large assortment of warm water fish during spawning periods. Species such as largemouth bass (Micropterus salmoides), smallmouth bass (Micropterus dolomieui), blue gills (Lepomis macrochirus), pumpkinseeds (Lepomis gibbosus), black crappie (Pomoxis nigromaculatus) and rock bass (Ambloplites rupestris) build nests on the lake and bottom substrates within which they shed and fertilize their eggs.

Land within 100 feet of any bank abutting land under a water body is likely to be significant to the protection and maintenance of land under a water body.

(2) Definition, Critical Characteristics and Boundaries

(a) Land Under Water Bodies is the land beneath any creek, river, stream, pond or lake. Said land may be composed of organic muck or peat, fine sediments, rocks or bedrock.

(b) The physical characteristics and location of Land Under Water Bodies and Waterways specified in the foregoing subsection (20 (a) are critical to the protection of the interests specified in Section 3.04 (1) above.

(c) The boundary of Land Under Water Bodies is the mean annual low water level.

(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 under a waterbody shall be permitted by the Conservation Commission except for activity which is allowed under a waiver from these regulations granted pursuant to Section 5.01.

(4) Performance Standards. Any activity which is allowed under a waiver granted pursuant to Section 5.01 of these regulations on land under a waterbody shall comply with the following regulations:

(a) Any proposed work upon land under a waterbody shall not impair the following:

1. The water carrying capacity within the defined channel, which is provided by said land in conjunction with the banks;

2. Ground and surface water quality; and

3. The capacity of said land to provide breeding habitat, escape cover and food for fisheries.

3.05 LAND SUBJECT TO FLOODING (BOTH BORDERING AND ISOLATED AREAS)

(1) Preamble.

(a) Bordering Land Subject to Flooding:

Bordering Land Subject to Flooding is an area which floods from a rise in a bordering waterway or water body. Such areas are likely to be significant to flood control and storm damage prevention. Bordering Land Subject to Flooding provides a temporary storage area for flood water which has overtopped the bank of the main channel of a creek, river or stream or the basis of a pond or lake. During periods of peak run-off, flood waters are both retained (slowly released through evaporation and percolation) and detained (slowly released through surface discharge) by Bordering Land Subject to Flooding. Over time, incremental filling of these areas causes increases in the extent and level of flooding by eliminating flood storage volume or by restricting flows, thereby causing increases in damage to public and private properties.

(b) Isolated Land Subject to Flooding:

Isolated Land Subject to Flooding is an isolated depression or a closed basin which serves as a ponding area for run-off or high ground water which has risen above the ground surface. Such areas are

likely to be locally significant to flood control and storm damage prevention. In addition, where such areas are underlain by previous material they are likely to be significant to public or private water supply and to ground water supply. Where such areas are underlain by pervious material covered by a mat of organic peat and muck, they are also likely to be significant to the prevention of pollution. Isolated Land Subject to Flooding provides important breeding habitat for amphibians and some rare plants. Isolated Land Subject to Flooding provides a temporary storage area where run-off and high ground water pond and slowly evaporate or percolate into the substrate. Filling causes lateral displacement of the ponded water onto contiguous properties, which may in turn result in damage to said properties. Isolated Land Subject to Flooding, where it is underlain by pervious material, provides a point of exchange between ground and surface waters. Contaminants introduced into said area, such as septic system discharges and road salts, find easy access into the ground water and neighboring wells. Where these conditions occur and a mat of organic peat or muck covers the substrate of the area, said mat serves to detain and remove contaminants which might otherwise enter the ground water and neighboring wells.

(c) Isolated Land Subject to Flooding, where it is a vernal pool habitat, is an essential breeding site for certain amphibians which require isolated areas that are generally flooded for at least two continuous months in the spring and/or summer and are free from fish predators. Most of these amphibians remain near the breeding pool during the remainder of their lifecycle. Many reptiles, birds and mammals also feed here.

(2) Definitions, Critical Characteristics and Boundaries

(a) Bordering Land Subject to Flooding:

1. Bordering Land Subject to Flooding is an area with low, flat topography adjacent to and inundated by flood waters rising from creeks, rivers, streams, ponds or lakes. It extends from the banks of these waterways and water bodies; where a bordering vegetated wetland

occurs, it extends from said wetland.

2. The topography and location of Bordering Land Subject to Flooding specified in the foregoing Sub-section (2) (a) are critical to the protection of the interests specified in Section 3.05 (1) (a) above.

3. The boundary of Bordering Land Subject to Flooding is the estimated maximum lateral extent of flood water which will theoretically result from the statistical 100-year frequency storm. Said boundary shall be that determined by reference to the most recently available flood profile data prepared for the community within which the work is proposed under the National Flood Insurance Program (NFIP, currently administered by the Federal Emergency Management Agency). Said boundary, so determined, shall be presumed accurate. This presumption may be overcome only by credible evidence from a registered professional engineer.

   Where NFIP Profile data is unavailable, the boundary of Bordering Land Subject to Flooding shall be the maximum lateral extent of flood water which has been observed or recorded.

(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.

   Isolated Land Subject to Flooding may be underlain by pervious material, which in turn may be covered by a mat of organic peat or muck.

2. The characteristics specified in the foregoing Sub-section (2) (b) 1 are critical to the protection of the interests specified in Section 3.05 above.

3. The boundary of Isolated Land Subject to Flooding is the perimeter of the largest observed or recorded volume of water confined in said areas.

(3) No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, removing, filing, dredging, or altering of land subject to flooding shall be permitted by the Conservation Commission, except for activity which is allowed under a waiver from these regulations granted pursuant to Section 5.01.

(4) Any activity which is allowed under a waiver granted pursuant to Section 5.01 of these regulations on land subject to flooding shall not result in the following:

(a) Flood damage due to filling which causes lateral displacement of water that would otherwise be confined within said area.

(b) An adverse effect on public and private water supply or ground water supply, where said area is underlain by pervious material.

(c) An adverse effect on the capacity of said area to prevent pollution of the ground water, where the area is underlain by pervious material which in turn is covered by a mat of organic peat and muck.

PART IV. CATEGORICAL PERMISSION FOR MOSQUITO CONTROL PROJECTS

4.01 Mosquito Control Projects

Pursuant to Section 2 of the Bylaw, the Conservation Commission categorically gives permission for mosquito control projects performed pursuant to the provisions of Clause 36 of M.G.L. Ch. 50, s. 5, of M.G.L. Ch. 252, or of any special act, provided that adequate notice, oral or written, has been given to the Conservation Commission at least one week hour prior to the commencement of any work other than normal maintenance and control including the application of pesticides.

4.02 Agriculture/Aquaculture Exemption

4.03 OTHER CATEGORICAL PERMISSION

There shall be no other categorical permission granted by the Conservation Commission except by amendment to this part of these regulations, and in accordance with the provisions of the Bylaw.

PART V. Variances

5.01 Variances

(1) The Conservation Commission may, in its discretion, grant variances from the specific stipulations of one or more of these regulations pursuant to this Section. Such variances may be granted in specific instances where relief for the property owner may be warrented and said relief will not adversley affect wetland intrests. Variances shall be granted only in accordance with the provisions of this Section, in no way set a precedent.

(a) The Conservation Commission is empowered to deny a variance if, in its judgment, such denial is necessary to preserve environmental quality of either or both the subject lands and contiguous lands. Due consideration shall be given to possible effects of the proposal or any and all values to be protected under this Bylaw and to any demonstrated hardship on the petitioner by reason of denial, as brought forth at the public hearing.

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

(c) The Conservation Commission may grant a veriance from these regulations when it is necessary to avoid so restricting the use of the property as to constitute an unconstitutional taking without compensation. If an application for a waiver pursuant to the sub Section is received by the Conservation Commission, the Commission may request an opinion from Legal Counsel as to whether the application of these regulations to a particular case may result in such a taking without compensation.

PART VI. FORMS

6.01 All forms submitted to the Commission or issued by the Commission will be those standard forms approved by the Commission prior to their use and will be available from the Commission or its agent(s). The same forms as those required by M.G.L. Ch. 131, s. 40 may be submitted if notice is given of application per Weymouth Bylaw Chapter 119.

PART VII. MISCELLANEA

7.01 APPEAL

Any person aggrieved by the decision of the Conservation Commission, under Chapter 119, whether or not previously a party to the proceeding, may appeal according to the provisions of the Massachusetts General Laws. Notice of said appeal and a copy of the complaint shall be sent certified mail, or hand delivered, to the Conservation Commission, its authorized representatives or assigns, and the Town Counsel. The complaint shall contain any facts pertinent to the issue, a copy of the decision appealed and bearing the date of the filing thereof, the complete name and address of the party filing the appeal, the name and address of the attorney, if any, representing the person filing the appeal and the relief sought.

7.02 COMPLIANCE

The Commission may require as a permit condition that the performance and observance of other conditions be secured by one or both of the following methods:

(1) By a bond or deposit of money or negotiable securities in an amount determined by the Commission to be sufficient and payable to the Town.

(2) By a conservation restriction, easement or other covenant running with the land, executed and properly recorded, or registered, in the case of registered land.

7.03 BOND

The amount of the Bond, which may be required under 7.02 (1) above shall be determined by the Commission. A bond estimate may be requested from the Commission and will remain effective for 60 days. The cost of this estimate will be borne by the applicant. The amount of the bond shall reflect the cost for the Town to complete the work and additional consultation fees. The Bond shall be released by the Commission only upon satisfactory completion of an Order of Conditions and issuance of a Certificate of Compliance.

7.04 FILING FEES

These fees are in addition to the fees for the filing under M.G.L. Ch. 131, s. 40. In addition, the Conservation Commission is authorized to require the applicant to pay the costs and expenses of any expert consultant deemed necessary by the Conservation Commission to review the application or request up to a maximum of $

(1) Schedule

(a) Permit fees are payable at the time of application and non refundable.

(b) Permit fees shall be calculated by this Commission as noted below.

(c) Town, State, County or Federal projects are exempt from fees.

(d) Failure to comply with this law after official notification will result in fees twice those normally assessed.

(2) Fees (PER ACTIVITY)

(a) Request for Determination of Applicability $25.00. If a Positive Determination is issued, the $25 fee paid for the Determination will be subtracted from the fee for the Notice of Intent.

(b) Notice of Intent for Single family dwellings:

(i) house: $ 200.00

(ii) minor project (including additions, tennis court, swimming pool, utility work): $ 50.00

(iii) a fee of .50 per sq. ft.. of wetland disturbed and .02 per sq. ft. of floodplain or buffer zone disturbed

(c) Notice of Intent for Subdivisions: $ 500.00 and $ 2.00 per foot of roadway sideline within 100 feet of a resource area. A fee of .50 per sq. ft. of wetland disturbed and .02 per sq. ft. of floodplain or buffer zone disturbed.

(d) Notice of Intent for Multiple-dwellings:

(i) dwelling structures: $ 500.00 and $ 100.00 per unit, all or part of which lies within 100 feet of a resource area.

(ii) minor projects including tennis courts, swimming pools, recreation buildings, garages, utility or storage buildings, security buildings: $ 100.00 each.

(e) Notice of Intent for Commercial and Industrial projects: $ 500.00 and $ .50 per square foot of wetland disturbed and $ .02 per square foot of flood plain or buffer zone disturbed.

(f) Extensions of Permits:

(i) Single family projects: $ 25.00

(ii) Other projects: $ 50.00

(g) Re-inspections of any kind: $25.00 per inspection.

(h) Refilling of a previously denied project within three years: original fee or $1,000 whichever is less.

(i) Control of nuisance vegetation under 310 CMR 10.53 (4) $200.00.

(j) Site preparation for any other development other than a single family home including removal of vegetation, excavation and grading when actual construction if not proposed $500.00.

(k) Limited project activities pursuant to 310 CMR 10.53 (a-d) (f-l) per foot print $200.00

(l) New agricultural/aquacultural projects $200.00

(m) Request for letter for Bank Closings etc. $50.00

(n) Requests foe Notarized Material $50.00

(o) Amend Order of Conditions $50.00

(p) Record Orders of Conditions or Enforcement Orders $100.00

(3) OTHER FEES

(a) Copies of Bylaw/Regulations $25.00

(b) Copies of records $.20 Per/Page

(c) Research fees are in accordance with Public Records Law.

(d) Fax's fees $3.00 First Page
$1.00 ea Add.Page

(e) All after the fact filings are subject to double the normal local fees.

PART VIII. FILING PROCEDURES

8.01 MINIMUM SUBMITTAL REQUIREMENTS

A Notice of Intent must include, at a minimum, a properly executed form and the information in 8.02, 8.03 and 8.04 unless a waiver is requested by the applicant and permission granted by the Conservation Commission or its Administrator.

8.02 INFORMATION TO BE SUBMITTED:

The following items are set out as a minimum standard. The applicant may submit, or be required to submit, any further information which will assist in review and which is deemed necessary to determine the proposed effect on the interests describing the proposed activity and its effect on the environment. Due regard shall be given for all natural features such as large trees, water courses and water bodies, wetlands, wildlife habitat, and similar community assets.

(1) Description of any alteration to Flood Storage Capacity on the site. Include calculations for 10, 50, and 100 storm events, include watershed and F.E.M.A. maps if necessary.

(2) Maximum and minimum ground water elevations. The calendar dates of measurements, samplings, and percolation tests shall be included, regardless of planned sewer connections.

(3) Soil characteristics in representative portions of the site, including depth of peat and muck in wetlands, include test borings.

(4) A runoff plan and calculations by a Registered Professional Engineer using the Rational Method (small areas) or the Modified Soil Cover Complex Method (areas greater than 20 acres) and based on the 10 year, 25 year, 50 year and 100 year flood frequency event period. Calculations shall show existing and proposed runoff conditions for comparative purposes.

(5) Methods to be used to stabilize and maintain any embankments facing any wetland.

(6) Methods to control erosion during and after construction.

(7) The Weymouth Wetlands Bylaw considers wildlife, erosion control, aesthetics and recreation as values of the wetlands. The applicant should include a discussion of the effect of the proposed project on these values.

(8) Included in materials submitted with a Notice of Intent shall be a signed statement from the professional who performed the field investigation, detailing the date of the work and types of vegetation found.

(9) A signed statement reflecting the investigator's assessment of the resource area shall be submitted concerning the function of the resource area and proposed construction impacts.

(10) Atlas sheet, block and lot.

(11) Upon receipt of the Notice of Intent, a public hearing shall be held by the Conservation Commission within 21 days of receipt of the minimum submittal requirements set forth in Section 8 and shall be advertised in accordance with the Bylaw and the requirements of the open meeting law, M.G.L. Ch. 39, s. 23B.

(12) In addition, abutters, as identified from the latest available assessor's records, shall be notified at least one week prior to the public hearing by certified mail or hand delivery, at the applicant's expense, and proof of notification shall be submitted to the Commission prior to the hearing.

(13) The amount and type of fill material brought to or from the site shall be addressed in the Notice of Intent.

8.03 PLANS

(1) All drawings shall be drawn (1" equals 10'; 1" equals 20'; or 1" equals 40') with the title designating the name of the project location, the name(s) of the person(s) preparing the drawings, the date prepared, including all revision dates. Drawings should be stamped and signed by a Registered Professional Engineer or a Registered Professional Land Surveyor.

(2) Drawings must include a delineation of all wetlands, both permanent and seasonal, natural or man-made, and should be clearly delineated as indicated below:

a. open or flowing water: light blue
b. marsh or swamp: light blue with swamp symbols superimposed
c. all meadows, flats, and other lands subject to flooding: outlined with a dashed blue line

(3) Drawings must indicate 100 foot Buffer Zone in yellow.

(4) Drawings must indicate flood plain boundary in pink.

(5) Drawings must show the 200' River front area.
a. 100' Inner Riparian Zone in orange.
b. 200' Outer Riparian Zone in green.

(6) Drawings must include a delineation of all alterations proposed in or adjacent to wetlands and floodplains as indicated below. Any alterations should be clearly explained in text or footnotes.

a. areas to be dredged out: outlined in red
b. areas to be filled: outlined in green
c. areas to be altered in any other way: outlined in black

(7) Contours shall not exceed two feet. Weymouth base shall be used for measurement of all datum. Include calendar date of measurements and samplings.

(8) Drawings must indicate existing and proposed contours and interval used, include pond bottom and stream invert contours. Existing contours in dashed lines, proposed in solid lines.

(9) Drawings must indicate locations, sizes, inverts and slopes of existing and proposed culverts and pipes.

(10) Drawings must indicate location and elevation of bench mark used for survey.

(11) Drawings must include existing and proposed water storage capacity of the property, including calculations and data on which the capacity is based. If filling is proposed, determine the effect on downstream channels and culverts.

(12) Drawings must indicate locations and elevations of sills and bottom of septic systems.

(13) Drawings must indicate all existing structures, trees with a diameter of 6" or more at breast height, fences, rock and ridge outcroppings, stone walls, and historic sites. Detail proposed alterations.

(14) Drawings must indicate invert elevations of sills and bottom of septic system.

(15) Drawings must indicate proposed on-site pollution control devices, such as hooded catch basins, oil absorption pillows, detention/retention basins, flow dissipators or vegetative buffers.

(16) Drawings must show locations and detail of erosion control measures.

(17) Wetlands shall be flagged in the field at the time of submission of a Notice of Intent and flag positions and numbers shown on plan. Flags shall be marked with numbers, beginning with one (1). The initial of the field investigator shall appear under the flag number.

(18) Drawings must indicate limit of work line with hay bales.

8.04 FILING REQUIREMENTS TO BE FULFILLED PRIOR TO SITE INSPECTIONS

(1) Before site inspections can be made by the Conservation Commission or the Commission's administrator, the following conditions must be met:

(a) Stakes indicating the corners of houses or other structures nearest the wetland resource area.

(b) Stakes indicating the septic tank and the leaching field location, if applicable.

(c) Stakes indicating the limit of work.

(d) Lot number or house number should be posted at location.

(e) Edges of all resource areas shall be delineated. (Please refer to Rules and Regulations for Definitions).

(f) Directions shall be made available to the Commission to locate property.

(2) Failure to have the lot staked will result in non-review and thus costly delay of the project.

(3) Upon completion of staking, the Commission office should be notified and a site inspection shall be arranged prior to the scheduled public hearing.

PART IX

9.00 BUFFER ZONE SET BACKS

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

(2) Dimensions for NO **DISTURB** AREAS:

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

(i) from top of bank of a water body: 25 feet
(ii) from edge of a vegetated wetland: 25 feet

(b) Multiple dwelling structures, including utility buildings and ancillary structures and devices.

(i) from top of bank of a water body: 25 feet
(ii) from edge of a vegetated wetland: 25 feet

(c) Commercial and industrial structures

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

(iii) Areas paved with asphalt or bituminous concrete or for parking, storage or repair of motor vehicles or motorized equipment: **50** feet

(d) Structures for storing petroleum distillates, fertilizers, pesticides or solid or liquid chemicals deemed hazardous by the Town Health Department: 75 feet.

(e) Permanent or temporary structures or devices for storing or receiving trash or garbage: 25 feet with a fence to prevent material from spreading

(4) Buffer Strip

(a) Goal:

The goal of the Commission is to maintain a strip of dense, vegetative cover between the development activity and the resource plant materials suitable for the maintenance of wildlife, both flora and fauna.

(b) Function: A Buffer Strip serves to provide wildlife habitat, improve water recharge, reduce pollution and erosion and to maintain the natural appearance of our fresh and saltwater shorelines.

(c) Size of buffer strip:

(1) Such a strip shall be a minimum of twenty five feet (25") in width running along the resource area boundry, unless such width is unreasonable in view of the lot size. Placement of an existing structure or such placement of an existing structure or such placement of an existing struture or such other factors as the Commission may consider.

(d) Elements of Buffer Strip: Such a strip may consist of

(1) field grasses or wildflower meadow plantings, mowed once or twice per year or

(2) dense plantings of indigenous species such as Rosa rugosa, bayberry, beach plum, ect. (see appendix for plant suggestions). In this case plantings may be dept at a two to three foot height where necessary for view preservation, either by annual pruning to that height or by clear cittomg to the ground once every three years, or as otherwise conditioned to permit regrowth from the plant's baser.

(3) Where new plantings are permitted in the Order of Conditions, slow release fertilizer may be required. The use of pesticides should be limited but if needed, I.P.M. (Intergrated Pest Management) of best management practices should be utilized. Consult Barnstable County Extension Service for further details of I.P.M.

(4) Plantings which require heavy watering will not be permitted, particulary adjacent to coastal banks where such watering may result in runoff and erosion.

(5) An access path, not more that four feet (4') wide through the strip may be maintained by such mowing as is required.

(e) Permissible work in Buffer Strip:
While it is the Commissions intent that no work shall occur in this strip, any work which is proposed must meet a higher performance standard that work proposed elsewhere in the Buffer Zone, and will generally be limited to pruning and lifting as defined below.

(f) Mitigation

(1) The Commission may require that a buffer strip be created where none presently exists to mitigate past or present construction impacts.

(5) Pruning, Cutting and Clearing

(a) Filing requirements

All proposed cutting, pruning, clearing and other vegetation removal projects require the filing of a Request for Determination, A Notice of Intent, or an Administrative Review. Such filings should use and Administrative Review. Such filings should use the definitions below. All such proposed work shall be done in consultation with and under the supervision of the Administrator.

(b) Alterations within a Resource area or Buffer Strip

Cutting, removal or other destruction of above-ground vegetation within a Resource Area as defined in sewction 1.02 of these regulationsor within a Buffer Strip as defined above will be limited to Vista Cutting and Pruning. If a Buffer Strip is to be maintained in grasses or as a wild flower meadow other appropriate vegetation removal may be approved.

(c) Indentification of specific view

View clearing in the buffer zone or vista cutting and pruning in the buffer strip or resource area will be limited until construction is completed and/or a specific view indentified. Applicants are encouraged to consult with the Commission before submitting the appropriate filing and when planning projects that involve the removal or replacement of vegetation in the Buffer Zone, Buffer Strip or Resource Area.

(d) Definitions

(1) Pruning-Removal of dead, diseased, obstruction, and weak branches, as well as selective thinning of branches to lessen wind resistance.

(2) Selective Pruning- Limited pruning of tree branches and brush and the removal of dead trees.

(3) Lifiting - Lifting of the canopy by removing lower limbs from the main trunk.

(4) Cutting - The removal of vegetation.

(5) Selective Cutting - The removal of smaller weaker trees and less desirable tree species, leaving the more vigorous trees.

(6) Vista Cutting - The removal of vegetation that blocks a view.

(7) Clear Cutting: Removal to the ground of all woodey vegetation, including mowing of understory brush down to a minimum height of two inches (2").

(4) Estuaries and ACEC's in Weymouth

(1) Preamble. An area of Critical Environmental Conern (ACEC) is established under MGL ch. 21A Section 2 (7). The Weymouth Back River has been so designated. Acres of salt marsh, productive shellfish habitat, large estuaries, anadromous fish runs floodplain and extensive areas for boating and swimming. The estuaries are habitat for upland species and waterfowl as well as a spawing and nursery ground for many marine resoures as well as the public health of recreational boater, fishermen and swimmers. The biological productivity of these estuarine systems is sustained by the contigous salt ponds and salt marshes which contribute larged quantities of nutreints, carbon and energy to the coastal food chain. Minimum alteration of the natural features of the ACEC allows them to function at their natural capacity. These undeveloped expanses also contribute to the scenic beauty enjoyed by users of Weymouth residents and visitors.

(2) Performance Standards: The standard of performance that must be met by proposed development activities in and adjacent to an ACEC is "no adverse effect" - 310 CMR show, using credible evidence from a competent source, that the proposed activity will have no adverse effect on the ACEC resoures. Since the Nauset/Town Cove estuary shares all the same characteristics of both the Orleans ACEC's the Commission herin sets the same performance standard of no adverse impact for the Weymouh Back River.

Land Subject to flooding or Inundation by Groundwater or Surface Water: This section 310 CMR 10.57 is incorporated subject to the changes below.

4.00 Docks (Piers)

(1) Preamble: For the most part, docks provide private, not public access to resources which are, themselves, public and upon which dock construction and use impacts are adverse. Docks and piers are also subject to Weymouth Zoning Bylaws (copy attached)

These adverse impacts cover a broad range. Turbulence and prop dredging generated by boat traffic to and from docks significantly increase turbidity levels which block sunlight necessary for the photosynthetic processes upon which the produtivity of our waters depend. Suspened sediments shellfish and altering the quality of the sand bottom essential for spat (mollusk larvae) settlement. Dock structures alter the ciculation patterns which affect shellfish settlement. Prop dredging in near shore areas destroys shellfish habitat. Boat traffic generated from docks adds to this disruption and causes erosion of banks and marshes.

Marshes which provide the food chain for many species of sport and commercial fish band shellfish as well as other wildlife, are also affected. The shaded conditions docks produce can cause a decrease in plant height, population density and leaf thickness as well as alteration of species composition. Reductions in plant density result in loss of sediment normally trapped by roots and culms. Tidal washouts and localized depressions result which concentrate salt throughevaporation of trapped water preventing recolonization by the orginal vegetation. The marshes ability to absorb wave energy as well as the marshes contribution toward maintaining ground and surface water quality is also adversely impacted. Displacement of marsh areas by dock pilings and the area immedialty surrounding them results in march loss. This loss can be substantial when the cumulative impact of increasing numbers of docks is considered.

Docks also impacts of dock proliferation threaten to decrease the overall productivity of the marsh ecosystem' to reduce its ability to absorb storm wave energy, and to reduce its contribution to ground water and surface water qualtiy.

(2) Presumptions
Docks are one of the few activities which come before the Commission for regulation which occur entirely within resource areas, ie beaches, flats, salt and freshwater wetlands, land under both salt and fresh water bodies, land subject to tidal action, to flooding and to coastal storm flowage. Collectively, these resource areas presumed significant to all the interests protected under both the Act and the Weymouth Wetlands Protection Bylaw Ch. 119.

PART X AMENDMENTS

10.00 AMENDMENTS

These rules and regulations may be amended as necessary.