

**ARTICLE XVI-a
WETLANDS PROTECTION**

(Amended ATM 5/13/2002 – Article No. 20)

SECTION 1. This article is adopted under authority of Section 6, Article 89 of the Amendments to the Massachusetts Constitution, known as the Home Rule Amendment, and General Laws Chapter 40, Section 21. The purpose of this Bylaw is to protect the floodplains, wetlands and related water resources, riverfront areas and adjoining land areas of the Town of Norwell by controlling any activities in or near wetlands and riverfront areas deemed to have a significant effect upon wetland values, including, but not limited to, the following: public or private water supply, groundwater and ground water quality, flood control, sedimentation and erosion control, storm damage prevention, water pollution prevention, wildlife and wildlife habitats, recreation, aesthetics, fisheries, fish and shellfish habitats, rare plant and animal species, and riverfront areas.

SECTION 2:

- A.** Except as permitted by the Norwell Conservation Commission (“Conservation Commission”) or as otherwise provided in this Bylaw, no person shall remove, fill, dredge, alter or build upon or within one hundred (100’) feet of any bank, fresh water wetland, including without limitation, isolated vegetated wetlands, flat, marsh, meadow, bog, swamp, creek, river, stream, pond or lake, any land under said waters, any land subject to flooding or inundation by groundwater, surface water or tidal action other than in the course of maintaining, repairing or replacing, but not substantially changing or enlarging an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, sanitary sewer, storm drainage, public roadway, telephone, telegraph, and other telecommunication services, without filing written Notice of this intention to so remove, fill, dredge, alter or build upon or within one hundred (100’) feet of said wetland resources and without receiving and complying with an Order of Conditions and provided all appeal periods have elapsed. Such Notice shall be sent by certified mail to the Norwell Conservation Commission, including such plans as may be necessary to describe such proposed activity and its effect on the environment.
- B.** Except as authorized by the Norwell Conservation Commission, no activity or alteration shall be permitted within a fifty (50’) foot buffer strip (“buffer strip”) between any wetland resource area, bordering vegetated wetland, and/or isolated vegetated wetland and any proposed site disturbance. Prohibited activities shall include, but are not limited to, the following: (1) new construction of any buildings, sheds, and/or driveways of any nature and type (excepting water dependent structures expressly approved by the Commission); (2) alteration, reconstruction or relocation of existing buildings, sheds and/or driveways of any nature or type; and (3) activities which involve or result in the removal, filling or altering of land within the buffer strip. Nothing herein shall preclude the maintenance of an existing structure located within the

buffer strip. The Conservation Commission may allow the prohibited activities upon an express determination that the applicant has made a clear and convincing showing that the proposed work in the buffer strip and its natural and consequential impacts and effects will not adversely affect the wetland values of this Bylaw.

SECTION 3. Any person desiring to know whether or not a proposed activity or an area is subject to this Bylaw may request a determination from the Conservation Commission in writing. The Conservation Commission shall issue its determination, in writing, within twenty-one (21) days from the receipt of such request. The Commission, its agent, officers and employees, may enter upon the land upon which the proposed work is to be done in response to a request for a prior determination or for the purpose of carrying out its duties under this Bylaw and may make or cause to be made such examination or survey as deemed necessary.

SECTION 4. The same Notice of Intent, plans and specifications required to be filed by an applicant under Massachusetts General Laws, Chapter 131, Section 40, will be accepted as fulfilling the filing requirements of the Bylaw. Within twenty-one (21) days after receiving a Notice of Intent, the Conservation Commission shall hold a public hearing on the proposed activity. Notice of the date, time and place of said hearing shall be given by the Commission at the expense of the applicant 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 applicant by mail. The applicant may be present at said hearing and may be represented by counsel and shall be entitled to present evidence, call witnesses, and question any witnesses appearing at the hearing. The Commission shall make and keep a record of its proceedings and, upon request, shall furnish copies at reasonable cost. Said hearing shall be conducted simultaneously with the public hearing required to be held under the provisions of said Chapter 131, Section 40, and in conformity with said regulations promulgated by the Department of Environmental Protection.

SECTION 5. Unless otherwise set forth in a regulation hereinafter adopted by the Conservation Commission, the term set forth herein shall have the following meanings. The term "applicant", as used in the Bylaw, shall mean the person giving notice of intention to remove, fill, dredge, or alter wetlands or to perform any regulated activity within the area of jurisdiction defined by the Bylaw. The term "person" as used in this Bylaw, shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth, or any political subdivision of the Commonwealth, administrative agency, public or quasi-public corporation or body, or any other legal entity or its legal representative, agents, or assigns.

SECTION 6: The Conservation Commission is empowered to deny permission for any removal, dredging, filling, or altering of subject lands within the Town if, in its judgment, such denial is necessary for the protection of public or private water supply, groundwater, flood control, storm damage prevention, and the prevention of

pollution or any of the wetland values protected hereunder. Due consideration shall be given to possible effects of the proposal on all values to be protected under this Bylaw.

Section 7: The Conservation Commission may, as an alternative to a denial, impose such conditions, as it deems necessary to contribute to the protection and preservation of the subject lands in accordance with the purpose of this Bylaw. An order of conditions issued under this Bylaw may be identical to such an order issued by the Norwell Conservation Commission under the provisions of M.G.L. c 131, sec. 40.

SECTION 8: The Notice required by Section 2 of this Bylaw shall not apply to emergency projects necessary for the protection of the health and safety of the citizens of Norwell and to be performed or, ordered to be performed, by an administrative agency of the Commonwealth or by the Town. Emergency projects shall mean any projects certified to be an emergency by the Commissioner of the Department of Environmental Protection and Conservation Commission if this Bylaw and Massachusetts General Laws Chapter 131, Section 40, as amended, are both applicable or by the Conservation Commission if only the Bylaw is applicable. In no case shall any removal, filling, dredging or altering authorized by such certification extend beyond the time necessary to abate the emergency.

The provisions of this Bylaw shall not apply to any mosquito control work done under the provisions of clause thirty-six (36) of section five of Chapter 40, or Chapter two hundred and fifty-two (252) or to work performed for normal maintenance or improvement of lands in agricultural use as of the effective date of this Bylaw.

SECTION 9: The Conservation Commission is authorized to establish filing fees to defray costs incurred in conducting hearings under the Wetlands Protection Bylaw and to adopt rules and regulations regarding the establishment and collection of such fees. Such rules and regulations may be adopted, or amended at any regularly scheduled meeting of the Conservation Commission subject to the approval of the Board of Selectmen. Upon such approval they shall be published once in a newspaper of general circulation in the Town, shall thereafter be posted for seven consecutive days in five conspicuous places, and shall become effective upon the expiration of said seven (7) days.

SECTION 10: In addition to the fees authorized by Section 9, Notices of Intent filed for business, commercial, industrial and/or subdivision projects shall reimburse the Town for certain costs incurred by the Town in processing the application, inclusive of consulting and expert fees incurred in reviewing any such proposals. The applicant shall, with submission of a Notice of Intent deposit with the Treasurer of the Town funds equal to one (1%) percent of the estimated cost of the project or five hundred dollars (\$500.00, whichever is greater. For business, commercial and industrial filings "estimated cost" shall mean the estimated cost of the entire project,

including building construction. For subdivisions "estimated cost" shall mean the estimated cost of land preparation, grading, placement of utilities, and construction of roads and drainage systems. The Conservation Commission shall direct the Treasurer to expend such funds to pay for all reasonable design review by its consulting engineer, or by other professional persons required to assist the Conservation Commission to determine the adequacy of the submitted plan(s) with regard to M.G.L. C. 131, s. 40 and this Bylaw. However, no such payment shall be directed until fourteen (14) days after a photocopy of the bill purporting to represent charges for such services and review has been sent, by first class mail, to the applicant. If the applicant disputes the amount, the bill shall be reconsidered by the Conservation Commission, and the Commission's decision will prevail. The balance of this account shall at no time be less than one-half the initial deposit; upon notice from the Commission by first-class mail, the applicant shall deposit with the Treasurer such additional funds as are required to restore the account to the amount of the initial deposit. Within twenty-one (21) days of issuance of a Certificate of Compliance, all remaining funds shall be returned to the applicant. The Conservation Commission may require similar deposits for filings by persons other than businesses if the submitted plan(s) require design review by its consulting engineer or other professional persons. If a deposit is required for a Request for Determination of Applicability, all remaining funds shall be returned to the applicant within twenty-one (21) days of issuance of an Occupancy Permit by the Building Inspector.

SECTION 11: The Commission, its agents, officers and employees shall have the authority to enter upon privately owned land pursuant to warrant, court procedure, or other appropriate administrative order for the purpose of performing their duties under the Bylaw and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.

SECTION 12: The Commission shall have the authority to enforce this Bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions. Upon request of the Commission to the Board of Selectmen, the town Counsel may take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law. Any person who violates any provision of this Bylaw, regulations or permits issued thereunder, shall be punished by a fine set by the Conservation Commission. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the Bylaw, regulations or permit violated shall constitute a separate offense. In addition to the procedure of enforcement as described above, the provision of this Bylaw may also be enforced by the Commission or its agent, by non-criminal complaint pursuant to the provisions of M.G.L. Chapter 40, Section 21D. The penalty for violation of any provision of this Bylaw shall be \$100.00 for the first offense; \$200.00 for the second offense; \$300.00 for the third offense and each subsequent offense.

SECTION 13: The Conservation Commission may require the posting of a bond with or without surety, running to the municipality, and sufficient as to form and surety in the opinion of the Commission's Counsel, to secure faithful and satisfactory performance of work required by any Order of Conditions, in such sum and upon such conditions as the Conservation Commission may require. Other evidence of financial responsibility which is satisfactory to the Conservation Commission may be accepted in lieu of bonding. Notwithstanding the above, the amount of such bond shall not exceed the estimated cost of the work required or the restoration of affected lands and properties if the work is not preformed as required, whichever is greater. Forfeiture of any such bond or other security shall be recoverable in an action in any court of competent jurisdiction. Such bond or other security shall be released upon issuance of a Certificate of Compliance.

The Commission may also consider a conservation restriction, easement, or other covenant enforceable in a court of law as a way to secure adherence to conditions imposed by the Commission. Such covenant shall be executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

SECTION 14: The Norwell Conservation Commission may, from time to time, adopt such other and further definitions. Regulations, fees and performance standards as it may deem necessary to protect the interest and/or intent of this Bylaw. Said definitions, regulations, fees and performance standards shall become effective upon publication following a public hearing.

SECTION 15. The invalidity of any section or provision of the Bylaw shall not invalidate any other section or provision thereof.

**NORWELL CONSERVATION COMMISSION
RULES AND REGULATIONS
FOR
TOWN OF NORWELL WETLANDS BYLAW
ARTICLE XVI-a**

1. INTRODUCTION

In order to assist potential applicants in the preparation for filings under the Town of Norwell Wetlands Bylaws, the Norwell Conservation Commission has adopted the following regulations.

2. PURPOSE

The purpose of these regulations is to define and clarify the process by which activities affecting areas subject to protection under the Bylaw are to be regulated in order to contribute to the following interests:

- a. Public Water Supply

- b. Private Water Supply
- c. Groundwater Supply
- d. Flood Management
- e. Storm Damage Prevention
- f. Prevention and Abatement of Pollution
- g. Protection of Land containing Shellfish
- h. Protection of Fisheries
- i. Protection of Wildlife Habitat

The purpose of these regulations is to define and clarify that process by establishing standard definitions and uniform procedures by which the Conservation Commission may carry out its responsibilities.

**WETLANDS FLAGGING REGULATIONS
(ADOPTED FEBRUARY 16, 1988, revised on September 6, 1988)**

The following information shall be submitted to the Norwell Conservation Commission at the time of the filing of a NOTICE OF INTENT:

- 1. Wetlands flagging shall be marked on the site and shall be clearly visible in the field to the Norwell Conservation Commission or its agents.
- 2. Wetlands flagging shall be numbered consecutively on site, and on the corresponding site plan.
- 3. Each individual wetlands line shall be indicated on the wetlands flag by letter and consecutive number, and shall be indicated on the corresponding site plan.
- 4. Plans should clearly indicate the 100' buffer zone, as well as the 50' buffer strip. The plan should also indicate the buffer zone for all adjacent properties to the development.

**FILING A NOTICE OF INTENT
NORWELL CONSERVATION COMMISSION**

Read attached – General Instructions for Completing Notice of Intent” and “Notice of Intent Supplemental Form for Riverfront Area”.

SUBMIT TO DEP/SOUTHEAST REGIONAL OFFICE:

- _____ Notice of Intent (2 copies)
- _____ Notice of Intent Supplemental for Riverfront Area
(2 copies if applicable)
- _____ Stormwater Management Form (2 Copies if applicable)
- _____ *Plans (2 copies)
- _____ Locus map identifying location of the property (2 copies)
- _____ Mail appropriate filing fee to DEP (send to lock box address), along with Fee Transmittal form.

SUBMIT TO NORWELL CONSERVATION COMMISSION:

- _____ Notice of Intent and Supplemental Forms (2 copies)
- _____ *Plans (2 Copies)
- _____ Filing fees: Town share of filing fee, Bylaw Fee, Guaranteed
- _____ Deposit (if Applicable), payable to Town of Norwell

**Notify abutters according to the DEP regulations (see attached
abutter Notification Information and forms)**

***PLANS:**

In addition to the requirements listed in the "General Instructions", plans must detail the following information:

_____ Location of wetlands (please read attached "Wetlands Flagging Policy")

_____ Delineation of the 100' buffer zone

_____ Delineation of the 50' buffer strip

***THE NORWELL CONSERVATION COMMISSION WILL NOT
ACCEPT INCOMPLETE FILINGS. (TC/2/20/2001)***

VIOLATION POLICY

NORWELL CONSERVATION COMMISSION
Adopted by Vote on May 2, 2001

Identification of Violations

Violations are identified by two primary means: observations by the agent or conservation members (primarily existing or impending projects) and citizens (existing, impending, or unidentified projects). Reports of violations from neighbors and other citizens are always confidential. Conservation members and staff may not reveal the source of any report of possible violations.

When possible violations are reported to a Commission member or staff, the Conservation Agent will determine whether a violation exists and a Violation Notice is necessary. The Agent may consult with the chairman and other members at this stage, but if time or other constraints exist may proceed based on his or her best judgment.

Violation Notices

If the agent confirms or strongly suspects a violation, a Violation Notice will be issued. Violation Notices will direct the property owners and contractors to (1) stop work, (2) identify resource areas on the site, (3) install erosion controls, and (4) meet with the commission or its agent to discuss the violation. If a wetland line has been previously approved by the Commission, its location will be the basis for evaluation of the Violation. If a wetland line has not been established or approved by the Commission, then the Violation Notice will require the owner, developer, and contractor to employ a wetland scientist to identify wetland resource areas with flagging within a time frame not longer than one week from the date of the Violation Notice.

Upon that meeting, the Commission, in consultation with the agent, will consider the following aspects of the violation:

- Value of the area to the statutory interests
- Harm of the damage
- Immediacy of the harm
- Value of restoration
- Feasibility of restoration
- Potential legal outcomes
- Potential financial burden to the Town of Norwell

Based upon that review, the Commission and Agent will work quickly and informally with the owner, developer, and contractors to correct the Violation, will direct the owner, developer, and contractors to file an after-the-fact Notice of Intent, or will issue an Enforcement Order.

Enforcement Orders

Enforcement Orders will be issued by the Commission when there is a serious Violation which requires an approved plan to correct, and or a Violator is not cooperating to correct the Violation. Enforcement Orders list the Conditions that the owner, developer, and contractors must meet to resolve the Violation. No work will continue on the project until the conditions of the Enforcement Order have been met. A copy of the Enforcement Order will be sent to other Town Boards.

Reporting

All Violation Notices and Enforcement Orders will be noted. A list, including address and location of the property owner developer, and primary contractor, will be maintained by the agent and staff. This list will be posted in the Conservation Commission office and on its website. Upon adoption of this policy, a list of Violations from January 1, 2000 will be compiled and posted.

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1.00 AUTHORITY

These Regulations were adopted under the provisions of the Norwell Wetlands Bylaw, Article XVI-a, of the Norwell General Bylaws. These Regulations set forth definitions, regulations and performance standards necessary to protect the interests and/or intent of the Bylaw. These Norwell Wetland Regulations are independent from, and in addition to, requirements in effect under the Massachusetts Wetland Protection Act (WPA) and associated regulations and policies. Following public notice and a public hearing thereon, these Regulations may be amended and/or added to by a majority vote of the Town of Norwell Conservation Commission. Any term, condition, definition or other language contained herein which may later be deemed invalid by competent legal authority does not invalidate the validity, full force and effect of any other language contained herein.

2.00 PURPOSE – PROTECTED INTERESTS

These Regulations are promulgated in order to effectuate the purposes of the Bylaw and contribute to the protection of the following wetland interests (hereinafter referred to as “Protected Interests”) including but not limited to:

| | | |
|-------------------------------|-------------------------------|----------------------------|
| groundwater | flood control | public water supply |
| wildlife habitats | private water supply | public safety |
| prevention of water pollution | recreation | prevention of storm damage |
| aesthetics | water quality | wildlife |
| sedimentation control | rare plant and animal species | fish/shellfish habitat |
| fisheries | erosion control | |

These interests are also known collectively as the “wetland values” protected under these Regulations.

3.0 JURISDICTION – RESOURCE AREAS AND BUFFER ZONES

Resource Areas and Buffer Zones adjacent to the Resource Areas which are associated with the Protected Interests are subject to protection under the Bylaw and are ANY of the following:

Resource Areas

- (1) Any freshwater or coastal wetland;
- (2) Land under water bodies, including but not limited to ponds of any size, lakes, rivers, streams, creeks, springs, estuaries, and banks;

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- (3) The ocean and land bordering on the ocean, including but not limited to tidal flats, coastal bank, dunes, beaches, salt marshes, and salt meadows;
- (4) Land subject to flooding or inundation by groundwater or surface water, including but not limited to freshwater wetlands, beaches, wet meadows, swamps, bogs, vernal pools (both Certified by Natural Heritage and Endangered Species Program or not certified), reservoirs or isolated wetlands;
- (5) Land subject to coastal storm flowage or flooding, including but not limited to the coastal floodplain as set forth on the Flood Insurance Rate Maps (FIRM);
- (6) Land within 200 feet of any river, stream, or creek continuously flowing throughout the year toward a body of water (hereinafter referred to as the "Riparian Zone") including the North River;

Buffer Zones

- (1) Land within 100 feet of any of the aforementioned Resource Areas (hereinafter referred to as the "Jurisdictional Buffer Zone");
- (2) Land within 50 feet of a Bordering Vegetated Wetland or Isolated Vegetated Wetland (hereinafter referred to as the "Buffer Strip" or "No Build Zone");
- (3) Land within 100 feet of a vernal pool (hereinafter referred to as the "Vernal Pool Protection Zone").

Said resource areas shall be protected whether or not they border surface waters

4.00 REGULATED ACTIVITIES

Activities subject to regulation under the Bylaw include the following:

- (1) Any activity proposed or undertaken within a Resource Area or Buffer Zone to a Resource Area described in 3.00 et seq.;
- (2) Any activity deemed by the Conservation Commission as likely to have a significant or cumulative detrimental effect upon resource areas as defined herein.

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5.00 BURDEN OF PROOF

The applicant shall have the burden of proof by a preponderance of credible evidence that the work proposed will not have a significant or cumulative detrimental effect upon Resource Areas or interests protected herein. No project determined to have a significant or cumulative detrimental effect upon Resource Areas or interests protected herein shall be allowed, unless mitigation is provided as part of the proposed project. Failure to provide adequate evidence to the Commission supporting this burden of proof shall be sufficient cause for the Commission to deny the proposed project. In all instances herein, the Conservation Commission, after due deliberation, shall have the discretion to determine the relative importance of the information presented or omitted. The Commission maintains the right to condition any project as it deems necessary to protect one or more of the interests set forth herein.

6.00 APPLICATIONS

Activities that are proposed to take place within a Resource Area or Buffer Zone under the jurisdiction of the Norwell Conservation Commission require approval prior to disturbance of any area under the jurisdiction of the Commission. Written application shall be filed with the Conservation Commission to perform activities affecting resource areas protected by the bylaw. The permit application shall include information and plans as are deemed necessary by the Commission to describe the proposed activities and their effects on the Resource areas protected by the bylaw. No activities shall commence without receiving and complying with the permit issued pursuant to the bylaw.

6.1.0 Request for Determination of Applicability (RDA)

Any person desiring to know whether or not a proposed activity or an area is subject to the Norwell Wetlands Bylaw may in writing request a determination from the Commission. A Request for Determination of Applicability (RDA) shall be filed with the Norwell Conservation Commission prior to altering existing conditions or conducting any work within any Resource Area or Buffer Zone. This submission shall be made on the form and according to instructions provided by the Town of Norwell, Section 7 of these Regulations, and required by 310 CMR 10.05(3)(a)(b) with the following additions: (1) the 50 foot No Build Zone will also be shown. The Conservation Commission may hold a public meeting on requests under both Town and State regulations at the same time. The Conservation Commission will render a positive or negative Determination of Applicability.

The Commission shall have the authority to continue the meeting to a certain date announced at the meeting, for reasons stated at the meeting, which may include timely receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion to make a determination, including comments, recommendations, or action of the other Town boards and Town officials.

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If a positive determination is made by the Conservation Commission upon a Request for Determination, a Notice of Intent under the Norwell Wetland Bylaw must be filed if the applicant wishes to proceed with the project. If a negative Determination is made by the Conservation Commission upon a Request for Determination, no Notice of Intent under the Norwell Wetland Bylaw need be filed. In either case, the Applicant shall not commence work until a Determination has been issued by the Commission and all appeal periods have elapsed, or in the event of an appeal all appeals finally concluded.

6.2.0 *Approval of Resource Area Delineation*

Any person who wishes to gain Norwell Conservation Commission Approval of a Resource Area Delineation under the Norwell Wetlands Bylaw may submit a written request. This request shall be made according to instructions and the form provided by the MA Department of Environmental Protection for Abbreviated Notice of Resource Area Delineation (ANRAD) with the 50 foot No Build Zone and Vernal Pools, as defined by the Norwell Wetland Bylaw, shown on the accompanying plan. The Conservation Commission may hold a public meeting on requests under both Town and State regulations at the same time. The Conservation Commission will approve, approve with modifications, or deny the delineation presented by the applicant. Approval of a wetland delineation shall be for only the referenced delineation on the plans approved by the Commission. It is not approval of, nor the determination of, the absence of wetlands on other portions of the property.

6.3.0 *Notice of Intent (NOI)*

A Notice of Intent must be filed with the Norwell Conservation Commission for any activity proposed within the Resource Areas or Buffer Zones, defined herein, which involves expansion or change in use or significant excavation and/or alteration of existing grades, soils and vegetation. The Notice shall be submitted on the form and according to instructions provided by the Town of Norwell Conservation Commission and required by 310 CMR 10.05(4), and a public hearing on requests under both Town and State regulations shall be held at the same time.

If required by the Commission, the Applicant shall provide a copy of the Application by certified mail or hand delivery, to all appropriate town officials, committees, or boards having joint jurisdiction over the proposed project. An affidavit of the person providing such notice shall be filed with the Commission. The Commission may seek written comments and/or recommendations from other Boards and Committees. The Commission, at its sole discretion, will allow adequate time for comments from other Boards. The Commission may continue any project for which action by other Town boards or Town officials is required.

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6.4.0 *Application Requirements*

No hearing will be opened unless all required information is submitted to the Commission at least 10 business days in advance of the scheduled hearing date. In certain circumstances and at its sole discretion, the Commission may open a hearing when the applicant submits application materials in less than 10 days before the hearing.

6.5.0 *Actions by the Commission*

If a proposed project meets the requirements of the Norwell Wetlands Bylaw and these regulations, the Commission will approve the project by issuing a Norwell Wetlands Permit. Such permit will include the Conditions under which the project may proceed. The Permit will be in effect for 3 years from the date of Approval. A 10 day Appeal Period shall begin from the approval, during which time an applicant may not begin work on the approved project.

The Commission shall have the authority to deny any project for which (1) the application is incomplete and the Conservation Commission requires additional information not provided by the applicant; or (2) the application for the proposed project does not protect the interests of the Norwell Wetlands Bylaw and/or does not meet the general performance standards set forth in Section 8.0. The Commission shall have the authority to continue hearings to a certain date announced at the hearing, for reasons stated at the hearing, which may include timely receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion to make a determination including comments, recommendations, or action of the boards and officials listed below.

6.6.0 *Authority to Reopen a Hearing*

The Commission may reopen a hearing to review whether the Wetland Permit issued for a project protects the Resource areas. Such hearing may be reopened when new information concerning site conditions or the approved project becomes available to the Commission.

6.7.0 *Amended Permit*

An applicant or holder of a valid Norwell Wetlands Permit issued under the Norwell Wetlands Bylaw may request minor changes to a plan or previously imposed condition on a project by submitting an application with the requested change. The Commission will follow the standard procedure for a new application, including advertisement of a public hearing, notification of abutters, holding public hearing, and conditioning the amended project. The Commission may reduce the filing fee on small projects.

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6.8.0 Permit Extensions

A Permit holder or his successor may request the Commission to extend the effective period of a Norwell Wetland Permit. The Commission may extend a Permit when a project has not been completed during the 3-year period that the Permit is in effect, as long as the project has been started and the Applicant defines a date certain when the project will be completed. In no case will the Commission extend a permit for more than three additional years.

7.00 DEFINITIONS

Definitions of Resource Areas are found in subsequent sections for each Resource Area. (This section is reserved for additional definitions.)

8.00 GENERAL PERFORMANCE STANDARDS

The Commission finds that regulations applicable to activities in the following Resource Areas are necessary and proper to protect the Wetland Interests stated in Section 2.00 of these Regulations.

General Provisions

All approved projects will be designed and executed so that Stormwater is controlled and no direct discharge to a resource area is created. Stormwater will be controlled using the most current Best Management Practices as defined by the DEP (Department of Environmental Protection), other regulatory bodies, relevant professional associations, or by additional standards which may be adopted by the Commission. In addition, all work will be conducted in such a way that there will be no adverse effect on other properties that are not considered part of the approved project.

8.1.0 Land Under Inland Water Bodies and Waterways – Rivers, Creeks, Streams, Ponds, Ditches or Flats

Characteristics and Definition As defined in 310 CMR 10.56 with the following additions:

A Pond is the same as 310 CMR 10.56(2) with the following addition:

The term “pond” shall include any open body of fresh water with a surface area observed or recorded within the last ten years of at least 5,000 square feet. Ponds shall contain standing water except for periods of extended drought. For the purposes of this bylaw, the definition of extended drought is the same as 310 CMR 10.58 (2)(a)1f.

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The definition of Stream in 310 CMR 10.04 is replaced with:

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 M.G.L. c. 131, § 40. 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 regardless of topographic location.

Protected Interests

Whenever a proposed project involves removing, filling, dredging, altering or building upon water bodies or the land beneath them, the Commission shall find that the water bodies and the land beneath them are significant to the protection of the following interests: groundwater, flood control, public water supply, wildlife habitats, private water supply, public safety, prevention of water pollution, recreation, prevention of storm damage, aesthetics, water quality, wildlife, sedimentation control, rare plant and animal species, fish/shellfish habitat, fisheries, and erosion control. These findings may be overcome only upon a clear and convincing showing that the water body or the land beneath it does not play a role in protecting one or more of the interests given above and only upon a determination to that effect by the Commission.

Performance Standards

When Land Under an Inland Water Body or Land within 100 feet of Land Under an Inland Water Body is determined to be significant to an Interest Protected by the Bylaw, the following regulations shall apply:

- (1) The Commission may impose such requirements as are necessary to protect the Interests under the Bylaw, including provision to minimize disturbance of buffer zone within 100 feet of a resource area when the pre-application condition is undisturbed.
- (2) The 50-foot No Build Zone applies to this resource area.

8.2.0 Salt Marshes

Characteristics and Definition Same as CMR 310 10.32(2)

Protected Interests

Whenever a proposed project involves removing, filling, dredging, altering or building upon a salt marsh, the Commission shall find that the salt marsh is significant to the protection of the following interests: groundwater, public water supply, wildlife habitats, private water

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supply, public safety, prevention of water pollution, recreation, prevention of storm damage, aesthetics, water quality, wildlife, sedimentation control, rare plant and animal species, fish/shellfish habitat, fisheries, erosion control. These findings may be overcome only upon a clear showing that the salt marsh does not play a role in protecting one or more of the interests given above and only upon determination to that effect by the Commission.

Performance Standards

When a Salt Marsh or Land within 100 feet of a Salt Marsh is determined to be significant to an Interest Protected by the Bylaw, the following regulations shall apply:

- (1) The Commission may impose such requirements as are necessary to protect the Interests Protected by the Bylaw, *including minimizing the disturbance in the buffer zone when the pre-application condition is undisturbed.*

8.3.0 Land Subject to Flooding (both Bordering and Isolated Areas)

Characteristics and Definition Same as CMR 310 CMR 10.57(2) with the following addition:

The term “isolated land subject to flooding” shall include an area, depression, or basin that holds at minimum one-eighth acre-foot of water and at least six inches of standing water once a year. The jurisdictional buffer zone for isolated land subject to flooding shall extend 100 feet from the highest extent of flooding, defined as the mean annual high water line.

Protected Interests

Whenever a proposed project involves removing, filling, dredging, altering or building upon land subject to flooding, the Commission shall find that the land is significant to the protection of the following interests: groundwater, public water supply, wildlife habitats, private water supply, public safety, prevention of water pollution, recreation, prevention of storm damage, aesthetics, water quality, wildlife, sedimentation control, rare plant and animal species, and erosion control. These findings may be overcome only upon a clear showing that land subject to flooding does not play a role in protecting one or more of the interests given above, and only upon a determination to that effect by the Commission.

Performance Standards

When a Land Subject to Flooding, Bordering or Isolated, or Land within 100 feet of Land Subject to Flooding, Bordering or Isolated, is determined to be significant to an Interest Protected by the Bylaw, the following regulations shall apply:

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- (1) Projects on land subject to flooding shall be permitted only in connection with such procedures determined by the Commission as not having the effect of reducing the ability of the land to absorb and contain floodwaters.
- (2) The Commission may require compensating or greater flood storage capacity in the same watershed if it permits any filling of land subject to flooding, and all filling of areas subject to flooding shall be strictly minimized. Except as stated in the preceding sentence, no proposed project shall be permitted to displace or direct floodwaters, through fill or other means, to other areas.
- (3) Project shall not have any effect on vernal pools, whether certified by the Massachusetts Department of Wildlife and Fisheries or uncertified.
- (4) A Vernal Pool Protection Zone, as defined under these Regulations, is 100 feet.
- (5) The Commission may impose such additional requirements as are necessary to protect the Interests Protected by the Bylaws.

8.3.1 Vernal Pools

Vernal Pools are a special type of Land Subject to Flooding, which the Commission recognizes as having unique habitat functions. The term "vernal pool" shall include any confined basin or depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or vernal pool community species, regardless whether *or not* the site has been certified by the Massachusetts Division of Wildlife and Fisheries. This definition does not include Vernal Pools occurring in lawns, gardens, landscaped areas, or driveways that have existed for more than 10 years.

The presumption of essential habitat value may be overcome by the presentation of credible evidence, which in the judgment of the Commission, demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. Protection of the 50 foot "No Build Zone" applies to vernal pools. In addition, a "Vernal Pool Protection Zone" shall extend 100 feet from the mean annual high-water line defining the depression.

Additional Performance Standard for Vernal Pools

- (1) In recognition of the ecological requirement for an undisturbed area around a Vernal Pool for it to maintain its habitat value, the Commission will encourage applicants to minimize disturbance in the 100-foot Vernal Pool Protection Zone around a Vernal Pool.

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8.4.0 Vegetated Wetlands (Meadows, Marshes, Swaps and Bogs)

Characteristics and Definition

Vegetated Wetlands are freshwater wetlands, which do or do not border on creeks, rivers, streams, ponds and lakes. The types of freshwater wetlands are wet meadows, marshes, swamps and bogs. Vegetated Wetlands are areas where soils are saturated and/or inundated such that they support a predominance (greater than 50%, based on a standardized grid) of wetland indicator plants. The ground and surface water regime and the vegetational community which occur in each type of freshwater wetland are specified in M.G.L. c. 131 s. 40.

The boundary of Vegetated Wetlands is the line within which 50 percent or more of the vegetational community consists of wetland indicator plants and saturated or inundated conditions exist. Wetland indicator plants shall include but not necessarily be limited to those plant species identified in the Act. Wetland indicator plants are also those classified in the indicator categories of Facultative, Facultative+, Facultative Wetland-, Facultative Wetland, Facultative Wetland+, or Obligate Wetland in the National List of Plant Species That Occur in Wetlands: Massachusetts (Fish and Wildlife Service, U.S. Department of the Interior, 1988) or plants exhibiting physiological or morphological adaptations to life in saturated or inundated conditions.

- (1) Areas containing a predominance of wetland indicator plants are presumed to indicate the presence of saturated or inundated conditions. Therefore, the boundary as determined by 50 percent or more wetland indicator plants shall be presumed accurate when:
 - (a) all dominant species have an indicator status or obligate, facultative wetland+, facultative wetland, or facultative wetland- and the slope is distinct or abrupt between the upland plant community and the wetland plant community.
 - (b) the area where the work will occur is clearly limited to the buffer zone; or
 - (c) the Conservative Commission determines that the sole reliance on wetland plants will yield an accurate delineation.
- (2) When the boundary is not presumed accurate as described in 310 CMR 10.55(2)(c) 1a. through c. or to overcome the presumption, credible evidence shall be submitted by a competent source demonstrating that the boundary of Vegetated Wetlands is the line within which 50 percent or more of the vegetational community consists of wetland indicator plants and saturated or inundated conditions exist. The Commission will evaluate vegetation and indicators of saturated or inundated conditions if submitted by a credible source, or may require credible evidence of

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saturated or inundated condition sufficient to support wetland indicator plants shall include one or more of the following:

- (a) groundwater, including the capillary fringe, within a major portion of the root zone;
 - (b) observation of prolonged or frequent flowing or standing surface water;
 - (c) characteristics of hydric soils.
- (3) Where an area has been disturbed (e.g. by cutting, filling, or cultivation), the boundary is the line within which there are indicators of saturated or inundated conditions sufficient to support a predominance of wetland indicator plants, or credible evidence from a competent source that the area supported or would support under undisturbed conditions a predominance of wetland indicator plants prior to the disturbance.

Protected Interests

Whenever a proposed project involves removing, filling dredging, altering or building upon a vegetated wetland, the Commission shall find that the vegetated wetland is significant to the protection of the following interests: groundwater, flood control, public water supply, wildlife habitats, private water supply, public safety, prevention of water pollution, recreation, prevention of storm damage, aesthetics, water quality, wildlife, sedimentation control, rare plant and animal species, fish/shellfish habitat, fisheries and erosion control. These findings may be overcome only upon a clear showing that the vegetated wetland does not play a role in protecting one or more of the interests given above and only upon a determination to that effect by the Commission.

Performance Standards

When a Vegetated Wetlands or Land within 100 feet of a Vegetated Wetlands is determined to be significant to an Interest Protected by the Bylaw, the following regulations shall apply:

- (1) The Commission may impose such requirements as are necessary to protect the Interests Protected under the Bylaw
- (2) The 50 foot No Build Buffer Zone Applies

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8.5.0 Riparian Zone or Riverfront Area

Characteristics and Definition

Same as defined at 310 CMR 10.58(1) and (2)

Protected Interests

When a proposed activity involves work within the riparian zone/riverfront area, the Commission shall presume that the area is significant to the protection of the following interests: private or public water supply; groundwater; flood control; storm damage prevention; pollution prevention; land containing shellfish; wildlife habitat; fisheries; aesthetics, water quality; sedimentation control, rare plant and animal species and erosion control. These findings may be overcome upon a clear showing that the riparian zone/riverfront area does not play a role in protecting one or more of the interests given above and only upon a determination to that effect by the Commission.

Performance Standards

When a riparian zone/riverfront area is determined to be significant to an interest protected by the Bylaw, the following regulations shall apply:

1. Except as stated below, the Commission hereby incorporates 310 CMR 10.58 in its regulations for land within 200 feet of rivers and perennial streams, the protection of these resources is extended to all rivers and perennial streams within the town of Norwell including the North River.
2. Notwithstanding the above, a river is any natural flowing body of water that empties to any ocean, lake, pond, other river, stream or wetland and which flows throughout the year. Perennial rivers, streams and creeks are rivers; intermittent streams are not. Notwithstanding 310 CMR 10.58, the burden of proof shall be on any applicant to show that a river, stream or creek is not perennial (i.e., is intermittent)

9.0 FEES

The Norwell Conservation Commission requires certain fees to be paid to the Town of Norwell when an Applicant requests review and consideration of an Application. The fees required under this bylaw are in addition to those required by the Wetland Protection Act (G.L. Ch 131 s.40) and Regulations (310 CMR 10.00).

9.1.0 Application Fees

The Norwell Conservation Commission will post an Application Fee Schedule approved by the Commission following a public hearing and approval by a majority of the Commission members. Following Approval by the Commission, the Fee Schedule Table is incorporated

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by reference into these Regulations. At the time of an Application, the applicant shall submit a filing fee specified in the Filing Fees Table. The Commission may waive the filing fee, costs and expenses for a permit application filed by a government agency or non profit entity.

9.2.0 Consultant Fee¹

As provided by GL Ch. 44 § 53G, the Norwell Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of the Wetlands Protection Act (GL Ch. 131 § 40), the Norwell Wetlands Bylaw, Conservation Commission Act (GL Ch. 40 § 8C), or any other state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time.

Funds received by the Conservation Commission pursuant to these rules shall be deposited with the Norwell town treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriation as provided in GL Ch. 44 §53G. Expenditures from this account shall be made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant.

Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrogeology and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. The consultant shall be chosen by, and report only to, the Commission and/or its Agent.

The Conservation Commission shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given.

The fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to determine that the application is administratively incomplete (except in the case of an appeal). The Commission shall state such in a letter to the applicant, copied to the DEP. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee.

¹ Adopted by unanimous vote of the Norwell Conservation Commission on November 18, 2003 as Rules for Hiring Outside Consultants Under GL Ch. 44 § 53G

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The applicant may appeal the selection of the outside consultant to the Norwell Board of Selectman who may disqualify the outside consultant selected only on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the Norwell Board of Selectman and a copy received by the Conservation Commission, so as to be received within ten (10) days of the date consultant fees were requested by the Conservation Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

10.0 OTHER REQUIREMENTS

10.1 Advertising Public Hearings and Meetings

The Conservation Commission shall send notice of the public hearing to a newspaper of local circulation. The Applicant is responsible for the cost of the legal notice.

10.2 Statement of Compliance

At the completion of a project, the Norwell Wetlands Permit holder, or his successor, shall request that the Commission terminate the Wetlands Permit by issuing a Statement of Compliance. The Commission will issue a Statement of Compliance following a review of the project, a site visit if deemed necessary, and a determination that the Conditions in the Permit were met. Expired Permits can receive a Statement of Compliance if the requirements of the Permit were met. If there are outstanding conditions that were not met, a Permit Extension may be necessary to complete the project before a Statement of Compliance is considered. In certain special circumstances, the Commission may issue a Statement of Compliance for a project that is not completed when the Permit Holder provides sufficient funds to complete the work in the event the Permit Holder fails to do so within a reasonable period of time. Funds received by the Conservation Commission for this purpose shall be deposited with the Norwell Town Treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriation as provided in GL Ch. 44 §53G. Expenditures from this account shall be made only to complete the work in accordance with the Order of Conditions. The Commission will return unused funds to the Permit Holder when the required work has been completed to the satisfaction of the Commission or its Agent.

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10.3. Recording with Registry of Deeds or Land Court

If the Applicant fails to record any of the following documents (Norwell Wetlands Permit, Notification of Non-Significance, Extension Permit, and Statement of Compliance) issued by the Commission within 20 business days of the date of issuance, the Commission is empowered to record them at the Applicant's expense. As proof of recording, the Applicant must deliver to the Commission the recording slip at the bottom of the document. If the Commission must record any document, the applicant will be charged the cost of registration plus a fee of \$150.00. The Commission may issue an Enforcement Order as a result of failure to record at the Registry.

Effective Date: May 5, 2009
By Unanimous Vote of the Norwell Conservation Commission