

Part I. General Provisions and Procedures

1.01. Introduction and purpose:

- A. Introduction. These regulations are promulgated by the Town of Canton Conservation Commission pursuant to the authority granted to it under the Town of Canton Wetlands Protection Bylaw (hereinafter referred to as the 'Bylaw'). These rules and regulations complement the Wetlands Protection Bylaw and shall have the force of law upon their effective date.
- B. Purpose. The Bylaw sets forth a public review and decision making process by which activities affecting areas subject to protection under the Bylaw are to be regulated in order to ensure the protection of the following interests: public water supply, private water supply, groundwater and groundwater quality, water quality in the numerous ponds in town, flood control, erosion and sedimentation control, storm damage prevention, prevention of water pollution, fisheries, wildlife, recreation, aesthetics, agriculture, aquaculture and historic values. The purposes of these rules and regulations are to define and clarify that process by establishing standard definitions and uniform procedures by which the Canton Conservation Commission shall carry out its responsibilities under the Bylaw.

1.02. Jurisdiction.

- A. Areas subject to protection under the Bylaw:
  - (1) Any bank, beach, flat, freshwater wetland, meadow, bog, swamp, vernal pool or River Front.
  - (2) Any land within 100 feet of any of the areas set forth in Subsection A (1) above.
  - (3) Any lake, pond, river or stream.
  - (4) Any land under any of the water bodies set forth in Subsection A (3) above.
  - (5) Any land subject to flooding or inundation by any of the following: groundwater or surface water.
- B. Activities subject to regulation under the Bylaw:
  - (1) Any activity proposed or undertaken which constitutes removing, filling, altering, dredging or building upon any area specified in Subsection A is subject to regulation under the Bylaw and requires the filing of an application for permit.
  - (2) Any subsurface sewage disposal system, where any component thereof is within any area specified in Subsection A above, because of the demonstrated potential for contamination of ground- and surface waters from the effluent of these systems.
  - (3) Any activity proposed or undertaken outside the areas specified in Subsection A above shall not be subject to regulation under the Bylaw unless, in the judgment of the Conservation Commission, said activity may result or has resulted in the removing, filling, altering, dredging or building upon an area specified in Subsection A above. If the applicant wishes to have the Conservation Commission determine whether an activity may be subject to regulation under the Bylaw, he or she shall submit a request for determination for applicability pursuant to 1.05 A of these rules and regulations.

1.03 Burden of going forward and burden of proof.

- A. The applicant shall have the burden of going forward with credible evidence from a competent source in support of all matters asserted pursuant to Subsection B below by the applicant in accordance with his or her burden of proof.
- B. The applicant shall have the burden of proving by a preponderance of the credible evidence that the work in the application will not have unacceptable significant or cumulative effect upon the wetland values protected by 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.

1.04 Definitions.

- A. **Except as otherwise provided in regulations of the Commission, the definitions of terms in the Bylaw shall be as set forth in the Wetlands Protection Act, MGL c. 131, § 40, and regulations. 310 CMR 10.00.**
- B. **As used in these regulations, the following terms shall have the meanings indicated:**

**ACT - The Massachusetts Wetlands Protection Act, MGL c. 131, § 40.**

**ACTIVITY - 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 runoff characteristics; the intercepting or diverging of groundwater or surface water; the installation of drainage, sewage and water systems; the discharging of pollutants; the destruction of plant life; the cutting of trees; and any other changing of the physical characteristics of land or the physical or chemical characteristics of water.**

AESTHETICS - The natural scenery and appearance of any resource as visually accessible to the public.

AGRICULTURE:

- (1) Land in agricultural use means land presently and primarily used in the 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 land presently and primarily used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals.
- (2) **Additionally, land in agricultural use means land presently and primarily used 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 land presently and primarily used in raising forest products under a planned program to improve the quantity and quality of a continuous crop; or land presently and primarily used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products.**

ALTER- To change the condition of any area subject to protection under the Bylaw. The term “alter” shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by the Bylaw:

- (1) Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind.
- (2) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics.
- (3) Drainage or other disturbances of water level or water acceptable.
- (4) Dumping, discharging or filling with any material which may degrade water quality.
- (5) Placing of fill or removal of material, which would alter elevation.
- (6) Driving of piles or erection or repair of buildings or structures of any kind.
- (7) Placing of obstructions or objects in water.
- (8) Destruction of plant life, including cutting of trees.
- (9) Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of water.
- (10) Any activities, changes, or work, which may cause or tend to contribute to pollution of any body of water or groundwater.

**(11) Application of pesticides or herbicides.**

APPLICANT - Any person who files an application for permit or request for determination of applicability, or on whose behalf such a notice is filed.

**AQUACULTURE:**

- (1) Land in aquacultural use means land presently and primarily used in the growing of aquatic organisms under controlled conditions, including one or more of the following uses: raising, breeding or producing a specified type of animal or vegetable life, including but not limited to finfish, such as carp, catfish, black bass, flatfishes, shad, smelt, sturgeon, sunfishes, trout, whitefish, eel and tilapia, amphibians such as frogs, reptiles such as turtles and edible freshwater plants.
- (2) Normal maintenance or improvements of land in aquacultural use means the following activities, when done in connection with the production of aquatic organisms as defined above: draining, flooding, heating, cooling, removing, filling, grading, compacting, raking, tilling, fertilizing, seeding, harvesting, filtering, rafting, culverting or applying chemicals in conformance with all state and federal laws; provided, however, that such activities are clearly intended to improve and maintain land in aquacultural use and that best available measures are utilized to ensure that there will be no adverse effect on wetlands outside the area in aquacultural use.

**AREA OF CRITICAL ENVIRONMENTAL CONCERN- An area so designated by the Secretary of Environmental Affairs of the Commonwealth of Massachusetts pursuant to regulations (301 CMR 12.00). Said designation being due to the particular environmental factors, which impact upon the areas in question and which highlight the importance of each area so designated, e.g., PONKAPOAG AREA OF CRITICAL ENVIRONMENTAL CONCERN**

AREA SUBJECT TO PROTECTION UNDER THE BYLAW - Any area specified in 1.02A. It is used synonymously with "resource area," each of which is defined in greater detail in Parts 2.01, 2.02, 2.03 and 2.04.

BANK - Defined in Part II, section 2.01.

BEACH - A naturally occurring beach means an unvegetated bank as defined in Part II, Section 2.01.

BEST AVAILABLE MEASURES - 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- Technologies, designs, measures or engineering practices that are in general use to protect similar interests.

BORDERLNG - Touching.

BOUNDARY - 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.

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

CONDITIONS - 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- That body comprised of members lawfully appointed pursuant to MGL c. 40, § 8C.

CREEK - The same as "stream."

DATE OF ISSUANCE- The date a permit is mailed, as evidenced by a postmark, or the date it is hand-delivered.

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

DETERMINATION:

- (1) DETERMINATION OF APPLICABILITY - A written finding by the Conservation Commission as to whether a site or the work proposed thereon is subject to the jurisdiction of the Bylaw.

**(1)(a) DETERMINATION (informal) - A part of the Town building permit process by which the Commission makes a written finding as to whether the work proposed at a site is subject to the jurisdiction of the Bylaw.**

(2) DETERMINATION OF SIGNIFICANCE - 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 significant to one or more of the interests identified in the Bylaw.

(3) NOTIFICATION OF NONSIGNIFICANCE - A written finding by the Conservation Commission, after a public hearing, that the area on which proposed work is to be done, or which the proposed work will alter is not significant to any of the interests of the Bylaw.

DREDGE - To deepen, widen or excavate, either temporarily or permanently.

EXTENSION PERMIT - A written extension of time within which the authorized work shall be completed.

FEE SCHEDULE - See Part V. Section 5.02, Filing fees.

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

FLOOD CONTROL - The prevention or reduction of flooding and flood damage.

FRESH WATER WETLANDS - As defined in Part II.

GROUNDWATER SUPPLY - Water below the earth's surface in the zone of saturation.

INTERESTS IDENTIFIED IN THE BYLAW - Those interests specified in Section I of the Bylaw and 1.01(l)(B) of these regulations.

ISSUING AUTHORITY - The Conservation Commission.

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

LAND SUBJECT TO FLOODING- Defined in Part II, Section 2.04.

LAND UNDER WATER BODIES AND WATERWAYS - The bottom of or land under the surface of a creek, river, stream, pond or lake. Land under water bodies is further defined in Part 2.03.

MAJORITY - More than half of the members of the Conservation Commission then in office.

MARSH – is defined in Part II, Section 2.02

MEADOW (or WET MEADOW) - Defined in Part II, Section 2.02.

MEPA - The Massachusetts Environmental Policy Act, MGL c. 30, §§ 62 through 62H, and the regulations promulgated pursuant thereto, 310 CMR 10.00.

NOTICE OF INTENT - The written notice filed by any person intending to remove, fill, dredge or alter an area subject to protection under the Massachusetts Wetlands Protection Act, MGL c. 131, §40.

ORDER - An order of conditions, superseding order or final order, whichever is applicable, issued pursuant to MGL c. 131, § 40.

ORDER OF CONDITIONS - The document issued by the Conservation Commission containing conditions which regulate or prohibit an activity under MGL c. 131, § 40.

OWNER OF LAND ABUTTING THE ACTIVITY - The owner of land sharing a common boundary or corner with the site of the proposed activity in any direction, including land located directly across a street, way, creek, river, stream, brook, canal, pond or lake.

PARTY TO ANY PROCEEDING - The applicant, the Conservation Commission and, pursuant to Section 1.05, may include the owner of the site, any abutter, any person aggrieved, any 10 residents of the town where the land is located and any 10 persons pursuant to MGL c. 30A, §10.

PERMIT - The document issued by the Conservation Commission containing conditions, which regulate or prohibit an activity under the Town of Canton Bylaw.

PERSON AGGRIEVED - 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 person must specify, in writing, sufficient facts to allow the Conservation Commission to determine whether or not the person is in fact aggrieved.

PLANS- Such data, maps, engineered drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the Conservation Commission to describe the site and/or work to determine the applicability of the Act or to determine the impact of the proposed work upon the interests identified in the Act. (See Part V, section 5.02)

POND - Any open body of fresh water, either naturally occurring or man-made by impoundment or excavation, which is never without standing water due to natural causes, except in periods of extended drought. For purposes of this definition, extended drought shall mean any period of four or more months during which the average rainfall for each month is 50% or less of the ten-year average for that same month. Basins or lagoons, which are part of wastewater treatment plants, swimming pools or other impervious man-made retention basins, shall not be considered ponds.

PREVENTION OF POLLUTION - The prevention or reduction of contamination of surface or groundwater.

PRIVATE WATER SUPPLY - Any source or volume of surface or groundwater demonstrated to be in any private use or shown to have potential for private use.

PROTECTION OF FISHERIES - Protection of the capacity of an area subject to protection under the Bylaw to prevent or reduce contamination or damage to fish and to serve as their habitat and nutrient source.

**PROTECTION OF HISTORIC VALUES - The protection of areas subject to protection under the Bylaw which are known or are determined, in writing, by the Conservation Commission to be likely to contain sites of archaeological significance, including but not limited to middens, burial sites or historic and prehistoric structures and artifacts.**

PROTECTION OF WILDLIFE - The protection of any plant or animal species listed as endangered, threatened or special concern, or on the Watch List by the Massachusetts Natural Heritage Program; listed as Federally Endangered or Federally Threatened by the U.S. Fish and Wildlife Service; deemed locally threatened, in writing, by the Conservation Commission; and means protection of the ability of any resource area to provide food, breeding habitat or escape cover and species falling within the definition of wildlife set forth in these rules and regulations.

PUBLIC WATER SUPPLY - Any source or volume of surface water or groundwater demonstrated to be in public use or approved for water supply pursuant to MOL c. 111, § 160 by the Division of Water Supply of the Department of Environmental Protection or shown to have a potential for public use.

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

REQUEST FOR DETERMINATION OF APPLICABILITY - 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 - Any of the areas specified in Part II, Section 2.01 through 2.04. It is used synonymously with "area subject to protection under the Bylaw," each one of which is enumerated in 1.02 A of this article.

RIVER - A natural flowing body of water that empties to any lake or other river and which flows throughout the year.

SIGNIFICANT - Plays a role. A resource area is significant to an interest identified in the Act when it plays a role in the provisions or protection as appropriate, of that interest.

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

STREAM - A body of running water, including brooks and creeks, which moves in a definite channel in the ground due to hydraulic gradient. 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 - Defined in Part II, Section 2.02.

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

WILDLIFE - Any non-domesticated mammal, bird, reptile, amphibian, fish, mollusk, arthropod or other invertebrate other than a species of the Class Insects which has been determined by the Commonwealth of Massachusetts or any agency thereof to be a pest whose protection under the provisions of the Bylaw would be a risk to man.

WORK - The same as "activity."

## 1.05 PROCEDURES

(1) Time Periods. All time periods of 10 days or less specified in the Bylaw and these rules and regulations shall be computed using business days only. In the case of a determination or order, such period shall commence on the first day after the date of issuance and shall end at the close of business on the 10th business day thereafter. All other time periods specified in the Bylaw and these rules and regulations shall be computed on the basis of calendar days, 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 Conservation Commission: 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.

Where the Bylaw states that a permit or notification shall be issued by the Conservation Commission, that action is to be taken by a majority of the members then in office, who need not convene as a body in order to sign said permit or notification, provided that they met pursuant to the Open Meeting Law, MGL c. 39, § 23A through 23C, when voting on the matter.

Where the Bylaw states that the Conservation Commission is to receive a request or notice, Conservation Commission means a member of the Conservation Commission or an individual designated by the Commission to receive such request or notice. **Said notice must be by certified mail to the Commission or hand delivered to the Commission's Office.**

### (3). Determination 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, Form 1 of 5.01, **and other application materials in accordance with the submittal requirements set forth in the filing guidelines for requests for determination of applicability provided in Part V, Plan and Filing Requirements.**
- (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 determination of applicability. Said request shall include sufficient information, as required on Form 1, to enable the Conservation Commission to find and view the area and determine whether the proposed work will alter an area subject to protection under the Bylaw.
- (3) A request for determination of applicability shall include certification that the Conservation Commission and the owner of the area subject to the request, if the person making the request is not the owner, have been notified that a determination is being requested under the Bylaw.

B. Determination of Applicability.

(1) Within 21 days after the date of receipt of the request for a determination of applicability, the Conservation Commission shall hold a public hearing on the request for a determination of applicability, Form 2 of Part V, Section 5.01. Notice of the time and place of the public meeting at which the determination will be made shall be given by the Conservation Commission at the expense of the person making the request not less than five business days prior to such meeting, by publication in a newspaper of general circulation in the town in which the land is located, and by mailing a notice to the person making the request, the owner, the Board of Health, the Planning and Zoning Board, the Board of Appeals, the Board of Selectmen and Building Inspector. Notice shall also be given in accordance with the Open Meeting Law, MGL c. 39, § 23B, and shall be given to abutters in accordance with the Bylaw. 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 31 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 on the portion thereof, if it is an Activity Subject to the Regulations under the Bylaw as defined in Section 1.02(1) above.

(3) An application for permit shall be filed in the event of a positive determination, and all of the procedures set forth in Section 1.05(4) shall apply.

(4). Application for permit.

A. Any person who proposes to do work that will remove, fill, dredge or alter any area subject to protection under the Bylaw shall submit an application for permit on Form 3 of Part V, Section 5.01 and other application materials in accordance with the submittal requirements set forth in the general instructions for completing applications for permits provided in Part V.

B. Upon receipt of the application materials referred to in Subsection A above, the Conservation Commission shall issue a file number (local filing). The designation of file number shall not imply that the plans and supporting documents have been judged adequate for the issuance of a permit, but only that copies of the minimum submittal requirements have been filed.

C. If 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 by the general instructions and Form 3 and 4, provided also that in such circumstances the application for permit 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 the general instruction for completing applications for permits (Form 3) and shall be advertised in accordance with the Bylaw and the requirements of the Open Meeting Law, MGL c. 39, § 23B. **(No hearing will be held unless the Commission has received proof of abutter notification)**

- B. Public hearings may be continued as follows:
- (1) Without the consent of the applicant to a certain date announced at the hearing either for receipt of additional information offered by the applicant or others or for information required of the applicant deemed necessary by the Conservation Commission as its discretion;
  - (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.
  - (4) The date, time and place of said continued hearing shall be publicized in accordance with the Bylaw and notice shall be sent by the applicant to any person at the hearing who so requests in writing.
- (6) Issuance of permit.
- A. Within 31 days of the close of the public hearing or any continuance thereof, the Conservation Commission shall either:
    - (I) 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 not significant to any of the interests identified in the Bylaw, and shall so notify the applicant on Form 6 of Part V, Section 5.01; or
    - (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 interests on Form 5 of Part V, Section 5.01
  - 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 conditioned to meet said standards. 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, removing 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 open and closed 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 denial prohibiting the work. The denial shall specify the information which is lacking and why it is necessary.
  - D. The permit shall be valid for three years from the date of its issuance.
  - E. The permit shall be signed by a majority of the members of the Conservation Commission and shall be mailed or hand-delivered to the applicant, his/ her agent or attorney.
  - F. A copy of the plans describing the work and the permit shall be kept on file by the Conservation Commission and shall be available to the public at reasonable 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. 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 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 Conservation Commission on the form at the end of Form 5. If work is undertaken without the applicant first recording the permit, the Conservation Commission may issue an enforcement order or may itself record the permit.

(7). Extension of Permit.

- A. The Conservation 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 V, Section 5.01. The request for an extension shall be made to the Conservation Commission at least 30 days prior to the expiration of the permit.
- B. The Conservation 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 and 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. If issued by the Conservation Commission, the extension permit shall be signed by a majority of the members of the Conservation Commission.
- D. The extension permit shall be recorded in the Land Court or the Registry of Deeds, whichever is appropriate. The certificate of recording shall be sent to the Conservation Commission on the form at the end of Form 7. 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.

(8). Certificate of Compliance.

- A. Upon written request by the applicant, a certificate of compliance shall be issued by the Conservation Commission within 31 days of receipt thereof, and shall certify on Form 8 of Part V, Section 5.01, that the activity or portions thereof described in the application for permit and plans has been completed in compliance with the permit. If issued by the Conservation Commission, the certificate of compliance 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 agents, 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, it shall refuse to issue a certificate of compliance. Such refusal shall be issued within 31 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 **civil** engineer or a land surveyor, a written statement by such professional 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 portion 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 Conservation Commission on the form at the end of Form 8. Upon failure of the applicant to so record, the Conservation Commission may do so. No Certificate of Compliance shall be issued on an expired Order of Conditions.

1.06. Emergencies.

- A. 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 citizen's 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 agent or employee, 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.
- B. An emergency certification shall be issued only for the protection of public health or safety or for the protection of any interest specified in the Bylaw.
- C. The time limitation for performance of emergency work shall not exceed 21 days.

1.07. Severability: **(compliance with court decisions.)**

- A. The invalidity of any section or provision of the Bylaw or of these regulations shall not invalidate any other section or provisions thereof, nor shall it invalidate any permit, which previously has been issued.
- B. If any Court of the Commonwealth shall invalidate any provisions of the Bylaw or of these rules and regulations, the Conservation Commission shall promulgate additional rules and regulations or present to the next Town Meeting after such invalidation, amendments to the Bylaw or rules and regulations which are designed to comply with any Court decision invalidating such provisions or regulations, as the case may be.

1.08. Effective date.

The effective date of these rules and regulations shall be February 20, 1992 and the provisions of these rules and regulations shall apply to all work performed after that date.

## PART II. Regulations for Inland Wetlands

### 2.01 Inland banks (naturally occurring banks and beaches).

#### A. Preamble

- (1) Banks are likely to be significant to wildlife, to public or private water supply, to groundwater 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.
- (2) Banks are an area where groundwater discharges to the surface and where, under some circumstances, surface water recharges the groundwater.
- (3) Where banks are partially or totally vegetated, the vegetation serves to maintain their stability, which in turn protects water quality by reducing erosion and siltation.
- (4) Banks may also provide shade that moderates winter temperatures, as well as providing breeding habitat and escape cover and food, all of which are significant to the protection of fisheries. Banks, which drop off quickly or overhang the water's edge often, contain numerous undercuts, which are favorite hiding spots for important game species.
- (5) Banks act to confine floodwater 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 many species. An alteration of a bank that permits water to frequently and consistently spread over a larger and more shallow area increases the amount of property which is routinely flooded, as well as elevating water temperatures and reducing fish habitat within the main channel, particularly during warm weather.
- (6) 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 resources serve to protect.

#### B. Definition, critical characteristics and boundary.

- (1) 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 vegetated bordering 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 it may be comprised of exposed soil, gravel or stone.
- (2) The physical characteristics of a bank, as well as its location, as described in the foregoing Subsection B (1), are critical to the protection of the interests specified in Subsection A.
- (3) 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.

- C. 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 30 feet of any bank, shall be permitted by the Conservation Commission, except for activity which is allowed under a variance from these regulations granted pursuant to Section 4.01
- D. Any activity, which is allowed under a variance, granted pursuant to Section 4.01 of these rules and regulations on a bank or on land within 100 feet of a bank shall comply with the following regulations. Any proposed work on a bank or within 100 feet of a bank shall not impair the following:
  - (1) The physical stability of the bank.
  - (2) The water-carrying capacity of the existing channel within the bank.
  - (3) Groundwater and surface water quality.
  - (4) The capacity of the bank to provide breeding habitat, escape cover and food for fisheries.
- E. **No work shall be performed within 100 feet of an inland bank that abuts an estimated habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage and Endangered Species Program.**

2.02. Vegetated wetlands (wet meadows, marshes, swamps and bogs).

A. Preamble

- (1) Vegetated wetlands are likely to be significant to wildlife, to public or private water supply, to groundwater supply, to flood control, to storm damage prevention, to prevention of pollution, to the protection of fisheries and to the protection of shellfish.
- (2) 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 runoff and floodwaters.
- (3) 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.
- (4) Vegetated wetlands are areas where groundwater discharges to the surface and where, under some circumstances, surface water discharges to the groundwater.
- (5) The profusion of vegetation and the low, flat topography of vegetated wetlands slow down and reduce the passage of floodwaters during periods of peak flow by providing temporary floodwater 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.

- (6) Wetland vegetation provides shade that moderates water temperatures important to fish life. Wetlands flooded by adjacent water bodies and waterways provide food, breeding habitat and cover for fish. Fish populations in the larval stage are particularly dependent upon food provided by overbank 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.
- (7) 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 non-aquatic insects. Largemouth bass (*Micropterus salmoides*), chain pickerel (*Esox niger*) and northern pike (*Esox lucius*) feed upon small mammals, snakes, non-aquatic insects, birds and amphibians. These wetlands are also important to the protection of rare and endangered wildlife species.
- (8) 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 wetlands.**
- (9) 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.

B. Definition, critical characteristics and boundary.

- (1) 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 Subsection B (3)(a) through (d) below.
- (2) The physical characteristics of vegetated wetlands, as described in the foregoing Subsection B (1), are critical to the protection of the interests specified in Subsection A above.
- (3) The boundary of vegetated wetlands is the line within which 50% or more of the vegetational community consists of the wetland plant species identified in Subsection B (3)(a) through (d) below:
  - (a) 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 (*Rhododron canadense* and *R. viscosum*), black spruce (*Picea mariana*), bog cotton (*Eriophorum*), cranberry (*Vaccinium macrocarpon*), high-bush blueberry (*Vaccinium coimbosum*), larch (*Larix laricina*), laurels (*Kalmis augustifolia* and *K. polifolia*), leatherleaf (*Chamaedaphne calyculata*), orchids (*Arethusa*, *Calopogon*, *Pogonia*), pitcher plants (*Sarracenia purpurea*), sedges (*Cyperaceae*), sundews (*Droseraceae*), sweet gale (*Myrica gale*) and white cedar (*Chamaecyparis thyoides*).

- (b) The term “swamps,” as used in this section, shall mean areas where groundwater 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 including all of, the following plants or groups of plants: alders (*Alnus*), ashes (*Fraxinus*), azaleas (*Rhododendron 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 vemic*), 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*) and willow (*Salicaceae*).
  - (c) The term “wet meadow” as used in this section shall mean areas where groundwater 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 or 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 (*Juncaceae*), edges (*Cyperaceae*), sensitive fern (*Onoclea sensibilis*) and smartweed (*Polygonum*).
  - (d) 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 rush (*Cephalanthus occidentalis*), cattails (*Typha*), duck weeds (*Lemnaceae*), ellgrass (*Vallisneria*), frog bits (*Hydrocharitaceae*), horsetails (*Equisetaceae*), hydrophilic grasses (*Poaceae*), leatherleaf (*Chamaedaphne calyculata*), pickerel weeds (*Pontederiaceae*), pipeworts (*Eriocaulon*), pond weeds (*Potamogeton*), rushes (*Juncaceae*), sedges (*Cyperaceae*), smartweeds (*Polygonum*), sweet gale (*Myrica gale*), water milfoil (*Haloragaceae*), water lilies (*Nymphaeaceae*), water starworts (*Callitrichaceae*) and water willow (*Decodon verticillatus*).
- C. 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 30 feet of a vegetated wetland, shall be permitted by the Conservation Commission, except for activity which is allowed under a variance from these regulations granted pursuant to Section 4.01.
  - D. Any activity which is allowed under a variance granted pursuant to Section 4.01 of these regulations upon or within 30 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 Subsection A of this section.
  - E. **No work shall be performed within 30 feet of a vegetated wetland that abuts on an estimated habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage and Endangered Species Program.**

## 2.03 Land under water bodies (under any stream, pond or lake).

### A. Preamble.

- (1) Land under water bodies and waterways are likely to be significant to wildlife, to public and private water supply, to groundwater supply, to flood control, to storm damage prevention, to prevention of pollution and to the protection of fisheries.
- (2) Where land under water bodies and waterways are composed of pervious material, such land represents a point of exchange between surface water and groundwater.
- (3) The physical nature of land under water bodies and waterways is highly variable, ranging from deep organic soils 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).
- (4) 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.
- (5) 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. River, stream and creek bottoms with a diverse structure composed of gravel, large and small boulders and rock outcrops provide escape cover and resting areas for game fish species. Such bottom type also provides areas for the production of aquatic insects essential to fisheries.
- (6) 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*), small mouth bass (*Micropterus dolomieu*), blue gills *Lepomis macrochirus*), pumpkinseeds (*Lepomis gibbosus*), black crappie (*Promoxis nigromaculatus*) and rock bass (*Ambloplites rupestris*) build nests on the lake and bottom substrates within which they shed and fertilize their eggs.
- (7) 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, and therefore to the protection of the interests which these water bodies serve to protect.

### B. Definition, critical characteristics and boundaries.

- (1) 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.
- (2) The physical characteristics and location of land under water bodies and waterways specified in the foregoing Subsection B (1) are critical to the protection of the interests specified in Subsection A above.
- (3) The boundary of land under water bodies is mean low water level.

- C. No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, or removing, filling, dredging or altering of land under a water body or within 30 feet of land under a water body shall be permitted by the Conservation Commission, except for activity which is allowed under a variance from these regulations granted pursuant to Section 4.01.
- D. Any activity, which is allowed under a variance, granted pursuant to Section 4.01 of these regulations on land under a water body or within 30 feet of land under a water body shall comply with the following regulations. Any proposed work upon land under a water body or within 30 feet of land under a water body 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 quality.
  - (3) The capacity of said land to provide breeding habitat, escape cover and food for fisheries.
- E. **No work shall be performed within 30 feet of land under water bodies that abuts an estimated habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage and Endangered Species Program.**

2.04. Land subject to flood (both bordering and isolated areas).

A. Preamble.

- (1) Bordering land subject to flooding.
  - (a) 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.
  - (b) Bordering land subject to flooding provides a temporary storage area for floodwater, which has overtopped the bank of the main channel of a creek, river or stream or the basin of a pond or lake. During periods of peak runoff, floodwaters are both retained (i.e., 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.
  - (a) Isolated land subject to flooding is an isolated depression or a closed basin, which serves as a ponding area for runoff or high groundwater, 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 pervious material they are likely to be significant to public or private water supply and to groundwater supply. Where such areas are underlain by pervious material covered by a mat of organic peat sand 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 runoff and high groundwater pond and slowly evaporate or percolate into the substrate. Filling causes lateral displacement of the ponded water onto contiguous properties, which may result in damage to said properties.

- (b) Isolated land subject to flooding, where it is underlain by pervious material, provides a point of exchange between ground waters and surface waters. Contaminants introduced into said area, such as septic system discharges and road salts, find easy access into the groundwater 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 groundwater and neighboring wells.

B. Definitions, critical characteristics and boundaries.

(1) Bordering land subject to flooding.

- (a) Bordering land subject to flooding is an area with low, flat topography adjacent to and inundated by floodwaters rising from creeks, rivers, streams, pond or lakes. It extends from the banks of these waterways and water bodies; where a bordering vegetated wetland occurs, it extends from said wetland.
- (b) The topography and location of bordering land subject to flooding specified in the foregoing Subsection B (1)(a) are critical to the protection of the interests specified in Subsection A(1) above.
- (c) The boundary of bordering land subject to flooding is the estimated maximum lateral extent of floodwater, which will theoretically result from the statistical one-hundred-year-frequency storm.

[1] 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, successor to the U.S. Department of Housing and Urban Development). Said boundary, so determined, shall be presumed accurate. This presumption may be overcome only by credible evidence from a registered professional **civil** engineer or other professional competent in such matters.

[2] Where NFIP profile data is unavailable, the boundary of bordering land subject to flooding shall be the maximum lateral extent of floodwater, which has been observed or recorded.

(2) Isolated land subject to flooding.

- (a) 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 peat or muck.
- (b) The characteristics specified in the foregoing Subsection B(2)(a) are critical to the protection of the interests specified in Subsection A(2) above.
- (c) The boundary of isolated land subject to flooding is the perimeter of the largest observed or recorded volume of water confined in said area.

- C. No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, or removing, filling, dredging or altering of, land subject to flooding shall be permitted by the Conservation Commission, except for activity which is allowed under a variance from these regulations granted pursuant to Section 4.01.
- D. Any activity, which is allowed under a variance granted pursuant to Section 4.01 of these regulations on land subject to flooding, shall not result in the following:
  - (1) Flood damage due to filling which causes lateral displacement of water that would otherwise be confined within said area.
  - (2) Adverse effect on public and private water supply or groundwater supply, where said area is underlain by pervious material.
  - (3) An adverse effect on the capacity of said area to prevent pollution of the groundwater, where the area is underlain by pervious material, which in turn is covered by a mat of organic peat and muck.
- E. **No work shall be performed within 30 feet of land subject to flooding that abuts an estimated habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage and Endangered Species Program.**

### PART III. CRANBERRY BOGS.

#### 3.01. Activities affecting bogs.

- A. Pursuant to Section 2 of the Bylaw, the Conservation Commission categorically gives permission for work on land which is being used as of the effective date of these rules and regulations as bogs in actual agricultural use 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 that it is carried out in accordance with the following general conditions and any additional conditions deemed necessary by the Conservation Commission:
  - (1) 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 as well as any such municipal regulations:
  - (2) All activities shall be undertaken in such a manner as to prevent erosion and siltation of adjacent water bodies and wetlands as specified in the U.S.D.A. Soil Conservation Service Guidelines for Soil and Water Conservation; and
  - (3) There shall be no contamination or pollution of any adjacent or contiguous water body, creek, stream, pond, lake or the ocean.
- B. Any violation of these general conditions shall be cause to revoke permission for operation of the bog under the Bylaw and require an application for permit. an other provision of the law notwithstanding.
- C. The permission granted in Subsection A only applies to existing bogs in actual production at the effective date of these rules and regulations. Abandoned bogs, or bogs under which renovation is proposed, shall be subject to all other provisions of these rules and regulations.

Part IV. Variances and ACEC'S.

- A. The Conservation Commission may, in its discretion, grant variances from the operation of one or more of the provisions of the Bylaw, or the rules and regulations promulgated thereunder. Such variances *are intended to be granted only in rare and unusual cases, upon a showing of clear hardship relating to the subject premises if the desired relief is not granted.*
- B. **The standards as set forth herein shall be the sole basis upon which a variance shall be granted.**
- C. **Applicants shall file a written request for variance at the same time as an application for Permit or request for determination is filed with the Commission. Such variance request shall be made in letterform, and shall be a separate writing from the application or request forms.**
- D. **At any time subsequent to filing of the variance request, but in no event less than five business days prior to the date of commencement of the public hearing at which the variance request is to be considered, the applicant or his or her or its representative shall submit to the Commission seven copies of a brief in support of the variance request. Such brief shall include but not be limited to the following items:**
  - (1) **A brief statement of the relief sought.**
  - (2) **A description of all reasonably identifiable alternatives to the applicant's proposal which were considered by the applicant and which would avoid or minimize the necessity of the requested relief. along with the reasons why such alternatives were deemed to be inadequate, unworkable or inadvisable.**
  - (3) **A statement of all efforts, which will be undertaken to minimize impact upon resource areas and buffer zones arising out of the work, proposed.**
  - (4) **Detailed plans for any mitigation measures proposed.**
  - (5) **Adequate engineering and expert evidence to permit the Commission to evaluate the basis for the applicant's contentions in support of the variance requested.**
  - (6) **Any and all relevant information, which the applicant wishes the Commission to consider in deliberating the variance request.**
- E. A variance may be granted only for the following reasons and upon the following conditions:
  - (1) The Conservation Commission may grant a variance 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 orally or in writing, in order to enable the Commission to ascertain such adverse effects and the failure of the applicant to furnish any information which has been so requested shall result in the denial of a request for variance.

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

#### **4.02. Areas of critical environmental concern.**

- A. Areas within the Town of Canton, which have been designated, as Areas of Critical Environmental Concern by the Secretary of Environmental Affairs, Commonwealth of Massachusetts, are so designated due to the particularly unique environmental factors which impact upon such areas, and which highlight the unique importance of each area so designated.**
- B. As a result of such designation, it is incumbent upon the Commission to be even more diligent in its review of projects proposed within such areas. The highest standards of scrutiny as to the impact of any proposal are required, and the Commission shall therefore require that a variance request as outlined in Section 4.01 be submitted with each such application.**
- C. Further, it is herewith set forth relative to any and all proposed projects within such areas, that close scrutiny shall be given by the Commission to any proposals involving an application of new pavement or newly installed other impervious materials within any area less than 100 feet from bordering vegetated wetland, bank, beach and meadow, and that the Commission *will not* look with favor on any such applications.**
- D. In specific instances, the Commission will entertain a request for waiver from the above standard in Subsection C. such request to follow the form and utilize the standards set forth for a variance under Section 4.01 herein.**

#### PART V. Plan and Filing Requirements

##### 5.01. Forms.

The forms in the Appendix, together with any requirements for the submission of applications for permits or requests for determination of applicability which the Conservation Commission may promulgate in writing, are incorporated by reference and are expressly made a part of these rules and regulations.

##### 5.02. Filing fees.

###### A. Rules.

- (1) Permit fees are payable at the time of application and are nonrefundable.
- (2) Permit fees shall be calculated by the Conservation Commission per the schedule below.
- (3) Town, county, state and federal projects are exempt from fees.
- (4) Non-profit organizations are not exempt.
- (5) Failure to comply with the law after official notification shall result in fees twice those normally assessed.

B. Fees.

- (1) Minor project (house addition, tennis court, swimming pool, utility work, etc.): **\$250.**
- (2) Single-family dwelling: **\$500.**
- (3) Subdivisions (road(s) and utilities only): **\$550** plus \$2 per foot of roadway(s) side line within 100 feet of wetlands or within land subject to flooding.
- (4) Multiple dwelling structures: **\$550** plus \$ 100 per unit all or part of which lies within 100 feet of wetlands or within land subject to flooding.
- (5) Commercial and industrial projects: **\$550** plus \$1 per square foot of wetland disturbed plus \$1 per square foot of land subject to flooding or one-hundred-foot buffer disturbed.
- (6A) Extensions and Certificates of Compliance
  - (a) Single-family dwelling or minor project: **\$100.**
  - (b) Other: **\$200.**
- (7) Re-filing of previously denied projects within three years: original fee or \$1,000 whichever is less.
- (8) Determination:  
Formal: **\$100** - Abbreviated Notice of Resource Area Delineation: \$1.00 per foot of resource Area  
  
Informal: **Resident \$15. other \$100.**
- (9) Filing a Notice of Intent or an Amended Notice of Intent after the fact (i.e. work commenced with out permit) or a violation the fee is doubled.
- (10) Amended Notice of Intent – ½ of the original fee.

***NOTE: These fees are in addition to the wetlands filing fees for notice of intent charged under MGL Chapter 131 section 40.***

5.03. Plan Requirements.

- A. Plans shall describe the proposed activity and its effect on the environment. Due regard shall be shown for all natural features such as large trees, watercourses and water bodies, wildlife habitat and similar community assets.
- (1) 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 the review and which is deemed necessary to determine the proposed effect of the interests protected by the Bylaw. ***The Conservation Commission may waive any of these plan requirements for projects deemed insignificant.***
  - (2) The applicant must submit the original material to the Conservation Commission, plus seven copies of the following: **(8 in total)**
    - (a) Request for permit form.

- (b) An eight-and-five-tenths-inch-by-eleven-inch reproduction of the USGS quadrangle sheet showing the project locus, and in the case where the project requires two or more plans to show the locus, an eight-and-five-tenths-inch-by-eleven-inch sheet clearly identifying the proposed site and work in addition to the labeled boundaries of the resource areas.

B. General.

(I) The following information shall be provided:

- (a) The names and addresses of the record owner(s), the applicant(s) and of all abutters, as determined by the most recent local tax list, unless the applicant shall have a more recent knowledge of such abutters.
  - (b) Description of any alteration to flood storage capacity on the site. Include calculations and watershed maps if necessary.
  - (c) Maximum and minimum groundwater elevations. The calendar dates of measurements, samplings and percolation tests shall be included, regardless of planned sewer connections.
  - (d) Soil characteristics in representative portions of the site.
  - (e) A runoff plan and calculations using the TR-55 (small areas) or the TR-20 (areas greater than 20 acres) and based on the ten-year, fifty-year and one-hundred-year-flood frequency event period. Calculations shall show existing and proposed runoff conditions for comparative purposes.
  - (f) Methods to be used to stabilize and maintain any embankments facing any wetlands, or show slope on plans of less than or equal to 3 to 1.
  - (g) Methods to control erosion during and after construction.
- (2) The Canton Wetlands Bylaw considers wildlife, erosion control, aesthetics, agriculture and agricultural values, historic values and recreation as values of the wetlands. The applicant should include a discussion of the effect of the proposed project on these values.

C. Plans.

- (1) All drawings shall be drawn one inch equals 40 feet (maximum) with the title designating the name of the project, location, the name(s) of the person(s) preparing the drawings and the date prepared, including all revision dates. Drawings, whenever possible, should be stamped and signed by **a Massachusetts Registered Civil Engineer and/or a Massachusetts Registered Land Surveyor as required. Plan sheets shall be no larger than 24"X 36"**. Pencil notations will not be accepted.
- (2) Drawings must include a delineation of all wetlands, both permanent and seasonal, natural and man-made, and should be clearly delineated as indicated below, regardless of whether or not the applicant believes the work is subject to MGL c. 131, § 40 the Wetlands Protection Act or the Canton Wetlands Bylaw:
  - (a) Open or flowing water: light blue.

- (b) Marsh or swamp: light blue with swamp symbols superimposed.
- (c) All meadows, flats and other land subject to flooding: outline with a dashed blue line.
- (3) Alterations.
  - (a) Drawing must include a delineation of all alterations proposed in or adjacent to wetlands and flood plains as indicated below:
    - (1) Areas to be dredged: outlined with red.
    - (2) Areas to be filled: outlined with green.
    - (3) Areas to be altered in any way, other than dredging or filling: outlined in black.
  - (b) All alterations should be clearly explained in text or footnotes.
- (2) All drawings should delineate the thirty-foot buffer (outlined in yellow) and the one-hundred-foot buffer (outlined in orange).
- (4) Calendar dates of measurements, samplings, contours and so forth should appear with such data. Datum shall be stated in NGVD base. The contour interval shall be no greater than two feet.
- (5) Indicate existing and final contours and contour interval used, including pond bottom and stream invert contours.
- (6) Indicate locations and elevations of sills and bottom of septic system.
- (7) Indicate soil characteristics in representative parts of property, including depth of peat and muck in wetlands. Include test borings, unless a variance is allowed.
- (8) Indicate locations, sizes and slopes of existing and proposed culverts and pipes.
- (9) Include cross-section of all wetlands, showing slopes, bank and bottom treatments.
- (10) 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 of loss of storage on downstream channels and culverts.
- (11) Indicate location and elevation of benchmark used for survey. Bench Mark shall be set on subject property and remain until a Certificate of Compliance is issued.
- (12) Indicate existing trees, stonewalls, fences, buildings, historic sites, rock ridges and outcroppings.
- (13) Indicate invert elevations on catch basins.
- (14) Indicate proposed on-site pollution control devices, such as hooded catch basins, oil absorption pillows. Detention/retention basins flow dissipaters or vegetative buffers or oil separators
- (15) Show locations/details of erosion control devices.

- (16) Assessors Map and Lot number(s) shall be shown.
- (17) All wells within 100 feet of any proposed septic system shall be shown.
- (18) If location is within the Ponkapoag Area of Critical Environmental Concern, the same shall be so indicated on the plan.**

5.04. Filing requirements to be fulfilled prior to site inspections:

A. Before site inspections can be made by the Conservation Commission or the Commission's Agent the following conditions must be met:

- (1) Stakes shall be provided as follows:
  - (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.
  - (c) Stakes indicating 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.

Failure to have the lot staked may result in non-review. Upon completion of staking, the Conservation Agent should be notified and a site inspection shall be arranged prior to the scheduled public hearing.

Part VI. Other Regulations:

6.01 Wetland Delineations

- A. All wetland delineations shall be delineated in accordance with the manual "Delineating Bordering Vegetated Wetlands, Under the Massachusetts Wetlands Protection Act, March 1995", produced by: Massachusetts Department of Environmental Protection, Division of Wetlands and Waterways. **Wetland flags shall be no farther apart than 20 feet.**

6.02 Demarcation of 30-foot No-build Zone:

- A. Preamble:

If the project proposes the construction of a structure within thirty feet of the 30-foot no-build line then a permanent barrier shall be constructed at the edge of the 30-foot no-build zone as a point of demarcation. The barrier will continue along the line to a point 30 feet beyond the point at which the structure is within 30 feet of the No-build Zone.

- B. The barrier shall be constructed of stone, concrete, brick or other similar material. The barrier shall be at least 24 inches above finish grade for the length of the barrier.
- C. The barrier is required for demarcation purposes only and shall be designed and constructed in such a manner that it does not pose a safety hazard and the design professional shall certify this to the Commission.
- D. If the barrier is to be used as part of a retaining wall, it as well as the retaining wall shall be designed and engineered structure.

**7.00. Water Quality: Entire section re-written**

- A. Until the issuance of water quality standards by the Town of Canton, applications for subdivisions, commercial and industrial projects shall meet the standards established in “Storm water Management”, Volume Two: Storm water Technical Handbook, prepared by Ma DEP and Ma CZM dated March 1997 and the US EPA Phase I and II Regulations.
- B. All applications for projects brought before the Commission shall include a erosion and sediment control plan which as a minimum follows the “ Guidelines for Soil & Water Conservation in urbanizing areas of Massachusetts, USDA Soil Conservation Service, October 1977.
- C. All applications for projects brought before the Commission shall comply with the **Town of Canton Storm Water By-law.**