TOWN OF STOUGHTON
Non Zoning- WETLANDS PROTECTION BY-LAW (Chapter 191 of the Town Code) REGULATIONS
Amendments Approved by the Stoughton Conservation Commission July 12, 2012 (vote of 4-0 APPROVED)

GENERAL REGULATIONS

191.01 Introduction and Purpose

The purpose of these regulations is to protect the wetlands, related resources, and adjoining land areas in the Town of Stoughton by prior review and the control of activities deemed by the Stoughton Conservation Commission (hereafter referred to as "Commission") likely to have a significant or cumulative effect upon wetland values, including but not limited to the following; public water supply, private water supply, ground water, flood control, erosion and sedimentation control, storm damage prevention, prevention of water pollution, fisheries, wildlife, wildlife habitat, recreation, and aesthetic values; these values are to be collectively known as the "wetland resource area values" protected by the By-law and its regulations.

191.02 Statement of Jurisdiction

(1) Areas subject to protection under the By-law. The following areas are subject to protection:
- (a) Any bank, freshwater wetland, marsh, swamp, creek, stream, river, pond, lake, or any beach or flat bordering on any bank, freshwater wetland, marsh, swamp, creek, stream, river, pond, or lake.
- (b) Land under any of the water bodies listed above
- (c) Land subject to flooding
- (d) Any resource areas subject to protection under M.G.L. Ch. 131 s. 40

(2) Activities Subject to Regulation Under the By-law.
- (a) Activities within the Areas Subject to Protection Under the Act and Bylaw.
- (b) Activities within the Buffer Zones established in this Bylaw

191.03 General Provisions

(1) Burden of Proof - Any person who files a Notice of Intent to perform any work within an Area Subject to Protection under the By-law or within the Buffer Zone has the burden of demonstrating to the Commission that a) the area is not significant to the protection of any of the interests identified in the By-law, or 2) that the proposed work will contribute to the protection of the interests identified in the By-law by complying with the general performance standards outlined in these Regulations .

(2) Burden of Going Forward - The burden of going forward means having to produce at least some credible evidence from a competent source in support of the position taken. This burden shall be upon the person contesting the Commission's position on appeal.

(3) Presumption Concerning Title V on the State Environmental Code - A subsurface sewage disposal system that is to be constructed in compliance with the requirements of Title 5 of the State Environmental Code, as may be amended in the future, or any more stringent municipal Board of Health requirements, shall be presumed to protect the wetland resource area values

noted in the By-law Section I.

(4) Presumption Concerning Point-Source Discharges - point source discharges designed to comply with the DEP's Stormwater Management Policy or Regulations as amended shall be presumed to protect the wetland resource area values noted in the By-law Section I.

(5) Presumption of Significance - Each area subject to protection under the By-Law is presumed to be significant to one or more of the wetland resource area values identified in the By-Law. These presumptions are rebuttable and are set forth in Sections 10:53 to 10:81.

(6) Presumption Concerning Application of Herbicides - The provisions of 310 CMR 10.03 (6) will be followed under these Regulations.

(7) The presumptions in items 3 through 6 do not relieve the applicant from the obligation to file for a permit.

(8) Fees - Fees for Requests for Determinations and other Applications are noted in these Regulations in Section 191.94.

191.04 Definitions

Abutter: The same as owner of land abutting the activity.

Agriculture: Land with resource areas or the Buffer Zone presently and primarily used in producing or raising one or more of the following agricultural commodities for commercial purposes:

1. animals, including but not limited to, livestock, poultry, and bees;
2. fruits, vegetables, berries, nuts, and other foods for human consumption;
3. feed, seed, forage, tobacco, flowers, sod, nursery or greenhouse products, and ornamental plants or shrubs; and
4. forest products under a planned program to improve yield quality and quantity

Alter: means to change the condition of any Area Subject to Protection Under the By-law. Examples of alterations include, but are not limited to, the following:

(a) The changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns and flood retention areas;
(b) Lowering of the water level or water table;
(c) Destruction of vegetation;
(d) The changing of water temperature, biochemical oxygen demand (BOD), and other physical, biological or chemical characteristics of the receiving water.
(e) Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind.
(f) Dumping, discharging, or filling with any material that may degrade water quality.
(g) Driving of any piles or erection of buildings or structures of any kind.
(h) Water withdrawals of more than 100 gallons per day.

Alteration: means a change

Applicant: means any person who files a Notice of Intent or Request for Determination, or on whose behalf such a notice is filed.

Areas subject to flooding: Depressions or closed basins which serve as ponding areas for runoff, snowmelt, heavy precipitation, or high ground water which has risen above the ground surface, and areas which flood from a rise in a bordering waterway or water body.

Bank: shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the

slope or the mean annual flood level, whichever is higher.

Bordering Vegetated Wetland: freshwater wetlands that border on creeks, rivers, streams, ponds, and lakes, including but not limited to wet meadows, marshes, swamps, and bogs.

Breeding area: areas used by wildlife for courtship, mating, nesting, or other reproductive activity, and rearing of young.

Buffer Zone: means that area of land extending one hundred (100) feet horizontally outward from the boundary of any area in the By-law.

Certificate of Compliance: means a written determination by the issuing authority that work or a portion thereof has been completed in accordance with an Order. It shall be made on Form 8 of CMR 10.99.

Determination: Determination of Applicability means a written finding by a conservation commission or the Department of Environmental Protection as to whether a site or the work proposed thereon is subject to the jurisdiction of the Act. It shall be made on Form 2 of 310 CMR 10.99

Determination of Significance: Means a written finding by a conservation commission. After a public hearing, or by the Department, 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 Act. It shall be made as part of the Order, on Form 5 of 310 CMR 10.99.

Notification of Non-Significance: means a written finding by a Conservation Commission, after a public hearing, or by the Department, that the area on which the proposed work is to be done, or which the proposed work will alter, is not significant to any of the interests of the act. It shall be made on Form 6 of 310 CMR 10.99.

Isolated Land Subject to Flooding: any "isolated depression without an inlet... which at least once a year confines standing water to a volume of at least one quarter acre-foot of water with an average depth of at least six inches." The boundary is the perimeter of the largest observed or recorded volume of water confined in the basin.

Non-Transient Macro-Organisms: These include wetland plants (as defined in M.G.L. Chapter 131, section 40, or in regulations 310 CMR 10.00) and/or animals visible to the naked eye including but not limited to: Eubrachiopods, Isopods, Amphipods, Coleoptera, Trichoptera and Pisidiid clams.

Notice of Intent: means the written notice filed by any person intending to remove, fill, dredge or alter an Area Subject to Protection under the By-law. It shall be made on Form 3 or 4 of 310 CMR 10.99.

Order of Conditions: means the document issued by a conservation commission containing conditions which regulate or prohibit an activity. It shall be made on Form 5 of 310 CMR 10.99.

Owner of Land Abutting the Activity: means 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, or canal.

Plans: means such data, maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the issuing authority to describe the site an/or the work, to determine the applicability of M.G.L. c. 131, s. 40 or to determine the impact of the proposed work upon

the interests identified in the Bylaw. Said plans are described in the Town of Stoughton NOI guidelines.

Pollution: shall mean human-caused introduction of pollutants: foreign or artificial substances, including but not limited to silt, sediments, sand, gravel, rocks, wood debris, logs, plant debris, like grass clippings, leaves, or branches, materials listed by the DEP as hazardous waste under M.G.L. c. 21E, 310 CMR 40.000, or other applicable state or Federal laws governing hazardous materials, or human-generated debris of other types, like plastics, metals, other forms of trash, or organic garbage.

Private Water Supply: means any source or volume of surface or ground water demonstrated to be in any private use or demonstrated to have a potential for private use.

Public Water Supply: means any source or volume of surface or ground water demonstrated to be in public use or approved for water supply pursuant to M.G.L. c. 111, s. 160 by the Division of Water Supply of the Department, or demonstrated to have a potential for public use.

Rare Species: means those vertebrate and invertebrate animal species officially listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife under 321 CMR 8.00.

Resource Areas Bordering Water Bodies: "bordering means touching" any: Bank, Flat, Marsh, Freshwater Wetland, Beach, Meadow, Dune, or Swamp that borders on any Estuary, Creek, River, Stream, Pond, or Lake, or that touches one of the above land areas that itself borders a water body, is a protectable area. Areas subject to flooding are also protectable.

Riverine Wetland: means wetland resource area abutting a river.

Seasonal Wetland: Areas subject to flooding which form temporary confined bodies of water during periods of high water table and high input from spring runoff or snowmelt or heavy precipitation, and support populations of non-transient macro-organisms or serve as breeding habitat for select species of amphibians.

Select Species of Amphibians: Species of amphibians which depend on seasonal wetlands for breeding habitat, including: mole salamanders (*Ambystoma maculatum, A. jeffersonianum*, *A. laterale*, and *A. opacum);* four - toed salamanders (*Hemidactylium scutatum*); Eastern Spadefoot Toads (*Scaphiopus holbrookii);* American and Fowler's Toads(*Bufo a. americanus and B. woodhousii fowleri*); Spring Peepers (*Hyla c. crucifer)*; Gray Treefrogs (*Hyla versicolor*); Wood Frogs (*Rana sylvatica*).

Storm Damage Prevention: means the prevention of damage caused by water from storms, including, but not limited to, erosion and sedimentation, damage to vegetation, property or buildings or damage caused by flooding, water borne debris or water-borne ice.

Temporary Confined Bodies of Water: Bodies of water with little or no flow that periodically becomes dry to such an extent that they cannot support sustained fish populations.

Temporary Pond or Pool: a seasonal wetland.

Vernal Pool Habitat: means a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundaries of such depressions, to

the extent that such habitat is within an Area Subject to Protection Under the Act as specified in the By-law 0.02(1). These areas are essential breeding habitat, and provide other extremely important wildlife habitat functions during non-breeding season as well, for a variety of amphibian species such as Wood Frog (Rana sylvatica) and the Spotted Salamander (Ambystoma maculatum), and are important habitat for other wildlife species.

Water Pollution: means the artificial (human-caused) introduction of a pollutant into a wetland. (material omitted)

Water withdrawal: Means any removal of water from a water body, stream, brook, river, or other wetland, for any purpose other than commercial agriculture. Loading a commercial tanker or hydroseeding truck constitutes a water withdrawal.

191.05 Procedures

(1) Time periods - All time periods of ten (10) days or less specified in the By-law shall be computed using business days only. In the case of a determination or an Order by the Commission, such period shall commence on the first day after the date of issuance and shall end at the close of business on the tenth business day thereafter. All other time periods specified in the By-law and these 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 - All actions taken by the Commission shall be done by a majority of the members present at a public meeting of at least a quorum (a majority of the members then in office).
(3) Determinations of Applicability and Requests for Determinations - The procedures for this action are outlined in the By-law Section V, and need not be duplicated here. It is noted that the Wetlands Protection Act does not require Conservation Commissions to approve wetlands delineations via a Determination, but instead allows Commissions to require filing of an Abbreviated Notice of Resource Area Delineation. The Commission reserves this option for wetland delineations, and assigns the fees as noted in Section 191.94 of these regulations.

(4) Applications for Permits (Notices of Intent and Abbreviated Notices of Resource Area Delineation) - The procedures for these applications are outlined in the By-law Section V, with the following exceptions:

A. In cases where continuances have been granted but the hearing has not been closed, Notices of Intent and Requests for Determination shall expire two years after the original filing was made.
B. See Section 191.94 of these regulations for the fee schedule.

(5) Public Hearings by Conservation Commissions -

A. All public hearings held by the Conservation Commission shall follow the Open Meeting Laws, and mimic the time periods noted in 310 CMR 10.00. All public hearings may be held simultaneously with hearings held under the Massachusetts Wetland Protection Act and 310 CMR 10.00 at the Commission's discretion.

B. All information required by the Commission at a hearing, as part of an agreement with the applicant to continue a hearing under this Bylaw, shall be submitted to the Commission within 90 days of the agreement, unless otherwise extended by the Commission. Failure to provide the required information shall be grounds to declare the permit application null and void and require the filing of a new permit.

(6) Permits regulating work - Fully outlined in the Wetlands Protection Bylaw.

(7) Follow-through after Permits – It is hereby noted that compliance with the requirements of any permit issued under this Bylaw is the sole responsibility of the applicant or his successors or assigns. Failure to comply with the conditions of any permit issued under this Bylaw shall, at the discretion of the Commission, be subject to a performance penalty of up to $300.00 per day from the date of detection of the failure to perform until the date of correction, or any other lesser time period imposed by the Commission.

Performance penalties may also be separately stated in an Order of Conditions.

(8) Extensions of Permits - Fully outlined in the Wetlands Protection By-law. See Section 191.94 for fee schedule.

(9) Certificates of Compliance - Fully outlined in the Wetlands Protection By-law.

191.06 Emergencies

(1) Under some circumstances, work will need to be done immediately. The Regulations consider several types of emergency activities, those that are necessary to abate a threat to public health or safety, including spills or releases of oil or hazardous materials, and those constituting agricultural emergencies. Any person requesting permission to do an emergency project shall specify why the project is necessary for the protection of the health or safety of the citizens of the Commonwealth.

(2) An emergency certificate shall be issued only for the protection of public health or safety.

(3) The time limitation for performance of emergency work shall not exceed 30 days, or 60 days for Immediate Response Actions approved by the Bureau of Waste Site Cleanup (BWSC) of the Department of Environmental Protection in accordance with the provision of 310 CMR 40.0410, unless written approval of the Commission is obtained.

(4) A copy of an emergency certification shall be sent to the Department when it is issued by the Conservation Commission and to the Conservation Commission when it is issued by the Department.

(5) At the conclusion of the emergency work, a Request for Determination, Notice of Intent, or Request for a Certificate of Compliance with an Emergency Certificate shall be filed with the Conservation Commission, and a hearing shall be held as needed to address the protection of the interests described in these Regulations. The form to be filed shall be determined by the Commission, in consultation with the applicant.

191.07 Enforcement

(1) When the Conservation Commission determines that an activity is in violation of the By-law or a Permit issued under the By-law, the Commission may:

(a) issue an Enforcement Order, and/or

(b) hold a Public Hearing to consider whether the landowner should be fined for the violation, and should have Commission signatures withheld on municipal permit applications, and/or

(c) issue a citation pursuant to M.G.L. Ch. 40 Section 21D.

(2) Violations include, but are not limited to:

(a) failure to comply with a Permit, such as failure to observe a particular condition or time period specified in the Permit;

(b) failure to complete work described in a Permit, when such failure causes damage to the interests identified in the By-law; or

(c) failure to obtain a valid Permit prior to conducting an activity subject to regulation under the By-law.

(3) An Enforcement Order issued by the Conservation Commission shall be signed by a majority of the Commission. In a situation requiring immediate action, an Enforcement Order may be signed by a single member, the Environmental Affairs Director or designated agent of the Commission, if said Order is ratified by a majority of the members at the next scheduled meeting of the Commission.

(4) If a fine or an adjustment of fine for a violation is contemplated, the Commission shall hold a Public Hearing to discuss the violation and to give the landowner or the landowner's representative an opportunity to respond to the evidence and circumstances. The landowner must be given at least 48 hours notice in writing of the date, time and place of the Public Hearing, by mail or hand delivery. If a majority of the Commission present at the Hearing finds by a preponderance of the evidence that a violation has occurred, the landowner shall be punished by a fine per violation of which the amount will be set by the Commission at the Public Hearing, in accordance with Section X of the By-law and the fine guidelines approved by the Commission herein.

(5) The Commission shall take into account the nature of the violation as follows;

(a) In a case where restoration is possible, each day or portion thereof during which a violation continues or is repeated shall constitute a separate offense, and each provision of the By-law or Permit violated shall constitute a separate offense.

(b) In a case where restoration is impossible or inadvisable, the Commission will decide what procedural or legal remedies to take. In particular, in the case of destruction of low herbaceous or shrub-sized vegetation, the Commission may continue indefinitely any public hearing for any part of that site until the vegetation has reemerged, grown or otherwise reestablished itself to the Commission's satisfaction. Sites where large trees have been removed shall also require detailed review by the Commission. In the meantime, no work may take place on that site without a valid Permit.

(6) The Commission guidelines for calculating the amount of any fine, within the discretion of the Commission, are as follows:

A. Without Permit:

1. Alteration within Resource Area: $10.00 per square foot of alteration, or $300.00, per day,

whichever is lower, and replication, when ordered, after filing a Notice of Intent.

2. Alteration within 50 foot No-Touch Zone: $7.50 per square foot of alteration, or $300.00, per day, whichever is lower, restoration of natural vegetative cover via landscaping approved under a Notice of Intent.

3. Alteration within 75 foot No Build Zone: $5.00 per square foot of alteration, or $300.00, per day, whichever is lower, and filing the required Notice of Intent.

4. Alteration within 100 foot Buffer Zone: $1.00 per square foot of alteration, or $300.00, per day, whichever is lower, and filing the required Notice of Intent.

B. With Permit:

1. Alteration within Resource Area: $10.00 per square foot of alteration, or $300.00, per day, whichever is lower, replication of damaged resource, $700.00 per numbered condition violated in the Order of Conditions, and filing an Amended Notice of Intent for the replication.

2. Alteration within 50 foot No-Touch Zone: $7.50 per square foot of alteration, or $300.00 per day, whichever is higher, restoration of damaged No-Touch Zone, $700.00 per numbered condition violated in the Order of Conditions, and filing an Amended Notice of Intent for the restoration.

3. Alteration within 75 foot No Build Zone: $5.00 per square foot of alteration, or $300.00, per day, whichever is lower,$700.00 per numbered condition violated in the Order of Conditions, and filing an Amended Notice of Intent for the unpermitted alteration.

4. Alteration within 100 foot Buffer Zone: $1.00 per square foot of alteration, or $300.00, per day, whichever is lower, $700.00 per numbered condition violated in the Order of Conditions, and filing an Amended Notice of Intent for the unpermitted alteration.

C. Fines for violations shall accrue until resolved to the satisfaction of the Commission.

(7) The notice of fine or fines and explanation thereof, including the date or approximate date of the violation from which daily violations are counted, will be sent in writing to the responsible applicant or landowner(s) by mail or hand - delivery. The fine or fines are payable to the Town of Stoughton within twenty-one days of the date of issuance of the notice. Any fine not paid shall accrue an interest of 14% per year.

(8) A landowner may apply in writing for a continuance of the Public Hearing to Assess Fine stating in full the reason for the request. The Commission may grant a continuance for compelling and / or environmentally sound reasons.

(9) The Commission reserves the right to adjust the fine in response to new information or new circumstances at a Public Hearing to which the landowner will be given notice as above. A written notice of the adjustment of fine shall be sent to the landowner by mail or hand - delivered.

(10) The Commission may accept a written plan with timetable for full restoration of the violation and may then withhold sending the notice of fine(s) for a specific time period. If satisfactory

restoration is not made in a timely manner, the notice of fines is retroactive. If satisfactory restoration is made in a timely manner, a Public Hearing may be held to adjust the fine.

(11) Unless otherwise stated in the By-law, or in the rules and regulations promulgated under the By-law, the definitions, procedures, and performances standards of the Wetlands Protection Act, M.G.L. Chapter 131, section 40 and associated regulations, 310 CMR 10.00 as promulgated 1 April 1983, and as amended 30 June 1995, or more recently, shall apply.

191 .08 Severability

If any provision of any part of this regulation or the application thereof, is held to be invalid, such invalidity shall not affect any other provision of this regulation, or of the bylaw itself.

191 .09 Effective Date

The regulations contained herein shall be effective upon the vote of the Conservation Commission after a duly noticed public hearing, and shall be applied pursuant to the Town of Stoughton Wetlands Protection By-law, Chapter 191.

IN KEEPING WITH THE NUMERICAL SEQUENCE USED IN 310 CMR 10.00, SECTIONS 191.10 THROUGH 20, AND 191.38 THROUGH 50 ARE RESERVED FOR FUTURE USE.

310 CMR 10.21 THROUGH 10.37 REFER TO REGULATIONS FOR COASTAL WETLANDS, AND ARE INAPPLICABLE TO THE TOWN OF STOUGHTON, THEREFORE, NOT ENUMERATED IN THESE REGULATIONS.

REGULATIONS FOR RESOURCE AREAS AND BUFFER ZONES

191.51 Introduction

This section applies to all work which will remove, fill, dredge or alter any bank, bordering vegetated wetland, land under water bodies and waterways subject to flooding, and to inland (as opposed to coastal) wetlands.

191.52 Purpose

The By-law is intended to establish criteria and standards for the uniform and coordinated

administration of the provision of the Act. It is intended to ensure that development in and near inland wetlands is sited, designed, constructed and maintained in a manner that protects the public interests identified in the Act and served by these resource areas.

The By-law is intended to notify both persons proposing work in Areas Subject to Protection Under the Act and those regulating that work as to the performance standards that should be applied. These standards are intended to identify the level of protection that the issuing authority must impose in order to contribute to the protection of the interests identified in the Act. It is the responsibility of the person proposing work to design and complete his project in conformance with these performance standards. It is the responsibility of the issuing authority to impose such

conditions on a proposed project as to ensure that the project is designed and completed in a manner consistent with these standards.

191.53 General Provisions

(1) Protecting interests when no presumption of significance “reserved”.
(2) Restriction orders “reserved”.
(3) Limited Projects

Notwithstanding the provisions of the By-law regulation sections 191.54 through 191.59, the Commission may issue a Permit and impose such conditions as will contribute to the interests identified in the By-law permitting the following limited projects (although no such project may be permitted that will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species as identified on the most recent MDFW map as described at 310 CMR 10.37):

(a) Access road: the construction and maintenance of a new roadway or driveway of minimum legal and practical width where reasonable alternative means of access from a public way to an upland area is otherwise unavailable. In determining whether reasonable alternative means of access are available, the Commission may consider the reasonableness of any available alternatives, including the realignment or reconfiguration of the project to minimize disruption of the wetlands. The limited project exception does not contemplate maximum development of uplands at the expense of wetlands, which would result from locating access ways in wetlands areas to the greatest extent possible. Such roadway or driveway shall be constructed using the best available practices to minimize disturbance and maximize compliance with the applicable performance standards. In addition, such roadway or driveway shall be constructed in a manner which does not adversely restrict the flow of surface or subsurface water and so that equivalent flood storage is maintained. A second access road to the same upland area shall not qualify as a limited project.

(b.) through (d.) Reserved

191.54 Bank (Naturally Occurring Banks and Beaches)

(1) Preamble

Banks are likely to be significant to public or private water supply, to ground water supply, to flood control, to storm damage prevention, to the prevention of pollution, to the protection of shellfish, fisheries, and wildlife habitat, and to aesthetics. Where banks are composed of artificial impervious material, they are only significant to flood control and storm damage prevention. Banks are areas where ground water may discharge to the surface, and where surface water may recharge the ground water. Vegetation on banks maintains stability, thereby protecting water quality by reducing erosion, as well as moderating water temperatures by shading the water. Bank vegetation also provides shelter and food for aquatic and water-dependent wildlife, as does the structure of the bank itself. Banks are important to overwintering, migratory, and breeding wildlife, and may be especially important as travel corridors for wildlife as other habitat is cleared for human use. Banks also serve to contain the most frequent “first flush” rains, confining average storms within waterways. Deeper waterways contain cool-water fisheries dependent on reasonable water depth for fish survival. Alterations of the banks of cool-water fishery waterways, allowing water to spread onto other properties and damage them, also harms the fish and their habitat, especially during warm weather.

(2) Definition, Critical Characteristics and Boundary : see 310 CMR 10.54 (2). These regulations are consistent with this section.

(3) Presumption: Where a proposed activity involves the filling, removing, dredging or altering of a bank, the Commission shall presume that the bank is significant to the interests specified in ~~178~~ 191.54 (1). This presumption is rebuttable, and may be overcome by a clear showing that the Bank does not play a role in the protection of the stated interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

(4) General Performance Standard:
(a) Where the presumption set forth in 191.54 (3) is not overcome, any proposed work on a Bank shall not impair the following:

1. The physical stability of the Bank;
2. The water carrying capacity of the waterway channel within the Banks**;**
3. Ground water and surface water quality
4. The capacity of the Bank to provide breeding habitat, escape cover, and food for fisheries;
5. The capacity of the Bank to provide important wildlife habitat functions.

(b) Notwithstanding the provisions of 191.54 (4) (a), no project may be permitted that will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species, as identified by procedures established under 310 CMR 10.59.

191.55 Wetlands (Wet Meadows, Marshes, Swamps & Bogs)

A. Freshwater Wetlands

(l) Preamble

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

The plant communities, soil, and associated low topography of Freshwater Wetlands remove or detain sediments, nutrients (such as nitrogen and phosphorus) and toxic substances (such as heavy metal compounds) that occur in runoff and flood waters.

Some nutrients and toxic substances are detained for years in plant root systems or in the soils. Others are held by plants during the growing season and released as the plants decay in the fall and winter. This latter phenomenon delays the impacts of nutrients and toxins until the cold weather period, when such impacts are less likely to reduce water quality.

Freshwater Wetlands are areas where groundwater discharges to the surface and where, under some circumstances, surface water recharges the ground water. The profusion of vegetation and the low topography of Freshwater Wetlands slow down and reduce the passage of flood waters during periods of peak flows by providing temporary flood water storage, and by facilitating downstream flood crests and resulting damage to private and public property. During dry periods the water retained in Freshwater Wetlands is essential to the maintenance of base flow levels in rivers and streams, which in turn is important to the protection of water quality and water supplies.

Wetland vegetation provides shade that moderates water temperatures important to fish life.

Wetlands flooded by adjacent water bodies and waterways provide food, breeding habitat and cover for fish.

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

Freshwater Wetlands are arguably the Town's most important habitat for wildlife. The hydrologic regime, plant community composition and structure, topography and water chemistry of Freshwater Wetlands provide important food, shelter, migratory and overwintering areas, and breeding areas for many birds, mammals, amphibians and reptiles. A wide variety of vegetative wetland plants, the nature of which are determined in large part by the depth and duration of water, as well as soil and water composition, are utilized by varied species as important areas for mating, nesting, brood rearing, shelter, and (directly and indirectly) food. The diversity and interspersion of the vegetative structure is also important in determining the nature of its wildlife habitat. Different habitat characteristics are used by different wildlife species during summer, winter and migratory seasons.

(2) Definition, Critical Characteristics and Boundary

Freshwater Wetlands are riverine wetlands, marshes, wet meadows, bogs, or swamps that meet both of the following requirements:

(a) Fifty percent or more of the natural vegetative community must consist of obligate or facultative wetland plant species as included or identified in generally accepted scientific or technical publications (as, for example, the Wetland Plant List (Northeast Region) for the National Wetlands Inventory, U.S. Fish and Wildlife Services); and

(b)The soils must be annually saturated, as evidenced by the observed or documented presence of groundwater generally within 24 inches of the surface at any time of the year or any soil gleying or soil mottling within 24 inches of the surface.

Freshwater Wetlands may be bordering on other wetland resources, or they may be isolated. Bordering Freshwater Wetlands are also called Bordering Vegetated Wetlands.

Isolated Wetlands and Seasonal Wetlands are defined elsewhere in these regulations (sections 191.55 B and 191 .80) and need not necessarily meet the above requirements.

In situations where the Commission determines that the natural vegetative community has been destroyed in violation of this By-law, the Commission may itself elect to defer any determination of the presence or absence of, or the boundaries of, a Freshwater Wetland until the natural vegetation has regrown, and until that time may determine the area to be Freshwater Wetland on the basis of annual soil saturation alone.

(3) Presumption

Where a proposed activity involves the removing, filing, dredging or altering of a Freshwater

Wetland, the Commission shall presume that such area is significant to the interests specified in the Preamble section 310 CMR 10.55 A(1). This presumption is refutable and may be overcome upon a clear showing by the applicant that the Freshwater Wetland does not play a role in the protection of said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

(4) General Performance Standards

(a) Where the presumption set forth above is not overcome, any proposed work in a Freshwater Wetland shall not destroy or otherwise impair any portion of said area.

(b) Notwithstanding section 4(a) above, the Commission may issue a Permit allowing work which results in the loss of up to 5000 square feet of Freshwater Wetlands when said area is replaced in accordance with the following general conditions and any additional, specific conditions the Commission deems necessary to ensure that the replacement area will function in a manner similar to the area that will be lost:

1. the replacement area shall be constructed before any other work is done on the project;

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

3. the ground water and surface water elevations, and the surface water depth of the replacement area shall be approximately equal to that of the lost area;

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

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

6. the wetland replacement area shall have a replacement soil substrate of primarily organic matter, either actual excavated wetland soil from the lost area or some form of peat soil, to facilitate the survival of the wetland plants installed in the replication area, and to rapidly recreate the destroyed hydric soils in the lost area, enhancing the likelihood of successful replication.

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

8. the wetland replacement area shall be excavated before the lost area is destroyed, to allow transfer of soils and vegetation from the lost area to the replacement area, where possible.

9. at least 75 percent of the surface of the wetland replacement area shall be reestablished with indigenous wetland plant species of the types lost, and of similar sizes, within two growing seasons, and prior to said vegetative establishment any exposed soil in the replacement area shall be temporarily stabilized to prevent erosion

in accordance with U.S. Soil Conservation Service methods, or by other methods preferred by the Commission; and

10. the replacement area shall be provided in a manner which is consistent with all other General Performance Standards for each resource area described in these regulations.

(c) Notwithstanding the provisions of 4(a) and (b), above, no project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species as identified on the Natural Heritage and Endangered Species Estimated Habitat Maps on file with the Commission and identified under section 10.59 ("Rare Species") of the regulations to the state Wetlands Protection Act (310 CMR 10.00).

B. Isolated Wetlands

(1) Preamble

Isolated Wetlands are Freshwater Wetlands that do not border creeks, rivers, streams, ponds, and lakes. They are likely to be significant to public or private water supply, to ground water supply, to flood control, to storm damage prevention, to prevention of pollution, and/or to wildlife habitat.

Isolated Wetlands may be found either in areas with low, flat topography or below sidehill seeps. These areas provide for the temporary storage of water which results from runoff, rising ground water, or where ground water breaks out of a slope forming a sidehill seep. In this way they provide for flood control and prevention of flood damage. Alteration can significantly change properties, which may result in damage to said properties.

Isolated Wetlands are areas where ground water discharges to the surface either by a rising water table or from a sidehill seep. Under some circumstances, surface water recharges the ground water in these areas, particularly where they are underlain by pervious material. Contaminates introduced into such areas, such as septic system discharges, road salts, pesticides or herbicides, find easy access into the ground water or neighboring wells.

Where such areas are underlain by pervious material covered by a mat of organic peat or muck, they are likely to be significant to the prevention of pollution.

Isolated Wetlands providing Seasonal Wetland habitats are essential breeding sites for certain amphibians which require isolated areas that generally flood in the Spring and/or Summer, and are free of fish predators. Many reptiles, birds and mammals also depend upon such Isolated Wetlands as a source of food.

(2) Definition, Critical Characteristics and Boundary

(a) Definition

Isolated Wetlands are Freshwater Wetlands, as defined in this By-law, that do not border on creeks, rivers, streams, ponds, and lakes. Some isolated depressions which hold standing water for extended periods of time, or continuously, such as certain kettle holes such as vernal pools too

small to be called ponds or lakes, are Isolated Wetlands.
(b) Critical Characteristics

(I) Topography Isolated Wetlands may occur in a depressions or closed basin in otherwise flat topography. In these areas, water may pool above the surface at least once a year or may be contained in the top above the surface at least once a year or may be contained in the top 24 inches of soil. In addition, some Isolated Wetlands occur downslope of sidehill seeps, depending on the topography, soils, and water regime.

(ii) Vegetation In most cases, the vegetation community in Isolated Wetlands conforms to that specified in this By-law for Freshwater Wetlands. Occasionally the presence of water is so temporary that the appropriate vegetative community is not established; these areas may qualify as Seasonal Wetland.

(iii) Soils The soils are annually saturated as specified for Freshwater Wetlands, except in those Isolated Wetlands that are Seasonal Wetlands this soil condition may not be present.

(c) Boundary

The boundary of an Isolated Wetland shall be determined by one or more of the following, depending on the availability of information. Where more than one method is possible, that method leading to the largest area shall be used.

The boundary of the Isolated Wetland shall be:

(I) the line enclosing that area having a vegetative cover consisting of 50% or more of freshwater species, as defined in the By-law, or

(ii) the line enclosing the largest observed or recorded area of water confined in said area, or

(iii) the area calculated to be inundated by runoff from the 100-year storm.

(3) Presumption

Where a proposed activity involves removing, filling, dredging, or altering an Isolated Wetland, the commission shall presume that such an area is significant to, and only to, the respective interests specified in section 191.55 B(1). This presumption is refutable and may be overcome only upon a clear showing that the Isolated Wetland does not play a role in the protection of said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

(4) General Performance Standards

A proposed project which may result in alteration of an Isolated Wetland shall not result in the following:

(a) Flood damage due to filling which causes lateral displacement of water that would otherwise be confined within said area.
(b) An adverse effect on public and private water supply or ground water supply, where said area is underlain by pervious material.

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

(d) An impairment of its capacity to provide wildlife habitat where said area is a Seasonal Wetland habitat as determined by procedures in section 191.60, Wildlife Habitat Evaluations.

Notwithstanding the provisions of section 191.55 B (4) above, no project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species as identified on the Natural Heritage and Endangered Species Estimated Habitat Maps on file with the Commission and identified under section 10.59 ("Rare Species") of the Regulations to the state Wetlands Protection Act (310 CMR 10.00).

191.56 Land Under Water Bodies and Waterway (under any Creek, River, Stream, Flat, Pond or Lake)

(1) Preamble. Land Under Water Bodies and Waterways is likely to be significant to public and private water supply, to ground water supply, to flood control, to storm damage prevention, to prevention of pollution and to protection of fisheries and wildlife habitat. Where such land is composed of concrete, asphalt or other artificial impervious material, said land is likely to be significant to flood control and storm damage prevention.

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

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

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

Land under rivers, streams and creeks that is composed of gravel allows the circulation of cold, well oxygenated water necessary for the survival of important game fish (salmonids). River, stream and creek bottoms with a diverse structure composed of gravel, large and small boulders and rock outcrops provides escape cover and resting areas for the above mentioned game fish species (salmonids). Such bottom type also provides areas for the production of aquatic insects essential to fisheries.

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

The plant community composition and structure, hydrologic regime, topography, soil composition and water quality of land under water bodies and waterways provide important food, shelter, migratory and overwintering areas, and breeding areas for wildlife. Certain submerged, rooted vegetation is eaten by waterfowl and some mammals. Some amphibians (as well as some invertebrate species eaten by

vertebrate wildlife) attach their eggs to such vegetation. Some aquatic vegetation protruding out of the water is also used for nesting, and many species used dead vegetation resting on land under water but protruding above the surface for feeding and basking. Soil composition is also important for hibernation and for animals which begin to burrow their tunnels under water. Hydrologic regime, topography, and water quality not only affect vegetation, but also determine which species feed in an area.

(2) Definition, Critical Characteristics and Boundary:

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

(b) The physical characteristics and location of land under water bodies specified in 191 .56(2) (a) are critical to the interests specifies in 191.56 (1).

(c) The boundary of Land Under Water Bodies and Waterways is the mean annual high water mark.

(3) Presumption. Where a project involves filling, removing, dredging, or altering of Land Under Water Bodies and Waterways, the Commission shall presume that such area is significant to the interests specified in ~~178~~ 191 .56 (1).This presumption is rebuttable and may be overcome upon a clear showing by the applicant that the Freshwater Wetland does not play a role in the protection of said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

(4) General Performance Standards.

(a) Where the presumption set forth in 191.56 (3) is not overcome, any proposed work within Land Under Water Bodies or Waterways shall not impair the following:

1. The water carrying capacity within the defined channel, that is provided by said land in conjunction with the Banks;
2. Ground and Surface Water Quality;
3. The capacity of said land to provide breeding habitat, escape cover, and food for fisheries; and
4. The capacity of said land to provide important wildlife habitat functions.

(b) Notwithstanding the provisions of section 191.56 B (4) above, no project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species as identified on the Natural Heritage and Endangered Species Estimated Habitat Maps on file with the Commission and identified under section 10.59 (“Rare Species”) of the Regulations to the state Wetlands Protection Act (310 CMR 10.00).

191.57 Land Subject to Flooding (Bordering and Isolated Areas)

(1) Preamble.

(a) Bordering Land Subject to Flooding:

1. Bordering Land Subject to Flooding is an area that 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.
2. Bordering Land Subject to Flooding provides an important temporary storage area for flood water that has overtopped the bank of the main channel of a creek, river, or stream, or the basin of a pond or a lake. During periods of peak runoff, flood waters are both retained (i.e., slowly released through percolation and evaporation) 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 increase in damage to public and

private properties.

3. Certain portions of Bordering Land Subject to Flooding are also likely to be significant to the protection of wildlife habitat. These include: (a) all areas on the ten year floodplain or within 100 feet of the bank or bordering vegetated wetland (whichever is further from the water body or waterway, so long as such area is contained within the 100 year floodplain), and (b) all vernal pool habitat on the 100 year floodplain. Exceptions to (a) and (b) are those areas so altered by human activity that their wildlife habitat functions have been effectively eliminated as of 11-1-87, and have been maintained in this altered state.

The hydrologic regime, plant community composition and structure, topography, soil composition and proximity to water bodies and bordering vegetated wetlands of these portions of bordering land subject to flooding provide important food, shelter, migratory and overwintering areas, and breeding areas for wildlife. Nutrients from flood waters, as well as the inundation of floodplain soil, create important wildlife habitat characteristics, like richness and diversity of soil and vegetation. A great many species require or prefer habitat that is as close as possible to water and/or has moist conditions, characteristics generally present on lower floodplains. Similarly, lower floodplains, because of their proximity to water and vegetated wetlands, can provide important shelter for wildlife that needs to migrate between wetland areas, or between wetlands and uplands. The edge where floodplain habitat meets vegetated wetlands or water bodies is frequently very high in wildlife richness and diversity. Similar edges may be found elsewhere in the lower floodplain, where differences in topography and frequency of flooding have created varied soil and plant community composition and structure.

Finally, vernal pool habitat is found at various locations throughout the 100 year floodplain, the pool itself generally formed by meander scars, or sloughs left after the main water channel has changed course. These pools are essential breeding sites for certain amphibians that require isolated areas that are generally flooded for at least two continuous months in the spring and/or summer and are free from fish predators. Most of these amphibians remain near the breeding pool during the remainder of their lifecycle. Many reptiles, birds, and amphibians also feed here.

(b) Isolated Land Subject to Flooding

1. Isolated Land Subject to Flooding is an isolated depression or a closed basin that serves as a ponding area for runoff or high ground water that 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 materials covered by a mat of organic peat and muck, they are also likely to be significant to the prevention of pollution. Finally, where such areas are vernal pool habitat, they are significant to the protection of wildlife habitat.

2. 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 in turn result in damage to said properties.

3. Isolated Land Subject to Flooding, where it is underlain by pervious material, provides a point of exchange between ground and surface waters. Contaminants introduced into said area, such as septic system discharges and road salts; find easy access into the ground water and neighboring wells. Where these conditions occur and a mat of organic peat and muck covers the substrate of the area, said mat serves to detain and remove contaminants that might otherwise enter the ground water and neighboring

wells.

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

(2) Definitions, Critical Characteristics and Boundary

(a)Bordering Land Subject to Flooding

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

2. The topography and location of Bordering Land Subject to Flooding specified in 191.57 (2) (a) 1. are critical to the protection of the interests specified in 191.57 (1) a. Where Bordering Land Subject to Flooding is significant to the protection of wildlife habitat, the physical characteristics described in 191.57 (1) (a) 3 are critical to the protection of that interest.

3. The boundary of Bordering Land Subject to Flooding shall be the estimated maximum lateral extent of floodwater as described by: (a) the most recent available flood profile data from the National Flood Insurance Program (b) the most recent Town of Stoughton 100 year flood boundary maps, or (c) the maximum lateral extent of flood water that has been observed or recorded in town records, particularly in areas where NFIP profile data are not available.

In the event of a conflict, the Commission shall require the applicant to determine the boundary as described in 310 CMR 10.57 (2) (a) 3a-c, or any method preferred by the Town of Stoughton Engineering Department.

4. The boundary of the ten year floodplain is the estimated maximum lateral extent of the floodwater that will theoretically result from the statistical ten year frequency storm. This boundary shall be determined as specified at 191.57 (2) (a) 3, using 10 year frequency storm data for calculations (4.8 inches of rain in 24 hours), and observations of ten year storms.

5. Vernal Pool Habitat shall be presumed to exist upon provision of credible evidence, preferably in the form of either a vernal pool certification packet, or photographic evidence and written or in person testimony, also supported by audio and/or videotapes if available, from a credible source or sources, at a legally held Public Hearing of the Commission. Said presumption is rebuttable upon a clear showing to the contrary.

6. The boundary of Vernal Pool Habitat shall be the maximum observed or recorded water level in the pool, or the boundary calculated from the total volume of runoff from the drainage area contributing to the Vernal Pool, based upon a design storm of 2.6 inches of rain in 24 hours. Vernal Pool Habitat shall include the area within 100 feet of the boundary of the pool, when said area is contained within the boundaries of a wetland resource area.

(b) Isolated Land Subject to Flooding

1. Isolated Land Subject to Flooding is an isolated depression or closed basin without an inlet or an outlet. It is an area that at least once a year confines standing water to a volume of at least one quarter acre-feet to an average depth of at least six inches.

2. The characteristics specified in 191.57 (2) (b) 1 are critical to the protection of the interests specified in 191.57 (1) b.

3. The boundary of Isolated Land Subject to Flooding shall be the perimeter of the largest observed or recorded volume of water confined in said area. In the event of a conflict, the Commission shall require the applicant to determine the boundary as described in 310 CMR 10.57 (2) (a) 3a-c, using the total volume of runoff from the contributing drainage area, and assuming no infiltration, or any method preferred by the Town of Stoughton Engineering Department.

4. Vernal Pool Habitat shall be presumed to exist upon provision of credible evidence, preferably in the form of either a vernal pool certification packet, or photographic evidence and written or in person testimony, also supported by audio and/or videotapes if available, from a credible source or sources, at a legally held Public Hearing of the Commission. Said presumption is rebuttable upon a clear showing to the contrary.

5. The boundary of Vernal Pool Habitat shall be the maximum observed or recorded water level in the pool, or the boundary calculated from the total volume of runoff from the drainage area contributing to the Vernal Pool, based upon a design storm of 2.6 inches of rain in 24 hours. Vernal Pool Habitat shall include the area within 100 feet of the boundary of the pool, when said area is contained within the boundaries of a wetland resource area.

(3) Presumption

Where a project involves removing, filling, dredging, or altering of Land Subject to Flooding, the Commission shall presume that the area is significant to the interests noted at 191.57 (1) (a) and (b). This presumption may be overcome only upon a clear showing that said land does not play a role in the protection of said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

(4) General Performance Standards

A. Bordering Land Subject to Flooding.

1. Compensatory storage shall be provided for all flood storage that will be lost as the result of a proposed project within Bordering Land Subject to Flooding. Compensatory storage shall mean a volume not previously used for flood storage, and shall be incrementally equal at intervals of no more than one foot to the theoretical volume of water at each elevation, up to and including the 100 year flood elevation, which would be displaced by the proposed project. Said compensatory storage volume shall have an unrestricted hydraulic connection to the same waterway or water body, and shall be provided within the same reach of a river, stream or creek.

2. Work within Bordering Land Subject to Flooding, including that work required to provide the above-specified compensatory storage, shall not restrict flows so as to cause an increase in flood storage or velocity.

3. Work in those portions of Bordering Land Subject to Flooding found to be significant to the protection of wildlife habitat shall not impair its capacity to provide important wildlife habitat functions.

B. Isolated Land Subject to Flooding: A project proposed in Isolated Land Subject to Flooding shall not result in the following:

1. Flood damage due to filling that causes lateral displacement of water that would otherwise be confined within said area.

2.An adverse effect on public or 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 ground water, where the area is underlain by pervious material that is in turn covered by a mat of

organic peat and muck.

4. An impairment of its capacity to provide wildlife habitat where said area is vernal pool habitat, as determined by procedures contained in 191.57 (2) (a) 5 & 6 and (2) (b) 4& 5.

C. Protection of Rare Wildlife Species: No project shall be permitted that will have any adverse effect on specified wildlife habitat sites of rare vertebrate or invertebrate species, as identified by procedures specified under 310 CMR 10.58.

191.57.01

TOWN OF STOUGHTON CONSERVATION COMMISSION FLOODPLAIN OVERLAY DISTRICT RULES AND REGULATIONS

Section 1 Pursuant to the provisions of G.L. c.40, Section 8C, the Conservation Commission hereby adopts the following regulations for all uses within the Floodplain District (hereinafter the "District").

The District shall include all special flood hazard areas designated as Zone A and AE as shown on those maps entitled, "Flood Insurance Rate Map (FIRM) of Norfolk County, Massachusetts prepared by the Federal Emergency Management Agency (FEMA) " as adopted by the Stoughton Annual Town Meeting in June 11, 2012. The Maps consist of a Map Index map Number 25021CIND1E and 13 individual Map Panels drawn at 1"=500' as Panel numbers 25021C0194E, 25021C0212E, 25021C0213E, 25021C0214E, 25021C0216E, 25021C0218E, 25021C0357E, 25021C0359E, 25021C0376E, 25021C0377E, 25021C0378E, 25021C0379E, and 25021C0381E, such maps to be effective on July 17, 2012. Such maps shall be kept by the Building Commissioner and copies in the office of the Town Clerk of the Town of Stoughton and shall be certified by the Town Clerk of the Town of Stoughton as being true and complete copies of said Wetlands Maps, and as the same may from time to time be amended or updated by action of the Town Meeting through the process required by law for the adoption of Zoning By-Law changes. All references in this regulation to "Wetlands Maps" shall be deemed to be referenced to the FIRM Map unless the context otherwise specifically requires.

The exact boundaries of flood hazard areas may be defined by the 100 year base flood elevations shown on the FIRM and further defined by the Norfolk County Flood Insurance Study (FIS) report dated July 17, 2012. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Commissioner and Conservation Commission.

§ 1-1. Statement of Purpose

The purposes of the Floodplain District are to:

1) Ensure public safety through reducing the threats to life and personal injury;
2) Eliminate new hazards to emergency response officials;

3) Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
4) Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
5) Eliminate costs associated with the response and cleanup of flooding conditions;
6) Reduce damage to public and private property resulting from flooding waters.

§ 1-2. Permitted Uses

The following uses are of low flood damage potential and cause no obstructions to flood flows and, are therefore, encouraged, provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:

1. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.;
2. Forestry and nursery uses;
3. Outdoor recreational uses, including fishing, boating, play areas, etc.;
4. Conservation of water, plants and wildlife;
5. Wildlife management areas and foot, bicycle and/or horse paths;
6. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises;
7. Buildings lawfully existing prior to the adoption of these provisions.

§ 1-3. Other Use Regulations

1. In Zone AE, along watercourses that have a regulatory floodway designated within the Town of Stoughton on the Norfolk County FIRM, encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2. All subdivision proposals must be designed to assure that:
a. Such proposals minimize flood damage;
b. All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
c. Adequate drainage is provided to reduce exposure to flood hazard.

These Rules and Regulations shall become effective immediately upon adoption thereof and shall be implemented in conjunction with, and as a supplement to, all other applicable statutes, bylaws, codes, rules and regulations. Any violation of this section regarding flood plain districts shall be enforceable pursuant to Section 191.07 of these Regulations.

§ 1-4. Base Flood Elevation and Floodway Data

1. Floodway Data. In zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in the floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2. Base Flood Elevation Data. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

§ 1-5. Notification of Watercourse Alteration

In a riverine situation, the Conservation Agent shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities;
- NFIP State Coordinator, Massachusetts Department of Conservation and Recreation, 251 Causeway Street, Suite 600-700, Boston, MA 02114-2104;
- NFIP Program Specialist, Federal Emergency Management Agency, Region 1, 99 High Street, 6th Floor, Boston, MA 02110.

§ 1-6. Reference to Existing Regulations

All development in the District, including structural and non-structural activities, whether permitted by right or by special permit, must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

1. Sections of the Massachusetts State Building Code which address floodplain and coastal high hazard areas (currently 780 CMR) which address flood plain and coastal construction;

2. Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);

3. Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);

4. Minimum requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15.000, Title 5).

5. All applicable provisions of the Stoughton Zoning By-law and maps that form a part of such By-law.

Any variances from the provisions and requirements of the above-referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

§ 1-7. Definitions

AREA OF SPECIAL FLOOD HAZARD is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A1-30, AE, A99, V1-30, VE, or V.

BASE FLOOD means the flood having a one percent chance of being equaled or exceeded in any given year.

DEVELOPMENT means any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

DISTRICT means floodplain district.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

FLOOD INSURANCE RATE MAP (FIRM) means an official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS) means an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

FLOODWAY means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

LOWEST FLOOR means the lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, PROVIDED that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

NEW CONSTRUCTION means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates, NEW CONSTRUCTION means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.

ONE-HUNDRED-YEAR FLOOD - see BASE FLOOD.

REGULATORY FLOODWAY - see FLOODWAY

SPECIAL FLOOD HAZARD AREA means an area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, V, V1-30, VE.

STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. STRUCTURE, for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

ZONE A means the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data.

ZONE AE (for new and revised maps) means the 100-year floodplain where the base flood elevation has been determined.

ZONE X are areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

191.58 Rare Species Habitat

Applicants are required to refer to the Estimated Habitat Maps, prepared by The Natural Heritage Program staff, before submitting a Notice of Intent. Anyone proposing a project within a wetland resource area that is

(a) determined by the Natural Heritage Program to be located within estimated rare species habitat, or

(b) shown by evidence presented at the public hearing to involve rare species habitat

must prepare a wildlife habitat assessment and show that the proposed work will not cause any temporary or permanent damage to the rare species habitat characteristics of the area.

191.59 Wildlife Habitat Evaluations

(1) Measuring Adverse Effects on Wildlife Habitat:

(a) to the extent that a proposed project on inland Banks, Land Under Water, or Land Subject to Flooding will alter vernal pool habitat or will alter other wildlife habitat beyond the thresholds permitted under the By-law, such alterations may be permitted only if they will have no adverse effects on wildlife habitat.

(b) An evaluation by the applicant of whether a proposed project will have an adverse effect on wildlife habitat beyond permissible thresholds shall be performed by an individual with at least a masters degree in wildlife biology or ecological science from an accredited college or university or other competent professional with at least two years experience in wildlife habitat evaluation.

(2) Wildlife Habitat Characteristics of Inland Resource Areas:

(a) Banks. The topography, soil structure, and plant community composition and structure of banks can provide the following important wildlife habitat functions:

1. Food, shelter and migratory and breeding areas for wildlife.
2. Overwintering areas for mammals and reptiles.

(b) Land Under Water Bodies or Waterways. The plant community and soil composition and structure, hydrologic regime, topography and water quality of land under water bodies or waterways can provide the following important wildlife habitat functions:

1. Food, shelter, and breeding areas for wildlife;
2. Overwintering areas for mammals, reptiles and amphibians.

(c) Vernal Pool Habitat. The topography, soil structure, plant community composition and structure, and hydrologic regime of vernal pool habitat can provide the following important wildlife habitat functions:

1. Food, shelter, migratory and breeding areas, and overwintering areas for amphibians.
2. Food for other wildlife.

(d) Lower Floodplains. The hydrologic regime, plant community and soil composition and structure, topography, and proximity water bodies and waterways of lower floodplains can provide the following important wildlife habitat functions:

1. Food, shelter, migratory and overwintering areas for wildlife:
2. Breeding areas for birds, mammals and reptiles.

(3) Restoration and Replication of Altered Habitat.

Alterations of wildlife habitat characteristics beyond permissible thresholds may be restored onsite or replicated offsite in accordance with the following general conditions, and any additional conditions the issuing authority deems necessary to insure that the standard in the By-law Regulations 191.59(1)(a) is satisfied;

(a) the surface of the replacement area to be created ("the replacement area") shall be equal to that of the area to be lost ("the lost area");

(b) the elevation of groundwater relative to the surface of the replacement area shall be approximately equal to that of the lost area;

(c) the replacement area shall be located within the same general area as the lost area. In the case of banks and land under water, the replacement area shall be located on the same water body or waterway if the latter has not been rechanneled or otherwise relocated. In the case of bordering land subject to flooding, the replacement area shall be located approximately the same distance from the water body or waterway as the lost area. In the case of vernal pool habitat, the replacement area shall be in close proximity to the lost area;

(d) interspersion and diversity of vegetation, water and other wildlife habitat characteristics of the replacement area, as well as its location relative to neighboring wildlife habitats, shall be similar to that of the lost areas, insofar as necessary to maintain the wildlife habitat functions of the lost area;

(e) the project shall not alter ten or more acres of Land Subject to Flooding or Land Under Water found to be significant to the protection of wildlife habitat, or 2,000 feet or more of Bank found to be significant to the protection of wildlife habitat (in the case of a bank of a stream or river, this shall be measured on each side of said stream or river.

191.80 Seasonal Wetlands (Temporary Ponds, Vernal Pools)

(1) Preamble

Seasonal Wetlands are usually isolated depressions or closed basins that serve, in most years, as ponding areas for runoff or high ground water that has risen to the surface. Seasonal Wetland may be found in flood plains or in saddles at the base of slopes. It should be noted that the above characteristics may be shared with Isolated Wetlands [cf. Section 191.55 B]. Seasonal Wetlands are distinguished from Isolated Wetlands in that they frequently serve as temporarily -- flooded amphibian breeding habitat, as well as habitat for other wildlife, and as such, are likely to be significant to the protection of wildlife habitats.

In addition, such areas may be locally significant for flood control storm damage prevention, and ground water and public and private water supply. Where such areas are underlain by pervious material covered by a mat of organic peat or other organic accumulation, they maybe significant to the prevention of pollution.

In addition to the critical Characteristics given below in section 191.80 (2)(b), Seasonal Wetlands have long been recognized for their importance to amphibians. Existing field data show that Seasonal Wetlands provide critical habitat for a number of amphibian species, some of which are listed below.

Amphibians requiring Seasonal Wetlands for breeding:

Ambystoma jeffersonianum (Jefferson salamander)
Ambystoma laterale (blue-spotted salamander)
Ambystoma opacum (marbled salamander)
Rana sylvatica (wood frog)

Amphibians using Seasonal Wetlands, occasionally for breeding/feeding in them:

Hyla versicolor (gray treefrog)
Hyla c. crucifer (spring peeper)
Bufo americanus (american toad)
Hemidactylium scutatum (four-toad salamander)

The established presence of certain species of vertebrate predators, such as adult fish populations, can be used as “negative information” or indicators that certain pools are clearly not temporary. It should be noted that the very reason that so many amphibians use Seasonal Wetlands for breeding, in contrast to permanent ponds, is because they and their offspring are far less likely to become prey in these pools when they are present. The presence of a pond or lake where fish and other predators are present and the presence of a sustaining population of any species of fish at a site in question would rule it out as a Seasonal Wetland.

A few species of reptiles are known to be occasional users of Seasonal Wetlands. These include the spotted turtle, snapping turtle, and painted turtle.

Malacologists have long recognized Seasonal Wetlands as habitat for members of the fingernail and pea clam family (S*phaeriidae)*. Other invertebrates are also known to inhabit Seasonal Wetlands. Waterfowl are known to frequent many of these pools, albeit sporadically. Wood ducks, mallards, black ducks, and occasionally great blue herons will stop, especially at those Seasonal Wetlands with growths of vegetation such as duckweed or abundant populations of mollusks. Thus, the presence of mollusks, duckweed residues, or other indicators of temporary pooling of water such as caddis fly cases, are indicative of the presence of a Seasonal Wetland.

With regard to floral characteristics, the typical plant communities usually associated with wetlands cannot reliably be used for Seasonal Wetlands. The presence of certain species of submergent or emergent vegetation generally indicates a wet condition that may go beyond the definition of Seasonal Wetland. Vegetation more usually associated with a wet meadow may indicate the pooling of water for a time insufficient for a Seasonal Wetland. These conditions may indicate the presence of an Isolated Wetland [cf. Section 191.55 B] or an area that holds standing water for a major part of the year.

(2) Definition, Critical Characteristics and Boundary

(a) Definition

Seasonal Wetlands are isolated depressions or closed basins which temporarily confine water during periods of high water table and high input from spring runoff or snowmelt or heavy precipitation, and support populations of non-transient macro-organisms or serve as breeding habitat for select species of amphibians. In the absence of those habitat functions, the areas should be considered under section 191.55 B as Isolated Wetlands.

(b) Critical Characteristics

(I) **Temporality** Seasonal Wetlands predictably fill up during the spring rains and snowmelt, dry up during summer, and may fill again during the fall rains. With few exceptions, a Seasonal Wetland is not considered temporary if the standing water does not disappear. The hydrological cycle may occasionally miss a year.

(ii) **Shape** Seasonal Wetlands occupy shallow, cup-shaped depressions in areas where flooding from nearby waterways or water bodies, or where rising ground water or sidehill seeps may serve to fill them temporarily.

(iii) **Size** Seasonal Wetlands are characteristically small; however, a given pool can vary in size from year to year depending on the amount of rainfall or snowmelt. No minimum threshold size is indicated.

(iv) **Substratum** Most Seasonal Wetlands are underlain with a relatively impermeable substratum or hardpan, frequently underlain with pervious soils.

(v) **Organic Accumulation** The presence of a well-developed organic layer is a feature of Seasonal Wetlands. Generally these pools have persisted since the end of the glacial period and will probably continue in their semi-open condition for many more thousands of years unless artificially altered. These ponds act as traps for organic matter, especially during the autumn when they trap quantities of airborne leaves. The presence of water-stained leaves in

a depression which is otherwise dry is a good indicator that the area temporarily serves to pool water.

(vi) **Topographical Orientation** Seasonal Wetlands occupy saddles or level ground and, with the exception of pools associated with flood plains, are often adjacent to steep slopes.

(c) Boundary

Because seasonal Wetlands are dry much of the year, it may be necessary to determine their boundaries using indicators other than pooled water. Further, because the area inundated varies so widely from year to year, pooled water is not a good indicator of extent. A Seasonal Wetland boundary shall be determined using a combination of pooled water, if present, and by the presence of a depression covered by water-soaked leaves. Other indicators of the temporary pooling of water, such as the presence of caddis fly cases or fingernail or pea clams, can also be used.

(3) Presumption

Where a proposed activity involves the removing, filling, dredging or altering of a Seasonal Wetland, the Conservation Commission shall presume that such an area, as well as the area within 100 feet of the mean annual boundaries of said Seasonal Wetland, is significant to the protection of wildlife habitat, particularly amphibian breeding habitat. This presumption is rebuttable and may be overcome upon a clear showing that the Seasonal Wetland does not play a role in the protection of wildlife habitat. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

Such an area may, however, be significant for the prevention of flooding and flood damage, protection of public and private water supplies, protection of ground water, and the prevention of pollution. When the presumption of wildlife habitat has been overcome, a determination for these other interests may be reviewed as set forth in Isolated Wetlands, section 191.55 B(3).

(4) General Performance Standards

A proposed project in a Seasonal Wetland shall not result in the following:

(I) Any impairment of the capacity of the Seasonal Wetland, as well as the area within 100 feet of the mean annual boundary of said Seasonal Wetland, to provide wildlife habitat. Alterations may be permitted if they will have no adverse effects on wildlife habitat, as determined by procedures listed in the By-law 191.59.

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

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

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

191.81 Buffer Zones

(1) Preamble

It has been the Commission's experience that any project undertaken in close proximity to a wetlands resource area has a high likelihood of resulting in some alteration of that area, either immediately, as a consequence of construction, or over a longer period of time, as a consequence of daily operation of the completed project. Accordingly, these regulations require that any person intending to perform work within 100 feet of a resource area must submit to the Conservation Commission either a Request for Determination of Applicability or an Application for a Permit. This way, the Commission has an opportunity to review the proposed project to determine whether any alteration of the neighboring resource area will occur, and whether any resulting alteration is in compliance with other applicable performance standards.

If in response to a Request for Determination of Applicability, the Commission finds that work within the Buffer Zone will not alter the resource area, it may issue a Negative Determination of Applicability, with or without conditions.

(2) Definition, Critical Characteristics and Boundary

(a) Definition:

The Buffer Zone is that area of land extending 100 feet horizontally outward from the boundary of any resource area specified in section 191.02(1)

(b) Critical Characteristics:

Where surface runoff or groundwater from the Buffer Zone drains toward the resource area, vegetative cover and soils may filter runoff and provide uptake or renovation of pollutants from adjacent areas, thereby protecting water quality within the resource area. The vegetation and soils may slow surface runoff and permit infiltration of precipitation, maintaining the hydrologic regime to which the resource area is adapted.

Where surface water or groundwater from the Buffer Zone do not drain toward the resource area, the topography and soils characteristics may help to control the surface and groundwater regime in the resource area.

(3) Presumption

Based on experience to date with projects in the Buffer Zone, the Commission shall presume that work in the categories below, within the tabulated distances <u>from a resource area</u>, will result in alteration of the resource area. This presumption is rebuttable and may be overcome upon a clear showing that the nature of the proposed work, special design measures, construction controls, or site conditions will prevent alteration of the resource area. Depending on site conditions and project characteristics, the Commission may also find that work at greater distances from the resource area will alter the resource area. For the purposes of the table below: "work" means filling, excavation, grading, operation of motorized construction equipment, and storage or stockpiling of earth or construction materials; and "building" means a structure requiring a building permit.

Type of Project:	**Limit of Work**	**Limit of Building**
Residential lot	50 ft.	75 ft.
Subdivision lot	50 ft	75 ft.

[with lot preparation done in conjunction with road construction]			
Commercial/Industrial	50 ft.		75 ft.
Driveways and utilities	50 ft	(except for permitted crossings)	N/A
Other roads	50 ft.	(except for permitted crossings)	N/A

The following activities within the Buffer Zone are presumed not to be significant to a resource area. This presumption is rebuttable and may be overcome when the nature of the work or site conditions will result in alteration of the resource area unless special preventive measures are taken. As with any work in the Buffer Zone, the activities below still require (as a minimum) filing for a Request for Determination of Applicability in order for the Conservation Commission to determine if their presumptions apply.

a. Discharge of subsurface drainage from a single residential lot or residential building.

b. Discharge of roof and driveway runoff from a total impervious area of less than 4000 square feet (per project) meeting the above separation distances, as long as no erosion results.

c. Landscape plantings, provided that areas disturbed are mulched immediately and there is no change in grade.

d. Construction or installation of fences or structures not requiring a building permit.

e. Percolation tests or soil borings carried out to gather information submittal with an application for a Permit, as long as bare soil is stabilized when work is complete.

(4) General Performance Standards

a. One of the following must apply:

1) Any work within the Buffer Zone shall not result in alteration of any resource area, or;
2) If work within the Buffer Zone which alters a resource area is permitted by the Commission, the alteration of the resources area shall comply with the applicable performance requirements for the altered resource area and any other conditions the Commission may require to enforce those performance requirements.

b. Point discharge of surface runoff within or through the Buffer Zone shall be controlled to minimize increases in peak flow in the watercourse downstream of the discharge point for the runoff, as determined for the 2-year, 10-year, and 100-year storms, and to cause no increase in flood elevations outside the project site.

For projects with over 40,000 square feet of added impervious surface, there shall be no increase in peak flow rates in the watercourse immediately downstream of the discharge point.

For projects with 4000 to 40,000 square feet of added impervious surface the best practical measures shall be used to minimize increase in flow rates.

191.82 Riverfront Area

All provisions of the Massachusetts Rivers Act Regulations at 310 CMR 10.58 shall also apply under these regulations.

191.91 Forms

The Massachusetts Wetlands Protection Act (the Act), Massachusetts General Laws Chapter 131, Section 40 identifies eight public interests served by wetlands. Anyone wishing to perform work that may affect wetlands is required first to apply for, and obtain, a permit to do so, usually an Order of Conditions (OC) to perform the proposed work, and finally a Certificate of Compliance once the project has been completed and the OC has been met to ensure that the public interests will be protected. The forms used to apply for various permits, etc., include but are not limited to the following:

(a) Form 1 Request for Determination of Applicability

(b) Form 3 Notice of Intent

(c) Form 4 Abbreviated Notice of Intent

(d) Form 4A Abbreviated Notice of Resource Area Delineation

(e) Form 5 Order of Conditions

(f) Form 6 Notification of Non-Significance

(g) Form 7 Extension Permit

(h) Form 8 Certificate of Compliance

(i) Form 9 Enforcement Order

191.92 Plan Requirements

1. Preamble.

The purpose of this section is to provide a guideline for applicants to use to prepare succinct, complete review packets for Commission use. Applicants may wish to remember that Commissioners are volunteers, in many cases with little time for on-site review, and that the easier it is for Commissioners to find project components, the faster the review process is likely to be. Even when professional staff review projects, considering the needs of the voting Commissioners is likely to save review time.

Plans shall describe the proposed activity and its effect on the environment. Due regard shall be shown for all natural features like large trees, water courses, water bodies, wildlife habitat, and similar community assets.

The following items are set out as a minimum standard. The applicant may submit, or may be required to submit, any further information that will assist in Commission review, and that is deemed necessary by the Commission to determine the effect of the proposal on the interests protected by this Bylaw.

2. General

a. The applicant must submit a signed original packet plus seven copies. Each packet shall include:

i. A Request for Permit form for the desired action.

ii. An 8.5 inch by 11 inch reproduction of the United States Geological Service (USGS) quadrangle sheet showing the project locus.

iii. The names and addresses of the record owner(s), the applicant, and of all abutters as defined in Section II of the Bylaw (as determined by the most recent tax list, unless the applicant shall have a more recent knowledge of said abutters).

iv. Description of any alteration to Flood Storage capacity on the site. Include calculations and watershed maps where available. It is suggested that drainage control structures be placed as far away as possible from abutting property lines to lessen the possibility of damaging neighboring property or property values.

v. Maximum groundwater elevations, either by observation or by soil mottling as for Title V septic system evaluations. Calendar dates and observers present shall be included for all measurements, samplings, and/or percolation tests, regardless of planned sewer connections.

vi. Soil characteristics in representative portions of the site.

vii. A runoff plan and calculations using the rational method for small areas, or the modified soil cover complex method, TR-22 or TR-55, as applicable, for larger areas, based on the 10 year, 50 year, and 100 year frequency flood events. Calculations shall show existing and proposed runoff conditions for comparative purposes.

viii. Permanent and temporary stabilization methods for any slope facing any wetland. It is recommended that all slopes be less than or equal to 3:1.

ix. Permanent and temporary methods used to control erosion during and after construction.

x. A discussion of the effect of the proposed project on the values protected by the Bylaw and Regulations.

b. Plans

i. All drawings shall be drawn at a scale of no smaller than one inch equals forty (40) feet unless otherwise requested by the Commission. A title block shall be included in the lower right hand corner, showing the name of the project site, its Assessors' Map designation, the name, address and telephone number of the plan designer and the project applicant, and the date prepared, including all revisions. Notice of Intent Plans and As-Built Plans shall be stamped and signed by a registered Professional Engineer or a registered Land Surveyor of the Commonwealth of Massachusetts. Pencil notations shall not be accepted. Plans larger than 8.5 inch by 11 inch shall be folded so that the title block is visible.

ii. Drawings must include a delineation of all wetlands as surveyed from April 1 to October 30, within one year of the filing date, including permanent, seasonal, natural, and manmade wetland areas, and showing wetland flag numbers. Wetland areas are to be shown whether or not the applicant believes the work to be subject to the Wetlands Protection Act, M.G.L. Ch. 131 s. 40 or the Stoughton Bylaws Chapter 191. Wetland areas shall be colored as follows on the drawings:

a. Open or flowing water: light blue
b. Marsh or swamp: light blue with USGS style "swamp" symbols superimposed.
c. All meadows, flats, seasonal wetlands, and land subject to flooding: outline with a dashed blue line.

iii. Drawings must include a delineation of all alterations proposed in or adjacent to wetlands and floodplains, as indicated below:

a. Areas to be dredged or excavated: outline with brown.

b. Areas to be filled: outline with red.

c. Areas to be altered in any other way: outline in dashed red line.

Alterations shall be explained in application text or plan footnotes.

iv. The 100 foot buffer zone shall be outlined in green.

v. Proposed sedimentation/erosion control shall be shown in orange.

vi. Calendar dates and sources of all measurements, sampling, and contours shall appear with the data. Surveying shall be stated in National Geodetic Vertical Datum (NGVD) base. The contour interval shall not be greater than one foot.

vii. Existing and proposed final contours shall be shown, including pond bottom and stream invert contours, and the interval used.

viii. Locations and elevations of all sills, basement floors, and septic system bottoms shall be shown.

ix. Test borings showing characteristics of representative soils may be required by the Commission.

x. Locations, sizes, inverts, and slopes of all existing and proposed culverts and pipes, and relevant information for all catch basins shall be shown.

xi. Location and elevation of survey bench mark shall be clearly shown.

xii. Existing trees, stone walls, fences, buildings, historic sites, rock ridges, outcroppings, or other items of aesthetic interest shall be shown.

xiii. Proposed on-site pollution control constructs and devices shall be shown, including but not limited to hooded catch basins, oil absorption pillows, detention/retention basins, flow dissipaters, swales, or vegetative buffers.

xiv. All wells within 100 feet of any limit of work shall be shown.

xv. Any delineated habitat of rare wetlands wildlife as noted in 191.60 shall be shown outlined in pink.

191.93 Filing Requirements to be Fulfilled Prior to Site Inspections

(a) A completed permit application must be received in the Commission office, and must be reviewed for completeness by the Commission or Commission staff.

(b) Before site inspections shall be made by the Commission or the Commission's agents, the following conditions must be met:

(1) Numbered stakes or flagging, with label numbers to be shown on the plan, shall be placed at the proposed corners of any buildings, within 10 feet of the actual final location.

(2) Numbered stakes, with label numbers shown on the plan, shall be placed at the field

locations of any septic tank and any leaching field.

(3) Numbered stakes, with label numbers shown on the plan, shall be placed at the limit of work.

(4) Lot number or house number shall be posted at location. House number shall be forwarded to the Commission when the number is assigned.

(5) Wetlands shall be flagged every 20 feet with numbered flagging. Flag numbers shall be shown on the plan.

(6) The corners of all detention/retention basins, wet ponds, drainage swales, or other water control structures shall be marked with numbered stakes and shown on the plan.

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

191.94 Filing Fees

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

(b) Permit fees shall be calculated by the Conservation Commission per schedule below.

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

(d) Permit fees are in addition to any fines levied for detected violations.

(e) The filing fee schedule shall be as follows:

(1) Application for a Permit (Notice of Intent)

i. $50.00 basic fee for all projects
plus
ii. $500.00 for any commercial or industrial project including residential subdivisions
iii. $100.00 for each building lot in or partially in the buffer zone
iv. $200.00 for each wetland replication area on the site.
v. $2.00 per linear foot for docks, piers, revetments or dikes, total fee not less than $50.00 nor more than $1,000.00
vi. 50% of the original fee shall be added for filings including Riverfront Area

(2) Application for a Permit (Abbreviated Notice of Resource Area Delineation)

i. single family house project: feet of wetland resource edge X $1.00 per foot, maximum $100.00
ii. all other projects: feet of wetland resource edge X $1.00 per foot.

(3) Application for a Determination of Applicability not including wetland resource area delineation

i. $50.00 basic fee for all construction applications, plus:
   a. $100.00 for each new single family home lot
   b. $150.00 for each addition to a non residence or parking lot, or for earthwork to non-residence

c. $250.00 for each new non-residential building and associated work

(3) Application for an Extension Permit
i. Single family house or one accessory project to a single family house: $50.00
ii. Any other project : $200.00

(4) Request for a Certificate of Compliance:
a. Residence: $50.00
b. Non-residence: $100.00
c. Residential or commercial subdivision: $200.00
d. Duplicate Attested Copy of previously issued Certificate of Compliance: $5.00

(5) Request for a Certificate of Compliance for an Enforcement Order, to recommence work:
i. Residence: $50.00
ii. New Residence: $100.00
iii. Other: $500.00

(6) Agent Site Visit (at applicant's request)
i. Residential $25.00 per hour
ii. Non-residential, $45.00 per hour

(7) Emergency Certificate $100.00

(8) Request to review Revised Plan (Amend Order of Conditions)
i. DEP category 1 filing, $25.00
ii. DEP category 2 filing, $100.00
iii. All other categories, $200.00

(9) After-the-Fact filings of any type shall be double the regular fee.

Appendices

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