

Town of Scituate

Code of Bylaws SECTION 30770

Wetlands Protection

Rules and Regulations

By the

Scituate
Conservation Commission

www.scituatema.gov

Revised to incorporate adoption of new FEMA Flood Insurance Rate Maps for
Plymouth County (Scituate) [effective July 6, 2021.](#)

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SWR 10.01 INTRODUCTION, PURPOSE, AND INTERESTS PROTECTED UNDER THE BYLAW

These regulations are promulgated pursuant to Section 7 of Scituate's Wetlands Protection Bylaw.

The purpose of these regulations is to define and to clarify, as necessary, statements and provisions of the bylaw. Scituate Wetland Regulations (SWR 10.00 - 10.99) are intended to enhance wetlands protection and to provide uniformity to the procedural requirements outlined in the bylaw for work in or near wetlands.

These regulations parallel the State Wetland Regulations 310 CMR 10.00, but provide more stringent control where it has been deemed appropriate to adequately protect wetland resource areas within Scituate.

THE INTERESTS PROTECTED UNDER THE BYLAW ARE AS FOLLOWS:

Protection of public and private water supply
Protection of groundwater
Flood control
Storm damage prevention
Prevention of pollution
Protection of fisheries
Protection of shellfish
Protection of wildlife habitat

SWR 10.02 STATEMENT OF JURISDICTION

- 1) Areas Subject To Protection Under the Bylaw. The following resource areas are subject to protection under this bylaw:
 - a) Any bank, cliff, or bluff, freshwater wetland, coastal wetland, beach, dune, flat, marsh, wet meadow, bog, swamp;
 - b) Any lake, pond, river, stream, estuary, or ocean, or vernal pool
 - c) And land under any of the water bodies listed in section (b) above;
 - d) Any land subject to tidal action or bordering the ocean including but not limited to, beaches, dunes, tidal flats, coastal banks, salt marshes, salt meadows and dredge spoils areas;
 - e) Any land subject to coastal storm flowage, including, but not limited to the coastal floodplain, as set forth on the Flood Insurance Rate Maps;
 - f) Any land subject to flooding;

- g) Any land within one hundred (100) feet of any resource area set forth in SWR 10.02 (a) (b) and (c). This land area shall hereinafter be called the BUFFER ZONE.
- h) Land within 200 feet of the bank of any river, stream or creek continuously flowing throughout the year toward a body of water. This area shall hereafter be called the RIVERFRONT AREA.

2) Activities Subject to Regulation under the Bylaw.

- a) Any activity proposed or undertaken within an area specified in SWR 10.02 which, in the judgment of the Conservation Commission, will remove, fill, dredge or alter an Area Subject to Protection Under the bylaw is subject to regulation under the bylaw and requires the filing of a Notice of Intent or a Request for Determination of Applicability.
- b) Any activity proposed or undertaken outside the areas specified in SWR 10.02 shall not be subject to regulation under the bylaw unless, in the judgment of the Conservation Commission, said activity will result or has resulted in removing, filling dredging or altering an area specified in SWR 10.02.

SWR 10.03 GENERAL PROVISIONS

1) Burden of Proof and Going Forward

- a) The applicant shall have the burden of going forward with credible evidence from a competent source in support of all matters asserted by the applicant in accordance with his/her burden of proof.
- b) The applicant shall have the burden of proving by clear and convincing evidence that the proposed work, as described in the NOI and presented at the Wetlands Hearing, will protect the interests of the bylaw. Failure to meet the Burden of Proof shall be cause for the Conservation Commission to issue a denial on the proposal and any work or activity proposed therein.

2) Title V, State Environmental Code 310 CMR 15.00

- a) Preamble: The surficial geology in Scituate provides justification for careful consideration of the potential threat of pollution that on-site sewage disposal systems may pose to Scituate's wetland resource areas. Major surficial soil areas are characterized by layers of fairly dense material interspersed with sand and gravel strata deposits. This occurrence tends to result in an unpredictable flow of contaminants which are generally associated with sewage disposal system effluent. Of equal consideration are the many sandy, highly permeable soil areas. These soils typically percolate too quickly to provide adequate treatment of contaminants.
- b) The Scituate Conservation Commission will endeavor, through these regulations, to support the Scituate Board of Health and to insure maximum protection of the interests

outlined under the local wetlands bylaw. The presumptions of significance adopted by the State Wetlands Regulations 310 CMR 10.03(3) correspond to public health standards more than environmental protection and are not adopted in these local wetlands regulations. As related to septic derived contaminants, the regulations are meant to complement local health regulations although authorized and administered separately.

- c) Special Flood Hazard Regulations: Some coastal resource areas are subject to ongoing erosion, overwash and storm alteration. As such, these areas are not suitable for construction of septic systems.
- d) To ensure protection of all other interests of the bylaw, no new or substantially enlarged septic systems shall be allowed in FEMA VE, AO and floodway areas where there is actively shifting sand (i.e., barrier beaches and dunes). This does not apply to X-Zones (replaced B or C Zones: no longer used by FEMA) or numbered A-zones as shown on the Flood Insurance Rate Map.
- e) A new mounded septic system, although permitted under Title V, shall not be permitted in a FEMA VE- or AO-zone or floodway area. Where mounded systems are proposed in other FEMA A-zones or to meet vertical groundwater setbacks, the applicant must demonstrate that construction and use of the system will not be inconsistent with protection of any interest protected under the bylaw.
- f) Where there is an existing dwelling, septic systems may be up-graded and/or improved, including mounded systems, where otherwise they would not be permitted.

3) Floodplain Overlay District

- a) The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas designated as special flood hazard areas on the Plymouth County Flood Insurance Rate Map (FIRM) dated July 6, 2021 issued by the Federal Emergency Management Agency for the administration of the National Flood Insurance Program,. The exact boundaries of the District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Plymouth County Flood Insurance Study (FIS) report dated July 6, 2021. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official and Conservation Commission..
- b) Purpose:
 - i) *Ensure public safety through reducing the threats to life and personal injury*
 - ii) *Eliminate new hazards to emergency response officials*
 - iii) *Prevent the occurrence of public emergencies resulting from water quality contamination, and pollution due to flooding*

- iv) Avoid the loss of utility services which if damaged by flooding would disrupt community beyond the site of flooding or shut down the utility and impact regions of the community beyond the impact of the flooding*
- v) Eliminate costs associated with the response and cleanup of flooding Conditions*
- vi) Reduce damage to public and private property resulting from flooding waters*

4) Abrogation and greater restriction

- a) The floodplain management regulations found in this Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws, ordinances or codes.

5) Disclaimer of liability

- a) The degree of flood protection required by this bylaw is considered reasonable but does not imply total flood protection.

6) Designation of community Floodplain Administrator

- a) The Town/City of Scituate hereby designates the position of Director of Planning and Development to be the official floodplain administrator for the Town of Scituate.

7) Requirement to submit new technical data

- a) If the Town of Scituate acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to:

FEMA Region I Risk Analysis Branch Chief
99 High St., 6th floor
Boston, MA 02110

And copy of notification to:

Massachusetts NFIP State Coordinator
MA Dept. of Conservation & Recreation,
251 Causeway Street
Boston, MA 02114

8) Permits for Proposed Development in the Floodplain Overlay District

- a) The Town of Scituate requires a permit for all proposed construction or other development in the floodplain overlay district, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.
- b) Scituate's permit review process includes the use of a checklist of all local, state and federal permits that will be necessary in order to carry out the proposed development in the floodplain overlay district. The proponent must acquire all necessary permits, and must submit the completed checklist demonstrating that all necessary permits have been acquired.

9) Incorporation

- a) All of the procedures and requirements set forth in the Wetlands Protection Regulations of 310 CMR 10.00 et seq. are hereby incorporated and made a part of these regulations except where they differ from or depart from these regulation.
- b) Where these regulations differ from the State regulations, they shall take precedence over the State regulations. The applicant should first address the regulations in 310 CMR 10.00 et seq. and then address any and all additional or differing content of the Scituate Wetland Regulations.

10) Reservation

- a) These regulations should not be construed to limit the Commission's authority under the Scituate Wetlands Bylaw. The Commission reserves the right to act in a manner consistent with the bylaw upon any matter within its jurisdiction.

11) Amendments

- a) Amendments to these regulations shall be made in the manner set forth in sections 7 and 8 of the Scituate Wetlands Bylaw.

12) Effective Date

- a) The effective date of these regulations, as amended, shall be July 6, 2021.

13) Severability

- a) Should any portion of these regulations be declared invalid by a decision of court, the legislature or other body having jurisdiction, the remainder of these regulations shall remain in full force and effect.

SWR 10.04 DEFINITIONS

The definitions applicable to the Scituate Wetland Bylaw shall be the same as set forth in 310 CMR 10.00 et seq. except for the following modifications to those definitions and additional definitions:

Abutter: Persons appearing on the Assessor's most recent valuation list as owners of property within a distance of 100' of the property lines of the lot on which the work is to be done.

Alter: To change the condition of any Area Subject to Protection under the bylaw. The term "alter" shall include, but not be limited to, the following activities when undertaken to, upon, within, or affecting resource areas protected by this bylaw:

- (1) Removal, excavation, or dredging of soils, sand, gravel, or aggregate materials of any kind;
- (2) Changing preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics, drainage or other disturbance of water level or water table;
- (3) Dumping, discharging or filling with any material;
- (4) Placing of fill, or removal of material;
- (5) Driving of piles or erection of buildings, placing of obstructions or objects in water (other than boats, fish, or shellfish traps, pens or trays used in conjunction with aquaculture, or aids to navigation).
- (6) Destruction of plant life, including cutting of trees;
- (7) Effecting a change in water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water, and use of chemicals for plant or pest control;
- (8) Any activities, changes, or work, which may cause, contribute to, or tend to contribute to pollution of any body of water, groundwater or wetland including its buffer zone.

Applicant: The individual filing a Notice of Intent, Request for Determination of Applicability, or Request for Amended Order, or on whose behalf one is filed before the Scituate Conservation Commission.

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, AE, or VE.

Base Flood: means the flood having a one percent chance of being equaled or exceeded in any given year.

Bog: Areas where standing or slowly running water is near or at the surface during a normal growing season and where a plant community has a significant portion of the ground or water surface covered with Sphagnum moss (*Sphagnum*) and where the plant community is made up of a significant portion of one or more, but not limited to nor necessarily including all, of the following plants or groups of plants: aster (*Aster nemoralis*), azaleas (*Rhododendron canadense* and *R. viscosum*), bog cotton (*Eriophorum*), cranberry (*Vaccinium macrocarpon*), high-bush blueberry (*Vaccinium corymbosum*), laurels (*Kalmia augustifolia* and *K. polifolia*), leatherleaf (*Chamaedaphne calyculata*), orchids (*Arethusa*, *Calopogon*, *Pogonia*), pitcher plants (*Sarracenia purpurea*), sedges

Bordering: As long as any one area subject to protection under the bylaw (SWR 10.02 [1]); touches any other area, it is bordering. Coastal Resource Areas may border on a freshwater Bordering Vegetated Wetland. Work within or adjacent to such a coastal Bordering Vegetated Wetland will be subject to the same performance standards as the freshwater Bordering Vegetated Wetland.

Buffer Strip: Land within the Buffer Zone (see below) immediately adjacent to the resource which is to be continuous and unaltered, undisturbed by human activity; ordinarily and minimally 50 feet in width, this dimension may be increased up to and exceeding 200 feet depending upon site specific variables, e.g. function to be met, (such as flood protection, water quality maintenance, protection of wildlife habitat), slope, existing vegetation, soil composition, stability of a bank or cliff, susceptibility to erosion (and desirability for being susceptible to erosion), etc.

Buffer Zone: Area of land within 100 feet of a resource area, except in the case of vernal pools, where the buffer zone shall be 250 feet.

Coastal High Hazard Area: means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a FIRM as Zone VE.

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 **or storage of equipment or materials.** [CFR, Title 44, Part 59]

District: means floodplain district.

Dunes: An elevated resource composed of accumulations of sand and/or overwash, or may be sediment or sand deposited by artificial (human) means, usually to serve the purpose of storm damage prevention or flood control. Dunes which are undisturbed appear as hills, mounds, or ridges of sand and are typically vegetated with beach grass and shrubs. The more or less continuous ridge of dunes parallel to, and just inland of the beach, is termed the “primary dune”.

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 the development in the flood hazard areas.

Flood Boundary and Floodway Map: definition eliminated – FEMA no longer produces these. All floodway data are now contained on the FIRM.

Floodway Fringe: Channel or stream, plus any adjacent floodplain areas that must be kept free of encroachment so that the 100 year flood can be carried without substantial increases in flood heights.

Flood Hazard Boundary Map (FHBM): An official map of a community issued by the Federal Insurance Administrator, where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E. [CFR, Title 44, Part 59]

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: 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 more than a designated height. [Base Code, Chapter 2, Section 202]

Floodplain District: The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Scituate designated as Zone A, AE, AO, or VE on the Plymouth County Flood Insurance Rate Maps (FIRMs) issued by the Federal Emergency Agency (FEMA) for the administration of the National Flood Insurance Program.

The map panels of the Plymouth County FIRM that are wholly or partially within the Town of Scituate as follows: The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Plymouth County Flood Insurance Study (FIS) report dated July 6, 2021. The FIRMs and FIS are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, and/or Conservation Commission.

Scituate Panels

25023C	044	K	11/4/2016
25023C	104	K	7/6/2021
25023C	106	L	7/6/2021
25023C	107	K	11/4/2016
25023C	108	L	7/6/2021
25023C	109	L	7/6/2021
25023C	116	K	7/6/2021
25023C	117	L	7/6/2021
25023C	126	K	11/4/2016
25023C	128	L	7/6/2021
25023C	129	K	11/4/2016
25023C	136	L	7/6/2021
25023C	137	K	11/4/2016
25023C	139	L	7/6/2021
25023C	143	K	11/4/2016

Flood Zones:

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 A1-30 and Zone AE means the 100-year floodplain where the base flood elevation has been determined.

Zone AH means the 100-year floodplain with flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations determined.

Zone AO means the 100-year floodplain with flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined.

Zone A99: means area of special flood hazard where enough progress has been made on a protective system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. (Flood elevations may not be determined.)

Zones B, C and X means areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood; or, areas determined to be outside the 0.2% annual chance.

Zone V: means area of special flood hazards without water surface elevations determined, and with velocity, that is inundated by tidal floods (coastal high hazard area)

Zone V1-30 and Zone VE: (*for new and revised maps*) means area of special flood hazards, with water surface elevations determined and with velocity, that is inundated by tidal floods (coastal high hazard area)

Flood Zones (Un-Numbered A Zones):

In A Zones, in the absence of FEMA BFE data and floodway data, the building department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.

Functionally Dependent Use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [CFR, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59]

Historic Structure: Any structure that is:

- i) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

- ii) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - iii) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 - iv) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior or
 - (2) Directly by the Secretary of the Interior in states without approved programs.
- [US Code of Federal Regulations, Title 44, Part 59]

Issuing Authority: In the Town of Scituate, both under state wetland regulations and under the local bylaw, the issuing authority is the Conservation Commission, which is responsible for 1) making and publishing rulings on Requests for Determination of the Applicability of wetlands rules and regulations (**RDA's**) to proposed projects, and 2) enumerating Orders of Conditions which establish parameters for projects prior to their undertaking, following the submission and review of Notices of Intent (**NOI's**); such parameters apply to projects in process and may include elements that are permanently attached to property deeds.

Lawfully Located Structure or Facility: Such structure is one that had a building permit and any other permit required bylaw or regulation at the time of its construction and was constructed in accordance with state and local laws and regulations or one which, by virtue of state law or local zoning bylaw, is deemed to be in compliance with applicable regulations or as to which no action may be taken to compel its removal.

Limit of Work: This limit is the boundary beyond which no work may take place. Permission of the Commission must be granted in advance for any work beyond the Limit of Work.

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.

Mean Annual High-Water Line: with respect to a river, is the line that is apparent from visible markings or changes in the character of soils or vegetation due to prolonged presence of water and which distinguishes between predominantly aquatic and predominately terrestrial land. The mean high tide line shall serve as the mean annual high water line for tidal rivers.

New Construction: Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such

structures. *New construction includes work determined to be substantial improvement.* [Referenced Standard ASCE 24-14].

NFIP: National Flood Insurance Program

Recreational Vehicle: A vehicle which is:

- a) Built on a single chassis;
- b) 400 square feet or less when measured at the largest horizontal projection;
- c) Designed to be self-propelled or permanently towable by a light duty truck;
- d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. [US Code of Federal Regulations, Title 44, Part 59]
- e) In A1-30, AH, AE Zones, V1-30, VE, and V Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready.

RV's are regulated under CFR 44, c.60.3 (9) (adopted by the Conservation Commission on September 7, 2016).

In addition, it is prohibited to occupy an RV in the Town of Scituate, elevated or otherwise, for living purposes pursuant to the Town of Scituate zoning bylaw. (450.3)

Regulatory Floodway – see FLOODWAY

Resource Areas: These are specified in SWR 10.02 (1)

River: A natural flowing body of water that empties into any ocean, lake, or other river and which flows throughout the year. All water features that are shown as solid blue lines on USGS quadrangles and which are not great ponds are included in this definition.

Riverfront Area: that land between a river's mean annual high-water line and a parallel line located two hundred feet away, measured outward horizontally from the river's mean high water line. This definition shall not create a buffer zone, so-called, beyond such riverfront area.

Significance: playing a role, having an influence or effect on protecting an interest under the bylaw. Resource areas and buffer strips are presumed to be significant. This presumption can be overcome only by credible evidence from a competent source based upon site specific data.

Special Flood Hazard Area: The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE or V1-30. [Base Code, Chapter 2, Section 202]

Start of Construction: The date of issuance of a permit for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling.

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. [CFR, Title 44, Part 59]

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 reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed.

Substantial Repair of a Foundation: When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a

foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition SBC]

Variance from Floodplain Overlay District Regulations: means a grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59]

Violation of Floodplain Overlay District Regulations: means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

Vegetated Wetland: are freshwater wetlands which do or do not border on creeks, rivers, streams, ponds and lakes, and may be isolated. The types of freshwater wetlands are wet meadows, marshes, swamps, and bogs. They exist where soils are saturated and/or inundated by water such that they support a predominance of wetland indicator plants. The ground and surface water regime and the vegetational community which occur in each type of freshwater wetland are specified in M.G.L. c. 131 s. 40.

- 1) The boundary of Vegetated Wetlands is the line within which 50% or more of the vegetational community consists of wetland indicator plants and saturated or inundated conditions exist. Wetland indicator plants shall include but not necessarily be limited to those plant species identified in the Act. Wetland indicator plants are also those classified in the indicator categories of Facultative, Facultative+, Facultative Wetland-, Facultative Wetland, Facultative Wetland+, or Obligate Wetland in the *National List of Plant Species That Occur in Wetlands: Massachusetts* (Fish & Wildlife Service, U.S. Department of the Interior, 1988) or plants exhibiting physiological or morphological adaptations to life in saturated or inundated conditions.
 - a. Areas containing a predominance of wetland indicator plants are **presumed** to indicate the presence of saturated or inundated conditions. Therefore, the boundary as determined by 50% or more wetland indicator plants shall be presumed accurate when:
 - b. all dominant species have an indicator status or obligate, facultative wetland+, facultative wetland, or facultative wetland- and the slope is distinct or abrupt between the upland plant community and the wetland plant community;
 - c. the area where the work will occur is clearly limited to the buffer zone; or
 - d. the Conservation Commission determines that sole reliance on wetland indicator plants will yield an accurate delineation.

- 2) When the boundary is not presumed accurate as described in 310 CMR 10.55 (2) (c) 1a. through 1 c. or to overcome the presumption, credible evidence shall be submitted by a competent source demonstrating that the boundary of Vegetated Wetlands is the line within which 50% or more of the vegetational community consists of wetland indicator plants and saturated or inundate conditions exist. The issuing authority must evaluate vegetation and indicators of saturated or inundated conditions if submitted by a credible source, or may require credible evidence of saturated or inundated conditions sufficient to support wetland indicator plants, such evidence shall include one or more of the following:
 - a. groundwater, including the capillary fringe, within a major portion of the root zone;
 - b. observation of prolonged or frequent flowing or standing surface water;
 - c. characteristics of hydric soils.
- 3) Where an area has been disturbed (e.g., by cutting, filling, or cultivation), the boundary is the line within which there are indicators of saturated or inundated conditions sufficient to support a predominance of wetland indicator plants, a predominance of wetland indicator plants, or credible evidence from a competent source that the area supported or would support under undisturbed conditions a predominance of wetland indicator plants prior to the disturbance.

Vernal Pool:

- a. any confined basin or depression which, at least in most years, holds water for a minimum of two consecutive months during the spring and/or summer,
 - b. is free of adult predatory fish populations, and
 - c. provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species,
 - d. as well as being a source of food and water for other animals (vernal pools are extremely productive, valuable ecosystems).
 - e. Sites confirmed as vernal pools, according to criteria used by the Commonwealth, are to be protected as resources under the local bylaw, even if the Massachusetts Division of Wildlife and Fisheries has not certified the sites as vernal pools.
- (**Note:** Excluded from this definition are depressions occurring in existing cultivated lawns, gardens, landscaped areas, or driveways.)
- f. The buffer zone for vernal pools shall be the area within a line parallel to the boundary of the vernal pool measuring 250 feet from that boundary; the buffer strip/no-build zone for a vernal pool shall be the area within a line parallel to the boundary of the vernal pool measuring 125 feet from that boundary.

Water Resource Protection District: shown on a map titled "Water Resource Protection District, Town of Scituate", adopted at the April 1987 Special Town Meeting, established to safeguard and protect Scituate's sources of water supply. The intent of this bylaw is to preserve and maintain the ability of the land to filter and purify water, to maintain the groundwater table, the purity of groundwater and surface water supplies, to conserve the natural environment and to protect the public health, safety and welfare.

Wetlands: Resource areas specified in SWR 10.02.(1).

Wildlife: All non-domestic animals, both vertebrate and invertebrate, and the habitat required by these animals for nesting, cover, and food; including but is not limited to species listed by state and federal agencies as endangered, threatened, or of special concern. The preservation of indigenous vegetation, including dead trees and dense understory, is essential to the support (i.e. cover, food, and nesting) of wildlife populations.

SWR 10.05 PROCEDURES

1) Request for a Determination of Applicability (RDA)

a. RDA Filing Procedures and Explanations:

- i. Any person who would like a formal decision as to whether the Conservation Commission has jurisdiction over a specific area or a proposed activity (or both) may file a RDA (**WPA Form 1**) with the Conservation Commission.
- ii. Payment to "Town of Scituate" in accordance with the fee schedule established December 1, 1988, and as amended currently and detailed in Scituate Wetland Regulations, shall accompany RDA submissions.
- iii. The applicant is responsible for payment of the fee to provide public notice of the RDA and will be billed by the publishing local newspaper.
- iv. Upon receipt of the RDA, the Conservation Commission will:
 1. Schedule a date (within 21 days of the receipt of the RDA for the public meeting to review the request.
 2. Secure public notice of the RDA and scheduled meeting date.
 3. Notify the applicant of the scheduled meeting date and time.
- v. Within 21 days of the RDA filing date and after conducting a site inspection and the required public meeting, the Commission will issue a Negative or a Positive Determination of Applicability.

1. A **Negative Determination** requires no further oversight by the Commission providing the work proceeds as proposed.
2. A **Positive Determination** requires the filing of a Notice of Intent (NOI: WPA Form 3) or an Abbreviated NOI (WPA Form 4 or 4A on the project.

b. RDA Submission Requirements

- i. Include a plan or plans which show **all** of the following information which applies to the project: Applicant must supply all information requested on the RDA form. The Commission may refuse to accept incomplete filings.

- ☐ A locus map 8-1/2 x 11" on a USGS base map with title & address.
- ☐ Location of Annual Mean High-Water Line.
- ☐ Any available spot elevations or contours at MSL (NGVD).
- ☐ Location of the Scituate Flood Plain and Watershed Protection District.
- ☐ FEMA 100 year Flood Elevations and Flood Zone.
- ☐ Any boundary indicating the Water Resource Protection District, if applicable.
- ☐ Location of the proposed work and distance to any Wetland Resource Area as listed in SWR 10.02(1).
- ☐ A project drawing with accurate measurements or an engineer's schematic of the proposed work, including any foundation/deck footing locations, depth and tie down detail.
- ☐ Vegetated areas of site including large trees & planting areas natural and cultivated.
- ☐ Proposed modifications to on-site sewage disposal system, if necessitated by the design/scope of work on the property.
- ☐ Assessor's reference: map, block and parcel number.
- ☐ Photographs of the property including structures.
- ☐ Copy of the Deed to the property.
- ☐ Reserve the right to require abutter notification

- ii. Submit Original (1) and Three (3) copies of completed submission including plans, **and electronic copy of file.**

1. Return the **original and three (3)** copies (8.5" X 11" format) to:

*The Conservation Commission
Town Hall
600 Chief Justice Cushing Highway
Scituate, Mass. 02066*

2. **One additional** copy to:

*The Department of Environmental Protection
DEP/SERO
20 Riverside Drive
Lakeville, MA 02347*

- iii. RDA on-site inspection requirements to be met at the time of filing: When appropriate, the applicant shall stake or flag the resource area and project boundaries at least five (5) days prior to the scheduled public meeting.

2) Notice of Intent

a. Filing procedures and explanations:

- i. A Notice of Intent (NOI) is a standard application for a proposed activity which is likely to impact on a site or nearby wetland resource areas. The Conservation Commission is the town appointed body responsible for review of a NOI or Abbreviated Notice of Intent (ANOI). The information supplied with the NOI is the primary data base used in making decisions on wetlands projects. Complete and accurate submissions minimize possible delays to secure necessary information. Filing for both the local bylaw and the Wetland Protection Act shall be done on one form (see appendix).
- ii. An Abbreviated Notice of Intent is the appropriate form to simplify filing for projects which are likely to result in limited impacts to wetlands, and which:
 - 1. are in the Buffer Zone (area within 100 feet of wetland boundary) or is within Land Subject to Flooding, as defined in Part III, Section 10.57 (2) of the DEP regulations; and,
 - 2. the proposed work will alter less than 1000 square feet of surface area within the Buffer Zone or Land Subject to Flooding; and,
 - 3. neither a Department of the Army permit nor a Division of Waterways Permit is required. April 7, 1999
- iii. Payment to the "Town of Scituate" in accordance with the fee schedule as amended on September 7, 2016 and detailed in the Scituate Wetland Regulations, shall accompany all NOIs, and ANOIs.
- iv. The applicant is responsible for payment of the fee to provide public notice and will be billed by the publishing local newspaper.
- v. Upon receipt of the NOI or ANOI the Conservation Commission will:
 - 1. schedule a date (within 21 days of receipt of the filing) for a Public Wetlands Hearing to review the work proposed under the filing.

2. secure public notice of the hearing date, time, and place.
 3. notify the applicant of the hearing date, time, and place.
- vi. The applicant shall supply the Commission with a listing of persons appearing on the Assessor's most recent valuation list as owners of property abutting within a radius of 100 feet of the property on which the work is to be done. Prior to the date of public hearing, the applicant shall supply all abutters with information (date, time, place & project description) on the filing. At the time of the hearing the applicant shall provide the commission with documentation (certified mail receipts and/or certificates of mailing) that abutters have been in receipt of notice of the hearing, no later than 5 business days prior to the Public Hearing. This shall be in addition to any notice required under DEP regulations.
 - vii. After the NOI or Abbreviated NOI has been reviewed, on-site inspection conducted, if needed, and Wetland hearing held, the Commission will issue an Order of Conditions within 21 days from the date of the close of the hearing. Prior to closing a hearing, continuances may be requested by the applicant or the Commission.
 - viii. Where a project involves the change or alteration of a watercourse in a riverine situation, the Conservation Agent shall assure that the applicant notifies the following organizations by certified mail (return receipt requested) before the public hearing:
 - Adjacent communities, especially upstream and downstream.
 - NFIP State Coordinator
Massachusetts Department of Conservation & Recreation
251 Causeway Street, 8th Floor
Boston, MA 02114
 - NFIP Program Specialist
FEMA Region I
99 High Street, 6th Floor
Boston, MA 02110
 - ix. **Floodway Encroachment:** In Zones A, A1-30, 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 floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
 - x. In any proposed project greater than 50 lots or 5 acres in size within an A-Zone where a flood elevation has not been determined, the applicant shall determine same, using standard engineering techniques which have been approved by the Commission.

- xi. In Zones A1-30 and AE, along watercourses within the Town of Scituate that have a regulatory floodway designated on the [Plymouth County FIRM dated July 6, 2021](#), 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.
- xii. All new construction within Zones VE shall be located landward of the reach of mean high tide.

xiii. Subdivisions and All development in Zone AO Floodplain

- 1. All subdivision and development proposals in the floodplain overlay district must be designed to assure that:
- 2. Such proposals minimize flood damage;
- 3. Public utilities and facilities are located and constructed so as to minimize flood damage.
- 4. Adequate drainage is provided.
- 5. Within Zone AO and AH on the FIRM, adequate drainage paths must be provided around structures on slopes to guide floodwaters around and away from proposed structures.
- 6. When proposing subdivisions or other developments greater than 50 lots or 5 acres (whichever is less), the proponent must provide technical data to determine base flood elevations for each developable parcel shown on the design plans.

xiv. Variances to building code floodplain standards

- 1. The Town/City will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community's files.
- 2. The Town/City shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property.

3. Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

xv. Variances to local Zoning Bylaws related to community compliance with the National Flood Insurance Program (NFIP)

1. A variance from these floodplain bylaws must meet the requirements set out by State law, and may only be granted if: 1) Good and sufficient cause and exceptional non-financial hardship exist; 2) the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and 3) the variance is the minimum action necessary to afford relief.

b. Notice of Intent (NOI) and Abbreviated Notice of Intent (ANOI) Requirements

- i. The applicant must supply all of the information requested on either the NOI or ANOI.
- ii. Information to be shown on plans and / or included in the documentation of the project:
 - ☐ Title box: date, owner, bar scale, NAVD datum 1988, North arrow.
 - ☐ Area of lot
 - ☐ Assessor's reference: map, block and parcel number
 - ☐ Registered Engineer's stamp and signature (smaller projects require plans with accurate measurements), Registered Land Surveyor's stamp and signature and/or Registered Sanitarian's Stamp and signature as appropriate
 - ☐ 10- and 100-year Flood Elevations and identification of any FEMA Flood boundaries and zones on the property
 - ☐ Proposed and existing contours and estimate of amount of fill proposed plotted at a minimum of a 2-foot Contour interval based on MSL (NGVD)
 - ☐ The "Water Resource Protection District" boundary if applicable
 - ☐ Any high-water line and/or Town of Scituate Floodplain and Watershed Protection District boundary line
 - ☐ Boundaries and identify the location of any on site or adjacent vegetated wetlands, water bodies, banks, coastal beach, and or dunes or riverfront area
 - ☐ Top and toe of the naturally occurring coastal bank, and both sides of any coastal dune
 - ☐ Vegetated areas of site including large trees & planting areas natural and cultivated
 - ☐ 100-foot setback (buffer zone) from delineated wetlands
 - ☐ Limit of work (boundary and/or notation).
 - ☐ The location and detail of any proposed sedimentation/erosion control.
 - ☐ All below-ground alteration & structures e.g., drainage, septic systems,

storage tanks, wells.

- ☐ Distance from wetlands, water courses or other resource areas to the leaching facility
- ☐ Easements.
- ☐ Existing stone walls, buildings or other fixed landmarks on the site.
- ☐ Proposed location for the stockpiling of any fill or spoils material to be stored on site.
- ☐ Existing and proposed lowest elevation of cellars or floors.
- ☐ The first-floor elevation for any dwelling in the floodplain, existing or proposed.
- ☐ Calculations for drainage, based on standard methodologies set forth in the U.S. Soil Conservation Service Technical Release No 55, Urban Hydrology for Small Watersheds and Section 4 of the U.S. Soil Conservation, National Engineering Hydrology Handbook, and prepared by a registered professional engineer or another professional competent in such matters.
- ☐ Photographs of the property, including structures.
- ☐ Copy of the Deed to the property.

iii. Submit Original and Three (3) copies of completed submission including plans [and electronic copy of files](#).

iv. If Applicant is not the property owner a letter of representation and/or authorization from the property owner.

v. Return **original and Three (3) copies** [and electronic copy of files](#) (8.5" X 11" format) to:

*Conservation Commission
Town Hall
Scituate, MA 02066*

vi. Send **one (1)** copy to:

*Department of Environmental Protection
DEP/SERO
20 Riverside Drive
Lakeville, MA 02347*

c. NOI onsite inspection requirements to be met at the time of filing:

- ☐ Visible identification of lot number or house number if existing house.
- ☐ Staking of all corners of new structures or additions.
- ☐ Staking of property boundaries, if required by the Commission.
- ☐ Flagging and numbering of the edge of wetlands and flood zone boundaries.

i. If these requirements are not met, the project may be denied for lack of information [SWR 10.05, (a) & (b)] or, at the applicant's request, continued to another hearing date. Any new information requested by the Commission must be submitted 7 days prior to the date of the continuance to allow for

adequate review by the Commission. Additional time for review of tardy information may be requested by the Commission and may result in an additional continuance.

d. Abbreviated Notice of Intent Wetlands Line Delineation Requirements

- i. See WPA Form 4A Abbreviated Resource Area Delineation Notice of Intent incorporated herein, in total, as part of these regulations.

3) **TOWN OF SCITUATE WETLANDS FILING FEE**

- a. See Filing Fee forms attached. (page 52)

4) **Orders of Conditions**

- a. Preamble: A **single decision** shall be made by the Commission simultaneously under the Wetlands Protection Act and the Scituate Wetlands Bylaw. An Order of Conditions is designed to permit the proposed construction activity while, at the same time, ensuring that valuable wetlands resources will be protected from either deliberate or accidental damage. Wetland protection is achieved by a combination of design elements within the approved plan and the additional conditions imposed by the Commission. All construction activities must be completed in compliance with the existing Order of Conditions.

Compliance may be monitored through periodic visits by the Agent or Commission members. members and Agents of the Conservation Commission shall have the right to enter and inspect the premises to evaluate and ensure compliance with the conditions and performance standards stated in the Order, the Act, 310 CMR 10.00 and Section 30700 of the Town of Scituate Code of Bylaws, and may acquire any information, measurements, photographs, observations and/or materials or may require the submission of any data or information deemed necessary for that evaluation. In addition, at the time it issues the Order, the Commission may strictly control construction activities by outlining stages of the work and by requiring periodic inspections and proof of compliance at each separate stage. A partial Certificate of Compliance may be required at discrete points of the project. The Commission will hold the permit recipient to strict accountability for the conditions contained in the Order.

- b. General Requirements. The following shall apply to all Orders of Conditions:

- i. Orders of Conditions are issued under both the Wetland Protection Act (M.G.L., Ch. 131, Sec. 40) and the Wetlands Protection Bylaw of the Town of Scituate, as voted at the April 8, 1988 adjourned session of the special Town Meeting of April 4, 1988.
- ii. Conditions may be for the construction period or may run with the Title to the property. Conditions may be structural or may require the meeting of a specified standard of performance.

- iii. Conditions may refer both to M.G.L., Ch. 131, Sec. 40 and to the Town Wetlands Protection Bylaw or conditions may refer only to the Town Bylaw. These separate conditions shall be explicitly identified in the Order of Conditions.
- c. Standard Conditions. A standard set of conditions will be imposed on all Orders of Conditions issued by the Commission.
- d. Special Conditions. A special set of conditions will be imposed when applicable on Order of Conditions issued by the Commission.
- e. If information significant to the Order becomes available which was previously not available or withheld, the Commission may issue an Enforcement Order pursuant to SWR 10.05(9). In such case, the Enforcement Order shall state that no work is to be undertaken until a new or Amended Order of Conditions is issued.

5) Appeal Procedure

- a. Procedure. Any applicant, owner, abutter, any person aggrieved, or any ten residents of Scituate may appeal an Order of the Commission under this bylaw to the Superior Court, pursuant to M.G.L. Chapter 249, Section 4.

Note: Appeals to DEP must be made within ten days of the Commission's decision as set forth in 310 CMR10.05(7).

- b. Mediation. Any applicant, owner, abutter, any ten residents of the town, or any person aggrieved by an Order of the Conservation Commission may, within ten (10) business days of the issuance of said Order, request that the matter be settled through a mediation process conducted by an individual(s) mutually agreed upon by the applicant, the Commission and any appellant (if different from the applicant or the Commission). Any party may refuse to participate in, or may withdraw from, the mediation proceeding at any time, and no settlement agreement shall be effective unless signed by all parties whose cooperation is necessary to its implementation. If no agreement to mediate is recorded within the said ten (10) business days, or for any reason the mediation process is abandoned before consummation, then the applicant, owner, abutter, ten residents of the town or any person aggrieved may appeal to the Superior Court, pursuant to MGL Chapter 249, Section 4.
- c. Notification of Date Change for DEP On-site or Appeal Hearings. Because of the added responsibility of the Scituate Wetlands Bylaw, the Commission must be directly involved in all appeal processes before DEP.
 - i. When a change of date for an appeal hearing is requested, it will be discussed and voted upon at the next regularly scheduled Commission meeting. The changing of a date for a DEP appeal hearing (on-site or adjudicatory) is to be made by the mutual consent of all parties. The DEP

requires that the party requesting a date change must find a mutually agreeable date and must notify all other parties of the change of date.

- ii. The Commission shall be represented at all appeal hearings by one or more of the Commission members and/or its agent, as designated by the Chairman.

6) **Certificate of Compliance**

- a. The Certificate of Compliance is issued when a project is completed within the constraints of the Order. The certificate may be used to permanently continue certain conditions from the original Order that are deemed appropriate by the Commission.
- b. Procedure.
 - i. Upon completion of the work permitted, the applicant shall request, in writing, that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.
 - ii. If a project has been completed in accordance with plans originally stamped by a registered professional engineer, architect, landscape architect or land surveyor, a written statement by such a professional person certifying substantial compliance with the plans or setting forth what deviation, if any, exists from the plans approved in the Order, shall accompany the request for a Certificate of Compliance. If the engineer, architect, landscape architect or land surveyor is unable to certify to certain conditions or activities relative to the site, he/she should so state.
 - iii. Prior to the issuance of a Certificate of Compliance a site inspection shall be made by the Agent and at least one (1) Commission member.
 - iv. Upon written request by the applicant, a Certificate of Compliance shall be issued within twenty-one (21) days of receipt thereof, and shall certify that the activity or portions thereof described in the Notice of Intent and submitted plans has/have been completed in compliance with the Order. The Certificate of Compliance shall be signed by a majority of the Commission. A copy of the Certificate of Compliance shall be sent to the DEP by the Commission.
 - v. If the Commission determines, after review and inspection, that the work has not been done in compliance with the Order, it may refuse to issue a Certificate of Compliance. Such refusal shall be issued within twenty-one (21) days of receipt of a request for a Certificate of Compliance, shall be in writing, and shall specify the reasons for denial.
 - vi. If the final Order contains conditions which continue past the completion of the work, such as maintenance or monitoring, the Order shall specify which,

if any, of such conditions shall continue. These shall be specified in the Certificate of Compliance.

- vii. The Certificate of Compliance, together with any continuing conditions, shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the Commission on the Form #3 at the end of 10.99. Upon failure of the applicant to so record, the Commission may do so.

c. Definition of Compliance.

- i. The Commission issues an Order of Conditions which is specific and unique to each project. It is the responsibility of all parties to read and to follow this Order. A project will be in compliance if it substantially conforms in all aspects to the Order. Compliance can be claimed if the completed project does not differ from the original proposal. If there is doubt as to compliance, an Amended Order should be considered, or the project should be revised to conform strictly to the written Order of Conditions.
- ii. In order to identify problems with compliance earlier in the process, the Commission may use special conditions when circumstances warrant.

7) Performance Guarantee

- a. Preamble. The performance guarantee is a tool available to the Commission and provided by the Applicant to ensure that monies are available should proposed work not be done in compliance with an Order of Conditions. The performance guarantee may be used in large, complex projects, or where the threat to particular Resource Areas warrants the additional security.
- b. Procedure. The performance guarantee shall be either in the form of a cashier's check, a letter of credit from a bank, a true bond, in which a bonding agency takes over the responsibility of the contractor, or a bank pass book. The Commission has the authority to use any such funds held under this section for the purposes stated by a vote of the Commission.
- c. The performance guarantee shall be retained by the Town Treasurer-Collector who shall record and file the original in the Treasurer-Collector's office. If a letter of credit is given to the Commission, it should include the following items:
 - i. The credit should be extended to "The Town of Scituate Conservation Commission" based on the Order of Conditions (DEP file #_____), Special Condition No. ____.
 - ii. The specific work covered by the performance guarantee should be stated.

- iii. The guarantee may be released by a vote of the Commission. If the bank requires that a time period be stated, it is the responsibility of the Commission to insure that the guarantee be continued if the work is not successfully completed at the end of that period.

8) Emergency Certification

- a. Any person requesting 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 Town of Scituate and what agency or sub-agency of the Commonwealth of Massachusetts is to perform the project or has ordered the project to be performed. If the project is certified to be an emergency by the Conservation Commission, the certification shall include a description of the work which is to be allowed and shall not include work beyond that necessary to abate the emergency. A site inspection shall be made prior to certification.
- b. An emergency certification shall be issued only for the protection of public health or safety.
- c. The twenty-one (21) day notice required in 10.05 Section 1 [a] (4) of this bylaw shall not apply to emergency projects necessary for the protection of the health and safety of the citizens of Scituate which are to be performed by an administrative agency of the Commonwealth or by the Town. Emergency projects shall mean any projects certified to be an emergency by the Commissioner of the Department of Environmental Protection and the Conservation Commission. Within thirty (30) days after a project is certified as an emergency, a public meeting shall be held on the project at which time the Conservation Commission may require the filing of a Notice of Intent or impose remedial conditions on the work. In no case shall any filling, dredging or altering commence prior to any emergency certification or extend beyond the time necessary to abate the emergency.

9) Enforcement Orders

- a. Preamble. Enforcement Orders may be issued by the Agent, a Commission Member or the Commission or Flood Plain Administrator. The goal of enforcement is to secure prompt and continued compliance with the Scituate Wetlands Regulations and any permits. The Commission oversees work under Superseding and Final Orders issued by DEP and can issue enforcement orders under them.
- b. Ratification of Enforcement Orders. It is the policy of the Commission to issue Enforcement Orders after a vote at a regularly scheduled meeting of the Commission, unless the violation is of a very serious or emergency nature. If the Order is issued prior to a vote of the Commission, said Order shall be ratified by the Commission at its earliest convenience. The Order will be delivered by hand or by certified mail, and will contain specifics of the violations, required actions and deadlines for response. Further, it is the role of the Commission to enforce DEP Orders, as well as any other provisions of FEMA Regulations. The DEP and/or

FEMA, as appropriate, will be promptly notify of all enforcement action taken.

- c. Penalties. Penalties for Violations and non-compliance of regulations may be issued at discretion of local authorities based on schedules referenced in local, general and zoning Bylaws.

10) Buffer Strip

- a. Preamble. This section is intended to define the policy of the Commission relative to the Buffer Strip which lies within the 100-foot Buffer Zone and to describe standards for preventing detrimental effects of activities on resource areas subject to protection under the Commonwealth of Massachusetts' Wetlands Protection Act (M.G.L. c.131 s.40), and Section 30700 of the Town of Scituate Code of Bylaws, including the Buffer Zone itself.

It is the intent of the Commission to emphasize the use of vegetated Buffer Strips within the Buffer Zone as the primary mechanism for reducing the potential for adverse impacts on resource areas subject to protection under the Commonwealth of Massachusetts' Wetlands Protection Act (M.G.L. c.131 s.40), and Section 30700 of the Town of Scituate Code of by laws. In general, buffer strips are intended to define an appropriate regulated distance between the limits of work (i.e., disturbance by human activity) and the limits of resource areas, such as wetlands or water resources. Designation of these Buffer Strips requires that natural vegetation within the strip be maintained in an undisturbed natural condition so that it functions effectively.

There is significant scientific data available to support the conclusion that Buffer Strips play a beneficial role in protecting resource areas from negative impacts. For instance, the U.S. Environmental Protection Agency has issued guidance policies recognizing the need for Buffer Strips ranging in width from 50 feet to over 200 feet depending upon the function and value of the particular resource area involved. Key environmental functions performed by Buffer Strips include:

- Sediment removal
- Nutrient removal
- Fecal coliform removal
- Temperature moderation
- Human impact deterrence
- Wildlife species distribution, habitat and diversity

It is generally accepted that undisturbed Buffer Strips of less than 50 feet in width are ineffective in protecting sensitive resource areas. To allow for a minimum of pollution attenuation, erosion control and wildlife habitat, the available research indicates that an undisturbed Buffer Strip of at least 50 feet in width is required. In addition, nearly all Buffer Strips that are less than 50 feet wide at the time they are established demonstrate a significant decrease in effectiveness within a few years, to the point of becoming nearly ineffective. In areas with steep slopes, poor soils, minimal vegetative cover, high water tables, or other unique factors, a wider buffer

strip may be necessary to protect the resource area. Buffer widths effective in preventing significant water quality impacts to wetlands are often 100 feet or greater in width.

b. Standards and Limitations. In keeping with the foregoing, the Commission hereby establishes the following standards and limitations on significant activities within the 50-foot Buffer Strip as defined in Chapter 310 CMR 10.00:

i. Buffer Strip: There shall be a continuous undisturbed Buffer Strip (hereafter referred to as the Buffer Strip), a minimum of 50 feet in width, from the edge of all areas subject to protection as defined in the regulations promulgated under Section 30700 of the Town of Scituate Code of Bylaws (with the exception of the Buffer Zone to Bordering Land Subject to Flooding, Isolated Land Subject to Flooding and Land Subject to Coastal Storm Flowage. As a general rule, the Buffer Strip shall be considered undisturbed if it is continuous, unaltered, and left in a natural state.

ii. Exceptions to the 50-Foot Buffer Strip. The foregoing notwithstanding, the Commission may find it appropriate to require a Buffer Strip of greater or less than 50 feet in width on a case-by-case basis. By allowing these exceptions to the 50-foot requirement, the Commission recognizes the need to account for site-specific variables that affect the pollutant removal capabilities of the Buffer Strip, such as slope, soil type, contributing land usage, and the surrounding patterns of land use.

The applicant or the Commission must demonstrate the appropriateness of a Buffer Strip of a width other than 50 feet through the use of an appropriate buffer designation method.

iii. Enhancement of the Buffer Strip. The Commission may require that the Buffer Strip be enhanced by the applicant, if it is determined that the quality of the existing buffer strip is insufficient to perform the desired resource protection functions. In such cases, the Commission will require the applicant to submit a vegetative enhancement plan prior to closing the Notice of Intent Hearing.

iv. Pre-Existing Conditions in the Buffer Strip. The Commission may allow a condition or activity within the Buffer Strip if the applicant is able to demonstrate to the Commission's satisfaction that the condition or activity existed prior to the date of this amendment to the Scituate Wetland Protection Regulations.

v. Demarcation of the Buffer Strip. The Commission may require a permanent row of designated appropriate plantings 4' on center delineating the Buffer Strip. These plantings shall be indicated on the plan submitted with the Notice of Intent.

- c. Wildlife Habitat. The Commission encourages the preservation of indigenous vegetation because of its important function as wildlife habitat and to maintain natural diversity in the vegetative community. Native plants that are sometimes regarded as “trash” species are often used by wildlife for important functions such as nesting, feeding and protective cover sites. For example, fox grapes and other vine-like plants are used as food sources and nesting sites by both native and migratory avian species. Dead trees, often considered undesirable are used as nesting and perching sites for a variety of birds and mammals, and as a food source by insect-eating birds. A dense understory layer in wooded areas may provide nesting sites, travel corridors and protective cover for a wide variety of fauna. In addition to its aesthetic value, wildlife also serves to maintain the natural “checks and balances system” within various ecological communities. A well-known example of this natural balance in biological communities is the predation of birds acting to control the populations of various insects. The Commission presumes that wildlife will be protected when we preserve sufficient open space, left in its natural state, to support the indigenous populations of mammals, birds, reptiles, amphibians, fish, and vegetation.
- d. Limit of Work. All development activity shall be contained within a defined building envelope as approved by the Commission. The Limit of Work line will be delineated by a demarcation acceptable to the Commission and shown on the plan approved by the Commission. Any work outside this line, including pruning, will require an amended Order of Conditions or a new filing [before the Commission].
- e. Erosion Control. A barrier of silt sock, or other erosion control practice acceptable to the Commission, will be used to protect down-gradient resource areas from erosion and sedimentation during the construction phase. This barrier and/or the Limit of Work line must be shown on the submitted plans and maintained intact and in good condition until the disturbed area is stabilized and revegetated as required and a certificate of compliance is issued.
- f. Pruning and Clearing. All proposed pruning and clearing projects will be done in consultation with and under the supervision of the Agent. Adherence to these guidelines and conditions of the Order of Conditions will be required in order that a full Certificate of Compliance can be issued.

The cutting, removal or other destruction of above-ground vegetation within a Resource Area (e.g. wetland bank) and within the required buffer strip will be strictly regulated and limited to Vista Cutting and Pruning. Although stricter performance standards will be maintained in the Resource Area and in the Buffer Strip, minimal vista cutting may be permitted. A request for work in this area should be made after construction is completed and a specific view is identified.

Property owners are required to consult the Commission when planning projects that involve the removal or replacement of vegetation adjacent to protected Resource Areas. All proposed clearing and pruning activities should be requested using the definitions listed below.

11) Definitions:

Pruning: Removal of dead, diseased, obstructing, and weak branches, as well, as selective thinning of branches to lessen wind resistance. The removal of such described branches may include those on main trunks, as well as those inside the leaf area.

Lifting: Lifting of the canopy by removing lower limbs from the main trunk.

Selective Pruning: Limited pruning of tree branches, brush and the removal of dead trees; removal of understory brush is prohibited. No tree whose trunk is greater than four (4") inches in diameter at breast height (DBH) shall be removed. Ninety percent of the existing crown cover shall be left intact and evenly distributed.

Selective Cutting: The removal of smaller, weaker trees, and less desirable tree species, leaving the older more vigorous trees. At least fifty percent (50%) of existing crown cover shall be left intact and evenly distributed. No tree whose trunk is greater than four (4") inches in diameter at breast height (DBH) shall be removed without specific permission. Specific specimen trees may be identified by the Commission for preservation. Understory brush may not be mowed.

Vista Cutting: The removal of vegetation that blocks a view. The Commission encourages that specific windows of view (containing top, sides and bottom) be opened on identified views and discourages "property line to property line" cutting. Vista cutting can be normally accomplished through pruning and lifting, although topping of trees may be permitted in specific cases. Clear cutting for a view is strongly discouraged.

Clear Cutting: Removal, to the ground, of all woody vegetation, including mowing of understory brush down to a minimum height of two inches (2"). All stumps are left in the ground and are cut flush.

Lawns. Lawns are a significant source of excess nutrients because the application of fertilizer is uncontrollable and subject to overuse. This results in excess nutrient loading. In the case of lawns within the Water Resource Protection District and within the 100' buffer to any wetland or 250' of any vernal pool, where proposed development activities are likely to increase the nutrient loading to a wetland, the Commission may require limiting existing lawn area and that NO use of herbicides, pesticides or fertilizers be used in the above restricted areas as mitigation of the proposed activity.

Limited Projects. The foregoing notwithstanding, the Commission may issue an Order of Conditions permitting limited projects in the Buffer Zone as defined in 310 CMR 10.53(3)(e). Such projects will be subject to the requirements outlined at Section 10.12(b) of the Scituate Wetland Protection Regulations.

SWR 10.11 SCENIC RIVER/NORTH RIVER/RIVERS ACT

- 1) Preamble. The North River is a designated Scenic River and is presumed significant to all the interests of the Wetlands Protection Act and the Scituate Wetlands Bylaw. The North River Corridor includes the river and adjacent land up to 300 feet horizontally from the natural bank of each side of the river.
- 2) Jurisdiction: The Scituate Conservation Commission has jurisdiction from the Town Boundary along the River to within 100 feet of the top of the Coastal Bank. Beyond filing a Notice of Intent or a Request for Determination of Applicability with the Commission, an applicant desiring to alter within the area of the North River corridor must file with the North River Commission.
- 3) The Scituate Conservation Commission adopts and incorporates, in total, the provisions and regulations promulgated under the Rivers Act Chapter 131 section 10 M.G.L. into these regulations.

SWR 10.12 SPECIFIC ACTIVITIES REGULATED

- 1) Replication of Bordering Vegetated Wetland
 - a. Preamble. There is at present no published scientific evidence to substantiate that the process of wetland replication is a viable, realistic, or reasonable substitute for a mature, established wetland. Thus, the Commission's approach to replication will be cautious until such evidence is available. The following standards are established in an attempt to insure the viability and success of any replication project in the Town of Scituate.
 - b. The Commission will make a determination as to whether the proposed wetland replication is necessary. The justification for the destruction of a wetland must be clear and convincing that there is **no** available alternative.
 - c. The edge of the proposed replicated wetland must be at least 100 feet from any property line unless written permission is granted by the adjoining property owner.
 - d. Area. Within the Water Resource Protection District, no Bordering Vegetated Wetland may be destroyed. In other areas up to 2500 square feet may be destroyed with replication at least twice that of the area lost.
 - e. Submittals. The applicant must provide the Commission with;
 - i. competent and complete analysis and survey of the area being destroyed, drained, or filled; and the area selected for replication as it exists before replication;

- ii. a replication plan including a complete hydrological, geological, chemical, and biological survey and analysis.
 - iii. a complete record of the area being replicated and the area being filled. This shall include, but not necessarily limited to, photographs, soil profiles, water elevations, and vegetative cover for the area before, during and after replication.
- f. The replication area must be the same type of wetland in form and vegetative composition and hydrologically connected to the filled, dredged, or destroyed wetland.
- g. The applicant must show that alteration of said area for new replication will have no adverse effect on: flood protection, protection of private or public water supply, wildlife habitat, other protective vegetation and/or adjacent properties and habitats.
- h. The new wetland must be created before the existing wetland is filled, drained or destroyed (unless material from the existing wetland is to be used in the creation of the new wetland). Completion shall include at minimum the creation of a natural wetlands soil profile, grading to natural water level and planting of species as conditioned by the Commission. In no case may other activities be undertaken until the replication is complete.
- i. The applicant must monitor the replicated wetland for a minimum of 5 years and submit annual reports to the Commission. These reports must assess the soil, water, and plant conditions of the replicated wetland. The applicant may be required, on an annual basis, to remedy any deficiencies at the replication site.

2) Limited Access Projects

- a. Preamble. Limited access projects involve the construction and maintenance of a new roadway or driveway, through a resource area, of minimum legal and practical width acceptable to the Planning Board, where reasonable alternative means of access from a public way to an upland area of the same owner is unavailable. Such roadway or driveway shall be constructed in a manner which does not restrict the flow of water or the recharge of groundwater on-site.
- b. Area. When limited access projects are permitted. A minimum replication area of twice that of the area being lost will be required.
- c. Submittals. The applicant must provide the Commission with:
 - i. Written documentation from the Planning Board that the new roadway or driveway is of minimum legal and practical width acceptable to the Planning Board.

- ii. Documentation of alternative accesses requested and the environmental or other reasons for denial by the Planning Board.
- iii. Presentation of alternative ways of constructing and or obtaining access (e.g.: bridge, pilings), and design of access (e.g.: minimum width, height, length).
- iv. Presentation of methods explored to minimize wetlands impacts and rationale for selected design decision. Applicants should explore the use of piling supports, bridging, box culverts with vertical walls, etc.
- v. Construction methodology must be described in full. Proposals for coffer damming, type of equipment, size of equipment, etc. should be included. Construction area shall be the limits of the roadway.

3) Detention Basins

- a. Preamble. For the purposes of these regulations, a detention basin is defined as a man- made, basin-like flood control structure which is designed to collect stormwater runoff and to detain it for a specified period of time during major storm events. It also is designed to minimized contaminants from leaving the project site.
- b. The purpose of these regulations is to establish guidelines and standards for the design and construction of detention basins. Given variations in soil conditions and topography, no "standard basin" is applicable in all cases. However, design assumptions, calculation formulas and construction details can be applied to the majority of designs.
- c. A detention basin is not the only method of controlling excess runoff from developments. Before considering the use of a detention basin, other methods of controlling runoff including, but not limited to, storm water leaching pits and natural or man-made swales shall be investigated. A detention basin should be used only if alternate, low-maintenance methods are not feasible. The applicant shall demonstrate, through a preponderance of credible evidence, that alternative solutions have been seriously considered.
- d. Detention basins will not be allowed within a Resource Area or in the Buffer Strip.

SWR 10.28 COASTAL DUNES

- 1) Preamble. All coastal dunes are likely to be significant to storm damage prevention and flood control, and all coastal dunes on barrier beaches and the coastal dune closest to the coastal beach in any area are per se significant to storm damage prevention and flood control. Coastal dunes are also significant to the protection of wildlife habitat.

In particular, the foredune zone, like beaches, is a dynamic feature, created and shaped primarily by the wind.

The foredune zone dissipates energy from waves and storm-surge overwash, which results in decreased wave runup and lowered levels of overwash water. Thus the foredune zone serves as a buffer to help minimize property loss. The shape or form of the foredune zone is of paramount importance.

The seaward-facing slope of the foredune naturally forms at the same gradient as the seaward slope of the berm: this low-gradient surface serves to dissipate and absorb wave energy. Higher-gradient slopes on human-altered foredunes often do not absorb the wave energy, and the waves erode the foredune and are reflected seaward, transporting sand offshore.

As reservoirs of sand, the foredune zone provides sand and sediment to coastal beaches. Vegetation cover contributes to the growth and stability of coastal dunes by providing conditions favorable to sand deposition.

A number of birds, most commonly terns and gulls, nest at the base or sides of dunes. In some dune systems other birds also nest in the interdunal area. In a few dune systems, wet meadows or vernal pool habitats occur, which serve as important feeding areas for a wide variety of bird species.

Coastal dunes are presumed to be significant to storm damage prevention, flood control, and/or wildlife habitat. The characteristics critical to the protection of those interests are enumerated in 310 CMR 10.28 (1, a-f).

- 2) Definition. Coastal Dunes are elevated accumulations of sand and/or sediment landward of a coastal beach and formed by wind action or storm overwash, or may be sediment or sand deposited by artificial (human) means, usually to serve the purpose of storm damage prevention or flood control.

Dunes which are undisturbed appear as hills, mounds, or ridges of sand and are typically vegetated with beach grass and shrubs. The more or less continuous ridge of dunes parallel to, and just inland of the beach, is termed the “foredune zone.”

- 3) Goals. The Commission’s goals are to:

- a. protect the foredune zone from activities that have a potential to increase wind or wave erosion;
- b. protect the public from dangerous storm forces, which ordinarily will involve preventing construction in high hazard areas;
- c. enhance the ability of dunes to serve as a natural storm buffer;
- d. protect the ecologic value of the foredune zone and dunes, in particular but not exclusively including its functioning as a bird nesting habitat for threatened and endangered species.

- 4) Policies. Coastal dunes are presumed to be significant to storm damage mitigation and/or prevention, and/or flood control, and/or wildlife habitat. **Alteration of sand dunes is prohibited when the alteration would increase potential flood damage.** In order for the Commission to approve or condition any project that may affect the functioning of a coastal dune or the buffer zone of that resource, the applicant must demonstrate that the project will not have an adverse effect on such dune or buffer zone by:

- a. affecting the ability of waves to remove sand from the dune;
- b. disturbing the vegetative cover so as to destabilize the dune and/or dune area;
- c. causing any modification of the dune form that could increase the potential for storm or flood damage;
- d. interfere with the landward or lateral movement of the dune;
- e. cause removal of sand from the dune artificially;
- f. interfere with identified bird nesting habitat.

Notwithstanding the provisions of SWR a-f above, if a building already exists upon a coastal dune, or in the buffer zone of same, a project accessory to the existing building may be permitted, provided that such work, using the best commercially available measures, minimizes the adverse effect on the coastal dune. Such accessory projects shall not include coastal engineering structures.

The following projects may be permitted and conditioned by the Commission, providing they adhere to the provisions of a-f above:

- g. pedestrian walkways;
- h. fencing and other devices designed to increase the dune development;
- i. plantings compatible with natural vegetative cover;
- j. other forms of non-structural protection, restoration, nourishment, or improvement of the feature intended to meet the goals enumerated in SWR 10.28 (3).

SWR 10.29 BARRIER BEACHES

- 1) In addition to those barrier beaches identified and mapped in the Massachusetts Coastal Zone Management publication "Massachusetts Barrier Beaches", published in December, 1982, the Scituate Conservation Commission has defined two other areas as barrier beaches subject to protection under these regulations. The first area is located between Egypt Beach and Shore Acres, bounded to the North by Priscilla Avenue, to the South by Bradford Avenue and to the West by Egypt Avenue. The second area is located in the Hatherly Beach area bounded to the North by Eighth Avenue and to the South by Tenth Avenue.

SWR 10.30 COASTAL BANKS

- 1) Coastal banks, including bluffs and cliffs, are naturally occurring features likely to be significant to storm damage protection and flood control because they may:
 - a. supply sediment to coastal beaches, coastal dunes or barrier beaches;
 - b. act as a vertical buffer to storm waters. Coastal banks that only function as a vertical buffer are further defined since some portions of a seaward- facing slope are not likely to be significant to storm damage prevention and flood control; and
 - c. have ecological value.
- 2) The Scituate Conservation Commission's goals are to protect coastal banks from activities and alterations that may damage the value of these features, prevent any construction in contiguous areas that may weaken the feature and has the potential of creating a hazard, and to preserve the ecological values of these features.
- 3) Whenever possible in situations involving altered banks, the Conservation Commission will make every effort to restore coastal banks to something approximating their original state.
- 4) When a proposed project involves dredging, removing, filling, or altering a coastal bank, the Conservation Commission shall presume that the area is significant to storm damage prevention and flood control, as well as to the other values enumerated above. Among other concerns, any project on a coastal bank or within 100 feet landward of the top of such coastal bank shall have no adverse effects on the stability of the coastal bank.
- 5) Definition
 - a. Preamble. The Scituate Conservation Commission finds it necessary to supplement the definition used in the regulations under the Wetlands Protection Act in order to provide a consistent and reliable means of defining the upper boundary or top of a coastal bank which recognizes formative and active processes. Consequently the 100-year flood elevation plus a factor to accommodate sea level rise is used in the definition.
 - b. The upper boundary or top of a Coastal Bank is the first observable *naturally* occurring break in slope above the 100 year flood plain or the 100 year flood elevation whichever is higher.

N.B. [SWR 10.31 - 10.37: refer to 310 CMR 10.00]

SWR 10.38 LAND SUBJECT TO COASTAL STORM FLOWAGE

PERFORMANCE STANDARDS FOR LAND SUBJECT TO COASTAL STORM FLOWAGE

12) PREAMBLE

Land Subject to Coastal Storm Flowage is significant to storm damage prevention and flood control.

Storm Damage Prevention & Flood Control: Velocity zones (VE-zones) and AE-zones of Land Subject to Coastal Storm Flowage (V-zones especially so) are areas which are subject to hazardous flooding, wave impact, and, in some cases, significant rates of erosion as a result of storm wave impact and scour. VE- and AE-zones in coastal areas are generally subject to repeated storm damage which can result in loss of life and property, increasing public expenditures for storm recovery activities, historic taxpayer subsidies for flood insurance and disaster relief, and increased risks for personnel involved in emergency relief programs. Alteration of land surfaces in AE-zones could change drainage characteristics that could cause increased flood damage on adjacent properties.

A number of complex and inter-related factors determine the wave height and the landward extent of wave run-up in VE- and AE-zones, including shoreline orientation, nearshore/offshore bathymetry, onshore topography, wave fetch, storm frequency and magnitude, and the presence of coastal engineering structures. The topography, soil characteristics (e.g. composition, size, density, & shape of soil material), vegetation, erodibility and permeability of the land surface within VE- and AE-zones are critical characteristics which determine how effective an area is in dissipating wave energy and in protecting areas within and landward of these zones from storm damage and flooding. Wave energy may be expended in eroding and transporting materials comprising the land surface within the VE- and AE-zones, as well as by percolation or the downward movement of the stormwater through more permeable land surfaces, thereby lessening the effects of backrush, scour and erosion.

Development in VE- and AE-zones poses environmental problems since construction and development activities can impair or destroy those characteristics cited above which are critical to the stated interests.

Dredging or the removal of materials within VE- and AE-zones acts to increase the landward velocity and height of storm waves, thereby allowing storm waves to break further inland and to impact upland and wetland resource areas which might not otherwise be impacted. Filling and the placement of solid fill structures within VE- and AE-zones may cause the refraction, diffraction and/or reflection of waves, thereby forcing wave energy onto adjacent properties, natural resources, and public or private ways potentially resulting in otherwise avoidable storm damage. When struck with storm waves, solid structures within VE- and AE-zones also may increase localized rates of erosion and scour.

Relative Sea Level Rise Considerations: Those portions of coastal floodplains which are

immediately landward of salt marshes, coastal beaches, barrier beaches, coastal dunes or coastal banks require special protection. These areas are likely to be in a state of transition as the entire complex of coastal wetland resources gradually moves landward because of the fact that, “for the past thousands of years, relative sea level has been rising in Massachusetts, and it is still rising”, resulting in inundation of more landward area. As sea level rises, the shoreline may retreat and areas are successively inundated more frequently by storm and tidal activity. Activities carried out within these ‘special transitional areas’ of coastal floodplains may interfere with the natural landward migration of the adjacent coastal resource areas. Therefore, maintaining these special transitional areas in as much of their natural state as possible is necessary to protect the interests of other wetland resources.

13) DEFINITIONS, BOUNDARIES, AND CRITICAL CHARACTERISTICS

a. Definitions (for purposes of these Regulations)

- i. **Land Subject to Coastal Storm Flowage:** Land Subject to Coastal Storm Flowage means land subject to any inundation caused by coastal storms up to and including that resulting in a 100-year flood, surge of record, or flood of record, whichever is greater. One hundred year flood (or base flood as it is also referred to) means the flood having a one percent chance of being equaled or exceeded in any given year. The seaward limit is mean low water.
- ii. **Velocity Zones (including VE):** Velocity Zones are those portions of Land Subject to Coastal Storm Flowage which are coastal high hazard areas or areas of special flood hazard extending from the mean low water line to the inland limit within the 100 year floodplain supporting waves greater than three feet in height.
- iii. **Overwash:** That portion of storm wave uprush that carries over the crest of a berm, dune, or man-made structure, often times depositing sediment or other storm laden material.

b. Boundary & Boundary Modification Procedure:

- i. The boundaries of the VE-, AE-, and A-zones within Land Subject to Coastal Storm Flowage shall be determined by reference to the **November 4, 2016 and July 6, 2021 Plymouth County FIRMs** prepared for the Town of Scituate. The boundaries within the Town of Scituate shown on the **Plymouth County Flood Insurance Rate Maps (FIRM) dated November 4, 2016 and July 6, 2021** shall be presumed accurate. This presumption may be overcome only by credible evidence, such as engineering calculations performed by a registered engineer or other professional competent in such matters and using FEMA procedures and guidelines.

- ii. The landward boundary of the 10-year floodplain is the estimated maximum lateral extent of the flood water which will theoretically result from the statistical 10-year storm. Said boundary shall be determined utilizing the 10-year Stillwater elevation as published in the community Flood Insurance Study.
 - iii. Where NFIP flood data are unavailable, the boundary of any zone within Land Subject to Coastal Storm Flowage shall be the maximum lateral extent of flood water typical of that zone which has been observed or recorded.
 - iv. In the event of a floodplain boundary conflict, the issuing authority may require the applicant to determine the boundary by engineering calculations which shall be:
 - 1. based upon the 100-year Stillwater flood elevation published in the effective Flood Insurance Study for the community for the affected shoreline reach or a revised 100-year Stillwater flood elevation calculated to account for hydrologic changes occurring subsequent to the effective date of the community Flood Insurance Study;
 - 2. based upon the appropriate wave height or wave run-up methodology for the affected shoreline reach as set forth in the FEMA Publication, Guidelines and Specifications for Wave Envelope Determination and V-Zone Mapping, and;
 - 3. prepared and certified by a registered professional engineer.
 - v. The seaward boundary of Land Subject to Coastal Storm Flowage shall be mean low water.
- c. Critical Characteristics:
- i. The topography, soil characteristics (i.e. composition, size, shape & density of material), vegetation, erodibility, and permeability allow for the dissipation of storm wave energy and, therefore, are the physical characteristics of Land Subject to Coastal Storm Flowage which are critical to the protection of the statutory interests of flood control and storm damage prevention. In addition, for areas in AE-zones that are subject to ponding or AE-zones that are hydraulically constricted areas, the ability to store a volume of flood water is a critical characteristic. Hydraulically constricted A-zones are those in which the base flood elevation is lower on the landward side of the constriction.

14) PRESUMPTIONS

- d. Where a project involves removing, dredging, filling or altering of Land Subject to Coastal Storm Flowage, the issuing authority shall presume:
 - i. That said area is significant to the interests of flood control and storm damage prevention;
 - ii. That it is likely to be significant to the prevention of pollution in those areas.
- e. These presumptions may be overcome only upon a clear showing that the area is not significant to the interests cited above. If the presumption is overcome, the issuing authority shall make a written determination to this effect, setting forth its grounds on Form 6, in 310 CMR 10.99.

15) GENERAL PERFORMANCE STANDARDS

- f. When the issuing authority determines that Land Subject to Coastal Storm Flowage (A, AE, and/or VE zones) overlays other resource areas listed in these Regulations, the applicable performance standards for each resource area shall be independently and collectively applied and the project shall be appropriately conditioned to protect all stated interests.
- g. When Land Subject to Coastal Storm Flowage (AE, AO and/or VE-zones) is significant to the interests of flood control and storm damage prevention, the following performance standards shall apply:
 - i. Any activity shall not have an adverse effect by increasing the elevation or velocity of flood waters or by increasing flows due to a change in drainage or flowage characteristics (e.g. change in direction) on the subject site, adjacent properties, or any public or private way.
 - ii. Relative sea level rise and the landward migration of resource area in response to relative sea level rise shall be incorporated into the design and construction of structures and other activities proposed in Land Subject to Coastal Storm Flowage. At a minimum, for activities proposed in AE- & VE-zones, the historic rate of relative sea level rise in Massachusetts of 1 vertical foot per 100 years shall be incorporated into the project design and construction by, at a minimum, elevating the lowest floor 1 foot or higher above the base flood elevation in a FEMA-mapped AE-Zone, and setting the lowest horizontal structural member 2 feet or higher above the base flood elevation in a VE-Zone unless a higher elevation is determined by the Commission.
- h. The following activities proposed within Velocity zones of Land Subject to Coastal Storm Flowage are likely to have an adverse effect on the protected interests:

i. Construction of:

1. new structures, including buildings, sheds, garages, additions and substantial improvements to existing structures supported on a solid foundation or proposed below the base flood elevation;
2. new parallel/shear walls or vertical walls for existing structures;
3. impermeable paving for new roads, driveways and parking lots;
4. new or proposed expansions of coastal engineering structures;
5. new mounded septic systems.

- i. A proposed project within a Velocity-zone of a beach, dune, barrier beach, or coastal bank shall not destroy or otherwise impair the function of any portion of said landform and/or shall not have an adverse effect on adjacent wetland resources. Activities and their ancillary uses in Velocity zones which result in alterations to vegetative cover, interruptions in the supply of sediment to other wetland resources, and/or changes to the form or volume of a dune or beach will have an adverse effect on said landform's ability to provide storm damage prevention and flood control and are, therefore, prohibited. These activities include, but are not limited to:

Construction of:

- i. foundations other than open pilings or columns;
- ii. new or proposed expansions of roads, driveways or parking lots, or impermeable paving for existing unpaved roads, driveways or parking lots;
- iii. new or proposed expansions of coastal engineering structure;

SWR 10.39 VERNAL POOLS

- 1) Definition. "Vernal pools" are confined basin depressions which, at least in most years, hold water for a minimum of two months during the spring and/or summer, and which are free of adult fish populations. They provide critical habitat for specific rare, threatened or endangered wildlife. They include the area within 100 feet of the mean annual boundary of such a depression. The greatest limit of flooding as defined by observation or determined by field indicators of hydrology must be minimum of 200 sq. ft. in surface area. Features that meet these criteria are considered Vernal Pools whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries.

SWR 10.61 WAIVER

- 1) The Conservation Commission may at its discretion waive one or more of these regulations when, in the Commission's opinion, the proposed work potentially represents a significant ecological improvement when compared to existing conditions, or will not adversely affect any areas subject to protection within these regulations.

SWR 10.62 ADDENDUM

Rules for Hiring Outside Consultants Under GL Ch. 44 § 53G and Section 30700 of the Town of Scituate Code of Bylaws Adopted November 17, 2003

As provided by GL Ch. 44 § 53G, the Scituate Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of the Wetlands Protection Act (GL Ch. 131 § 40), and the Scituate Code of Bylaws 30770, Conservation Commission Act (GL Ch. 40 § 8C), or any other state or Scituate bylaw or regulation, as they may be amended or enacted from time to time.

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

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

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

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

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

Appendix A

List of Forms:

**A list of all forms, filing instructions and
Informative links can be found on the Town
Of Scituate Municipal web site:**

www.scituatema.gov

WPA Form 1:	Request for Determination of Applicability
WPA Form 2:	Determination of Applicability
WPA Form 3:	Notice of Intent
WPA Form 4:	Abbreviated Notice of Intent
WPA Form 4A:	Abbreviated Notice of Resource Area Delineation
WPA Form 4B:	Order of Resource Area Delineation
WPA Form 5:	Order of Conditions
WPA Form 6:	Notification of Non-Significance
WPA Form 7:	Extension Permit for Order of Conditions
WPA Form 8A:	Request for Certificate of Compliance
WPA Form 8B:	Certificate of Compliance
WPA Form 9A:	Enforcement Order
WPA Appendix A:	Request for Determination – DEP Regional Addresses
WPA Appendix A:	Notice of Intent – DEP Wetland Fee Transmittal Form
WPA Appendix B:	Notice of Intent – DEP Stormwater Management Form
WPA Appendix C:	Abbreviated Notice of Intent – Stormwater Management Form
WPA Appendix D:	Regional Addresses
WPA Appendix E:	DEP Request for Departmental Action Fee Transmittal Form



TOWN OF SCITUATE WETLANDS PROTECTION BYLAW FILING FEE CALCULATION WORKSHEET

(Submit this form and check with application. Please make checks payable to: Town of Scituate)

1. A flat fee of \$100.00 each for the following applications: (Check off appropriate item)

____ Request for Determination of Applicability (RDA)
____ Request for Each Certificate of Compliance
____ Request for Extension of Orders

2. A categorized fee schedule for Notices of Intent (NOI) [categories are the same as in DEP regulations 310 CMR 10.3(7)(c)] as follows:

	No.	Total
Category 1: \$ 100.00 per activity	x ____	= \$ ____
Category 2: \$ 300.00 per activity	x ____	= \$ ____
Category 3: \$1,000.00 per activity	x ____	= \$ ____
Category 4: \$1,400.00 per activity	x ____	= \$ ____

Category 5: \$3.00/Linear Feet (Not less than \$100.00 or more than \$2,000.00)
\$3.00/Linear Feet x ____ Linear Feet = \$ ____

3. Amendment to or Modification of Existing Orders that require a public hearing:

Equal to original filing fee:.....\$ ____

4. Request for Amendment or Modification of Existing Orders that do not require a public hearing:
(Check off appropriate item)

____ \$100.00/First Request ____ \$200.00/Third Request
____ \$150.00/Second Request ____ \$250.00/Fourth Request & each request thereafter

5. Application for review of resource area delineation: \$1.60/Linear Feet (Not less than \$100.00 or more than \$400.00 for single family house projects and not less than \$100.00 or more than \$2,000.00 for any other activity). This fee will be in addition to the fee for an RDA or NOI listed above.

Type of Activity: _____ \$1.60/Linear Feet x _____ Linear Feet = \$ _____
(\$100.00 Min, \$400 or \$2,000 Max.)

6. Fees for projects within the Riverfront Area and another resource area shall be 150% of the above.
(Check off appropriate item)

____ RDA: \$100.00 x 150% = 150.00

____ NOI (Total from No. 2 above): \$ ____ x 150% = \$ ____

Name of Applicant: _____ Project Address: _____

DEP or SC File No. _____ (if applicable) Total Filing Fee Submitted _____

Additional Fee: An additional fee as determined by State Statute will be required.

Additional Fee: For review by Conservation Commission's consultant for projects requiring specific technical expertise.

Additional Fee: For Minor Activity Permit ____ \$35.00 (discuss)

**If work is started without a permit or as a result of an Enforcement Order.
All fees will be doubled. Violators of the Wetland Bylaw may be subject to
fines and penalties under Section 10230 of the General Bylaws.**

Revised as of September 21, 2016