

# NAHANT WETLANDS PROTECTION BY-LAW RULES AND REGULATIONS

**Adopted March 27, 2019**

**These regulations have been promulgated by the Nahant Conservation Commission.  
If you have questions regarding them, call the Nahant Conservation Office.**

**INTRODUCTION:** These regulations are hereby adopted by the Nahant Conservation Commission to set standards of review for work which will take place within wetland resource areas established under Article 18 of the Town of Nahant General Government By-laws, Wetlands Protection (the “Wetlands By-law”), Section 1. These regulations are intended to assist applicants and landowners in the Town of Nahant by setting forth clear guidelines for submission of applications and the Conservation Commission’s review of proposed activities within wetland resource areas. Wetland resource areas, as defined in Section 2 of the Wetlands By-law, include land within 100 feet of the other resources areas identified therein. The intent of the Wetlands By-law and these regulations is to supplement the state review and provide review of additional resource areas not covered under G.L. c. 131, § 40, the Wetlands Protection Act. It is not the intention of these regulations to duplicate review that is already taking place under the Commission’s jurisdiction pursuant to G.L. ch. 131, §40. Fees for processing applications have been established by the Conservation Commission and are outlined in Section XII of these regulations. The regulations adopted below represent the terms and requirements for complying with the By-law.

## **Section I. Authority**

These rules and regulations (hereinafter “regulations”) have been adopted by the Nahant Conservation Commission (hereinafter “the Commission”), pursuant to Section 10 of the Wetlands By-law.

## **Section II. Definitions**

Abutter – for purposes of notification, an abutter is the owner(s) of land as shown on the most recent assessor’s records within 100 feet of the lot on which an activity is proposed.

Alter – as defined in the Nahant Wetlands Protection By-law, include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by the by-law:

- a. Removal, excavations, or dredging of soil sand, gravel, or aggregate materials of any kind.
- b. Changes to preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics.
- c. Drainage or other disturbance of water level or water table.
- d. Dumping, discharging, or filling with any material which may degrade water quality.
- e. Placement of fill or removal of material, which would alter elevation.
- f. Driving piles, erection, or repair of buildings, or structures of any kind.
- g. Placement of obstructions or objects in water.
- h. Destruction of plant life, including cutting of trees.
- i. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters.
- j. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or ground water.

- k. Incremental activities, which have, or may have, a cumulative adverse impact on the resource areas protected by this by-law.

Aesthetic Values – natural and natively scenic impressions of Wetlands Resource Areas most conducive to a continued wildlife habitat, a natural aquatic system and a protective buffer between wetlands and human development activities.

Coastal Wetlands – land under the ocean; coastal beaches; coastal dunes; barrier beaches; coastal banks; rocky intertidal shores; salt marshes; land under salt ponds; land containing shellfish; banks of land under the ocean, ponds, streams, rivers, lakes, or creeks that underlie anadromous/catadromous fish run (“fish run”); land subject to tidal action; and estimated habitats for rare wildlife (for coastal wetlands).

Degraded Area – means a change to the land, caused by human actions, which creates long term loss of environmental function, and where recovery will not take place unaided.

Freshwater Wetlands – riverine wetlands (including rivers, freshwater banks, streams, creeks; estuaries); marshes; wet meadows; bogs; and swamps that meet *at least one* of the following requirements:

1. Fifty percent or more of the natural vegetative community consists of obligate or facultative wetland plant species, as included or identified in generally accepted scientific or technical publications (such as, the Wetlands Plant List, Northeast Region for the National Wetlands Inventory, U.S. Fish and Wildlife Service).
2. The presence of a hydrologic regime that indicates a wet condition in which the soils are annually saturated.
3. The presence of hydric soils associated with wetlands as defined in Delineating Bordering Vegetated Wetlands, a publication written and distributed by the MA Department of Environmental Protection, Division of Wetlands and Waterways (1995) or as amended.
4. Where the natural vegetative community has been destroyed, as for example by landscaping or agricultural use, or in violation of this by-law, the Commission may determine the area to be a Freshwater Wetland on the basis of annual soil saturation or soil analysis alone or may defer the determination until the natural vegetation has re- grown.
5. Further freshwater wetlands are vernal pools; banks; rivers; streams; creeks; reservoirs; lakes; ponds of any size; and quarry pits and motions which may or may not contain any of the above-cited vegetative and hydric requirements.

Land Subject to Coastal Storm Flowage – as defined in the MA Wetlands Protection Act Regulations (310 CMR 10.04), means land subject to any inundation caused by coastal storms up to and including that caused by the 100-year storm, surge of record or storm of record, whichever is greater.

Land Subject to Flooding - land subject to periodic inundation by ground water or surface water.

Land Subject to Tidal Action – as defined in the MA Wetlands Protection Act Regulations (310 CMR 10.04), means land subject to the periodic rise and fall of a coastal water body, including spring tides.

Native Plants – those plants recognized as native in *The Vascular Plants of Massachusetts: A County Checklist, First Revision (2011)* by Melissa Dow Cullina, Bryan Connolly, Bruce A Sorrie and Paul Somers (a MA Division of Fisheries and Wildlife publication), or as amended.

Single Family Home – all real property used or held for human habitation containing one unit, as designated by the Nahant Board of Assessors.

Wetlands Resource Area – any wetland resource area deemed significant to the protection of the values specified in Section 1 of the Nahant Wetlands Protection By-law, and includes any wetland (defined herein) and lands within 100 feet of any wetland.

Wetland – any freshwater or coastal wetland; land subject to flooding or inundation by groundwater or surface water; or lands subject to coastal storm flowage or flooding.

### **Section III. Minimum Submission Standards**

There are many types of activities which an applicant may pursue and the Conservation Commission may permit within a Wetlands Resource Area. There are three (3) different submission types from which the applicant may choose, depending upon the activity:

- A Request for Determination of Applicability (RFD) is used for projects where the applicant requests that the Commission determine if the Wetlands Protection Act/Nahant Wetlands Protection By-law is applicable to the area and/or the activity proposed. If the Commission issues a “negative” Determination of Applicability, a more detailed Notice of Intent is not required for the project. Submitting a RFD may be sufficient for a project that has no impact on a wetland. A RFD involves the applicant (or his/her representative) paying for the publication of a legal notice in the newspaper, paying a small fee to the town, and attending at least one public hearing.
- A Notice of Intent (NOI) is used for projects (septic system repairs, house construction, activities within wetlands, etc.) where the likelihood of impacting the Wetlands Resource Area exists. A NOI is more detailed than a RFD and involves the applicant paying fees to both the town and the state, paying for the publication of a legal notice in the newspaper, notifying abutters to the property, and may require attending more than one public hearing.
- An Abbreviated Notice of Resource Delineation (ANRAD) is used to confirm a wetland delineation which, in turn, establishes the Commission's jurisdiction. An ANRAD involves the applicant paying fees to both the town and the state, paying for the publication of a legal notice in the newspaper, notifying abutters to the property, attending at least one public hearing, and the Commission conducting a site visit to view the wetland delineation.

The following submission requirements are intended to assist applicants and their consultants by providing the information necessary to address the concerns of the Nahant Wetlands Protection By-law.

1. All applications for Request for Determination of Applicability (RFD) and/or permits listed below shall be submitted to the Conservation Office no later than ten (10) business days prior to the date of the public hearing for the application.
2. All applications for Request for Determination of Applicability (RFD) and/or permits listed below shall include the Local Filing Fee Calculation Worksheet and the associated fee.
3. The Notice of Intent form and the Request for a Determination of Applicability form required by Section 5 of the Wetland By-law and the Abbreviated Notice of Resource Area Delineation Form shall be the same as those required by Massachusetts General Laws Chapter 131, §40 and 310 CMR 10.00, as amended, so that no separate submission is necessary to comply with the By-Law.
4. The words **“and Nahant Wetlands Protection By-Law and Regulations”** shall be added to the above-referenced forms at the bottom of the heading on these forms.
5. Wetlands delineated and associated with a submission shall be deemed valid for three (3)

years from the date of the Final decision by the Commission and may be extended for one (1) year with Commission approval.

In addition to and in conformance with the requirements of 310 CMR 10.00 (The Massachusetts Wetland Protection Act Regulations), the following shall be submitted:

**A. Submission Standards for a Request for Determination (RFD)**

A RFD application filing shall also contain the following information:

1. WPA Form 1- Request for Determination of Applicability (One original signed copy for the file).
2. An 8 ½” x 11” section of a USGS quadrangle sheet or locus map sufficient to show the location of the affected area.
3. A Site Plan showing boundaries of all inland and coastal wetlands within 100’ of the proposed activity. The Plan shall also contain the name(s) of the person(s) who prepared the Plan. The Commission strongly encourages that the Plans be signed and stamped by a registered professional engineer, land surveyor, architect or landscape architect with one original signed copy for the file.
4. When a person requesting a RFD is other than the owner of the property where the activity is proposed, the RFD shall also be mailed or delivered to the owner by the applicant and proof of service shall be filed with the Commission.

During the public hearing process, and with permission from the applicant, the public hearing for a RFD may be continued in order to obtain enough information to make an informed decision.

**B. Submission Standards for an Abbreviated Notice of Resource Area Delineation (ANRAD)**

An ANRAD application filing shall also contain the following information:

1. WPA Form 4A- Abbreviated Notice of Resource Area Delineation (One original signed copy for the file).
2. An 8 ½” x 11” section of a USGS quadrangle sheet or locus map sufficient to show the location of the area.
3. Notification to Abutters and Affidavit of Service forms.
4. Abutters list stamped by the Nahant Assessor’s Office for all abutters to within 100 feet of the property line of the parcel or parcels of land where the proposed activity is to take place. Copies of “Receipt for Certified Mail,” or copies of “Return Receipt Cards,” or a copy of the stamped abutters list with hand-gathered signatures as proof of abutter notification shall be submitted at or before the first public hearing.
5. A site plan signed and stamped by a Massachusetts licensed Professional Engineer or Registered Land Surveyor (one original signed and stamped copy for the file) to the minimum scale of 1” = 10’ delineating all wetland resource areas, property boundaries and existing topographic features and elevations of the project site. Existing contours of the site and existing contours within 50 feet around its perimeter shall be shown. The contour interval shall be one foot except in those areas that exceed 20% grade, where five foot intervals shall be acceptable. Spot elevations shall be included in areas with grades of 2% or less. Elevations shall be based on Mean Sea Level Datum of 1988 (NAVD) with a permanent bench mark for all projects. The name of the individual who delineated the wetlands and date of delineation shall appear on the plan.
6. The delineated boundary of the resource area(s) with flag numbers and elevations on site and including those extending off the project site (where applicable).

7. Location(s) of transects and soil samples.
8. All relevant delineation data sheets (a minimum of 1 for every 100ft of wetland boundary delineated). The name of the delineator and date of delineation.
9. The narrative report of the delineation together with the field data sheets in accordance with 310 CMR 10.55 (DEP Bordering Vegetated Wetland Delineation Form).

During the public hearing process, and with permission from the applicant, the public hearing for an ANRAD may be continued in order to obtain enough information to make an informed decision.

### **C. Submission Standards for a Notice of Intent**

A NOI application filing shall also contain the following information:

1. WPA Form 3 - *Notice of Intent* (One original signed copy for the file).
2. An 8 ½" x 11" section of a USGS quadrangle sheet or locus map sufficient to show the location of the affected area.
3. A site plan signed and stamped by a Massachusetts licensed Professional Engineer or Registered Land Surveyor (one original signed and stamped copy for the file) containing the following elements:
  - a. A minimum scale of 1" = 10' delineating the wetland resource areas described in this regulation and all proposed activities within the wetland resource areas. Existing and proposed contours of the site and existing contours within 50 feet around its perimeter shall be shown. The contour interval shall be one foot except in those areas that exceed 20% grade, where five foot intervals shall be acceptable. Spot elevations shall be included in areas with grades of 2% or less. Elevations shall be based on Mean Sea Level Datum of 1988 (NAVD) with a permanent bench mark for all projects. The name of the individual who delineated the wetlands and date of delineation shall appear on the plan.
  - b. Profile drawings shall be provided for all proposed drainage systems, including retention/detention basins, and for all sewer system components, if located within the resource area. Profiles shall be at horizontal scale of 1" = 10' and a vertical scale of 1" = 4'.
  - c. Horizontal profiles and vertical profiles shall be on separate pages of the planset.
  - d. Existing and proposed locations of all drainage structures, including but not limited to foundation and roof drains, with rim and invert elevations; and profiles of all proposed drain lines and culverts.
  - e. Highest and lowest elevations for cellars, foundations, septic systems, leaching galleries and groundwater recharge systems.
  - f. Location of any stormwater management systems or measures (e.g. water retention areas, swales, French drains, 100-year flood level delineations as shown on the FEMA Flood Insurance Rate Maps).
  - g. Observed and estimated maximum ground water elevations shall be obtained at the location of each proposed sewage absorption system, retention/detention basin or pond, storm water infiltration structure, and/or proposed wetland replication area(s). The dates at which the observations were made for detention ponds or retention ponds and the locations of observation pits or wells shall be indicated on the plans.
  - h. General soil characteristics of the area as provided by the U.S. Natural Resource Conservation Service (NRCS) and by hand dug soil observation pits at specified sites shall be required if there is a dispute as to an existing or former wetland line or in enforcement cases when there is an attempt to determine the former wetland line.
  - i. The location of all easements, including but not limited to, underground utilities, drainage or trail easements on the site.

- j. If applicable, stormwater control designs, which shall conform at a minimum to the stormwater management standards established by the Department of Environmental Protection's (DEP's) Stormwater Management Standards and Massachusetts Stormwater Handbook dated February 2008, or as amended.
  - k. Location and detail of all proposed erosion and sedimentation controls.
  - l. In the event of a proposed alteration of a water course, cross-section showing slope, bank and stabilization treatment shall be shown at specified intervals along the affected water course.
  - m. Typical and actual cross sections shall be provided for proposed wetlands driveway crossings, retention/detention basins, proposed drainage ditches or swales, and for proposed alterations to existing watercourses. Cross sections shall be drawn at a horizontal scale of 1" = 10' and a vertical scale of 1" = 4' and shall show existing and proposed slopes, banks, fill material, and surface treatment. Cross section intervals shall not exceed 50 feet.
  - n. Horizontal cross sections and vertical cross sections shall be provided on separate pages of the planset.
4. Notification to Abutters and Affidavit of Service forms. As required by the by-law, an applicant shall give written notice, by certified mail or hand delivery, to all abutters within 100 feet of the property line of the parcel or parcels of land where the proposed activity is to take place.
  5. Abutters list stamped by the Nahant Assessor's Office for all abutters within 100 feet of the property line of the parcel or parcels of land where the proposed activity is to take place. Copies of "Receipt for Certified Mail," or copies of "Return Receipt Cards," or a copy of the stamped abutters list with hand-gathered signatures as proof of abutter notification shall be submitted at or before the first public hearing.
  6. A narrative cover letter providing details of the project and the proposed work located relative to boundaries of each Wetlands Resource Area. The letter should include details about the construction sequence, construction materials, equipment to be used, stockpiling area, plans to mitigate for run-off, placement of erosion and sediment controls, the limit of work, plantings, etc.
  7. If the project is within a Riverfront Area, the applicant is required to follow the protocol established in 310 CMR 10.58, including the submission of a written Alternatives Analysis.

During the public hearing process, and with permission from the applicant, the public hearing for a NOI may be continued in order to obtain enough information to make an informed decision.

**D. Variance.**

The Commission may grant a variance in an Order of Conditions from these regulations when the Commission finds that, given existing conditions, the proposed project will serve to lessen impacts to and/or substantially enhance the interests identified in the Wetlands By-law and there are no other reasonable conditions or alternatives that would allow that project to proceed in compliance with the rules and regulations. The burden of proof to demonstrate compliance in protecting the interests identified in the Wetlands By-law shall be the responsibility of the owner/applicant. The variance from these regulations shall be requested in writing and decided upon administratively by the Commission at a public meeting. Any variance request from specific sections of these regulations must be in writing and shall be submitted as part of the Notice of Intent under the Town of Nahant Wetlands Protection By-law.

**E. Waiver of Submission Standards for a NOI or a RFD.**

The Commission may waive any of the submission standards if, in its opinion, these standards do not apply or are not needed to reach a decision. Any request for a waiver from an applicant must be submitted to the Commission in writing.

**F. Revised Plans.**

When revised plans are submitted to the Commission during the public hearing process, the Commission must receive the plans a minimum of three (3) business days prior to the public hearing at which the applicant would like them to be reviewed. If revised plans are received less than three (3) business days prior to a public meeting, the Commission reserves the right to refuse to make any decisions based on the revised plans and to require the hearing be continued to the following regularly scheduled meeting date in order to adequately review the plans.

**G. Expert Services for Review of RFD's, NOI's or ANRAD's.**

Upon receipt of an application, or at any point during the public hearing process, the Commission may require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert consultant services deemed necessary by the Commission to come to a final decision on the application. The specific consultant services may include, but are not limited to, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including but not limited to wildlife habitat evaluations, hydrogeologic and drainage analysis; legal responsibilities/advice and researching environmental or land use law. Failure of the applicant to pay a review fee promptly upon request by the Commission shall be grounds for denial of the Application.

Each review fee received by the Commission shall be deposited with the Town Treasurer, who shall establish a special account for that application, pursuant to G.L. ch. 44, §53G. This special account may be expended at the direction of the Commission without further appropriation, but such expenditures shall be made only in connection with review of the specific project which is the subject of that application. At the completion of the Commission's review of that project, the Town Treasurer shall make a final report of the account, and any amount (including interest) remaining in the account shall be repaid to the applicant or to the applicant's successor in interest.

As provided in G.L. ch. 44, §53G, an applicant may appeal the selection of the outside consultant to the Board of 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.

**Section IV. Boardwalks, Ramps, Docks, Piers and Floats (collectively and/or separately referred to as dock facilities)**

**A. General Requirements.**

All dock facility plans shall be prepared and stamped by a Professional Engineer, as deemed appropriate by the Commission. All plans shall show property lines and bathymetric information at one foot contour intervals.

The applicant shall provide to the Harbormaster copies of all applications and plans of the project submitted to the Commission. The application must include the actual data generated on site. Data shall include at least size and frequency distributions for shellfish found, soil analyses, map of any eelgrass beds or salt marsh present, slope of bottom, depth and distance to nearest channel. The Harbormaster shall have ten business days to provide comments to the Commission.

Dock facilities shall not be permitted in areas that would result in any adverse impact/significant effect to eelgrass, shellfish and/or their habitat and land containing shellfish. Dock facilities shall not be permitted in areas where the accompanying boat traffic would adversely impact/significantly affect the eelgrass, shellfish, finfish and/or their habitat. The Commission may allow mitigation of the project effects if deemed appropriate and found to enhance the protection of the wetland resources and the interests of the Town of Nahant Wetlands Protection By-law. All mitigation projects shall be reviewed and approved by the Commission prior to the issuance of an Order of Conditions. All mitigation projects shall include monitoring protocols and measurable performance standards/success thresholds.

All docking and loading facilities shall require a minimum of three (3) foot depth at mean low water without benefit of dredging. At all normal levels of the tide along the shoreline, passage shall be provided.

**B. Construction Requirements.**

1. All work and materials shall be consistent with water quality goals. Dock facilities, whenever practicable, shall be fabricated in an upland area to prevent residue and sawdust from entering any wetland resource area. Dock facilities shall not be constructed with materials containing creosote or CCA.
2. Piers, ramps and boardwalks shall be limited to open, pile-supported construction. No solid fill shall be used.
3. Piers, ramps and boardwalks shall cross no more than one hundred fifty (150) feet of saltmarsh, vegetated wetlands, mud flats, eelgrass or mapped shellfish/shellfish habitat areas, shall be no wider than four (4) feet and elevated a minimum of one foot in height for each one foot of width above existing grade.
4. Floats shall be limited to a maximum width of ten (10) feet and a maximum length of twenty (20) feet.

**C. Indemnification.**

Any applicant receiving a permit for a dock facility and any person who purchases, inherits or otherwise acquires a dock facility following issuance of a permit for a dock facility, may be required by the Commission to (a) agree to release the Town of Nahant and its employees, officials or agents (“the Town”) from any and all claims, rights of action or other forms of liability, whether for personal injury, property damage or otherwise, that may arise in connection with use of the dock facility; (b) agree to INDEMNIFY and HOLD HARMLESS the Town against any and all legal claims and proceedings of any type that may arise from or relate in any way to the dock facility; and/or (c) agree to INDEMNIFY the Town for any and all costs, expenditures and damages incurred by the Town that may arise from or relate in any way to the dock facility, including without limitation movement of the dock facility in connection with storm events.

**Section V. Land Subject to Coastal Storm Flowage**

**A. Preamble.**

Land Subject to Coastal Storm Flowage – including but not limited to coastal beaches, salt marshes, banks, barrier beaches, salt ponds, dunes, land containing shellfish, land under the ocean, and banks of and land underlying fish runs – is important for the protection of public and private water supply, groundwater and groundwater quality, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, wildlife habitat, fisheries, shellfish, and to the interests of aesthetics and recreation.

Land Subject to Coastal Storm Flowage extends from mean low water to the calculated extent of a 100-year storm, surge of record or storm of record, whichever is greater. During extreme high tides and hurricanes the ability of the land to absorb flood waters is important to buffer inland areas from flood and wave damage. The more gentle and permeable a seaward-sloping land surface is, the more effective that land surface is in reducing the height and velocity of incoming storm waves. Dredging of land subject to coastal storm flowage has the potential to allow storm waves to break further inland and to impact other areas which might not otherwise be affected. Filling of land subject to coastal storm flowage is likely to cause displacement of flooding to other areas.

Coastal floodplain areas are low-lying areas that are ecologically transitional between marine/estuarine ecosystems and upland areas. Resource areas within the 100-year floodplain are important habitats for a large variety of wildlife species. Areas of coastal floodplains adjacent to other wetland resource areas provide important wildlife functions, such as nesting and roosting habitat, and serve as wildlife corridors connecting coastal zone resources with freshwater wetland resources. Adjacent areas within the coastal floodplain also serve as transitional zones needed to protect the coastal wetland resources' ability to provide essential habitats (Guidance Specifying Management Measures for Sources of Non-point Pollution in Coastal Waters, EPA, 1993; Castelle, et al., 1992, pgs 5 & 6).

Areas 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. As sea level rises, the shoreline may retreat, and areas of the coastal floodplain will successively be 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. Maintaining these special transitional areas in their natural state is significant to the protection of the interests of other wetland resources.

## **B. Presumption.**

Where a project involves removing, filling, dredging or altering land subject to coastal storm flowage (LSCSF), the Commission shall presume that such an area is significant to the following interests specified by Section 1 of the Wetlands By-law and 310 CMR 10.57 (1)(a) and (b): the protection of public and private water supply, groundwater and groundwater quality, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, wildlife habitat, fisheries, shellfish, and to the interests of aesthetics and recreation.

If the following activities, when combined, alter a total of 5,000 or more square feet in LSCSF (with the exception of the construction of a single-family home) they shall be presumed to have unacceptable significant or cumulative effects upon the protection of wildlife habitat: construction of new or proposed expansions of roads, driveways or parking lots; construction of impermeable paving for existing unpaved roads, driveways or parking lots; and/or any activities which will result in the building within or upon, removing, filling and/or altering (as defined in Section 2 of the Wetlands By-law) of any vegetated area(s).

These presumptions may be overcome only upon demonstration that LSCSF does not play a role in protecting one or more of the wetland interests cited above.

### **C. Performance Standards.**

A proposed project that may result in alteration of land subject to coastal storm flowage shall not cause or create the likelihood of the following:

1. Reduction in the ability of the land to absorb and contain waters.
2. Reduction in the ability of the land to buffer more inland areas from flooding and wave damage.
3. Displacement or diversion of flood waters to other areas.
4. Damage to other structures or property.
5. Pollution of groundwater, surface water, or salt water.
6. Reduction of the ability of the resource to serve as a wildlife habitat and migration corridor through activities such as, but not limited to the removal of substantial vegetative cover and/or installation of fencing and other structures which prevent wildlife migration across property.
7. An increase in the elevation or velocity of flood waters.
8. Prevention of the migration of resource areas such as salt marshes due to sea level rise.

### **Section VI. Changes of Work Described in the Notice of Intent**

After an Order of Conditions has been issued, the applicant shall notify the Commission of any proposed changes to the work contained in the Notice of Intent. Such changes shall be presented to the Commission in a plan a minimum of three (3) business days prior to a regularly scheduled Commission meeting for the Commission's review. If, in the opinion of the Commission, the proposed changes significantly alter the nature or increase the scope or impacts of the intended work, the Commission shall notify the applicant whether the filing of an amended or a new Notice of Intent is required to accommodate the proposed changes. ***No work related to the proposed changes shall commence until the Commission has reviewed and approved the proposed changes and notified the applicant in writing.*** Failure to comply with this section may result in fines and shall be deemed good cause to revoke or modify the Order of Conditions in accordance with Section 12 of the Wetlands By-law.

### **Section VII. Orders of Conditions**

The Order of Conditions form (WPA Form 5) issued pursuant to G.L. ch. 131, §40 and 310 CMR 10.00 shall constitute a permit under the provisions of Section 5 of the By-law in addition to any conditions that may be added to protect values identified under the By-law. The Commission shall issue the original signed Order of Conditions to the applicant within twenty-one (21) calendar days of the close of the public hearing, unless an extension is authorized in writing by the applicant.

The applicant shall have the Order of Conditions recorded at the Essex County Registry of Deeds. No work shall commence until the applicant provides written proof to the Commission that the Order of Conditions has been recorded and that all other pre-construction conditions have been met.

In the event of a denial of an application, the Commission shall issue the original signed denied Order of Conditions to the applicant within twenty-one (21) calendar days of the close of the public hearing, unless an extension is authorized in writing by the applicant.

### **Section VIII. Pre-Acquisition Violation**

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of the Wetlands By-law or these regulations or in violation of any permit issued pursuant to the Wetlands By-law shall forthwith comply with any such Order of Conditions or Enforcement Order to restore such land to its condition prior to any such violation. No civil or criminal complaint shall be brought against any such owner provided that said restoration has begun within three (3) years of acquisition or from the issuance of an Enforcement Order to said owner by the Commission, whichever is greater.

### **Section IX. Certificate of Compliance**

The applicant shall request a Certificate of Compliance (WPA Form 8A) from the Commission upon completion of the proposed work, inclusive of any approved changes therein. Upon receipt of said request, accompanied by an "As-Built" plan as required by the Order of Conditions, and by appropriate certification that the activity(ies) has been conducted in compliance with Order of Conditions, the Commission or its Agent shall conduct a site inspection. If the Commission determines that the proposed activity(ies) has been conducted in accordance with the Order of Conditions, it shall issue a Certificate of Compliance. The original signed Certificate of Compliance shall be filed by the Applicant with the Essex County Registry of Deeds within thirty (30) days of issuance. If the Commission determines that the activity(ies) has not been conducted in accordance with the Order of Conditions, it may deny the request. If the final Order of Conditions contains conditions which continue past the completion of the work, such as maintenance or monitoring, the Certificate of Compliance shall specify which, if any, of such conditions shall continue.

### **Section X. Extension of Orders of Conditions**

A request for an extension of the Order of Conditions shall be filed in writing with the Commission at least sixty (60) days prior to its expiration date. The Commission may deny the request for an extension and require a new Notice of Intent for reasons contained in CMR 310 10.05(8)(b), as may be amended, or it may issue an Extension Permit to the applicant for one additional year.

### **Section XI. Emergency Certificate**

A Request for an Emergency Certificate shall be filed in writing with the Commission by the applicant within forty-eight (48) hours of the initiation of any emergency work. The request for a certificate shall set forth clearly what conditions constitute a clear and present danger to the health and welfare of the public. The Emergency Certificate shall be signed by the Conservation Commission, a Commission member or the Agent of the Commission. Only those activities that are absolutely necessary to mitigate an immediate threat to human, animal or environmental safety shall be conducted under an Emergency Certificate. Negligence on the part of the property owner shall not constitute grounds for issuance of an Emergency Certificate. An Emergency Certificate shall expire within thirty (30) days of issuance.

The Commission shall ratify any Emergency Certificate and make a determination at its next regularly scheduled meeting after receiving the request for an Emergency Certificate as to whether the situation resulting in the work constitutes an actual emergency and the specific requirements for an "after-the-fact" filing with the Commission, as necessary.

**Section XII. Filing Fee Schedule**

**A. Fee schedule**

<b>APPLICATION TYPE</b>	<b>LOCAL FILING FEE</b>
<b><i>Request for Determination (RFD)</i></b>	\$55
RFD within Riverfront Area (RFA)	add 50% to the total fee if within RFA
<b><i>After-the-fact RFD application</i></b>	<i>double the local filing fee</i>
<b><i>Notice of Intent (NOI)</i></b>	
Category 1	\$55
Category 2	\$250
Category 3	\$525
Category 4	\$725
Category 5	\$2 per linear foot; total fee not less than \$50 or more than \$1,000
<b>NOI within Riverfront Area (RFA)</b>	add 50% to the total fee if within RFA
<b><i>After-the-fact Notice of Intent application</i></b>	<i>double the local filing fee</i>
<b><i>Abbreviated Notice of Resource Area Delineation (ANRAD)</i></b>	\$1 per linear foot of Bordering Vegetated Wetland (BVW), Coastal or Inland Bank (if not directly associated with a BVW), or salt marsh, vernal pool or isolated wetland. A minimum fee of \$25 and a maximum fee of \$100 for single family home projects and \$1,000 maximum for any other activity.
<b><i>Certificate of Compliance (COC)</i></b>	
1st request (including partial COC)	\$25
2nd request	original filing fee + \$25
3rd request	original filing fee + \$125
4th request	original filing fee +\$225 & each request thereafter
<b><i>Amendments to Existing Orders</i></b>	<b><i>Minor amendments are free</i></b>
1st request	\$25
2nd request	original filing fee + \$25
3rd request	original filing fee + \$50
4th request	original filing fee +\$100 & each request thereafter
<b><i>Request for an OOC Extension</i></b>	\$75

The Nahant Wetlands By-law Notice of Intent (NOI) application categories #1-6 correspond with the MA Wetlands Protection Act (310 CMR 10.03(7)(c)).

## **B. Waiver of filing and other fees**

The Commission will waive the filing fee required herein for a permit or other application filed by a government agency and may waive the filing fee for a permit or other application filed by a non-profit organization.

## **Section XIII. Standards of Review for Wetland Alteration**

If a project proposes the altering of a wetland, the Commission shall require an Alternatives Analysis be performed which shows that the alteration of the wetland is the least environmentally damaging practicable alternative to the project. In addition, for a wetland alteration, the Commission shall require at least 1.5 square feet of replication for every 1 square foot of wetland altered. The 1.5 to 1 formula for replicating wetlands is based upon the Commission's desire to achieve a "no net loss" of wetlands in the Town of Nahant. The replication area shall replace and enhance the wetland functions and values lost due to the alteration on the site. The Commission reserves the right to waive or increase this requirement depending upon the circumstances of the individual permit application.

If wetland alteration and replication is proposed, a wetland replication narrative and detail plan shall be submitted with the Notice of Intent application. The narrative shall include, but not be limited to the following:

1. A description of the existing wetland proposed to be altered including plant species composition and distribution, hydrologic characteristics, and soil characteristics.
2. A description of existing conditions within the proposed wetland replication area(s) including soil characteristics and depth to observed and estimated seasonal high ground water.
3. A wetland replication methodology detailing construction sequencing for preparation of the replication area(s); proposed subsurface and finished grades; transfer and supplement of wetland (hydric) soils and vegetation; seeding/planting species list and prescribed seeding rates/planting densities; stabilization and erosion control methods; and a monitoring, maintenance and contingency plan. The wetland replication detail plot plan shall be prepared at a scale of 1" = 10' and shall indicate the following:
  - a. Limits of the wetland alteration and replication areas with the calculated square footage of each area.
  - b. All existing and proposed grades at one foot contour intervals and spot elevations; access routes; stockpile areas; and erosion controls.
  - c. Proposed planting layout and species distribution.
4. Profile of the replication area(s) at a horizontal scale of 1" = 10' and a vertical scale of 1" = 4' showing existing and proposed ground surfaces, estimated seasonal ground water elevation, and proposed subsurface grade.
5. Horizontal profiles and vertical profiles shall be on separate pages.
6. A summary of the construction sequencing and wetland replication methodology shall be provided on the detail plot plan.

Wetland replication areas shall be constructed prior to or at the same time as existing wetland areas are filled/alterred and prior to all other components of the project. Subsurface and finished grades within the replication area(s) shall be verified by a field survey prior to proceeding with work on any other components of the project. **Wetland replication shall be designed and the work overseen by a qualified wetlands scientist/engineer.**

#### **Section XIV. Monitoring Permitted Work**

In order to ensure that the permitted work is being performed in accordance with the approved plans and Order of Conditions, the Commission, as a condition of approval, may require applicants, at the applicants' expense, to retain a consultant to monitor the progress of the work and submit periodic reports to the Commission for the following types of projects:

1. Residential and commercial subdivisions.
2. Projects in close proximity (less than 50ft) of a wetland.
3. Projects involving the disturbance of 50% or more of a Wetlands Resource Area.
4. Projects when 50% or more of the work is in a Wetlands Resource Area.

The consultant shall be a qualified environmental professional acceptable to the Commission. The consultant shall prepare and submit to the Commission certified reports every two weeks, as required. If, during construction, unexpected site conditions require modifications to the approved plans, the consultant shall immediately notify the Commission and request the Commission to review and approve the necessary changes. No revised work shall be performed without the prior written approval of the Commission.

#### **Section XV. Exemptions to these Regulations**

**A.** The following activities are exempt from the application requirements of these regulations:

1. Normal maintenance and normal improvement of land in agricultural use.
2. Federal work on federal land.
3. Activities that are temporary in nature, have a negligible impact and which upon completion, leave the affected Wetlands Resource Area in its pre-existing condition.
4. The mowing of existing lawns; planting trees, shrubs or groundcover; mulching existing trees, shrubs or groundcover; pruning or maintenance of trees; cutting down trees or planting turf lawns, unless the extent of the tree cutting or turf lawn planting and/or its proximity to the Wetland Resource Areas protected by this by-law will adversely impact such resource areas.
5. The repair, maintenance or improvement of any existing structure or building, unless the extent or proximity of said work to the Wetland Resource Areas protected by this by-law will adversely impact such resource areas.
6. Any other activity qualifying as a "minor activity" under the regulations promulgated pursuant to the Wetlands Protection Act, G.L. ch. 131, § 40, at 310 CMR 10.02(2)(b)2.
7. The maintenance, repair, or replacement, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, sewer, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Conservation Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Conservation Commission.
8. Mosquito control work conducted by the State Reclamation and Mosquito Control Board (SRMCB) or a Mosquito Control District (MCD) pursuant to G.L. ch. 252.

**B.** The consideration of Aesthetic Values does not apply to the exempted activities listed above in Section XV (A.) (1-8), to the construction or extensions of a single family home or to the building of a new structure separate from a single family home on a residential lot.

**C.** The following activities may be exempt from the application requirements of these regulations, if prior written approval has been received from the Conservation Commission. For

exemption approval, at least ten (10) business days prior to commencement of the work, written notification must be received by the Conservation Office. That notification shall describe the proposed activity, state the exemption, and explain how the wetland in question will be protected. The Commission has the right to require an application for these activities, for reasons of potential impacts to a wetland:

1. Unpaved pedestrian walkways for public or private use, if not within a wetland.
2. Fences, twenty-five (25) feet or more from any wetland, which do not prevent wildlife movement.
3. Conversion of manmade impervious surfaces to vegetated surfaces within a Wetlands Resource Area. This requires erosion and sedimentation controls to be used during the replacement process.

#### **Section XVI. Applicable Federal, State & Local Permits and Approvals**

It is the applicant's responsibility to apply for and obtain all applicable federal, state and local permits and approvals required for any project proposed within an area of jurisdiction of the Nahant Conservation Commission. The Commission may request a copy or evidence of receipt of or application for such permits, including but not limited to, NPDES permit(s), U.S. Army Corps of Engineers permits, any permit(s) required by the MA Division of Fisheries & Wildlife, Hazardous Waste Removal permit(s), building permit(s), and decisions by the Zoning Board of Appeals and/or the Planning Board.

#### **Section XVII. Chapter 91 License or Permit**

Projects subject to Massachusetts General Laws Chapter 91, and 310 CMR 9.00, which include but are not limited to piers, wharves, floats, retaining walls, revetments, fill, groins, dredging, beach nourishment, dams, and buildings within the tidelands as defined by said Chapter 91 that also require a permit by the Commission shall be subject to the following:

- For work on new structures (work on projects applied for after the effective date of these regulations) that are subject to review under the Massachusetts Environmental Policy Act (MEPA): Applicants shall be asked either to withdraw their applications or to request a continuance until after the MEPA process has been completed. The purpose of this procedure is to allow the Commission to participate in the MEPA review and more effectively coordinate with the state agencies. As there are also permits for the project at the state level, this coordination will assist the Commission in dealing with what usually are difficult and complex reviews.
- For work on existing structures (work on previously existing structures or projects for which applications were filed prior to the effective date of these regulations): Any project proponents wishing to perform any maintenance or repair work on an applicable structure within the existing footprint shall be informed as to the required permit. Any project proponent wishing to perform any work beyond basic maintenance or repair of an existing structure shall be dealt with in the same manner as if it were a new structure or project.

#### **Section XVIII. Appeal**

A decision of the Commission shall be reviewable in the Superior Court in accordance with G.L. ch. 249, § 4.

#### **Section XIX. Severability**

If any section of these regulations is deemed invalid or unconstitutional, the remaining sections shall remain in full force and effect.

**Section XX. Effective Date**

These regulations, and revisions thereto, shall take effect when adopted by the Commission and filed with the Town Clerk, as provided in Section 10 of the Wetlands By-law.