

**ROCKPORT WETLANDS PROTECTION BY-LAW  
RULES AND REGULATIONS**

**Adopted May 6, 2009**

**Approved by Board of Selectmen on May 5, 2009**

**INTRODUCTION:** These regulations are hereby adopted by the Rockport Conservation Commission to set standards of review for work which will take place within wetland resource areas established under Chapter 14. A. Wetlands, Section 2 of the Town of Rockport Code of By-laws (the 'Wetlands By-law'). These regulations are intended to assist applicants and landowners in the Town of Rockport by setting forth clear guidelines for submission of applications and the 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 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. Chapter 131, §40. Fees for processing applications have been established by the Commission and are outlined in Section IX of these regulations. The regulations adopted below represent the terms and requirements for complying with the By-law.

These regulations also establish a "No-Disturb Zone" and a "No-Build Zone" within **Rockport Protected Wetlands**, as described in Section X of these regulations. These zones are being established because, in the considerable body of experience of the Commission supported by scientific literature, alteration of land immediately adjacent to a wetland consistently results in the alteration of the wetland itself during construction through activities such as over-clearing, over-grading, siltation, and depositing of construction debris, and after construction from improper land use such as unauthorized filling, cutting of vegetation, extension of lawns or the depositing of yard waste. It is the opinion of the Conservation Commission that these alterations cannot be avoided without the imposition of the regulated zones detailed in Section X. Naturally vegetated buffer zones between wetlands and excavation and construction activities and other anthropogenic activities such as septic systems, application of lawn maintenance chemicals, refueling of lawn mowers and other power tools, and deposition of pet waste have been shown to help protect wetlands by attenuating some of the chemicals and sediments before they enter the wetland. Highly sensitive areas such as water supply bodies and tributaries and wetlands feeding water supply bodies and vernal ponds may require greater zones of no disturbance to protect their critical functions and values. The Commission may grant a waiver from these requirements, as described in Section III D of these regulations.

**Section I. Authority**

These rules and regulations (hereinafter "regulations") have been adopted by the Rockport Conservation Commission (hereinafter "the Commission"), pursuant to Chapter 14A. Wetlands, Section 6 of the Rockport Code of By-laws.

## **Section II. Definitions**

Abutter – for purposes of notification, an abutter is the owner(s) of land directly abutting the lot on which an activity is proposed and the abutter(s) to that abutter within 300 feet.

Alter – as defined in the Rockport 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. Changing of 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. Placing of fill or removal of material, which would alter elevation.
- f. Driving of piles, erection, or repair of buildings, or structures of any kind.
- g. Placing 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.

Coastal Wetlands – are 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 coastal storm flowage or flooding; land subject to tidal action; and estimated habitats for rare wildlife (for coastal wetlands).

Freshwater Wetlands – are 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

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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.

Motion – as defined in the Rockport Wetlands Protection By-law, is a small quarry pit.

No-Disturb Zone – the 25 feet horizontally landward of a wetland (as defined herein) in which there shall be no alteration.

No-Build Zone – the 50 feet horizontally landward of a wetland (as defined herein) in which there shall be no building of any structures. This shall include, but is not limited to, home construction, additions, porches, decks, garages, driveways, sheds, roads, parking lots and any other man-made pervious or impervious structures.

Quarry Pit– as defined in the Rockport Wetlands Protection By-law, any open pit previously used for cutting stone, which has been inundated with water from rain, runoff, or springs.

Rockport Protected Wetland – is any wetland resource area deemed significant to the protection of the values specified in Section 1 of the Rockport Code of By-laws, and includes any wetland (defined herein); lands within 100 feet of any wetland; and lands subject to coastal storm flowage or flooding.

Watershed Protection Overlay District – as defined in Section VII of the Rockport Zoning Bylaw, includes lands lying adjacent to water courses and surface water bodies which are used, have been used or may in the future be used as a drinking water source, and as part of their natural drainage system as mapped and on file in the Town Clerks Office. This is an area of groundwater recharge and surface water drainage for the drinking water sources in Rockport.

Wetland – any freshwater or coastal wetland; marsh; wet meadow; bog; swamp; vernal pool; bank; reservoir; lake; pond of any size; quarry pit and motion; river; stream; creek; beaches; dune; estuary; the ocean; land under water bodies; land subject to flooding or inundation by groundwater or surface water; and land subject to tidal action.

### **Section III. Minimum Filing Standards**

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

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1. All applications for Request for Determination (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. The Notice of Intent forms (Long or Abbreviated forms) and the Request for a Determination form required by Section 3 of the Rockport Code of By-laws, and the Abbreviate 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.
3. The words “***and Rockport Wetlands Protection By-Law***” shall be added to the above referenced forms at the bottom of the heading on these forms.
4. Some projects which are proposed within **Rockport Protected Wetlands** may be subject only to the provisions of the By-Law and not Chapter 131, §40 and will require a special form, which the Commission has created.

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

A RFD application filing shall contain the following information:

1. WPA Form 1- *Request for Determination of Applicability* or RCC Form 1- *Request for Determination* (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. Local Filing Fee Calculation Worksheet and the associated fee.
4. A Site Plan showing boundaries of all inland and coastal wetlands. The Plan shall also contain the name(s) of the person(s) who prepared the Plan. The Commission strongly encourages and may require 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.
5. If a request is filed to determine the boundary of any wetland resource area, the Commission requires that the applicant file a WPA Form 4A “Abbreviated Notice of Resource Area Delineation (ANRAD)” to obtain confirmation of the delineation. The Request shall be prepared by a professional wetland scientist and accompanied by a field surveyed plan prepared by a registered land surveyor or professional engineer of the Commonwealth of Massachusetts.

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

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

An ANRAD application filing shall contain the following information:

1. WPA Form 4A- *Abbreviated Notice of Resource Area Delineation* or RCC Form 4A- *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. Local Filing Fee Calculation Worksheet and the associated fee.
4. Notification to Abutters and Affidavit of Service forms.

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5. Abutters list stamped by the Rockport Assessor's Office for all abutters and abutters to the abutters within 300 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 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 scale of 1" = 20' 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.
7. 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).
8. Location(s) of transects and soil samples.
9. All relevant delineation data sheets (a minimum of 1 for every 100ft of wetland boundary delineated). The name of the wetland scientist and date of delineation.
10. The location of soil sample sites and vegetation plot sites shall be staked or flagged in the field.
11. The wetland scientist's 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, the public hearing for an ANRAD may be continued in order to obtain enough information to make an informed decision.

### **C. Standards for a Notice of Intent (including abbreviated - NOI/ANOI)**

A NOI or ANOI application filing shall contain the following information:

1. WPA Form 3 - Notice of Intent or RCC Form 3 - Notice of Intent or WPA Form 4 - Abbreviated 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. Local Filing Fee Calculation Worksheet and the associated fee.
4. 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 scale of 1" = 20' delineating the wetland resource areas described in this regulation including the "No Disturb" and "No Build" zones 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.

- 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" = 20' and a vertical scale of 1" = 4'.
- c) 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.
- d) Highest and lowest elevations for cellars, foundations, septic systems, leaching galleries and groundwater recharge systems.
- e) Location of any storm water 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).
- f) 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.
- g) 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.
- h) The location of all easements, including but not limited to, underground utilities, drainage or trail easements on the site.
- i) A runoff plan and calculations showing the pre- and post- development runoff conditions for comparative purposes. Runoff calculations shall be prepared for the 1, 10, and 100 year storm frequencies for all activities which impact wetland resource areas and land subject to flooding. Drainage calculations shall be prepared by utilizing the NRCS TR55 or TR20 Method, as required by the MA Stormwater Management Standards Handbook, or as amended. The Rational Method may only be used for pipe sizing calculations.
- j) 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, and to the Rockport Stormwater Management Bylaw dated October 1, 2008 (Chapter 8. D. Discharges to the Municipal Storm Drain, of the Rockport Code of By-laws, ("Stormwater Management By-law")), 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) The location of any wells or sources of potable water on the site or within 400 feet of the property line.

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- n) A list of pesticides, herbicides, non-aqueous dust controls, or other chemical products to be applied to areas covered by the Notice of Intent. If the chemical products have Manufacturing Safety Data Sheets (MSDS) sheets, copies shall be supplied to the Commission.
  - o) 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" = 20' 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.
5. Notification to Abutters and Affidavit of Service forms. As required by the bylaw, an applicant shall give written notice, by certified mail or hand delivery, to all abutters and abutters to the abutters within 300 feet of the property line of the parcel or parcels of land where the proposed activity is to take place.
  6. Abutters list stamped by the Rockport Assessor's Office for all abutters and abutters to the abutters within 300 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.
  7. A narrative cover letter providing details of the project and the proposed work located relative to boundaries of each Rockport wetland 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.
  8. 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.
  9. Stormwater Management - Stormwater control designs shall conform to the Department of Environmental Protection's (DEP's) Stormwater Management Standards and Massachusetts Stormwater Handbook dated February 2008, or as amended, and to the Rockport Stormwater Management Bylaw dated October 1, 2008 (Chapter 8. D. Discharges to the Municipal Storm Drain, of the Rockport Code of By-laws), or as amended.

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

### **D. Waiver of 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.

### **E. 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 (for example, by noon on the Friday prior to a Wednesday meeting). 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.

**F. Expert Services for Review of RFD's or 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. Selection of a consultant shall be consistent with the provisions of G.L. c. 30B. 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 M.G.L. c. 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 said 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 M.G.L. c. 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. 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 V of the By-law.

**Section V. Orders of Conditions**

The Order of Conditions form (WPA Form 5) issued pursuant to MGL Chapter 131, §40 shall constitute a permit under the provisions of Section V of the By-law in addition to any conditions

that may be added to protect values identified under the By-law. The Commission shall provide the original signed and notarized Order of Conditions to the applicant within twenty-one (21) calendar days of the Order of Conditions' approval. The applicant shall file the Order of Conditions with 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 provide the original signed and notarized denied Order of Conditions containing the detailed reasons for the denial to the applicant within twenty-one (21) calendar days of the Commission's denial.

#### **Section VI. 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 and notarized Certificate of Compliance shall be filed by the Applicant with the Essex County Registry of Deeds within 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. Said denial shall list detailed reasons wherein the activity (ies) has been or is at variance with the Order of Conditions.

#### **Section VII. 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 VIII. 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 30 days of issuance.

The Commission shall 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.

**Section IX. 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
Category 6	\$1 per linear foot; but not to exceed \$100 for activities associated with a single-family house (SFH) or \$1,000 for all other activities
<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), salt marshes, Land Under Water (if not associated with a Bank) and \$1 per square foot for each quarry pit or motion, vernal pool (certified or not) or isolated wetland. A minimum fee of \$25 and a maximum fee of \$100 for SFH 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 OC Extension</i></b>	\$75

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

**Category 1**

- a) work on single family lot; addition, pool, etc.;
- b) site work without a house;
- c) control vegetation;
- d) resource improvement;
- e) work on septic system separate from house;
- f) monitoring well activities minus roadway;
- g) new agricultural or aquaculture projects.

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### Category 2

- a) construction of single family house;
- b) parking lot;
- c) beach nourishment;
- d) electric generating facility activities;
- e) inland limited projects minus road crossings and agriculture;
- f) each crossing for driveway to single family house;
- g) each project source (storm drain) discharge;
- h) control vegetation in development;
- i) water level variations;
- j) any other activity not in Category 1, 3, 4, 5 or 6;
- k) water supply exploration.

### Category 3

- a) site preparation (for development) beyond Notice of Intent scope;
- b) each building (for development) including site;
- c) road construction not crossing or driveway;
- d) hazardous cleanup;
- e) water supply development.

### Category 4

- a) each crossing for development or commercial road;
- b) dam, sluiceway, tide gate (safety) work;
- c) landfills operation/closures;
- d) sand and gravel operations;
- e) railroad line construction;
- f) bridge;
- g) hazardous waste alterations to resource areas;
- h) dredging;
- i) package treatment plant and discharge;
- j) airport tree clearing;
- k) oil and/or hazardous material release response actions.

### Category 5

- a) work on docks, piers, revetments, dikes, etc. (coastal or inland).

### Category 6

- a) boundary delineations for Bordering Vegetated Wetlands.

### B. Waiver of filing and other fees

The Commission will waive the filing fee 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 X. Standard of Review for Alteration within Rockport Protected Wetlands

### A. Establishing “No-Disturb Zone” and “No-Build Zone”

Section 2 of the Rockport Wetlands By-law establishes the Commission’s jurisdiction over projects within 100 feet of a wetland as defined in Section II, above. This area is considered a wetland resource area deemed significant to the protection of the values specified in Section 1 of the By-law. For purposes of clarity, these regulations define this jurisdictional area as the **“Rockport Protected Wetland ”** and include *any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; quarry pits and motions; rivers; streams; creeks; beaches; dunes; estuaries; the ocean; lands under water bodies; lands*

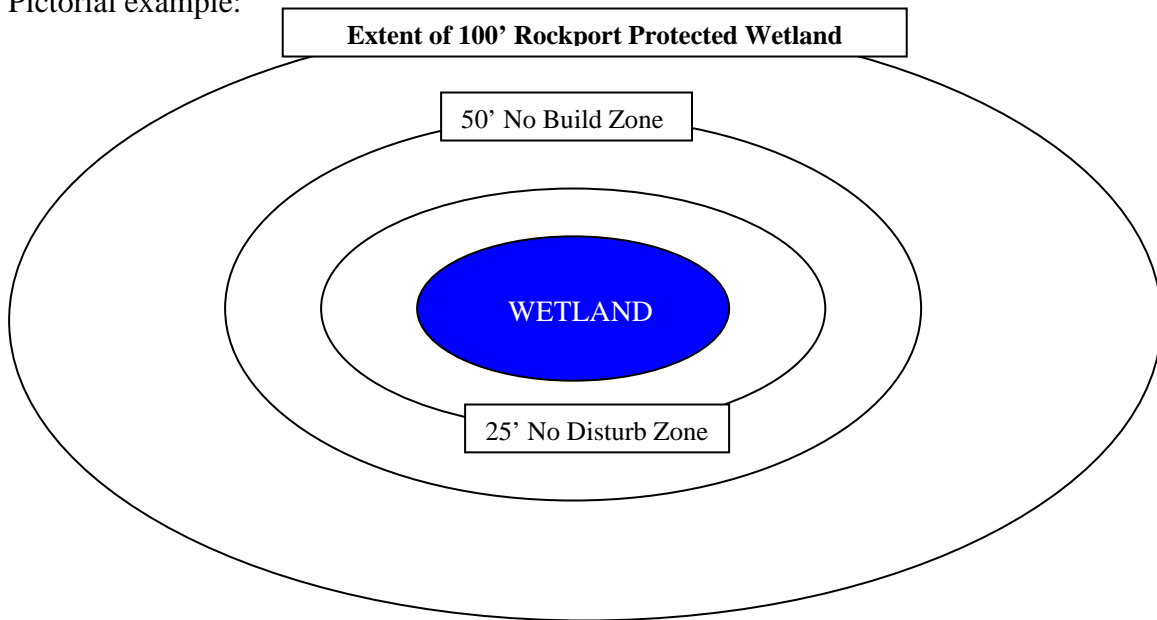
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*subject to flooding or inundation by groundwater or surface water; lands subject to tidal action; lands within 100 feet of above cited wetlands; and lands subject to coastal storm flowage or flooding.*

When a proposed activity involves clearing, filling, excavating, building upon or otherwise altering a **Rockport Protected Wetland**, the Commission shall presume that such activity will have an adverse impact on the wetland. The presumption is rebuttable and may be overcome upon a clear showing by the applicant that such activity will not impact the wetland and that the activity can be conditioned to protect the resource area values of the By-law.

In evaluating the effect of activities that are proposed in a **Rockport Protected Wetland**, the Commission shall review the short-term, long-term, and cumulative effects of the activity on the wetland. The Commission is concerned with future encroachments on **Rockport Protected Wetlands** and therefore requires that a permanent 25 foot “No-Disturb Zone” and a permanent 50 foot “No-Build Zone” be established on all projects within a **Rockport Protected Wetland**. The “No-Disturb Zone” is defined as the 25 feet horizontally landward of a wetland in which there shall be no alteration. The “No-Build Zone” is defined as the 50 feet horizontally landward of a wetland in which there shall be no building of any structures. This shall include, but is not limited to, home construction, additions, porches, decks, garages, septic system components (as identified below), driveways, sheds, roads, parking lots and any other man-made pervious or impervious structures. **NOTE: There are no “No-Disturb” or “No-Build” zones associated with land subject to coastal storm flowage or flooding.**

Pictorial example:



Due to the importance of protecting and maintaining the water table and water recharge areas within the Watershed Protection Overlay District for preservation of present and potential sources of water supply for public health and safety, **within a Watershed Protection Overlay District, the “No-Disturb Zone” shall be 50 feet horizontally landward of a wetland and the “No-Build Zone” shall be 100 feet horizontally landward of a wetland.**

All septic systems shall conform to the minimum setback distances for septic tanks, holding tanks, pump chambers, treatment units and soil absorption systems, including the reserve area,

as set forth in Title V of 310 CMR 15.211 and shall be expanded here to 100 feet horizontally landward of any wetland regulated by the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s 40) and the regulations adopted thereunder, as amended, and any wetland regulated by the Rockport Wetlands By-law, and the regulations adopted hereunder, as amended. A waiver from this requirement may be presumed when the activity involves a Board of Health approved repair of an existing septic system for an existing dwelling/building which has failed Title V requirements and where no expansion of the system is to take place. **There will be no waiver of this requirement for new development.**

**B. Waivers for “No-Disturb Zone” and “No-Build Zone”**

The Commission, at its discretion, may grant a waiver to approve activities in these “Zones” where the applicant provides information and evidence that a waiver is necessary, that the activity will have no adverse impact on the adjacent wetland, and that the project serves to protect the values of the By-law. The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in these regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; and that avoidance, minimization and mitigation have been employed to the maximum extent feasible; or that the waiver is necessary to avoid a decision that so restricts the use of the property as to constitute an unconditional taking without compensation.

In cases when a waiver is considered within the “No-Disturb Zone”, the Commission shall require that an additional contiguous “No-Disturb Zone” of 1.5 times the area of the altered “No-Disturb Zone” be provided at another location on the applicant's property, preferably adjacent to and contiguous with the altered “No-Disturb Zone” or that some Commission-approved manner of environmental mitigation be conducted commensurate with the disturbance of the zone. The Commission reserves the right to waive or increase this requirement depending upon the circumstances of the individual permit application.

The Commission also reserves the right to regulate the application of pesticides, herbicides, fertilizers and other materials in jurisdictional areas because of their potential impact upon the wetlands, including nutrient loading and other forms of pollution.

**C. Enhancing a Degraded or Previously Disturbed “No-Disturb Zone”**

Where the “No-Disturb Zone” is in a degraded or previously disturbed state, the Commission may allow for the area to be enhanced. In a degraded area, the Commission may allow the area to be enhanced through the removal of debris and/or the removal of invasive plant species where a replanting plan using appropriate native plant species is also proposed. In a previously disturbed area, such as a landscaped or maintained as lawn, the Commission may require that an area of up to 25 feet from the wetland boundary be replanted with native grasses, shrubs or trees or be allowed to naturally re-vegetate without cutting or clearing to better protect the wetland.

**D. Marking the “No-Disturb Zone”**

To maintain the perpetual integrity of the “No-Disturb Zone” and to ensure that there will be no encroachments into the “No-Disturb Zone” by the applicant or future owners of the applicant’s

land, the Commission may require the “No-Disturb Zone” to be marked on the ground, at the applicant’s expense, with permanent surveyors’ markers. In addition, one or more engraved granite monuments, for the purpose of informing the applicant and future owners of the applicant’s land of the existence of the “No-Disturb Zone”, shall also be set at a location or locations approved by the Commission on the line of the “No-Disturb Zone”. The monument(s), shall at a minimum, measure 6" x 6" x 8" and shall be set 4 feet into the ground. The engraving shall be on the upland side of the monument and shall read: **"NO DISTURBANCE BEYOND THIS POINT PER ORDER OF THE ROCKPORT CONSERVATION COMMISSION"**.

In lieu of engraved monuments, the Commission may require granite boulders (cut or uncut) of minimum 24 inch diameter be placed at a minimum designated distance on center to establish a visual and physical barrier between maintained “lawn” or other disturbed areas and the “No-Disturb Zone”. It may be further required that an engraved plaque be mounted on boulders at a minimum of one per every 50 feet of “No-Disturb Zone” boundary.

The Commission may require that the “No-Disturb Zone” be defined by metes and bounds on a plan prepared by a Registered Land Surveyor of the Commonwealth of Massachusetts. The permanent survey markers and the engraved granite monument(s) or boulders shall be shown and identified on this plan. The plan shall be recorded in accordance with an Order of Conditions, at the Essex County Registry of Deeds or, if the land is registered, at the Land Court section of the Registry. Proof of recording shall be submitted to the Commission within 21 days of recording of the Order of Conditions and plan.

#### **Section XI. 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 a replication of at least 1.5 square feet of replication for every 1 square foot of wetland altered. The 1.5 to 1 formula for replicating wetland is based upon the Commission's desire to achieve a "no net loss" of wetlands in the Town of Rockport. The replication area shall replicate or replicate 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 by a Massachusetts certified wetlands scientist. 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 plan shall be prepared at a scale of 1" = 20' 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" = 20' and a vertical scale of 1" = 4' showing existing and proposed ground surfaces, estimated seasonal ground water elevation, and proposed subsurface grade.
  5. A summary of the construction sequencing and wetland replication methodology shall be provided on the detail plan.

Wetland replication areas shall be constructed at the same time as existing wetland areas are filled/alterd 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 and an elevation certificate shall be submitted to the Commission signed and stamped by a registered land surveyor of the Commonwealth of Massachusetts prior to proceeding with work on any other components of the project. **Wetland replication shall be designed and overseen by a certified wetlands scientist/engineer.**

#### **Section XII. 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 own 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 **Rockport Protected Wetland.**
4. Projects when 50% or more of the work is in a **Rockport Protected Wetland.**

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 work shall be performed without the prior written approval of the Commission.

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

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. To be exempt from application requirements, the following activities shall require written notification to the Conservation Office at least ten (10) business days prior to commencement of work. This notification shall state the exemption and how the resource area in question will be protected. The Commission has the right to require an

application for an ordinarily exempt activity for reasons of potential impacts to a wetland. The following activities are exempt from the application requirements of these regulations:

- a. Unpaved pedestrian walkways for private use, if not within a wetland.
- b. Stacks of cordwood, if not within a wetland and they do not prevent wildlife movement.
- c. Fences 25 feet or more from any wetland, if they do not prevent wildlife movement.
- d. Vista pruning, if more than 50 feet from a wetland.
- e. Planting of native trees, shrubs, or groundcover within a **Rockport Protected Wetland**, but not seeding lawns.
- f. Conversion of impervious to vegetated surfaces within a **Rockport Protected Wetland**, if erosion and sedimentation controls are used during replacement process.

#### **Section XIV. Areas of Rare & Endangered Species Habitat**

Any disturbance of areas where rare and endangered species habitats are documented either by the Natural Heritage & Endangered Species Program or by observation, including anadromous and catadromous fish runs, shall require notification to the MA Division of Fisheries & Wildlife. For any project proposed within such an area, the Commission shall require that the applicant submit a copy of the Request for Determination (RFD) and/or the Notice of Intent (NOI) to the MA Division of Fisheries & Wildlife, at the same time as the RFD and/or NOI is submitted to the Commission. The applicant shall submit a copy of any response received from the MA Division of Fisheries & Wildlife to the Commission.

#### **Section XV. 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 Rockport 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), 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 XVI. 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:

- a. For work on new structures (work on projects applied for after the effective date of these regulations): Applicants shall be asked either to withdraw their applications or to request a continuance until after the Massachusetts Environmental Policy Act (MEPA) process has been completed. The purpose of this procedure is to allow the Commission to participate in the MEPA review and more effectively to 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.

- b. 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 XVII. Appeal**

A decision of the Commission shall be reviewable in the Superior Court in accordance with Massachusetts General Law, chapter 249, section 4.

**Section XVIII. Severability**

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

**Section XIV. Effective Date**

These regulations shall take effect for all filings on or after **May 6, 2009**.