

RULES AND REGULATIONS UNDER THE SWANSEA WETLANDS PROTECTION BYLAW

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ARTICLE 1 GENERAL PROVISIONS

1.01 Introduction

These rules and regulations (hereinafter referred to as the Regulations) are promulgated by the Town of Swansea Conservation Commission (hereinafter referred to as the Commission) pursuant to the authority granted to it under Section 8 of the Swansea Wetlands Protection Bylaw (hereinafter referred to as the Bylaw). These regulations shall compliment the Bylaw. They shall be used to enforce and implement the Bylaw and shall have the same force of law upon their effective date.

These regulations should be read together with the Bylaw, which has many important provisions not repeated in these regulations. These regulations supersede all existing rules and practices previously applicable to procedures and proceedings before the Commissions.

1.02 Purpose

The Bylaw sets forth a public review and decision making process by which activities having an impact or cumulative effect upon Areas Subject to Protection under the Bylaw are to be regulated in order to ensure the protection of wetlands interests, functions and values, including, but not limited to:

- Public water supply
- Private water supply
- Flood control
- Erosions and sedimentation control
- Storm damage prevention
- Water pollution prevention
- Wildlife habitat
- Fisheries
- Shellfish habitat

The purpose of these Regulations is to create a uniformity of process and to clarify and define the provisions of the Bylaw by which the Commission shall carry out its responsibilities. Both the bylaw and these regulations may be amended when necessary.

In instances where these Regulations are more stringent than 310 CMR 10.00, these local Regulations shall prevail (see 310 CMR 10.01 (2)).

1.03

Jurisdiction

A. Resource Areas Subject to Protection Under the Bylaw

1. Any freshwater wetland
Any coastal wetland
Any freshwater marsh
Any coastal marsh
Any wetland meadow
Any bog
Any swamp
Any bank
Any beach
Any dune
Any flat
Any vegetated or un-vegetated wetland
2. Any lake
Any pond
Any river, perennial or non-perennial
Any stream
Any creek
Any estuary
Or the ocean or bay
3. Any land under any of the waterbodies set forth in 1.03(A)(2) above
4. Any land subject to flooding or inundation by:
Groundwater
surface water
tidal action
coastal action
or coastal storm flowage

B. Activities Subject to Regulation Under the Bylaw

1. Any activity proposed or undertaken which will constitute removing, filling, dredging, or altering any area specified in section 1.03(A) above is subject to regulations under this Bylaw;
2. Any activity proposed or undertaken within one hundred (100) feet of an area specified in section 1.03(A) above, hereinafter referred to as the Buffer Zone, is subject to regulations under this Bylaw.
3. Any activity proposed or undertaken within two hundred (200) feet of the mean high water mark of a perennial river or stream hereinafter referred to as the Riverfront Area under the Act is subject to regulation under this Bylaw.

1.04

Burden of proof

The applicant shall have the burden of proof by clear and convincing evidence that the work proposed in an application, i.e. Notice of Intent, Request for Determination or Request for Preliminary Review, shall not have unacceptable significant cumulative or harmful effects upon the wetland values protected under the Bylaw. Failure to provide sufficient evidence to the Commission shall be sufficient cause for the Commission to deny the application along with any work or activity proposed therein.

1.05

Definitions

Abutter - The owner of land in accordance with the most recent records of the Swansea Tax Assessor's Office. The abutters' properties are within 100 feet in any horizontal direction of any boundary of the site, which is listed in the permit. This includes by land, sea or traveled way

Act - Massachusetts Wetlands Protection Act, Mass General Laws Chapter 131, Section 40.

Activity - Any form of removing, filling, grading, dredging, building upon, expansion, reconstruction, altering, changing, enlarging, draining, withdrawing, damming, discharging, excavation, driving of pilings, construction, improvement, intercepting and/or diverging of water, installations of pipes or drainage systems, discharging of pollutants, destruction or cutting of plant life (including, but not limited to trees), and any change to the physical characteristics of land or the physical or chemical characteristics of water. These activities shall apply to land, sea, traveled way, buildings and/or structures on/in or within 100 feet of any jurisdictional area as stated in the Bylaw or under the Act 200 feet from any Riverfront Area.

Adjoining Land Adjacent to the Buffer Zone - Non-wetland areas, immediately adjacent to, and extending in a horizontal direction from any wetland buffer zone, the activities on which are having or may have a significant or cumulative effect upon wetland values.

Administrative Order - Verbal and/or written directives by the Commission for the purpose of enforcing and/or administering the Bylaw, its regulations and permits issued thereunder.

Aesthetics - The visual appearance or quality of jurisdictional areas accessible to the public including visual linkage for the public with scenic vistas.

Affidavit of Service Form - A form completed by the Applicant certifying to the Commission that proper notification to abutters was duly served.

Agriculture - Land which has been used continually for at least the past five years primarily in the raising (housing/feeding) of animals including, but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur bearing animals and the land incidental thereto which represents a customary and necessary use in raising such animals. Land which has been used continually for at least the past five years primarily in the raising of fruits, vegetables, berries, nuts, and other

foods for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs; forest products under an approved, planned program to improve the quality and quantity of a continuous crop; land which is used primarily in the related manner which is incidental thereto and represents a customary and necessary use in raising such products.

Alter - The term “alter” includes, but is not limited to, the following activities when undertaken , upon, within or affecting resource areas protected by this Bylaw:

- Removal, excavation or dredging of soil, gravel, sand, clay, minerals, or aggregate materials of any kind
- Changing of existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics
- Drainage or other disturbance of water level or water table;
- Dumping, discharging or filling with any material which may degrade water quality
- Placing of fill, or removal of material, which would alter elevation
- Driving of piles, construction, erection, repair or demolition of building(s) or structure(s) of any kind
- Placing of obstructions or objects in water
- Destruction of plant life including cutting of trees, shrubs, or non-woody vegetation
- Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water
- Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

Appeal - Under the Bylaw, a person has the right to appeal the Commission’s decision on a Determination of Applicability or Order of Conditions to Superior Court under M.G.L. c.249 sec.4 or as otherwise provided by law provided notice of the appeal is made to the Commission and/or the applicant within ten days from the date the Determination of Applicability and Order of Conditions is issued. A Determination of Applicability and Order of Conditions shall be appealed under the Act to the Department of Environmental Protection according to 310 C.M.R. 10.00 et seq.

Applicant - The person who signs the Notice of Intent, Request for Determination or Request for Preliminary Review.

Application - See Notice of Intent, Request for Determination or Request for Preliminary Review.

Approved Plan - The document(s)(see definition of plan) , which have been accepted and/or approved by the Commission and meet the burden of proof criteria as set forth in the Bylaw, Regulations and/or Act and are listed in the Order of Conditions, Determination of Applicability or Request for Preliminary Review. See Article 4 for data required on engineered plans.

Areas Subject to Protection - Freshwater wetland, coastal wetland, marsh, wet meadow, bog, swamp, bank, beach, dune or flat, lake, river, pond, stream, estuary, ocean; land under said waters, river, pond, ocean, bay, estuary, lake; land subject to flooding or

inundation by groundwater, surface water, tidal action or coastal storm flowage; and land horizontally within 100 feet of said areas; and may include adjoining land areas, and, under the Act, the areas 200 feet from a perennial river or stream.

As-Built Plan - A plan which has been signed and stamped by a professional engineer certifying the post-development conditions on a site. See Article 4 for data required.

Bank (Coastal) – The seaward face or side of any elevated land form, other than a coastal dune, which lies at the landward edge of a coastal beach, land subject to tidal action or storm flooding, or other wetland. Any minor discontinuity of the slope notwithstanding, the top of the bank shall be the top of the face of the bank or the break in slope above the relevant 100-year flood plain elevation. A bank may be partially or totally vegetated or it may be comprised of exposed soil, gravel, stone or sand. A bank may be naturally occurring, created in part or entirely by man and/or made of man-made materials. The 100 year flood plain elevations shall be taken from the Flood Insurance Rate Maps and the Flood Boundary and Floodway Maps as amended and defined by the Federal Emergency Management Act and designated as Zone A, A1-A30, V1-V30 and Zone B, for the Town of Swansea, Massachusetts. Notwithstanding the above, in some cases an onsite inspection may be necessary in order to determine the actual top of the bank. Coastal banks are likely to be significant to wildlife, habitat, storm damage prevention and flood control.

Bank (Inland) – The portion of land surface which abuts and confines a water body. A bank may be partially or totally vegetated or it may be comprised of exposed soil, gravel, stone, sand or man-made materials, and/or created by man. The physical characteristics of a bank as well as its location are critical to the protection of wetland interests. The upper boundary of a bank is the first observable break in the slope above the one-year flood level, as defined by the FEMA Flood Maps, described above, as calculated by an engineer or as determined by the Commission.

The lower boundary of a bank is the water body. A bank may be created by man and/or man-made materials. An unvegetated inland bank is synonymous with an inland beach. Notwithstanding the above, in some cases an onsite inspection may be necessary in order to determine the actual top of the bank.

Beach (Coastal or Marine) – unconsolidated sediment subject to wave, tidal or coastal storm action which forms the gently sloping shore of a body of salt water, including land which is separated from other land by a body of water or a marsh system, i.e. tidal flats. Beaches extend from the mean low-water line landward to the dune line, coastal bank line or the seaward edge of existing man-made structures, when these structures replace one of the above lines, whichever is closest to the ocean.

Beach (Inland) - Unconsolidated sediment subject to wave, wind, ice or storm action which forms the gently sloping shore of a body of fresh water. Beaches extend from the mean high water line landward to the inland bank line or the fresh waterbody edge of existing man-made structures, whichever is closest to the waterbody. An inland beach is synonymous with unvegetated inland bank.

Bordering - Touching at any point.

Bordering Vegetated Wetlands (BVW) - Freshwater wetlands, which border on creeks, rivers, streams, ponds and lakes. Types of freshwater wetlands include wet meadows, marshes, swamps, and bogs. BVW are areas where the soils are saturated and/or inundated such that they support a predominance of wetland indicator plants. The ground and surface water regime and the vegetative community which accrue in each type of freshwater wetlands are specified in M.G.L. C. 131, S. 40.

Boundary – The boundary of the Area Subject to Protection under the Bylaw.

Buffer Zone - The area of land extending 100 feet horizontally outward from the boundary of any wetland or resource area or under the Act or 200 feet from a perennial river or stream.

Bylaw - The Town of Swansea Wetlands Protection Bylaw

Certificate of Compliance - A signed, written document issued by the Commission which certifies that all or part of the work requested in the Notice of Intent has been satisfactorily completed in accordance with the conditions stated in the Order of Conditions. Some Conditions shall continue for a specified period of time or in perpetuity.

Coastal Wetland - Any bank, beach, dune, estuary, marsh, swamp, meadow, flat or other lowland which is subject to tidal action or coastal storm flowage.

Conditions - The requirements set forth in writing in a Request for Preliminary Review, Order of Conditions or Determination of Applicability issued by the Commission for the purpose of permitting, regulating, controlling or prohibiting any activity.

Conservation Commission - All or part of the members lawfully appointed to the Swansea Conservation or their agent, employees or designee. For voting purposes, this term shall mean a majority of the lawfully appointed regular members of the Swansea Conservation Commission present at a hearing and voting on an issue in accordance with Robert's Rules of Order.

Contamination - The same definition as pollution.

Creek - The same definition as a stream.

Cumulative - Increasing in effect, size, quantity, etc., by successive additions; increasing in severity by repetition of activity or by other various activities affecting the interests protected under the Bylaw.

The Commission may require a plan showing the completed project and/or changes to the resource area(s) to determine the cumulative effect upon the resource area(s) by a project.

Date of Issuance - The date an Order of Conditions, Determination of Applicability is mailed as evidenced by the postmark or the date it is hand delivered. The date a Request for Preliminary Review is signed by the Commission.

Date of Receipt - The date of delivery to an office or usual place of business by mail or hand delivery.

DEP/Department - The Massachusetts Department of Environmental Protection (DEP), formerly known as the Department of Environmental Quality Engineering (DEQE).

Determination of Applicability (DOA) - A completed signed document issued by a majority of the Commission in response to a Request for Determination of Applicability after holding a public hearing(s). The document shall state if the area or proposed work is subject to protection under the Act and/or Bylaw.

Dune - Any natural hill, mound or ridge of sediment landward of a coastal beach deposited by wind action or storm overwash. Coastal dune also means sediment deposited by artificial means and serving the purpose of storm damage prevention or flood control.

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

Endangered Animal Species – Any species which is in danger of extinction throughout all or a significant portion of its range. For the purposes of these Regulations, it is those animal species listed as endangered, threatened or of special concern by the Massachusetts Natural Heritage Program. See also rare animal species.

Endangered Plant Species – Any species which is in danger of extinction throughout all or a significant portion of its range. For the purposes of these Regulations, those plant species listed as endangered, threatened or of special concern by the Massachusetts Natural Heritage Program. See also rare plant species.

Enforcement Order - A written document issued by the Commission and /or DEP for work or activity within a jurisdictional area which has not been approved by either the Commission or DEP.

Erosion Control - A means or method to prevent or reduce the detachment or movement of soil or rock fragments by water, wind, ice, and/or gravity.

Existing - Lawfully begun or completed prior to the date of the plan or prior to any activity on the site.

Extended Drought – Period when precipitation for the previous four months was below normal for the period of record, with at least three of the four months 75% or less and two of the four months 50% or less of normal precipitation.

Extension Permit - A written extension of time within which the authorized activity shall be completed, as permitted by Section VIII N of the Bylaw. The Commission may, in an appropriate case, combine this extension with the extension permit issued under G.L.M. c. 131, s. 40.

Fill - To deposit or cause any material in order to raise an elevation temporarily or permanently.

Fisheries - An area for catching, taking, breeding, of all freshwater and saltwater finfish and shellfish including the nutrient sources and the habitat in which they live during all or part of their life cycle.

Flag Line - The demarcation of the wetland indicated by markers appropriate in surveying.

Flat (tidal)- Any nearly level part of a coastal beach which usually extends from the mean low water line landward to the more steeply sloping face of a coastal beach or which may be separated from the beach by land under the ocean.

Flood Control - The prevention or reduction of flooding and flood damage.

Floodplain - Any land susceptible to inundation by flood flowage or land subject to flooding.

Forestry - A formal plan approved by the Massachusetts Service Forester and the Swansea Conservation Commission under a Notice of Intent. No forestry is allowed for home use under the Bylaw.

Freshwater Wetland - A bordering vegetated wetland, examples are wet meadows, marshes, swamps and bogs. Areas where the topography is low and flat and the soils are saturated.

Groundwater Supply - Water below the earth's surface in the zone of saturation.

Hydrologic Analysis - The process of determining the effects of water through its pattern or directional flow, quality or quantity, recharge or discharge, and/or temperature, as pertaining to surface or subsurface water.

Hydraulic Connection – A link between two wetlands which consists of water, whether stationary, moving or intermittent and which provides a direct exchange of surface, surface groundwater or sub-surface groundwater. The connection may be through man-made structures.

Interests Protected under the Bylaw - The wetland and riverine values either singularly or collectively as listed in Section 1 of the Bylaw.

Issuing Authority - The Swansea Conservation Commission.

Lake - An open body of fresh water with a surface area of ten acres or more which includes great ponds.

Land Subject to Coastal Storm Flowage - Any area of land which may or has been inundated with water which was caused by a coastal storm(s) up to and including the 100-year storm event, surge or storm of record, whichever is greater. The lateral extent of the boundary shall be determined by the extent it has standing water as a result of the 100-year storm event.

Land Subject to Flooding or Inundation by Ground Water - Any land which borders a wetland or any depression or basin which on the average at least once every five years contains standing water over an area of at least one thousand square feet.

Land Under Water - Any land which is under an ocean, lake, pond, river, stream or creek.

List of Abutters - A list prepared by the Applicant of abutters' names, street, house # and/or map and lot numbers. (See Abutter)

Majority - In terms of a quorum, more than half the members of the lawfully appointed Swansea Conservation Commission. In terms of voting, more than half the members of the lawfully appointed Swansea Conservation Commission who are present at a meeting and voting. An abstention vote is not considered voting.

Marsh - An area where the vegetative community exists in standing or running water during the growing season and where a significant part of the vegetative community is composed of, but not limited to or necessarily including all of the following species: arums, bladder worts, bur reeds, button rush, cattails, duck weeds, eelgrass, frog bits, horsetails, hydrophilic grasses, leatherleaf, pickerel weeds, rushes, sedges, smartweeds, sweet gale, water milfoil, water lilies, water startworts, water willow, common reed.

MEPA - Massachusetts Environmental Policy Act, Mass General Law Chapter 30, Section 62-62H and the regulations promulgated thereto, 310 CMR 10.00 et seq.

Notice of Intent - The signed completed form duly delivered to the Department and Commission by an applicant requesting permission to do work on or in an area which is subject to protection under the Act and Bylaw.

Notification to Abutters Form - A form completed by the Applicant and delivered to abutters by either certified mail or hand delivery (obtaining a signed receipt) notifying abutters of the date, time and place of the public hearing and information concerning the application.

On-site Inspection – a review of a project or its location in the field by members of the Commission or the agent of the Commission.

100- Foot Buffer Zone - Any area which extends 100 feet horizontally from any boundary of a resource area. The entire 100-foot buffer zone is protected under the Bylaw.

100-Year floodplain - The estimated maximum lateral extent of flood water which will theoretically result from the statistical 100-year frequency storm.

100 Year Frequency Storm - A rainfall event that statistically has a 1/100 (0.01) probability that it will occur in any given year.

100-Year Flood – A flooding event that statistically has a 1/100 (0.01) chance of occurring in any given year.

Order of Conditions - The formal document issued and signed by a majority of the Commission in response to a Notice of Intent which permits, controls, regulates, prohibits or denies a project within an area subject to protection under the Act and Bylaw.

Permits - See Order of Conditions, Determination of Applicability, Request for Preliminary Review, Certificate of Compliance or Extension Permit.

Perennial Stream – a river, stream or brook which flows throughout the year except for periods of extended drought. Rivers, streams and brooks which are perennial under natural conditions but affected by drawdown from withdrawals of water supply wells or direct withdrawals or by man-made structures such as dams shall be considered perennial.

Phasing - To propose the construction of a section or portion of a roadway and/or subdivision.

Plan - Any data, maps, engineered drawings, surveys, narratives, calculations, specifications, schedules, or hydrological, historical, endangered species or habitat studies and any other materials deemed necessary by the Commission or submitted by the applicant or another party which describes the site and/or work in order to enable the Commission to determine the applicability of the Act and/or Bylaw or to determine the impact of the proposed work upon the interests identified in the Act and/or Bylaw. See also definitions for Approved Plans, As-Built Plans, and Article 4 for the data required on plans.

Pollution - Contamination of land, surface or groundwater with materials not normally present or with elevated levels of naturally occurring materials, including a change in the physical or chemical characteristics of the same. See also Contamination.

Pond - Any open body of fresh water or saltwater either naturally occurring or man-made by impoundment. Basins or lagoons, which are part of a wastewater treatment plant or water treatment plant, swimming pools or other impervious man-made retention/detention basins, shall not be considered ponds.

Prevention of Pollution - To stop or reduce contamination of land, ground water or surface water.

Private Water Supply - Any source or volume of surface or ground water shown to be used or have the potential for use by an individual, organization or group which includes water used for agricultural purposes. See also the definition of Public Water Supply.

Protection of Fisheries - To protect the capacity of any area subject to protection under the By-law which serves as a habitat or nutrient source for fish or aquatic animals by preventing or reducing contamination or damage to fisheries .

Protection of Wildlife - To protect plant or animal species listed as endangered, threatened or of special concern and to protect the ability of any resource area to provide food, breeding grounds, habitat, and/or escape cover to those species.

Public Interest - Something of benefit to the health, welfare or safety of the Swansea community at large as opposed to one individual, organization or applicant.

Public Water Supply - Any source or volume of surface or ground water demonstrated to be in public use for drinking water or fire protection or approved for water supply pursuant to Massachusetts General Laws Chapter 111, Section 160 by the Division of Water Supply of the DEP or demonstrated to the Commission's satisfaction to have a potential for public use as a drinking water supply or for fire protection.

Remove - To take away any type of material including, but not limited to soil, vegetation and/or water or thereby changing an elevation either temporarily or permanently.

Request for Determination of Applicability - A written, signed, completed request made by an applicant to the Commission and Department asking for permission to do work in a specified area. The Commission indicates on the form if the area is subject to protection under the Act or Bylaw.

Request for Preliminary Review - A written completed form made by an applicant to the Commission indicating the location, map, lot and type of work which is proposed and requesting a preliminary determination as to whether the work or the area are within the jurisdiction of the Conservation Commission.

Resource Area - Same definition as Areas Subject to Protection.

River - Any natural flowing body of water that empties into any lake, ocean, other river, pond or open water body. Same definition as Stream.

Significant – Plays a role. A resource area is significant to an interest identified in the Bylaw when it plays a role in the provision or protection, as appropriate, of the interest. This standard is used by the Commission in determining what condition, if any, it deems necessary to protect the public interest under the bylaw. The standard that shall be considered to establish significance shall include but is not limited to one or more of the following factors:

- a) Actual or potential contamination to public, private or groundwater supply including aquifers or recharge areas, land containing fisheries, including the biological life necessary to support a fresh or saltwater ecosystem.
- b) Any reduction of the flood storage capacity of a wetland, river stream or creek.
- c) Any alteration of a river, stream, creek, vernal pond or wetland that results in any increase in the volume or velocity of water which may cause flooding.
- d) Any actions which will remove, fill, dredge or alter any areas subject to the Bylaw and will result in any threat to the health, welfare or safety of the individual or to the community
- e) Any alteration of a river, stream, creek, vernal pond or wetland or land subject to flooding or any area subject to the Bylaws which will result in any threat to wildlife or erosion control.
- f) Any change in function or characteristics of a wetlands, which alters the hydrologic regime by decreasing or increasing flow rates.

Sign Off - Same definition as Request for Preliminary Review.

Soil Line - The demarcation of the wetland by hydric soils.

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

Stream - A body of running water and the land under the water which includes, but is not limited to brooks, creeks, and man-made water courses, which move in a definite channel in the ground due to hydraulic gradient. An existing portion of a stream may flow through a culvert, pipe or beneath a bridge.

Superseding Determination of Applicability - The formal document issued by the Department of Environmental Protection either because a party appealed the Commission's Determination of Applicability or the Department of Environmental Protection under their authority determined to supersede the Commission's Determination of Applicability

Superseding Order of Conditions - The formal document issued by the Department of Environmental Protection either because a party appealed the Commission's Order of Conditions or the Department of Environmental Protection under their authority determined to supersede under the Act the Commission's Order of Conditions

200 Foot Riverfront Area - In accordance with the Act, 310 CMR 10:58., i.e. the 200 foot area extending horizontally from the mean annual high water line of a perennial river or stream.

Vegetated Wetland - Wet meadows, marshes, swamps and bogs.

Vernal Pool - A confined basin depression, as well as the area within 100 feet of the mean annual boundaries of the such depressions, to the extent that such habitat is within an area subject to protection under this Bylaw, which, at least in most years holds water for a minimum of two continuous months during the Spring, and/or Summer, and which is free of adult fish populations, or are areas that vernal pool species use for breeding as evidenced by breeding adults, eggs, tadpoles, or transforming adults. These areas are essential breeding habitats and provide other extremely important wildlife habitat functions during non-breeding seasons as well for a variety of amphibian species and are important habitats for other wildlife species.

Violation Notice - Same definition as Enforcement Order.

Wet Meadow - An area where ground water is at the surface for a significant part of the growing season and near the surface throughout the year. A significant amount of the vegetative community is comprised of various grasses, sedges and rushes.

Wetland Scenic Viewshed – Those areas which provide important visual linkage for the public with scenic wetlands that are vistas typical of the unique Swansea environment. Scenic wetlands include but are not limited to the following features: expansive open space, large areas of natural features, placement and sizing of both natural and man-made features, or mix of colors and textures created by interactions among the water, sand and different types of vegetation. Visual linkage for the public is not restricted to views from

public ways but also views from areas used by the public such a public and private conservation land, great ponds, beaches, harbors and the ocean.

Wildlife - Any live animal, mammal, bird, reptile, amphibian, fish, mollusk, arthropod or other invertebrate that is neither human nor domesticated.

Wildlife Habitat – Areas having plant community composition and structure, hydrologic regime or other characteristics sufficient to provide shelter, nutrient sourcing, growing conditions, nesting or breeding sites conducive to the propagation and preservation of wildlife.

Work - Same definition as activity.

1.06 Performance Standards

A. General

In performance of its duties under the Bylaw and these regulations, the Commission shall apply the following Performance Standards, without limitation, which the Bylaw seeks to protect. Those Standards not listed herein shall be found in the Wetlands Protection Act Regulations (310 CMR 10.00).

B. Banks

Proposed work on a bank shall not adversely affect the following:

1. Stability of the bank
2. Capacity of the channel to convey water
3. Ground water and surface water quality
4. Capacity of bank to provide fisheries and wildlife habitat
5. Natural resistance to wind and water erosion

C. Land Under Water

Proposed work on land under water shall not adversely affect the following:

1. Water storage or carrying capacity of the water body
2. Ground water and surface water quality
3. Capacity of said land to provide fisheries and wildlife habitat
4. Water circulation and distribution of sediment grain size

D. Land Subject to Flooding

Proposed work on land subject to flooding shall not adversely affect:

1. Flood control capacity of said area
2. Pollution prevention capacity
3. Wildlife habitat

E. Wetlands

Proposed work in wetlands shall not destroy or otherwise impair any portion of said wetland. There shall be no permanent intrusion into the wetland for any purpose except for projects classified under the limited project status.

(Amended March 25, 2002)

F. Side Slope Grades Near Inland Wetlands

Side slopes within 100 feet of a resource area shall have a finished grade according to the following:

1. No greater than a 3:1 slope for grassed and mulched slopes
2. No greater than a 2:1 slope for all stone rip-rapped slopes.
3. The Commission strongly encourages a 3:1 slope unless the riprapped slope will eliminate the proposal for wetland filling.

G. Riprap

Stone used for riprap will be hard, durable, angular, resistant to weathering, free from overburden, spoil shale and organic material, and shall be from 4 inches to 8 inches in diameter. Neither breadth nor thickness of a single stone should be less than one-third its length. Round stone is not acceptable.

H. Limited Projects

1. The Commission may issue an Order of Conditions permitting work which results in the loss of not more than (5000) square feet of wetland **only** under a limited project provided the following requirements are met:
 - a. All design method of mitigation have been utilized to minimize the alteration of the wetlands
 - b. There is no reasonable alternative to the proposed project.
 - c. Replication and re-vegetation plans has been submitted under the criteria of sections 1.06I and 4.07 describing the construction of the amount of recreated wetland necessary to compensate for that portion which is proposed to be destroyed.
 - d. Compensatory wetland area will be provided which in the judgement of the Commission will adequately replicate all of the wetland function to be lost. The minimum ratio shall be 1.5 replicated area to 1.0 area to be disturbed.

(Amended March 25, 2002)

2. The project must be included in one of the following categories:
 - a. Construction of new road drainage structures including culverts, catchbasins, drainage easements, ditches, watercourses and artificial water conveyances to ensure flow capacities.
 - b. Construction of a new roadway or driveway of minimum legal and practical width acceptable to the Planning Board where reasonable

alternative means of access from a public way to an upland area of the same owner is unavailable.

- c. New construction of underground and overhead public utilities, such as electrical distribution or transmission lines, or communication, sewer, water and natural gas lines, may be permitted, in accordance with the following general conditions and any additional conditions deemed necessary by the Commission:
 - 1) The Commission may require a reasonable alternative route with fewer adverse effects.
 - 2) The best available mitigating measures shall be used to minimize adverse effects during construction
 - 3) All surface vegetation and contours of the area shall be substantially restored
 - 4) All sewer lines shall be constructed to minimize inflow and leakage
- 3. Proposed roadway/driveway crossings of wetland areas shall include the following:
 - a) Wetland replication which, in the determination of the Commission, will compensate for the wetland to be lost with respect to the wetlands values and area.
 - b) Headwalls shall be required to minimize the amount of the wetland alteration.
 - c) Such roadway or driveway shall be constructed in a manner, which does not restrict the flow of water.
 - d) Use of multiple pipes laid side by side in a channel to convey water is not allowed

I. Wetlands Replication

There shall be no intrusion into a wetland area unless the project qualifies under a limited project under sec. H. When unavoidable wetland alteration is proposed, the Commission may allow the project to proceed as proposed as long as compensatory wetlands are proposed. The Commission may require replacement of more, but not less than 200% of the altered wetland if it is judged to be necessary to replace the altered wetland value.

(Amended March 25, 2002)

J. Buffer Zone Protection

- 1. Bordering any wetland, the Commission may require a zone of natural vegetation of sufficient width to assure that silt, soil, fertilizer in solutions, organic chemicals, herbicides, organic manure, oils or petroleum products which may be carried by surface runoff shall not reach that wetland, but instead shall be trapped by the natural mulch, soil and roots. Under most conditions, a zone of 25 feet would be considered sufficient to accomplish this purpose, however, the distance would depend on slope, soil type, ground cover and the project proposed. The Commission shall encourage stabilization of upgradient areas beyond the 100-foot line.

2. The Commission may also require a fence of a minimum of 3 feet or other boundary, which shall permanently identify the area beyond which there shall be no work or alterations.

K. Erosion and Sedimentation Control

Disturbed soil areas within 100 feet of a resource area shall be stabilized and protected from the erosive forces of wind and water. Measures to prevent erosion shall be maintained in functional condition until natural vegetation has, in the Commission's judgement, developed sufficiently. Haybales and siltation fence, alone, or in combination, may be used for temporary control during construction.

L. Stormwater Runoff

Any change in stormwater runoff characteristics, which may result in increased flooding off the site, must be mitigated by on-site controls. Such controls may include, but are not limited to:

1. Stormwater detention facilities
2. Vegetated swales
3. A vegetation plan using trees, shrubs and/or non-woody vegetation

M. Wildlife Habitat

Projects proposing to alter natural wetland areas suitable for wildlife habitat shall be required to submit documentation describing the alternatives and the proposed means of compensating for lost wildlife habitat values such as food, shelter, migrating and breeding areas, and over-wintering areas.

N. Public and Private Water Supply

Projects proposed in areas significant to public and private water sources of water supply will be required to demonstrate that there will be no adverse impact on the water resource.

Projects proposed within an area subject to protection and within recharge area or cone of depression of a municipal well shall comply with the provisions of the Swansea Aquifer Protection District Bylaw.

O. Sewer/Septic Systems

1. New Septic Systems

For all construction of new septic systems on undeveloped land or where there was no system to support any existing development, or for replacement of a system for property which has been subdivided, the leaching field / drainage area must be more than 100 feet from the any wetland, resource or jurisdictional area defined in section 1.03A.

2. Replacement of Existing Septic Systems

For repairs and replacement of previously existing septic systems and/or cesspools, the leaching field / drainage area must be as far away as possible from any wetland, resource or jurisdictional area defined in section 1.03A. . Repairs to a septic system for the original house on a lot, which has been subdivided will require the new leaching field be at least 100 feet from any wetland

P. Aesthetics

Proposed projects shall be designed to retain or improve natural conditions including natural lighting, sounds, odors, significant trees and wetland scenic viewsheds experienced by the general public from public ways including waterways.

Q. Recreation

Proposed projects shall not significantly affect public recreational values dependent either directly or indirectly on the resource area or within 100 feet of the resource area.

R. Agriculture and Aquaculture (Reserved)

S. Endangered Plant and Animal Species

Notwithstanding any provision of the Bylaw or Regulations, the Commission shall not approve any proposed activity on any area or habitat of rare plants or animals as determined by the Massachusetts Natural Heritage Program, to have any short or long term adverse effects on such species or habitat.

T. Shellfish Habitat

Projects proposing to alter areas significant to land containing shellfish shall not change the productivity of such land caused by alterations of:

1. Water Circulation
2. Elevation and relief elevations
3. Compacting sediment by vehicular traffic
4. Distribution in sediment grain size
5. Natural drainage from adjacent land
6. Water quality including, but not limited to, fluctuations in levels of salinity, dissolved oxygen, nutrients, temperature or turbidity, or the addition of pollution

U. Fisheries (reserved)

V. Surface Water and Groundwater Pollution

Where projects are proposed in areas significant to surface water and/or groundwater, the applicant will be required to demonstrate that there will be no adverse pollution impacts and if any, how any impacts will be mitigated.

W. Perennial Rivers

1. The Commission shall presume that a river or stream is perennial, if it appears on the latest United States Geologic Survey Map or more recent map provided by the DEP as a perennial stream. This presumption may be rebutted by evidence from a competent source asserting to the contrary or there is a previous finding by the issuing authority. Conservation Commissioners and staff members are considered competent sources.
2. If a river or stream is shown as intermittent or not shown on the current USGS map or more recent map provided by DEP, an assertion that it is perennial must be supported by evidence by the person making the assertion or by the Commission on its own initiative. This evidence may include evidence of the presence of aquatic microinvertebrate species which requires a perennial flow; evidence of a stream order of two or greater, a watershed size of greater than three square miles or other evidence.
3. If a river or stream is shown as perennial on the current USGS map or more recent map provided by DEP, an assertion that it is intermittent must be supported by evidence by the person making the assertion or by the Commission on its own initiative which may include field observations that the river is not flowing, provided the date of observation is not within an extended drought; or that there has been a change upstream causing discontinuance of the flow of water, absence of a channel or banks, soils information showing the groundwater elevation is not at or near the surface or other evidence.

1.07 Severability and Invalidity

The invalidity of any section of the Rules and Regulations shall not invalidate any other section or provision nor shall it invalidate any Request for Determination, Determination of Applicability, Notice of Intent, Order of Conditions, Extension Permit, Certificate of Compliance or Enforcement Order which previously has been received or issued.

1.08 Effective Date

The effective date of these Rules and Regulations shall be the date on which these rules and regulations are approved by a majority of the Commission. These Rules and Regulations shall apply to all Requests for Preliminary Review, Request for Determination, Determination of Applicability, Notice of Intent, Order of Conditions, Extension Permit, Certificate of Compliance or Enforcement Order, which are filed or issued after that date.

1.09 Appeals

Any decision by the Commission made under the jurisdiction of the Bylaw, including, but not limited to, Determinations of Applicability, Order of Conditions, Enforcement Orders, Certificates of Compliance, Partial Certificates of Compliance and Extension Permits. shall be reviewable in Superior Court in accordance with M.G.L. c. 249 sec 4 or as otherwise provided by law, but is subject to the filing of a notice of appeal which must be received by the Commission within 10 days of the issuance of the decision.

1.10 Waiver

Strict compliance with these Regulations may be waived when, in the judgement of the Swansea Conservation Commission, such action is in the public interest and is consistent with the intent and purposes of the Bylaw. Any request for a waiver must be submitted to the Commission in writing and must state the public interest involved. The Commission will act upon the request within 21 days of the date of receipt and will then notify the Applicant in writing within 21 days of said action. The Commission shall include the public interests that are protected or enhanced by issuing a waiver from these Regulations.

ARTICLE 2 PROCEDURES

2.01 Time Periods

All of the time periods specified in the Bylaw and the Regulations shall be computed on the basis of calendar days unless the last day falls on a Saturday, Sunday or legal Holiday in which case the last day shall be the next business day following.

2.02 Action by Commission

A. Quorum

Where the bylaw states that a particular action (except for receipt of documents or filings) is to be taken by the Commission, that action is to be taken by more than half of the regular members present at a meeting of at least a quorum. A quorum is defined as a majority of the regular members then in office.

B. Signature Required

Where the Bylaw states that a permit or notification shall be issued by the Commission, that action is to be taken by a majority of the regular members, then in office, who need not convene as a body in order to sign said permit or notifications, provided the Commission met pursuant to the open meeting law, M.G.L. c 39 s. 23A-23C, when voting on the matter.

C. Receipt of Filings

A Request for Preliminary Review, Request for Determination, Notice of Intent or other documents and/or requests, shall be deemed to be received by the commission if they are presented at a Commission meeting or submitted to the Commission, its agent, or staff at its office during the Commission's regular business hours.

2.03 Emergencies

Depending upon their availability, the Agent, Chairman, Vice-chairman and Clerk, in that order may make binding decisions upon the Commission in cases of emergency.

2.04 Forms

All forms described in these Bylaws are available from the Conservation Commission Office during its regular business hours.

2.05 Deadline

The deadline for filing a Notice of Intent or Request for Determination under the Wetlands Protection Act or the Swansea Wetlands Protection Bylaw is 10:00 on the Thursday 11 days prior to the meeting. For example, for a petition to be heard on the Monday the 13th of the month, then, the petition must be filed by Thursday the 2nd at 10:00 a.m. If the Thursday is a holiday, it must be filed by Wednesday, the day before.

2.06 Meetings

A. Meeting Dates

The meetings of the Commission are usually held on the 2nd and 4th Mondays of the month at the Commission office or at a previously posted date and location. Changes may occur due to conflicts with other town functions and holidays.

B. Agenda

An agenda of the meeting will be available from the Commission.

C. Robert's Rules of Order

All meetings shall be conducted in accordance with Roberts Rules of Order.

2.07 Public Hearings

A. First Continuances

The Commission shall have the authority to continue the public hearing once, for reasons stated at the hearing, which may include, but is not limited to, an on-site visit, receipt of additional information, plans, documents, hard copy of a file number from DEP, comments or review from other town departments or officials.

B. Second Continuance

After the second public hearing, the Applicant has the right to object to another continuance or postponement. In such an event the hearing may be closed and the Commission shall vote based on the information available at the time.

C. Failure to Notify Abutters

If the Commission determines that a continuance is necessary in order to insure proper notification to abutters or other interested parties as required by the Bylaw, these regulations and state law, then said continuance shall not be deemed a first continuance as the hearing will not be valid without the proper notice.

D. Failure to Provide Information

Failure to provide the Commission with the information, which was requested by the Commission in order to make its decision, may be grounds for denial or an unfavorable determination.

E. Simultaneous Hearings

All public hearings may be conducted simultaneously under the Bylaw and under the Massachusetts Wetlands Protection Act. M.G.L. c 131 s 40 at a legally scheduled meeting of the Commission.

2.08 On-site Meetings

The Commission or its agent shall be available to make appointments for on-site visits and answer questions during normal business hours of the Town of Swansea and at its regularly scheduled meetings

2.09 Discussions

A. Appointment

An appointment for a discussion of a potential project or an on-going project with the Commission, at its regularly scheduled meeting, must be scheduled at least 5 days prior to the start of the meeting.

B. Informational Purposes Only

Discussions cannot be held as a replacement for a public hearing. Rather, discussions shall be held solely on an informal basis for guidance or informational purposes only. The Commission shall not be held bound by any guidance they give an Applicant during a discussion because all the submittal information for a project may not have been received and reviewed. The purpose of a discussion shall not be to approve a project or proposed work that requires a filing.

2.10 Withdrawal

Withdrawal of any request or application shall be made by the Applicant in writing and delivered to the Commission or its agent. The request shall include the following information: Applicant's name and address, Owner's name and address, location of project, including house number and street name, map and lot and the type of project.

2.11 Wetland Flagging

The Commission or its agent will not flag wetlands. The Commission can only approve or disapprove a wetland line. It is the responsibility of the Applicant to hire a qualified Wetlands Consultant or Botanist to flag the wetland lines.

2.12 Recommendation of Professionals

The Commission or its agent cannot recommend a professional registered engineer, registered land surveyor, botanist, qualified wetlands consultant or any other professional from which the Applicant may require services to complete the filing process. The Commission will, upon request, send a list of engineers and/or wetlands consultants and botanists in the area who have requested their name be included on this list.

2.13 Access to Private Property

A. Mutual Agreement to Meet at the Property

In the ordinary conduct of business, prior to entering upon the Applicant's property, the Commission or its agent will arrange for a mutually acceptable time to meet at the site for the necessary field work.

B. Release By Applicant

If the applicant does not wish to be represented at the site, the applicant may sign a release for the Commission or its agent to enter upon the property, otherwise known as the Release. A site visit will be made solely at the Commission's convenience. However, once an application has been filed under the provisions of a Request for Preliminary Review, Request for Determination, or a Notice of Intent, and the Release has been signed, the Commission or its agent may enter the property for necessary field work in order to receive information to facilitate its decision making process.

2.14 Enforcement

A. Enforcement Order

When the Commission determines an activity is in violation of the Bylaw, they may issue an enforcement order to the owner of record and/or the violator ordering that the activity cease immediately. Violations may include, but are not limited to:

1. Failure to comply with a Request for Preliminary review, Determination of Applicability, or Order of Conditions
2. Failure to Complete Work described in the Request for Preliminary review, Determination of Applicability, or Order of Conditions when such failure causes damage to the wetland values protected under the Bylaw

3. Failure to file a Preliminary Review
4. Failure to file a Request for Determination and receive a Determination of Applicability
5. Failure to file a Notice of Intent and receive an Order of Conditions for said project
6. Any activity which would require a filing and or be prohibited under these Bylaws

B. Enforcement

Any member or members of the Commission or its agent regardless of the issuing authority may enforce a violation notice. The Commission or its agent may enter upon privately owned property for the purpose of performing their duties under the Bylaw.

C. Form

An enforcement order shall be issued on a form provided by the Commission. In a situation requiring immediate action, an enforcement order may be signed by the agent, a Commission member or a majority of the Commission if said Order is ratified by a majority of the members of the Commission present at the next scheduled public meeting of the Commission.

ARTICLE 3 FILINGS

3.01 Request for Preliminary Review

A. Requirement for Permits of other Boards

When the Commission, Building Inspector, or Board of Health, require the Commission's review of a site or project before issuance of a permit or allowing a project to commence, the owner or his representative shall file a Request for Preliminary Review and shall arrange a site visit with the Commission or its agent.

B. Form and Plans

The Applicant shall provide to the Commission or its agent a completed copy of the Request for Preliminary Review Plan including the Map and Lot # as designated by the Town of Swansea Board of Assessors, a set of plans for the Commission which shows the site, existing conditions, the proposed work and any jurisdictional areas within the site or 100 feet of the site.

C. Additional Requirement

Prior to making its determination, the commission or its agent may require further action or information by the applicant or their representative, such as staking of the site to determine location of a work area, or any other information which will aide the Commission or its agent to make that determination.

D. Revocation of Permit

If the Commission determines that information provided to the Commission is incorrect or pertinent information was not provided to the Commission, then the Commission may revoke its Determination and require the filing of a Notice of Intent or a Request for Determination.

E. Permit Expiration

The Building or Board of Health Permit must be obtained within one year from the date the Request for Preliminary Review is signed by the Commission. The proposed work or activity must be completed within three years from the date the Request for Preliminary Review is signed.

3.02 Request for Determination of Applicability

A. Request

Any person who desires a determination as to whether the bylaw applies to a site or area, as an Area Subject to Protection, or as to whether work or an activity may be performed in that area under the bylaw, may submit to the commission by certified mail or by hand delivery a Request for Determination of Applicability.

B. Submittal Requirements

1. Two copies of a completed Request for Determination of Applicability form dated and signed by the applicant or representative
2. Two copies of the definitive plans, hand drawn or engineered (as required), dated and signed by the applicant or engineer respectively which shall define the area which is the subject of the petition and any changes or alterations. If the request is for work within an Area Subject to Protection, the limits of work shall be defined per the plan and any accompanying narratives
3. Locus plan: 8 ½" x 11" section from a USGS quadrangle map with the area circled
4. List of abutters as defined by section 1.05
5. Two copies of the completed notification to abutters form.
6. A signed property access authorization from
7. The correct fee for advertisement of the notice in the local newspaper
8. The correct filing fee

C. Notification to Abutters

Prior to submittal, the Applicant shall contact the Commission or its agent to determine the date and time of the hearing on the petition. Using the form provided by the commission, the applicant shall notify all abutters at the time of filing the Request for Determination of Applicability. Said form shall give the date and time of

the hearing, map and lot # of the parcel in question in accordance with the records of the Swansea Board of Assessors, name of the applicant and a description of the area or project. Copies of the certified mail receipts or signature on said notice and submission of the Notification of Abutters affidavit shall submit proof of the notification to abutters.

D. Notification to Owner

If the applicant is not the owner of the property or the owner's representative, the applicant shall send a copy of the completed filing to the Owner of Record in accordance with the latest records of the Swansea Board of Assessor's office by certified mail at the same time as the Request for Determination is filed.

E. Copies to Other Town Boards or Departments

The applicant shall also provide copies of the Request for Determination form and plans to the Swansea Board of Health, Building Inspector, and Planning Department.

F. Simultaneous Hearing under the Wetlands Protection Act

The Request for Determination under the bylaw may be filed concurrently with and by using the same form as the Request for Determination under the Massachusetts Wetlands Protection Act, M.G.L. Ch. 131 sec 40.

G. Requirement of Further Information

The Commission may require the area to be flagged or staked, more detailed plans or professionally engineered plans, or require other information the Commission deems necessary to determine if the cumulative effect upon the resource areas protected under the Bylaw prior to an on-site visit or closing of the public hearing.

H. Hearings

The Commission shall conduct a public hearing within 21 days of the receipt of a completed Request for Determination Filing. If more information is needed or the Commission needs to conduct an on-site inspection, the Commission may continue the hearing for receipt of the requested information. Thereafter, the hearing may be continued with the mutual agreement of the Commission and the applicant. Upon receipt of all information requested, the Commission shall close the hearing.

3.03 Determination of Applicability

A. Issuance of Determination of Applicability

Within 21 days of the closure of the public hearing on the Request for Determination, the Commission shall issue a Determination of Applicability in accordance with its majority vote of the regular members present at the time of the vote. The Determination of Applicability under the Bylaw may be issued concurrently with and using the same form as the Determination of Applicability under the Massachusetts Wetlands Protection Act, M.G.L. ch. 131 sec. 40.

B. Positive Determination of Applicability

The Commission shall issue a positive determination if it finds that:

- the area in which the proposed activity will occur is an area subject to protection under the Bylaw and
- that the activity which is proposed is deemed to affect one or more of the interests protected under the Bylaw or
- The activity may have a significant or cumulative effect upon the resource area or interests protected under the bylaw.

None of the proposed activity shall commence until the activity has been approved under a Notice of Intent and all appeal periods have expired.

C. Negative Determination of Applicability

The Commission shall issue a negative determination if it determines that the area in which the proposed activity is to take place is not subject to protection under the Bylaw or that the proposed activity is not deemed to affect one or more of the interests protected by the Bylaw. The approved work may commence after 10 days from the date the Negative Determination is issued or delivered providing no notice of appeal has been received by the applicant or the Commission or no notice of a superceding order from the DEP has been received by the applicant or the Commission.

D. Negative Determination of Applicability with Conditions

The Commission may issue a negative determination with conditions attached, if it determines that with said additional conditions, the proposed activity will not affect one or more of the interests protected under the bylaw. Said conditions shall be strictly followed. Failure to follow said conditions may cause the revocation of the Negative Determination and the Commission or its agent may order all activity to cease, at which time the applicant shall cease the activity until the conditions are followed or a Notice and Intent and subsequent Order of Conditions is received by the applicant under section 3.04 et seq.

E. Appeal of Determination

If there is an appeal of the Determination under the Bylaw under the Massachusetts Rules of Civil Procedure, no activity may commence until the Courts have rendered a final decision and all appeal periods have expired.

F. Expiration of Determination

The Determination of Applicability shall expire three years from the date it is issued. The approved activity must be completed within those three years. The Building and/or Board of Health Permit must be obtained within two years from the date the Determination of Applicability is issued.

G. Violation of Bylaw or Failure to Comply

Any violation of the Bylaw or failure to comply with the Conditions of the Determination of Applicability may result in the revocation or modification of the Determination of Applicability, Enforcement Proceedings or Prohibition of the Building or Occupancy Permits and/or Board of Health Certificate of Compliance.

3.04 Notice of Intent

A. Notice of Intent

Any person who proposes to do work that will remove, fill dredge, build upon, drain, or alter any Area Subject to Protection under the Bylaw shall submit, by certified mail or hand delivery to the office of the Conservation Commission, a Notice of Intent and other application materials in accordance with the submittal requirements in this section.

B. Submittal Requirements

1. Two (2) copies of all forms and plans including a completed Notice of Intent form, dated and signed by the applicant or their representative and the owner of record.
2. Definitive plans, hand drawn or engineered as required, dated and signed by the applicant or engineer with his stamp.
3. Locus plan: 8 ½" x 11" section from a USGS quadrangle map with the area circled
4. List of abutters as defined by section 1.05
5. Two (2) copies of the completed notification to abutters form.
6. A signed property accesses authorization form.
7. The correct fee for advertisement of the notice in the local newspaper.
8. The correct filing fee.

C. Special Requirements for Certain Types of Projects

1. The Commission shall require plans by a registered professional engineer for the following types of projects within a jurisdictional area:
 - commercial buildings or additions and/or their associated landscaping
 - single family dwellings
 - septic systems including alterations, repairs or new construction
 - subsurface sewers
 - sewerage treatment facilities
 - roadways
 - parking facilities
 - commercial landscaping
 - bridges
 - dams
 - wells, public or private
 - wetland crossings
 - wetland replication or restoration
 - subdivisions for housing
 - forestry plans
 - farm plans
 - any activity on or in a wetland or body of water

- wetland flag or soil lines.
or any activity which the Commission deems likely to have a significant or cumulative effect upon wetland values.
2. Prior to or during the public hearing process, the Commission may also require the area to be staked, to receive drainage and/or hydrological studies and calculations, habitat studies, detailed replication plans including narratives, wildlife studies or any other information necessary to determine if the area or work is significant to or may have a cumulative effect upon the resource areas protected by the Bylaw prior to the closing of the public hearing.

D. Portion of Project in Area Subject to Protection

In the event that only a portion of a proposed project or activity lies within an Area Subject to Protection under the Bylaw, all aspects of the project must be described in the detail required under Article 4 provided also that in such circumstances, the Notice shall also contain descriptions and calculations of peak flow and estimated water quality characteristics of discharge from a point source (both closed and open channel) when the point of discharge falls within an Area Subject to Protection under the Bylaw.

E. Notification to Abutters

Prior to submittal, the Applicant shall contact the Commission or its agent to determine the date and time of the hearing on the petition. Using the form provided by the commission, the applicant shall notify all abutters, as defined in sec. 1.05 at the time of filing the Notice of Intent. Said form shall give the date and time of the hearing, map and lot # of the parcel in question in accordance with the records of the Swansea Board of Assessors, name of the applicant and a description of the area or project. Proof of the notification to abutters shall be submitted by filing copies of the certified mail receipts or signature on said notice and submission of the Notification of Abutters affidavit. Failure to notify abutters may result in the Commission's refusal to conduct the public hearing, require the continuance of the public hearing until all notifications have been made or issue a denial of the Notice of Intent.

F. Notification to Owner

If the applicant is not the owner of the property or the owner's representative, the applicant shall send a copy of the completed filing to the Owner of Record in accordance with the latest records of the Swansea Board of Assessor's office by certified mail at the same time as the Request for Determination is filed.

G. Copies to Other Town Boards or Departments

The applicant shall also provide copies of the Notice of Intent form and plans to the Swansea Board of Health, Building Inspector, and Planning Department.

H. Simultaneous Hearing under the Wetlands Protection Act

The Notice of Intent under the bylaw may be filed concurrently with and by using the same form as the Notice of Intent under the Massachusetts Wetlands Protection Act, M.G.L. c. 131 sec 40.

If the Notice of Intent is filed concurrently with a filing under the Wetlands Protection Act, then it shall be given the file number provided by the Department of Environmental Protection. If the Notice of Intent is filed under the Bylaw only, the Commission shall give the Notice of Intent a file number. The issuance of a file number shall not imply that the Notice of Intent, plans and supporting documents have been judged adequate for the issuance of an Order of Conditions.

I. Hearings

The Commission shall conduct a public hearing within 21 days of the receipt of a completed Notice of Intent. If more information is needed or the Commission needs to conduct an on-site inspection, the Commission may continue the hearing for receipt of the requested information or to conduct the on-site inspection. Thereafter, the hearing may be continued with the mutual agreement of the Commission and the applicant. Upon receipt of all information requested, the Commission shall close the hearing.

3.05 Order of Conditions

A. Issuance of Order of Conditions

The Commission shall issue an Order of Conditions in accordance with its majority vote within 21 days from the date of the public hearing for the Notice of Intent was closed, providing all payments of fees and expenses have been paid and all necessary information has been received and evaluated.

B. Commencement of Work

If the Commission issues an Order of Conditions, the approved work may commence within 10 days from the date the Order of Conditions is issued or delivered providing no appeal or notice of appeal has been received or no notice of a superceding order from the DEP has been received.

If the Order of Conditions is appealed to Superior Court under the appeal provisions of the Bylaw, no work may commence until a final decision has been rendered by the Courts approving the activity and all further appeal periods have expired.

C. Denial of an Order of Conditions

If the Commission issues a denial of the Order of Conditions no activity within the wetland or buffer zone is allowed or permitted. If the Denial of an Order of Conditions is appealed to Superior Court, no activity may commence until a final decision has been rendered by the Courts approving the activity and all further appeal periods have expired.

D. Order of Conditions

1. The Order of Conditions shall contain those Conditions, which the Commission deems necessary in order to protect the interests and the areas subject to protection.
2. The Commission may reserve the right to require additional Order of Conditions upon receipt of additional information, which will supplement the Notice of Intent.
3. The Commission may also issue additional conditions on the work if it determines that the interests are not protected.

E. Recording of the Order of Conditions

The original copy of the Order of Conditions shall be recorded in the Land Court or the Registry of Deeds in the appropriate District at the expense of the applicant. The Commission shall record the original, sending a copy, via certified mail, to the applicant, and the owner. When the original is returned by the Registry or Land Court, it shall be forwarded to the applicant.

F. Expiration of the Order of Conditions

The Order of Conditions shall expire three years from the date it is issued. The Building and/or Health Inspector Permits must be obtained within two years from the date of issuance. Approved activity must be completed within three years from the date the Order of Conditions was issued.

G. Violation of the Order of Conditions

Any violation of an Order under this Bylaw and failure to comply with the Conditions of the Order of Conditions may result in the revocation or modification of the Order of Conditions, Enforcement Proceedings, prohibition of the Building and/or Occupancy Permits or the Board of Health Certificate of Compliance or denial of the Conservation Commission's Certificate of Compliance.

H. Concurrent Issuance of Order of Conditions

Any Order of Conditions issued under the Bylaw may be issued concurrently with and by using the same form as an Order of Conditions under the Massachusetts Wetlands Protection Act, M.G.L. c 131 sec. 40.

3.06 Amendment to the Order of Conditions

A. Submission

An applicant may amend a Notice of Intent, within one year of the date of the Order of Conditions was issued, by submitting a written request which states the changes which are requested to be made for the following reasons:

1. minor modifications of the project are necessary due to subsurface conditions
2. requirements of other State or local permits issued subsequent to the issuance of the Order of Conditions
3. other significant reasons, which the Commission deems appropriate to require or allow an Amendment

B. Procedures

An applicant shall follow all of the same procedures as required for the filing of the Notice of Intent including notification to abutters and public notice, except that no filing fee is required.

C. Additional Activities

The Commission shall not accept an Amendment to the Order of Conditions if the Amendment includes additional buildings, projects or activities which were not included in the original Notice of Intent.

3.07 Extension of Order of Conditions

A. Request for Extension of the Order of Conditions

At least 30 days prior to the expiration of the Order of Conditions, an applicant may request, in writing, an extension of said Orders of Condition, provided the applicant has applied for and received all other permits and has substantially completed the work.

B. Length of Extension

The Order of Conditions may be extended for one year from the date the Order of Conditions was issued, at the discretion of the Commission, one time. Said extension shall be by a majority vote of the Commission. An on-site visit, re-flagging or additional information may be required by the Commission, and the Order of Conditions may be changed or modified.

C. Denial of Extension

The Commission may deny the extension by a majority vote of the Commission. The Commission shall notify the applicant in writing of its decision and state the reason(s) for the denial. The Commission shall deny the Extension request if:

1. the extension request is received less than 30 days prior to the expiration date of the Order of Conditions
2. the work has not been done in accordance with the Order of Conditions or approved plans
3. any activity has been done in violation of the Bylaw
4. incomplete work is causing damage to the interests identified in the Bylaw
5. new information has become available to the Commission which was not available at the time of issuance of the Order of Conditions which indicates the Order of Conditions is not adequate to protect the interests identified in the Bylaw

6. no work has begun on the project except where such failure is due to an unavoidable delay such as appeals or obtaining necessary permits through other boards

D. Applicant's Responsibility

It is the applicant's responsibility to request an extension in writing and in a timely manner.

E. Concurrent Extension

The extension of an Order of Conditions under the Bylaw may be issued concurrently with and by using the same form as an Extension Permit of an Order of Conditions under the Wetlands Protection Act, M.G.L. c. 131 sec. 40.

3.08 Certificate of Compliance and Partial Certificate of Compliance

A. Request

Upon completion of all of the work approved and ordered in the Order of Conditions and shown on the approved plans and documents of record, the Applicant may request in writing a Certificate of Compliance.

B. Requirements

Unless waived by a majority of the Commission, the request shall include an "As-built Plan" by a registered professional engineer indicating any deviation from the approved plans and Order of Conditions and a narrative, which shall include the reasons for those deviations.

As an alternative, the Commission may require a letter signed, stamped and dated by either a professional engineer or registered land surveyor certifying that the project was constructed in accordance with the approved plans and the Order of Conditions.

C. Special Requirements for Sewer/Septic Repairs and New Systems

For sewer/septic repairs and new systems, the Commission shall also require a written certification from the installer that the old system was properly abandoned and the new system was installed in accordance with the approved plans and the Order of Conditions.

D. On-site Visit

Prior to the issuance of a Certificate of Compliance, the Commission or its agent may conduct an on-site visit to determine the extent of the project completion and compliance with the Order of Conditions.

E. Partial Certificate of Compliance

If the majority of the Commission determines that the work is substantially completed, but there are still minor requirements to be completed, according to the plans and the Order of Conditions, the Commission may issue a Partial Certificate of Compliance. This Partial Certificate shall indicate which portions of the project and which orders still must be complied with.

F. Time Period for Issuance of the Certificate of Compliance

The Commission shall approve or deny a Full Certificate of Compliance or issue a Partial Certificate of Compliance within 21 days of receipt of the written request. The applicant and the Commission may request a continuance of the request when such a continuance may allow correction by the applicant of minor problems which can be corrected or completed in a short period of time.

G. On-going Conditions in Perpetuity

Some conditions in the Order of Conditions may be considered on-going conditions, which shall continue in perpetuity. The Commission shall identify and include these conditions as such on the Partial Certificate of Compliance or the Certificate of Compliance.

H. Concurrent Issuance of the Certificate of Compliance or Partial Certificate of Compliance.

The Certificate of Compliance or Partial Certificate of Compliance under the Bylaw may be issued concurrently with and using the same form as the Certificate of Compliance under the Massachusetts Wetlands Protection Act, M.G.L. c 131 sec. 40.

ARTICLE 4 GUIDELINES FOR PLANS AND FORMS

4.01 Standards for Completeness of Forms and Plans

A. General

Forms and plans shall describe the proposed activity and its effect on wetlands, flooding, and off-site runoff. The following items are set out as a minimum standard and are not intended to be a complete and final presentation as to what the form or plan should include. The applicant may submit or be required to submit to the Commission any further information which will assist in the review and which is deemed necessary to determine the proposed effect on the interest protected by this Bylaw. All applications should include the original material and one (1) copy.

All forms, plans, drawings, sketches, and calculations shall be dated and signed by the person responsible for their preparation. Plans and drawings involving the practice of surveying or engineering shall be stamped and signed by the appropriate design professional(s) who shall be registered in the Commonwealth of Massachusetts. The Swansea Conservation Commission reserves the right to request additional narrative information on the forms or other information on the plans.

B. Narratives

Narratives shall include a discussion of the proposed activity and its impacts on the wetland functions and values (or interests). Article 1 Section 1.11 et seq. lists the performance standards which must be addressed. One word answers such as none or minimal may not be accepted. If the applicant contends that there will be no effect on the interests which the Bylaws protects, the applicant must demonstrate to the Commission's satisfaction why there will be no effect.

C. Plans

1. All plans submitted under any section of these rules and regulations shall be of adequate size, scale and detail to completely and accurately describe the site and the work proposed.
2. All plans, calculations or supporting data submitted under the provisions of the Notice of Intent, and Certificate of Compliance sections of these Rules and Regulations shall meet the following requirements:
 - a. Maximum sheet size shall be 24" x 36" and minimum sheet size shall be 8 ½" x 11".
 - b. Where more than three sheets are required to describe the proposed work, an additional sheet indexing all other sheets and showing a generalized composite of all work proposed with the Buffer Zone and Areas Subject to Protection under the Bylaw
 - c. For subdivisions of land, the first sheet shall clearly show the entire subdivision and all the proposed lots and roadways. This scale may be greater than 1" – 50'.
 - d. Applicant shall color code at least one plan to be presented to the Commission which shall be color coded as follows:
 - Edge of all resource areas and wetlands, flood plains, and other freshwater wetland areas - green
 - Water bodies, including vernal pools - blue
 - Buffer Zones -orange
 - Riverfront areas including 1st and 2nd hundred foot zones –violet and violet crosshatch
 - Aquifer Protection Zone - pink
 - Resource areas to be altered shall be crosshatched in the appropriate color
 - Replication areas – green crosshatch
 - Upland areas between BVWs in yellow crosshatchOther colors may be used to designate other areas which are important for the board to make its determination.
 - e. Scale shall be not more than 1" = 50', 1" = 40' is recommended
 - f. Where plans are reduced, display graphical scale
 - g. Lines, symbols, clouding, colors, etc. shall be identified and referenced in a legend
 - h. North arrow
 - i. USGS locus map 1" = 1000'
 - j. Locations, elevation and datum of the benchmark used for survey;
 - k. Bearings and distances of all property lines with existing and proposed boundary control points

- l. Existing contour lines at contour intervals no greater than two feet up to the abutters' property lines
- m. Approximate contour lines, at contour intervals no greater than five feet, of abutting properties for a distance of 100 feet
- n. Proposed contour lines up to the abutters' property line, at contour intervals no greater than two feet
- o. Wetland line indicated by numbers and flags and the type of resource area named, i.e. Bordering Vegetative Wetlands, River, Pond etc.
- p. Edge of wetland, flood plain, 100 foot buffer zone and 200 foot riverfront area including division between the 1st and 2nd hundred feet;
- q. Replication areas shall be clearly identified including the existing and proposed elevations
- r. Replication areas shall include specific locations of plants, their species and a planting schedule.
- s. Locations, inverts, sizes, and slopes of existing and proposed culverts, pipes, catch basins, detention facilities and other storm drainage structures
- t. Existing and proposed locations, rim elevations and invert elevations of all catch basins, drains, culverts and other drainage structures immediately upstream and downstream of the site, as well as on-site
- u. Proposed on-site pollution control devices such as oil/gas separators, oil absorption pillows, hooded catch basins, flow dissipaters, detention basins, berms, and vegetative buffers
- v. Location and details of erosion sedimentation control devices both temporary and permanent
- w. Proposed lowest elevations for cellars or floors
- x. Calendar dates, locations of samplings, and results including but not limited to, groundwater tests, percolation tests, soil borings, soil logs, habitat and/or wildlife evaluations and water testing
- y. Soil characteristics in representative parts of the property as identified in the Bristol County Soil Conservation Survey and/or as field identified
- z. Typical cross section of bodies of water; if the width varies, the locations of the variance
- aa. Existing major features of the property such as structures, including, but not limited to, buildings, foundations, stone walls, wells (public or private), embankments, stockpiles of fill, sea walls, piers, wharves, riprap, cement area, asphalt areas, pools, bridges, trails, historic areas, fuel storage tanks, trees exceeding 12" caliper, vegetation
- bb. Existing and proposed locations of containment units for solid waste, chemicals, liquid waste, radioactive materials, explosives and other materials or substances as required by the Commission.
- cc. Abutters' names, with maps and lot numbers of property
- dd. Revisions should be demarcated by clouding
- ee. Title block which shall be located in the bottom right-hand corner and include identification of project, name(s) of owner, house number if applicable, assessor's map and lot numbers, names of existing or proposed streets, name of sub-division date, revision dates and scale
- ff. If the entire parcel is not shown on the plan, the plan shall include a notation that the area not shown has not been addressed by the Request for Determination or Notice of Intent.
- gg. The following NOTE shall be included on the plan:

ATTENTION: The work proposed on this plan is allowed by an Order of Conditions issued by the Swansea Conservation Commission, which includes strict standards and requirements. No work is to proceed until the contractor has reviewed and agreed to abide by all the conditions therein by notation on said plan.

hh. The Professional Engineer's \ Registered Land Surveyor's \ Sanitary Engineer's name, wet stamp, signature and date signed.

D. Calculations/Technical Data

(reserved)

4.02 Certification of Plans

The Commission shall require proper certification of construction documents by a PE (Registered Professional Engineer qualified in the branch of civil engineering or environmental engineering), a RLS (Registered Professional Land Surveyor) or RS (Registered Sanitarian) based on the following list:

- Engineering Design PE
- Site Plans PE & RLS
- Subsurface Sewer Design PE
(over 5000 GPD)
- Subsurface Sewer Design PE & RS
(under 5000 GPD)
- Percolation Tests PE
- Definitive Subdivision Plans PE & RLS

4.03. Wetland Crossings

A. Three Copies of Plans Required

If a Notice of Intent includes crossing of a wetland, the applicant shall submit three (3) copies of the Notice of Intent plans, calculations, replication plans, narratives and supporting data to the Commission.

B. Requirement of Proof of No Other Access

The applicant shall also provide proof that there is no ability to access the upland section of their property except through the crossing of the wetland. Said proof shall include letters from the abutting property owners indicating they will not grant access through their property.

4.04 New Docks

If the Notice of Intent is for construction of a new dock, the applicant shall also submit a letter signed by the harbor master certifying that the proposed dock does not interfere with the public's right of access to the channel, nor will it interfere with the abutting owners' rights to access the channel via their docks or property. It shall also include a narrative as to how the work will be performed.

4.05 Work Within a Wetland

If the Notice of Intent includes work within a wetland, the applicant shall also submit two (2) copies of a narrative which shall explain how the work will be performed; a replication plan including details of types and locations of plant species which will be planted, wetland assessment, and a wildlife assessment in accordance with MGL c 131 sec 40, and 310 CMR 10:59 and 10:60.

4.06 Work Within a Waterway

If the Notice of Intent includes work within a waterway, the applicant shall also submit two (2) copies of a narrative, which shall explain how the work will be performed, and all methods used to mitigate interference or damage to the jurisdictional areas.

4.07 Replication Projects for Bordering Vegetative Wetlands

All replication plans shall include the following:

1. In-kind replication of the same type of system
2. Replication of an area at least 2 times (old 1.5) the area to be disturbed
3. Detailed plans which shall include construction schedule, planting plan, monitoring and reporting plan
4. Field delineation of existing wetlands, including plants and proposed replication areas
5. Land and groundwater elevations of the area to be replaced and the area proposed after grading
6. Plans, analyses, construction supervision by experts
7. Transfer of topsoil from wetland being filled which will contain seeds, roots and tubers,
8. Use of only native plants and in-kind plants to the wetland being disturbed
9. Replication at first stage of project
10. Siltation barriers to prevent siltation and show limits of work
11. Progress reports at end of each growing season
12. Notice to Comission of major steps

4.08 Septic Systems

A. New Septic Systems

For all construction of new septic systems on undeveloped land or where there was no system to support any existing development, the leaching field / drainage area must be more than 100 feet from any wetland, resource or jurisdictional area defined in section 1.03A.

B. Replacement of Existing Septic Systems

For repairs and replacement of previously existing septic systems and/or cesspools, the leaching field / drainage area must be as far away as possible from any wetland, resource or jurisdictional area defined in section 1.03A. Repairs to a septic system to

the original house to a lot which has been subdivided will require the new system to be at least 100 feet from any wetland. (Amended February 23, 2004)

4.09 Subdivisions and Site Plans

All plans submitted to both the Conservation Commission and the Planning Board for a subdivision of land or a site plan review shall be consistent. Submission of different plans to the individual boards for the same project is prohibited. If either board requires additional plans or revisions of said plans, then the applicant must file said plans with the other board(s).

ARTICLE 5 STORMWATER MANAGEMENT GUIDELINES & REQUIREMENTS

5.01 Application

New development increases impervious surfaces, thereby altering the natural drainage features, increasing peak discharge rates and volumes and reducing groundwater recharge which maintains wetlands and baseflow in streams. Development also increases the concentrations and types of pollutants such as nutrients, solids, metals, salts, pathogens, pesticides and hydrocarbons.

5.02 Exemption

Emergency repairs to existing roads, including repaving, and its drainage system within the existing layout of the roadway, are exempt from these standards.

5.03 Standards

The following is required for all work and projects involving land which is one (1) acre or more, and for all projects which include roadways, subdivisions for single family homes, parking plans, industrial and commercial .development

1. All projects must be designed and constructed to meet the volume and rate of the flow of water from the one-hundred year frequency storm event
2. No new stormwater outfalls may discharge untreated stormwater directly into or cause erosion in, wetlands or waters of the Commonwealth.
3. Systems must be designed so that the post-development peak discharge rates do not exceed the pre-development peak discharge rates
4. Loss of recharge to groundwater should be minimized through use of infiltration measures to the maximum extent practicable, approximating the predevelopment recharge.
5. For new development, systems must remove 80 percent (80%) of the average annual post-development load of Total Suspended Solids (TSS). Using Best Management Practices (BMPS) listed in DEP's Stormwater Management Technical handbook creates a rebuttable presumption that the 80 percent standard is met.

6. Erosion and sedimentation controls must be used during construction and work on the land.
7. Any analysis must be accompanied by a plan or plans of the total tributary area indicating catchment and sub-catchment boundaries, hydrologic soils classifications and cover types for both pre- and post- development conditions. If off-site areas are included in the analysis and detailed topography is not available, they may be indicated with site boundaries on a copy of the appropriate USGS quadrangle sheet.
8. Primary catchment delineation should be based on specific point or area of discharge from the area of analysis.
9. Although catchment and sub-catchment boundaries within the area of analysis may be realigned due to development, the total area and perimeter of the analysis must be the same for pre- and post-development. Any modifications of catchment boundaries which is to be accomplished by regrading in order to satisfy the attenuation requirement must be supported by proposed grading plans or other appropriate documentation.
10. The determination of catchment time of concentration must include an accurate estimate and evaluation of the various forms of sheet flow, shallow concentrated and open channel. Assumptions of sheet flow distances in excess of 300 feet should be substantiated.
11. Natural or man-made ponding areas along the flow route can substantially impact peak flow rates and lag time. A culvert or bridge can delay flow and reduce peak rates if there is a significant storage area available behind it. In such cases detailed storage routing procedures should be used.
12. Storm drainage conduits are not always installed coincident with surface flow paths. In some cases conduits may actually cross surface drainage divides. Drain inlets and conduits typically lack sufficient hydraulic capacity to handle major rainfall events. Therefore, the drainage analyses and resultant stormwater management system design must account for all runoff in excess of storm drain capacity.
13. The determination of storm runoff by any methodology cannot be considered exact. The hydraulic capacity of any system component, however accurately determined, may be compromised by blockage. Therefore, stormwater storage facilities proposed for the attenuation of peak flow rates should incorporate adequate freeboard and/or overflow capacity to minimize risk of failure or damage in the event that outlet capacity is reduced or if actual inflow exceeds design flows.
14. The Commission requires that the design of attenuation facilities take into account the potential development of the entire tributary watershed including off site areas. Even though facilities may be provided to attenuate the rate of discharge from upslope development, it will still cause an increase in the volume of runoff.
15. Since some runoff can be expected from all but the most permeable soils during significant rainfall, storage basin discharge due to infiltration during the storm normally cannot be substantiated. If such infiltration losses are to be assumed in design, they must be supported by appropriate data including existing and proposed soil profile and permeability evaluation of the involved surface and subsoils.
16. In order to facilitate the review, all calculations, hydrographs, details and similar supporting data should be included with the submittal. The submittal should also include a tabular comparison of pre- and post-development catchment areas,

cover complex numbers (CN), time of concentration (TC) and maximum runoff rates.

17. All supporting data, calculations and plans should prove that the design would accommodate the unimpeded and unobstructed flow of water during the 100-year frequency storm. This information should also include two cross-sections of the streambed, i.e. 20' each side (upstream and downstream). If the cross sections are the same, a typical cross section only may be submitted.
18. All stormwater systems must include information on operation and maintenance.

ARTICLE 6 FILING FEES, PERFORMANCE BONDS and CONSULTANTS FEES

6.01 Purpose

The purpose of the fee system is to defray the costs of administering the Bylaw, provide engineering and consultants services, requests for action from the Commission, or to secure and endure satisfactory performance of work required by any Permit.

6.02 Authority

- A. The filing fee schedule is promulgated pursuant to Section 4 of the Bylaw.
- B. The escrow account, performance bond or other security mechanism used to ensure satisfactory performance of work is promulgated in accordance with Section 10 of the Bylaw.

6.03 Time of Payment and Waiver of Fee

- A. At the time of submission of a Notice of Intent or a Request for a Determination, or other request, the applicant shall pay a filing fee.
- B. If a filing fee is concurrent with a filing under M.G.L. c. 131 sec 40, the Wetlands Protection Act and its regulations and there is a fee specified under those regulations, then the applicant shall only pay that fee. If the filing is under the Bylaw only, or if there is no fee under the Wetlands Protection Act, then the applicant shall pay the filing fee specified below in section 6.06.
- C. The filing fee shall be waived for a Notice of Intent, Request for Determination or other request filed by a government agency.

6.04 Disputes over Filing Fees

- A. Whenever the Commission or its agent determines that an inadequate fee has been paid, the time period for the Commission to act shall be stayed until the balance of the fee is paid.
- B. The applicant may appeal pursuant to the Massachusetts General Laws.

- C. The applicant may bring the matter to the Commission at a regular meeting prior to the filing of an application or other request for the Commission's approval under the Discussion section of these Rules and Regulations.

6.05 Amendments

These fees may be amended as allowed under section 4 of the Bylaw.

6.06 Filing Fee Schedule

A. Request for Determination

The filing fee shall be calculated by first determining the size of the property which is to be included in the Determination

Up to 10 acres	\$75.00
10 – 50 acres	\$200.00
More than 50 acres	\$400.00

B. Calculation Procedure for Notice of Intent Fee

- Step 1 – review plans and narrative to identify each activity in wetland resource areas and buffer zones.
- Step 2 – Determine the number of each activity associated with the project as provided in the Wetland fee Schedule under M.G.L. ch. 131 sec 40 as provided
- Step 3 – List the fee amount for each category of activity
- Step 4 – Determine the subtotal fee for each type of activity by multiplying the fee for the activity by the number of activities.
- Step 5 – Add the additional fee for each activity under the Swansea Wetlands Protection By-law as defined in Appendix B
- Step 6 – Add all of the subtotals identified in step 4 to determine the total fee.

C. Notice of Intent

See Appendix A

D. Certificates of Compliance \$55.00

E. Extension Requests - \$55.00

(Amended March 25, 2002)

6.07 Refund of Fee

If, at any time, the applicant withdraws the Notice of Intent or Request for Determination, which has been filed, there will be no refund of the fee, which was paid.

6.08 Consultants Fees

- A. As provided by M.G. L. Ch. 44 Sec.53G, the Swansea Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission for specific expert services deemed necessary to the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of their Wetlands Protection Act (M.G. Ch. 131 40 and the Town of Swansea Wetlands Protection Bylaw, Conservation Commission Act (MGL Ch. 40 sec. 8C, or any other state or municipal statute, bylaw or regulation as they may be enacted or amended from time to time.
- B. Funds received by the Conservation Commission pursuant to these rules shall be deposited with the Swansea treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the discretion of the Conservation Commission without further appropriation as provided in MGL Ch. 44 sec 53G. Expenditures from this account shall be made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant.
- C. Specific consultant services may include, but are not limited to resource area, survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands and environmental or land use law. The consultant shall be chosen by, and report only to, the Commission and or its Agent.
- D. The consultant shall be chosen in accordance with the written policy of the Swansea Conservation Commission.
- E. The Conservation Commission shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be charged, to the applicant, and a request for the payment of the fee in its entirety. Such notice shall be deemed to have been given on the date it was mailed or delivered, No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date the notice is given.
- F. The fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services.
- G. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to determine that the application is administratively incomplete (except in the case of an appeal). The Commission shall state such in a letter to the applicant, copied to DEP. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee.
- H. The applicant may appeal the selection of the outside consultant to the selectboard who may disqualify the outside consultant only on the grounds that the consultant has a conflict or interest or does not possess the minimum qualifications, The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. The applicant may not appeal on the

basis of the scope of the work and the amount of the fees. Such an appeal must be in writing and received by the selectboard and a copy received by the Conservation Commission within ten (10) days of the date consultant fees were requested by the Conservation Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.
(Approved and inserted 02-23-04)

6.09 Performance Bond

A. Security

The Commission may require the establishment of an escrow account or other security running to the benefit of the Town of Swansea, sufficient as to form and surety in the opinion of the Commission to secure faithful and satisfactory performance of work required by any permit in such sums and upon such conditions as the Commission may require.

Notwithstanding the above, the amount of such escrow account or security shall not exceed the estimated cost including inflation of the work required or the restoration of affected lands and properties if the work is not performed as required, whichever is greater. Forfeiture of any such escrow account or security shall be as detailed in M.G.L. c. 41 sec. 81U.

B. Replication Projects

For replication projects, the applicant shall provide an escrow bond for the duration of a monitoring program plus one (1) year to cover the correction of any deficiencies revealed by the program. Said bond shall, at a minimum, be equal to the initial cost of the replication.

EFFECTIVE BY VOTE OF THE SWANSEA CONSERVATION COMMISSION AFTER HEARINGS HELD ON JANUARY 23, 2001 AND JANUARY 30, 2001 AND VOTED JANUARY 30, 2001 AS AMENDED BY UNANIMOUS VOTE ON MARCH 25, 2002 AFTER PUBLIC HEARINGS ON MARCH 12, 2002 AND MARCH 25, 2002 AND AS AMENDED BY UNANIMOUS VOTE ON FEBRUARY 23, 2004, AFTER PUBLIC HEARINGS ON FEBRUARY 9, 2004 AND FEBRUARY 23, 2004.

APPENDIX A

NOTICE OF INTENT FEE SCHEDULE FOR FILINGS UNDER THE SWANSEA WETLANDS PROTECTION BYLAW

CATEGORY 1: Town Portion of State Fee under M.G.L. Ch. 131 sec 40 \$55.00 plus an additional \$75.00 Town only fee Total fee to Town of Swansea \$115.00

- a) Work on existing single family lot including pool, addition, deck
- b) Site work without a house
- c) Vegetation control
- d) Resource improvement
- e) Septic repair of existing house
- f) New agricultural or aquacultural projects

CATEGORY 2: Town Portion of State Fee under M.G.L. Ch. 131 sec 40 \$250.00 plus an additional \$115.00 Town only fee Total fee to Town of Swansea \$252.50

- a) Construction of a single family home (SFH)
- b) Parking lot
- c) Beach nourishment
- d) Electric generating facility activities
- e) Inland limited projects minus road crossings and agriculture
- f) Each crossing or driveway to a SFH
- g) Each point source discharge
- h) Control vegetation in development
- i) Water level variation
- j) Any other activity not in Category 1,3, 4, 5 or 6
- k) Water supply exploration

CATEGORY 3: Town Portion of State Fee under M.G.L. ch. 131 sec 40 \$525.00 plus an additional \$250.00 Town only fee Total fee to Town of Swansea \$540.00

- a) Site preparation (for development or commercial road
- b) Each building for development including site
- c) Road construction not crossing in driveway
- d) Hazardous cleanup
- e) Water supply development

CATEGORY 4: : Town Portion of State Fee under M.G.L. ch. 131 sec 40 \$725.00 plus an additional \$515.00 Town only fee. Total fee to the Town of Swansea 890.00

- a) Each crossing for development of commercial road
- b) Dam, sluiceway, tidegate (safety) work
- c) Landfills operation/closures
- d) Sand and gravel operation
- e) Railroad line construction
- f) Bridge
- g) Hazardous waste alterations to resource area
- h) Dredging
- i) Package treatment plant & discharge
- j) Airport tree clearing
- k) Oil and/or hazardous material release response actions

CATEGORY 5: Town Portion of State Fee is \$2.00 per linear foot under MGL Ch 131 40 and an additional \$1.00 per linear foot Town only fee Total fee \$3.00 per linear foot.

Work on docks, piers, revetments, dikes, etc (coastal or inland)
Total fee not less than \$100.00 or more than \$1,500.00

CATEGORY 6: Fee is \$1.00 per linear foot plus \$1.00 per linear foot town fee

Delineation of a Bordering Vegetative Wetland
Fee not to exceed \$100.00 for Single Family House or \$1,000 for all other activities

(Amended March 25, 2002)