

Bourne Conservation Commission
BOURNE WETLANDS REGULATIONS
August 31, 2000 (Revised January 18, 2024)

BWR 1.00: WETLANDS PROTECTION

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Part I: Regulations for all Wetlands

BWR 1.01 Introduction and Purpose

(1) Introduction. The Bourne Wetland Regulations, BWR 1.00, is promulgated by the Bourne Conservation Commission pursuant to the authority granted to them under the Bourne Wetlands By-law, Article 3.7 of the Town of Bourne By-laws. The BWR 1.00 shall complement Article 3.7 of the Town of Bourne By-laws, and shall have the force of law upon their effective date.

BWR 1.01 through 1.15 provide definitions and procedures. BWR 1.01 through 1.16 pertains to both inland and coastal areas subject to protection under Article 3.7 of the Town of Bourne By-laws. BWR 1.16 provides standards for work within those areas. A project may be subject to regulation under Article 3.7 of the Town of Bourne By-laws in which case compliance with all applicable regulations is required.

(2) Purpose. Section 3.7 of the Town of Bourne By-laws sets forth a public review and decision-making process by which activities affecting Areas Subject to Protection under Article 3.7 of the Town of Bourne By-laws are to be regulated in order to protect the following wetland resource values:

- public and private water supplies
- groundwater supplies
- flood control
- erosion and sedimentation control
- storm damage prevention
- pollution prevention
- fisheries and shellfisheries
- wildlife habitat
- recreation and/or commercial use

The purpose of BWR 1.00 is to define and clarify that process by establishing standard definitions and uniform procedures by which the Commission may carry out its responsibilities under Article 3.7 of the Town of Bourne By-laws.

BWR 1.00 is intended solely for use in administering Article 3.7 of the Town of Bourne By-laws; nothing contained herein should be construed as preempting or precluding more stringent protection of wetlands or other natural resource areas by other by-laws, ordinance or regulations.

BWR 1.02 Area of Jurisdiction (Resource Areas)

(1) Areas Subject to Protection Under Article 3.7 of the Town of Bourne By-laws. The following areas are subject to protection under Article 3.7 of the Town of Bourne By-laws:

(a) Any:

1. bank,
2. freshwater wetland,
3. coastal wetland,
4. beach,
5. dune,
6. flat,
7. marsh,
8. swamp,
9. wet meadow, or
10. bog

(b) Any:

1. creek
2. estuary,
3. stream,
4. pond, or
5. lake;

BWR 1.02 continued

- (c) The ocean;
- (d) Land under water bodies;
- (e) Riverfront Area;
- (f) Land subject to flooding;
- (g) Land subject to coastal storm flowage, but not including that portion of a A- zone greater than 100 feet from the areas listed in BWR 1.02(1)(a) through (f)
- (h) Land within 100 feet of the areas listed in BWR 1.02(1)(a) through (f).
- (i) Land within 200 feet of the areas listed in BWR 1.02(1)(a) through (f) when in an ACEC or the BEOD.

(2) Activities subject to regulation under the By-law

(a) Activities within resource areas: any activity proposed or undertaken within an area specified in BWR 1.02(1) which, in the judgment of the Commission, will remove, fill, dredge, alter or cause adverse effect to an area subject to protection under the By-law is subject to regulation under the By-law and requires the filing of a Notice of Intent. If the applicant is in doubt as to whether a Notice of Intent shall be required by the Commission, a Request for a Determination of Applicability should be filed (BWR 1.05(4)(a)).

(b) Activities Outside the Areas Subject to Protection Under Article 3.7 of the Town of Bourne By-laws: any activity proposed or undertaken outside the areas specified in BWR 10.02(1) is not subject to regulation under Article 3.7 of the Town of Bourne By-laws, and does not require the filing of a Notice of Intent unless and until that activity actually alters an Area Subject to Protection Under Article 3.7 of the Town of Bourne By-laws referenced in BWR 1.02(1)(a) through (i).

In the event that the Commission determines that such activity has in fact altered an Area Subject to Protection Under Article 3.7 of the Town of Bourne By-laws referenced in BWR 1.02(1)(a) through (h), it shall impose such conditions on the activity or any portion thereof as it deems necessary to contribute to the protection of the wetland resource values identified in Article 3.7 of the Town of Bourne By-laws.

- (3) Notwithstanding the provisions of BWR1.02 (1) and (2), any fresh water wetland, bank, land under waterbodies, land subject to flooding created for the purpose of stormwater management pursuant to Article 3.7 of the Town of Bourne By-laws, shall not require the filing of a Notice of Intent or a request for Determination of Applicability to maintain the stormwater management system, provided that the work is limited to the maintenance of the stormwater management system and conforms to a Permit issued after August 31, 2000, and that the area is not altered for other purposes.

BWR 1.03 General Provisions

(1) Burden of Proof.

Any person who files a Notice of Intent to perform any work within an Area Subject to Protection under Article 3.7 of the Town of Bourne By-laws has the burden of demonstrating to the Commission:

- (a) that the area does not play a role in the protection of any of the wetland resource values identified in Article 3.7 of the Town of Bourne By-laws: or
- (b) that the proposed work will contribute to the protection of the wetland resource values identified in Article 3.7 of the Town of Bourne By-laws by complying with the general performance standards established in the By-law or BWR1.00 for that area or activity.

- (2) Burden of Production. The burden of production means having to produce at least some credible evidence from a competent source in support of the position taken.

- (3) Where any section of BWR 1.00 provides that a proposed project "may be permitted" in certain circumstances, no such project shall be undertaken until all of the usual procedures required by Article 3.7 of the Town of Bourne By-laws and BWR1.00 have been followed and a Permit has been issued for the work. The Commission shall impose such conditions on such projects as may be necessary to contribute to the protection of the wetland resource values of Article 3.7 of the Town of Bourne By-laws.

BWR 1.04 Definitions

A-Zone (including A-, AE-, AI-30, & A99) means those portions of Land Subject to Coastal Storm Flowage which are subject to inundation by types of 100 year flooding where stillwater flooding predominates. The landward boundary of the A-zone within Land Subject to Coastal Storm Flowage shall be determined by reference to base flood elevation on the most recently available flood data prepared for the Town of Bourne under the National Flood Insurance Program. The boundaries determined by the base flood elevation and a topographical plan of the parcel performed by a registered engineer or other professional competent in such matters and shall be presumed accurate.

ACEC means an Area of Critical Environmental Concern established pursuant to 301 CMR 12.00

Adjoining Land Areas means the land 100-ft. back as measured horizontally from the boundary of any Wetland Resource Area not in an area designated by the Commonwealth of Massachusetts as an Area of Critical Environmental Concern (ACEC) or the Bourne Environmental Overlay District (BEOD). In the ACEC and/or the BEOD, "Adjoining Land Areas" shall mean the land 200-ft. back as measured horizontally from the boundary of any Wetland Resource Area. This area is hereafter referred to as the Buffer Zone.

Adverse Effect means any change in the quality of a Wetland Resource Area that causes a diminishment in its ability to provide the Wetland Resource Values protected by the By-law.

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

- (a) removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- (b) changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- (c) drainage or other disturbance of water level or water table;
- (d) dumping, discharging or filling with any material which may degrade water quality;
- (e) placing of fill, or removal of material, which would alter elevations;
- (f) driving of piles, erection or repair of buildings, or structures of any kind;
- (g) placing of obstructions or objects in water;
- (h) destruction of plant life, including cutting of trees;
- (i) changing temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
- (j) any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater;
or
- (k) application of pesticides or herbicides.

Applicant means any person who files a request for determination of applicability or Notice of Intent, or on whose behalf such a request or application is filed.

Area Subject to Protection Under the By-law means any area specified in BWR 1.02(1)

BEOD means the Bourne Environmental Overlay District

Bank (coastal) is defined in 310 CMR 10.30

Bank (inland) is defined in 310 CMR 10.54

Beach (coastal) is defined in 310 CMR 10.27(2)

Bog is a type of freshwater wetland.

Boundary means the boundary of a resource area.

Bourne Environmental Overlay District means that certain tract of land within the Town of Bourne that is bounded by the Plymouth/Bourne town line, Route 3, the Cape Cod Canal and Route 25.

BWR 1.04 continued

By-law means Article 3.7 Wetland and Natural Resource Protection By-law of the Town of Bourne.

Certificate of Compliance means a written determination by the Commission that work or a portion thereof has been completed in accordance with a Permit.

Coastal Wetlands means any marsh, swamp, meadow, bank, flat or other lowland subject to tidal action.

Commission means the Conservation Commission of the Town of Bourne.

Compliance -A project is in compliance with these regulations and a Certificate of Compliance will be issued when the requirements set forth in BWR 1.05 (11) have been fulfilled (i.e., project is consistent with plans submitted and Permit issued).

Conditions means those requirements set forth in a written Permit issued by the Commission for the purpose of permitting, regulating or prohibiting any activity that remove, fill, dredge, alter or cause adverse effect to an Area Subject to Protection Under the By-law. [See also BWR 1.05(7).]

Conservation Commission Agent means the duly authorized representative of the Commission, with the authority to carry out certain of the Commission's functions. These shall include, but not be limited to, carrying out site visits, determination of application completeness, the issuance of Cease and Desist Orders, and reports to the Commission.

Creek means the same as a stream, as defined in BWR 1.04.

Date of Issuance means the date a Permit is mailed, as evidenced by a postmark, or the date it is hand delivered, as evidenced by a signed receipt.

Determination.

- (a) Determination of Applicability means a written finding by the Commission as to whether a site or the work proposed thereon is subject to the jurisdiction of Article 3.7 of the Town of Bourne By-laws.
- (b) Determination of Significance means a written finding by the Commission, after a public hearing, that the area on which the proposed work is to be done, or which the proposed work will alter, is significant to one or more of the wetland resource values identified in Article 3.7 of the Town of Bourne By-laws. It shall be made as part of the Permit.
- (c) Notification of Non-Significance means a written finding by the Commission, after a public hearing, that the area on which the proposed work is to be done, or which the proposed work will alter, will not have a significant or cumulative effect on any of the wetland resource values of Article 3.7 of the Town of Bourne By-laws.

Dune means coastal dune, as defined in 310 CMR 10.28(2).

Eelgrass Beds means those areas where the marine substrate is populated by eelgrass (*Zostera marina*) in quantities considered significant to shellfish habitat as determined by DMF and/or Bourne DNR. Destruction of such beds is prohibited.

Erosion means the wearing away of the land by running water, wind, ice, or other geological agents.

Erosion and Sedimentation Control means both the ability of the Wetland Resource Area to perform these functions and the responsibility of the project applicant to propose a design that incorporates these controls into the plan to prevent damage to the wetland resource area, buffer zone or abutting properties from erosion/sedimentation and water displacement caused by the project. Furthermore, each proposed project must be designed to prevent damage to the wetland resource area due to scouring, propeller wash/shear, re-suspension of sediments and from increased wave energy. Projects shall be designed to cause no adverse effect on significant shellfish habitat and/or eelgrass beds.

Extension Permit means a written extension of time within which the authorized work shall be completed.

FEMA means the Federal Emergency Management Agency.

Fill means to deposit any material so as to raise an elevation, either temporarily or permanently.

BWR 1.04 continued

FIRM means the most recent Federal Insurance Rate Map of the Town of Bourne.

Fisheries and Shellfisheries means all fish and shellfish found in fresh, salt or brackish waters and any organisms (including plants) that make up part of the food chain/web of such animals regardless of their commercial value. The By-law requires that a project be designed so as not to contaminate, damage or impair fish/shellfish, its food supply, habitat, or water supply. All projects proposed in public wetland resource areas must meet the performance standard of no adverse effect.

Flat is defined in 310 CMR 10.27(2)(b).

Flood Control means the ability of the Wetland Resource Area to prevent and/or reduce flooding and flood damage.

Freshwater wetland means a Wetland Resource Area that due to its vegetation, soils, and/or hydrology has at least one of the following characteristics:

- a. a wetland plant community,
- b. holds enough water to provide a breeding habitat for certain water dependent fauna species, or
- c. 50% or more of the vegetational community is composed of wetland plant species.

General Performance Standards means those requirements established by BWR 1.00 for activities in or affecting each of the Areas Subject to Protection Under the By-law, Article 3.7 of the Town of Bourne By-laws.

Groundwater Supplies means any water below the earth's surface in the zone of saturation below the Wetland Resource Area or below the Buffer Zone.

Hardship means the application of Article 3.7 of the Town of Bourne By-laws to a particular piece of property, evaluated in its totality, owing to the unique characteristics of the property, that is unduly oppressive, arbitrary or confiscatory and would involve substantial economic loss to the applicant because of the literal enforcement of the By-law provided that the conditions and characteristics of the property are not the result of the actions of the applicant, or owner, or their agents, predecessors, successors or assignees.

Impair means to make or cause to become worse; weaken or damage.

Isolated Land Subject to Flooding is defined in 310CMR 10.57(2)(b).

Lake means any open body of fresh water with a surface area of ten acres or more, and shall include great ponds.

Land Containing Shellfish is defined in 310 CMR 10.34(2)

Land Subject to Coastal Storm Flowage is defined in 310CMR 10.04

Land Subject to Flooding is defined in 310 CMR 10.57(2).

Land Subject to Tidal Action means land subject to the periodic rise and fall of a coastal water body, including spring tides.

Land Under Salt Ponds is defined in 310 CMR 10.33(2).

Land Under Water bodies and Waterways is defined in 310 CMR 10.56(2)

Limit of Work means the boundary beyond which no work maytake place.

Marina District shall consist of all the "pier" structures as defined in BWR 1.16(1)(b) and the mooring field (as approved by the Bourne Department of Natural Resources, Massachusetts Department of Environmental Protection Chapter 91 License, and the US Army Corps of Engineers Permit) used for non-residential purposes.

The constraints mentioned in BWR 1.16 (g) "Applications for Small Residential Piers in Velocity Zones (SR V-zone piers)" shall not apply to commercial, educational, or governmental entities.

Other restrictions in BWR 1.16(e) "General Performance Standards for all Piers" can be waived by the Bourne Conservation

BWR 1.04 continued

Commission on a case-by-case basis.

The following are considered a “Marina District”: Waterside non-residential facility that has piers, docks or moorings and other facilities for boats. Examples include, but are not limited to, Kingman Yacht Center, Taylor Point Marina and Massachusetts Maritime Academy.

Marsh is a type of freshwater wetland.

Mean High Water Line means the line where the arithmetic mean of the high water heights observed over a specific 19-year metonic cycle (the National Tidal Datum Epoch) meets the shore and shall be determined using hydrographic survey data of the National Ocean Survey of the U. S. Department of Commerce.

BWR 1.04 continued

Mean Low Water Line means the line where the arithmetic mean of the low water heights observed over a specific 19-year metonic cycle (the National Tidal Datum Epoch) meets the shore and shall be determined using hydrographic survey data of the National Ocean Survey of the U. S. Department of Commerce.

Minimize means to achieve the least amount of adverse effect that can be attained using best available measures or best practical measures, whichever is referred to in the pertinent section.

Modify means to amend.

Ocean means Buzzards Bay, Massachusetts Bay and all contiguous waters subject to tidal action except salt ponds.

Notice of Intent means an application for a permit to remove, fill, dredge, alter or cause adverse effect an area subject to protection under the By-law.

Person means any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town By-laws, administrative agency, public or quasi-public corporation or body, Town of Bourne, or any other legal entity or its legal representatives, agents or assigns.

Plans means such data, maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the Commission to describe the site and/or the work, to determine the applicability of Article 3.7 of the Town of Bourne By-laws, or to determine the impact of the proposed work upon the wetland resource values identified in Article 3.7 of the Town of Bourne By-laws.

Pollution Prevention means a project must be designed in a manner as to not cause pollution to the ground or surface waters and that will not in any way result in the degradation to the Wetland Resource Area.

Pond (coastal) - means Salt Pond as defined in 310 CMR 10.33(2)

Pond (inland) is defined in 310 CMR 10.04

Public and Private Water Supplies means any surface water or ground water supply that has, is, or could be used for consumption by humans or livestock.

Recreational and/or Commercial Use means, but is not limited to, the purposes for which the Wetland Resource Area are used by the public such as navigation, fishing, hunting, shell fishing, swimming, water skiing, diving, walking, etc. A project must be designed so as to not impair the ability of the Wetland Resource Area to provide for these public recreational and/or commercial uses.

Remove means to take away any type of material, thereby changing an elevation, either temporarily or permanently.

Request for Determination of Applicability means a written request made by any person to the Commission for a determination as to whether a site or work thereon is subject to Article 3.7 of the Town of Bourne By-laws.

Riverfront Area is defined in 310 CMR 10.58

Rocky Intertidal Shore is defined in 310 CMR 10.31(2)

Salt Pond is defined in 310 CMR 10.32(2)

Significant Shellfish Habitat means those areas containing shellfish in densities (numbers) and/or habitat considered significant By the state Division of Marine Fisheries (DMF) and/or the Bourne Department of Natural Resources (DNR). The Commission Shall also evaluate information provided by local recreational and commercial shell fishers and by the applicant. No project shall

BWR 1.04 continued

be permitted if it will cause any adverse effect on shellfish habitat and/or shellfish densities and/or impair the ability to harvest shellfish and/or cause adverse effect to eelgrass beds.

Storm Damage Prevention means the project must be designed in a manner that ensures the prevention of damage to the Wetland Resource Area and abutting properties caused by, but not limited to, erosion and sedimentation, damage to vegetation, damage to property or buildings, or damage caused by the displacement of water, water-borne debris or water-borne ice.

Stream means a body of running water, including brooks, creeks, and rivers which moves in a definite channel in the ground due to a hydraulic gradient, and which flows within, into or out of an Area Subject to Protection Under Article 3.7 of the Town of Bourne By-laws. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (i.e., which is intermittent) is a stream except for that portion up gradient of all freshwater wetlands, bogs, swamps, wet meadows and marshes.

Swamp is a type of freshwater wetland.

V-zone means velocity zone.

Velocity Zone (including V-, VE-, & Vi-30) means those portions of Land Subject to Coastal Storm Flowage which are coastal high hazard areas or areas of special flood hazard extending from the inland limit within the 100 year floodplain seaward supporting waves greater than three feet in height. The boundaries of the V-zones within Land Subject to Coastal Storm Flowage shall be determined by reference to the most recently available flood data prepared for the Town of Bourne under the National Flood Insurance Program. In the event of a v-zone boundary conflict, the Commission may require the applicant to determine the boundary by engineering calculations which shall be based upon the appropriate wave height or wave run-up methodology for the affected shoreline reach as set forth in the FEMA Publication, "Guidelines and Specifications for Wave Envelope Determination and V-Zone Mapping," (the Guidelines), and prepared and certified by a registered professional engineer. Notwithstanding the v-zone delineation on the most recent Federal Insurance Rate Map (FIRM), where a V-zone has been depicted on the latest FIRM on a barrier beach with a frontal dune reservoir less than 540 square feet (as explained in the National Flood Insurance Program and Related Regulations [44 Code of Federal Regulations, Chapter 1, Section 65.11]), the V-zone shall be remapped using the Guidelines. (see illustration)

Vernal Pool means those areas mapped and certified by the Massachusetts Natural Heritage and Endangered Species Program as well as those areas identified in the field as eligible for certification.

Water means all surface and ground water associated with the Wetland Resource Areas and/or the land 100-ft. from such areas.

Wet Meadow is a type of freshwater wetland.

Wetland Resource Areas means all wetland resource areas mentioned in Chapter 131, section 40 MGL and its Regulations at 310 CMR 10.00 et. seq., as from time to time amended, and any other area that due to its vegetation, soils, and/or hydrology supports a wetland plant community or holds enough water to provide a breeding habitat for certain water dependent fauna species. Areas in which 50% or more of the vegetational community is composed of wetland plant species shall be classified as a wetland resource area. It is used synonymously with Area Subject to Protection Under Article 3.7 of the Town of Bourne By-laws, each one of which is enumerated in BWR 1.02(1)

Wetland Resource Values means public and private water supplies, groundwater supplies, flood control, storm damage prevention, pollution prevention, fisheries and shellfisheries, wildlife habitat, erosion and sedimentation control, and recreational and/or commercial uses.

Wildlife Habitat means the place within each Wetland Resource Area or Buffer Zone thereto, where animal life (vertebrates/invertebrates) live. This habitat shall consist of the plants, soil physical features and/or water which provides for the animal species. Proposed projects must be designed to maximize protection of wildlife habitat. All state rare species (plant and/or animal) officially listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife under 321 CMR 8.00 et. seq., and from time to time amended, and those species of local significance which live within the wildlife habitat shall be fully protected by the By-law and their habitat must not be impaired in any way by a proposed project.

BWR 1.05 Procedures

The following procedures shall apply to all filings under the Bourne Wetlands By-law

(1) Time Periods. All time periods of ten days or less specified in Article 3.7 of the Town of Bourne Bylaws, and BWR shall be computed using business days only. In the case of a determination, Permit or tentative decision, such period shall commence on the first day after the date of issuance and shall end at the close of business on the tenth business day thereafter. All other time periods specified in Article 3.7 of the Town of Bourne By-laws, and BWR 1.00 shall be computed on the basis of calendar days, unless the last day falls on a Saturday, Sunday or legal holiday, in which case the last day shall be the next business day following.

(2) Actions by Conservation Commission. Where Article 3.7 of the Town of Bourne By-laws, states that a particular action (except receipt of a request or notice) is to be taken by the Commission, that action is to be taken by more than half the members present at a meeting of at least a quorum. A quorum is defined as a majority of the members then in office. Where Article 3.7 of the Town of Bourne By-laws, states that the Commission is to receive a request or Notice of Intent, Commission means an individual designated by the Conservation Commission to receive such request or Notice of Intent.

(3) Reserved

(4) Determinations of Applicability.

(a) Requests for Determination of Applicability.

1. Any person who desires a determination as to whether Article 3.7 of the Town of Bourne By-laws, applies to land, or to work that may affect an Area Subject to Protection Under Article 3.7 of the Town of Bourne By-laws, may submit to the Commission by certified mail, hand delivery or the Town's online permitting system, a Request for a Determination of Applicability. Such request shall include such information as required to enable the Commission to find and view the area and to determine whether the proposed work will remove, fill, dredge, alter or cause adverse effect to an Area Subject to Protection Under the By-law.

2. A Request for a Determination of Applicability shall include certification that the owner of the area subject to the request, if the person making the request is not the owner, has been notified that a determination is being requested under Article 3.7 of the Town of Bourne By-laws.

3. Notice to Abutters. Any person filing a Request for Determination of applicability with the Conservation Commission shall give written notice thereof, no less than five (5) business days prior to the scheduled Commission meeting, by certified mail-return receipt requested postage prepaid or by delivery in hand, to all abutters to the proposed project and to the property owner if other than the applicant, according to the most recent records of the Bourne Board of Assessor. The notice shall specify the date, time and location of the Commission meeting, and shall also specify where a copy of the Request for Determination, accompanying plans and documents may be examined and obtained.

(b) Determination of Applicability.

1. Within 21 days after the date of receipt of the Request for a Determination of Applicability, the Commission shall issue a Determination of Applicability. Notice of the time and place of the public hearing at which the determination will be made shall be given by the Commission at the expense of the person making the request not less than five days prior to such meeting, by publication in a paper of local circulation and by mailing a notice to the person making the request, and the owner. Notice shall also be given in accordance with the Open Meeting Law, M.G.L. c. 39, § 23B. Said determination shall be signed by a majority of the Conservation Commission, and copies thereof shall be sent by the Commission to the person making the request, and to the owner. Said determination shall be valid for three years from the date of issuance.

2. The Conservation Commission shall find that Article 3.7 of the Town of Bourne By-laws, applies to the land, or a portion thereof, if it is an Area Subject to Protection Under Article 3.7 of the Town of Bourne By-laws, as defined in BWR 1.02(1). The Conservation Commission shall find that Article 3.7 of the Town of Bourne By-laws applies to the work, or portion thereof, if it is an Activity Subject to Regulation under Article 3.7 of the Town of Bourne By-laws as defined in BWR 1.02(2).

3. Reserved

4. Reserved

5. A Notice of Intent which is filed as a result of a positive determination shall be filed with the Commission, and all of the procedures set forth in BWR 1.05(5) shall apply.

BWR 1.05 continued

(5) Notice of Intent

(a) Any person who proposes to do work that will remove, fill, dredge, alter or cause adverse effect to an Area Subject to Protection under Article 3.7 of the Town of Bourne By-laws shall submit a Notice of Intent, and other application materials in accordance with the submittal requirements of 310 CMR 10.00, the By-law, and BWR 1.00.

1. The person filing a Notice of Intent with the Bourne Conservation Commission must submit with said document a Notice of Intention Authorization Form which clearly identifies the locus of the intended project, certifies to the Commission that the applicant is the owner of the locus where work is to occur and that the owner approves of the proposed work.

(b) A Notice of Intent shall expire where the applicant has failed to diligently pursue the issuance of a Permit in proceedings under BWR 1.00. A Notice of Intent shall be presumed to have expired one year after the date of filing unless the applicant submits information showing that (a) good cause exists for the delay of proceedings under BWR 1.00; and (b) the applicant has continued to pursue the project diligently in other forums in the intervening period; provided, however, that unfavorable financial circumstances shall not constitute good cause for delay. No Notice of Intent shall be deemed expired under this section when an appeal is pending and when the applicant has provided all information necessary to continue with the prosecution of the case.

(c) Compliance with Section 3.112 of the Town of Bourne By-laws. At the time of filing the Notice of Intent, the owner(s) of the property(ies) upon which the project is proposed that they are in compliance with Section 3.11.2 regarding payment of any local taxes, fees, assessments, betterments or other municipal charges, including amounts assessed under the provisions of section 21D.

(d) Reserved

(e) Abutter Notification for Notice of Intent Any person filing a Notice of Intent with the Conservation Commission shall at the same time give written notification thereof, by delivery in hand, or certified mail, return receipt requested, to all abutters and other land owners within 100 feet of the property line of the land where the activity is proposed, at the mailing addresses shown on the most recent applicable tax list of the assessors, including, but not limited to, owners of land directly opposite said proposed activity on any public or private way, and in another municipality or across a body of water. Said notification shall be at the applicant's expense, and shall state where the copies of the Notice of Intent may be examined and obtained or shall include a copy of the complete Notice of Intent and where information the date, time and place of the hearing may be obtained. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission.

(6) Public Hearings.

(a) A public hearing shall be held by the Commission within 21 days of receipt of the minimum submittal requirements and shall be advertised in accordance with Article 3.7 of the Town of Bourne By-laws and the requirements of the Open Meeting Law, M.G.L. c. 39, § 23B.

(b) The advertising cost for a public hearing for a permit or request for determination shall be paid by the applicant. The advertising cost for a public hearing for any other matter shall be paid by the person requesting said hearing.

(c) Public hearings may be continued as follows:

1. Without the consent of the applicant to a date announced at the hearing, within 21 days, of receipt of the complete Notice of Intent;
2. With the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing; or
3. With the consent of the applicant for a period not to exceed 21 days after the submission of a specified piece of information or the occurrence of a specified action. The date, time and place of said continued hearing shall be publicized in accordance with Article 3.7 of the Town of Bourne By-laws.

(7) Permits

(a) Scope. A Permit is designed to allow the proposed construction activity while, at the same time, ensuring that valuable wetlands resources will be protected from either deliberate or accidental damage. Resource area protection is achieved by a combination of design elements within the approved plan and by additional conditions imposed by the Commission.

All construction activities must be completed in compliance with the existing Permit.

(b) Within 21 days of the close of the public hearing, the Commission shall either:

1. Make a determination that the area on which the work is proposed to be done, or which the proposed work will remove, fill, dredge, alter or cause adverse effect to, is not significant to any of the wetland resource values identified in Article 3.7 of the Town of Bourne By-laws, and shall so notify the applicant; or
2. Make a determination that the area on which the work is proposed to be done, or which the proposed work will

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remove, fill, dredge, alter or cause adverse effect to, is significant to one or more of the wetland resource values identified in Article 3.7 of the Town of Bourne By-laws, and shall issue a Permit for the protection of said wetland resource value(s).

(c) The Permit shall impose such conditions as are necessary to meet the performance standards set forth in 310 CMR 10.21 through 10.60 and BWR 1.16(1). The Permit shall impose conditions only upon work or the portion thereof that is to be undertaken within an Area Subject to Protection Under the By-law. The Permit shall impose conditions setting limits on the quantity and quality of discharge from a point source (both closed and open channel), when said limits are necessary to protect the wetland resource values identified in the By-law; provided, however, that the point of discharge falls within an Area Subject to Protection Under the By-law.

Notwithstanding the foregoing, when the Commission has determined that an activity outside the Areas Subject to Protection Under the By-law has in fact altered an Area Subject to Protection Under the By-law, it shall impose such conditions on any portion of the activity as are necessary to contribute to the protection of the wetland resource values identified in the By-law.

(d) Except as provided in M.G.L. c. 131, § 40 for maintenance dredging, a Permit shall be valid for three years from the date of its issuance; provided, however, that the Commission may issue a Permit for up to five years where special circumstances warrant and where those special circumstances are set forth in the Permit.

(e) The Permit shall be signed by a majority of the Commission and shall be mailed or hand delivered to the applicant or his agent or attorney.

(f) A copy of the plans describing the work and the Permit shall be kept on file by the Conservation Commission and shall be available to the public at reasonable hours.

(g) Prior to the commencement of any work permitted or required by the Permit, the Permit shall be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Permit shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the Permit shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. Certification of recording shall be sent to the Commission. If work is undertaken without the applicant first recording the Permit, the Commission may issue an Enforcement Order or may itself record the Permit.

(8) Amended Permits

(a) Following the issuance of a Permit, unforeseen circumstances sometimes arise which may require minor deviations from the project approved in that Permit. To allow for the smooth operation of the permitting procedure and to avoid unnecessary and unproductive duplication of regulatory effort after a Permit has been issued, it would not be reasonable to require a complete refile of the Notice of Intent when the changes sought in the Permit are relatively minor and will have unchanged or less impact on the wetland resource values protected by the By-law. Amended Permits provide assurances to applicants that modifications undertaken in the course of the project are within the scope of the deviations allowed for the receipt of a Certificate of Compliance at BWR1.05(11). No Amended Permit shall be issued for a Permit that has expired.

(b) Minor Changes. The most simple changes, such as correcting obvious mistakes such as citing a wrong file number or typographical errors, may be accomplished by correction of the Permit by the Commission or the Conservation Agent.

(c) Moderate Changes.

1. The applicant shall make a request for an amendment to the Commission. The request for an amendment of the Permit is to be made either orally at a regularly scheduled meeting of the Commission or by submitting the request to the Commission in writing.

2. The Commission shall make a determination whether the requested change is of a relatively minor nature and can be considered as an amendment to the original Permit. In making this determination, the Commission shall consider such factors as whether the purpose of the project has changed, whether the scope of the project has increased, whether the project meets relevant performance standards, and whether the potential for adverse impacts to the protected statutory wetland resource values will be increased. Relatively minor changes which result in the same or decreased impact on the wetland resource values protected by the By-law shall be considered a Minor Change.

3. If the Commission determines that a new Notice of Intent is not necessary, the Commission shall publish newspaper notice (at the applicant's expense) in the same general manner as outlined in the By-law for a new Notice of Intent and

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as required by the Open Meeting Law, M.G.L.c.39, §23B, to inform the public that the request for amendment to the Permit will be considered by the Commission at a public hearing.

4. The applicant shall follow the requirements of a butter notification as if filing a Notice of Intent as described in BWR 1.05(5).

5. The usual appeal procedure of the Permit shall apply to the amended permit, however the issues under appeal will be limited to those issues subject to the amendment(s) or the change(s) made in the Permit. Until there is a final resolution of the appeal, no work may continue on those portions of the project not permitted under the Permit but only permitted by the amendment(s) which has been appealed.

6. Under no circumstances shall the issuance of an Amended Permit extend the effective date of the original Permit. The Amended Permit shall run with the term of the original Permit or the effective date of an extended Permit.

7. The Amended Permit shall be issued on the form provided for a Permit, with the insertion of the word "Amended" and the amendment date. Amended Permits shall be recorded with the Registry of Deeds in the same manner as Permits.

(d) Significant Changes. Significant changes require the filing of a new Notice of Intent.

(9) Denials

(a) Procedural Denials.

If the Commission finds that the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the wetland resource values identified in the By-law, it may issue a denial prohibiting the work. The denial shall specify the information which is lacking and why it is necessary. In writing the procedural denial, the Commission shall:

1. State that the denial is specifically based on lack of information describing the site, the work and/or the effect of the work on the wetland resource values identified in the By-law;

2. List specific information needed in each of the three possible problem areas mentioned above, citing appropriate sections of BWR 1.00; and

3. State that the Commission encourages a resubmittal of a Notice of Intent with the above requested information.

(b) Substantive Denials. The Commission shall prohibit any work or any portion thereof that cannot be conditioned to meet the standards of 310 CMR 10.00, BWR 1.16(1) and the By-law.

The written decision will include the reasons for the denial, citing wetland resource values protected, and relevant regulations. The written decision will be signed by a majority of the Commission.

(10) Extensions of Permits.

(a) The Commission may extend a Permit for one or more periods of three years each. The request for an extension shall be made to the Commission at least 30 days prior to expiration of the Permit.

(b) The Commission may deny the request for an extension and require the filing of a new Notice of Intent for the remaining work in the following circumstances:

1. Where no work has begun on the project, except where such failure is due to an unavoidable delay, such as appeals, in the obtaining of other necessary permits;

2. Where new information, not available at the time the Permit was issued, has become available and indicates that the Permit is not adequate to protect the wetland resource values identified in Article 3.7 of the Town of Bourne By-laws;

3. Where incomplete work is causing damage to the wetland resource values identified in Article 3.7 of the Town of Bourne By-laws;

4. Where work has been done in violation of the Permit or BWR 1.00; or

5. Where applicable sections of the Article 3.7 of the Town of Bourne By-laws and/or BWR 1.00 have been changed.

(c) Request for Hearing

1. Any party specified in BWR 1.10(1)(a) may request a hearing in writing prior to the issuance of the Extension Permit, or within 10 days of the issuance of the decision relative to the request for an Extension Permit.

2. Any decision regarding an Extension Permit where no hearing was held shall be a tentative decision.

3. Where no hearing has been held, and no request for a hearing has been made pursuant to BWR 1.05(10)(c)1, the tentative decision shall be final.

4. Where a request for a hearing is made, the Commission shall conduct a hearing and issue a final decision pursuant to the procedures specified in BWR 1.05(6).

5. Where a request for a hearing is filed after the tentative decision is issued, the Commission shall conduct a hearing regarding the issuance of a final decision without prejudice to all parties.

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- (d) The Extension Permit shall be signed by a majority of the Commission.
- (e) The Final Extension Permit shall be recorded in the Land Court or the Registry of Deeds, whichever is appropriate.

Certification of recording shall be sent to the Commission. If work is undertaken without the applicant so recording the Final Extension Permit, the Commission may issue an Enforcement Order or may itself record the Final Extension Permit.

(11) Certificate of Compliance

- (a) Upon written request by the applicant for a Certificate of Compliance, the Commission shall issue a decision regarding the request within 21 days of receipt thereof. A Certificate of Compliance is issued by the Commission and may certify that the activity or portions thereof described in the Notice of Intent and plans has been completed in compliance with the Permit. The Certificate of Compliance shall be signed by a majority of the Commission.
- (b) Prior to the issuance of a Certificate of Compliance, a site inspection shall be made by the Commission, or its agent, with prior notice to the applicant or the applicant's agent, of the date and time of said site inspection.
- (c) If the Commission determines, after review and inspection, that the work has not been done in compliance with the Permit, it may refuse to issue a Certificate of Compliance. Such refusal shall be issued within 21 days of receipt of a request for a Certificate of Compliance, shall be in writing and shall specify the reasons for denial.
- (d) If a project has been completed in accordance with plans stamped by a registered professional engineer, architect, landscape architect or land surveyor, a written statement by such a professional person certifying substantial compliance with the plans and setting forth what deviation, if any, exists from the plans approved in the Permit shall accompany the request for a Certificate of Compliance.
- (e) If the Permit contains conditions which continue past the completion of the work, such as maintenance or monitoring, the Certificate of Compliance shall specify which, if any, of such conditions shall continue. The Certificate shall also specify to what portions of the work it applies, if it does not apply to all the work regulated by the Permit.
- (f) The Final Certificate of Compliance shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the Commission. Upon failure of the applicant to so record, the Commission may do so.

(g) Request for Hearing

1. Any party specified in BWR1.10(1)(a) may request a hearing in writing prior to the issuance of the Certificate of Compliance, or within 10 days of the issuance of the decision relative to the request for a Certificate of Compliance.
2. Any decision regarding a Certificate of Compliance where no hearing was held shall be a tentative decision.
3. Where no hearing has been held, and no request for a hearing has been made pursuant to BWR1.05(11)(g)1, the tentative decision shall be final.
4. Where a request for a hearing is made, the Commission shall conduct a hearing and issue a final decision pursuant to the procedures specified in BWR 1.05(6).
5. When a request for a hearing is filed after the tentative decision is issued, the Commission shall conduct a hearing regarding the issuance of a final decision without prejudice to all parties.

(12) Recording in Registry of Deeds or Land Court

- (a) The following forms issued by the Commission shall be recorded in the Barnstable County Registry of Deeds or the Land Court, whichever is appropriate:

1. Permit
2. Amended Permit
3. Notification of Non-Significance
4. Final Extension Permit
5. Final Certificate of Compliance

(b) If the applicant fails to timely record any of these documents (unless in accordance with paragraph c, below), the Commission is empowered to do so. As proof of recording, the applicant must deliver to the Commission the recording slip at the bottom of the Permit, Amended Permit, Notification of Non-Significance, Final Extension Permit, or Final Certificate of Compliance, as appropriate. In such cases, the Commission is also empowered to issue an Enforcement Order prohibiting any work.

(c) If the applicant desires to delay the recording of the Permit, they shall so state in writing to the Commission the reasons for the delay, and the estimated date of recording. In no case shall any construction commence unless and until the Permit has been recorded.

BWR 1.06 Emergency Work

(1) All emergencies permitted under the Massachusetts Wetlands Protection Act, G.L. c. 131, s. 40, as from time to time amended (hereinafter the "Act"), shall be permitted under the By-law.

BWR 1.07 Performance Guarantee

- (1) Introduction. The performance guarantee is a tool available to the Commission to insure that proposed work is done in compliance with a Permit.
- (2) Procedure. The Commission may require, as a permit condition, that a performance and observance of other conditions be secured by one or both of the following methods described in BWR 1.07(2)(a) and (b).
- (a) The following forms of security, in the amount determined by the Commission to be sufficient and payable to the Town of Bourne, shall be released in whole or in part upon the issuance of a Certificate of Compliance:
1. Bond;
 2. Deposit of money;
 3. Negotiable securities; or
 4. Other undertaking of financial responsibility
- (b) The following forms of security shall be executed and duly recorded in the Barnstable County Registry of Deeds by the owner of record running with the land the benefit of the Town of Bourne where by the applicable permits conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed:
1. Conservation restriction pursuant to Sections 31, 32, and 33 of Chapter 184 of the General Laws;
 2. Easement; or
 3. Other covenant running with the land enforceable in a court of law
- (3) The performance guarantee specified in BWR 1.07(2)(a) should be extended to "The Town of Bourne Conservation Commission" based on the Permit, (File _____), Special Condition No. __. and shall state the specific work covered by the performance guarantee.
- (4) If it is required that a time period be stated for a form of performance guarantee specified in BWR 1.07(2)(a), the applicant shall insure that the bond performance guarantee be continued if the work is not successfully completed at the end of that period or the Commission may elect to utilize the performance guarantee to complete the work.

BWR 1.08 Enforcement

- (1) Cease and Desist Orders
- (a) When the Commission determines that an activity is in violation of Article 3.7 of the Town of Bourne By-laws or a Permit, the Commission may issue a Cease and Desist Order. Violations include, but are not limited to:
1. Failure to comply with a Permit, such as failure to observe a particular condition or time period specified in the Permit;
 2. Failure to complete work described in a Permit, when such failure causes damage to the wetland resource values identified in Article 3.7 of the Town of Bourne By-laws; or
 3. Failure to obtain a valid Permit or Final Extension Permit prior to conducting an Activity Subject to Regulation Under Article 3.7 of the Town of Bourne By-laws as defined in BWR 1.02(2).
- (b) The members, officers, employees and agents of the Commission may enter upon privately owned land for the purpose of performing their duties under this section with prior approval of the property owner, or other legal authority as provided by law.
- (c) A Cease and Desist Order shall be signed by a majority of the Commission. In a situation requiring immediate action, a Cease and Desist may be signed by a single member, agent of the Commission, or Natural Resource Officer, if said Order is ratified by a majority of the members at the next scheduled meeting of the Commission.
- (d) Request for Hearing
1. Any party specified in BWR 1.10(1)(a) may request a hearing in writing within 10 days of the issuance of the Cease and Desist Order.
 2. Any decision regarding a Cease and Desist Order where no hearing was held shall be a tentative decision.
 3. Where no hearing has been held, and no request for a hearing has been made pursuant to BWR 1.08(d)(1.), the tentative decision shall be final.
 4. Where a request for a hearing is made, the Commission shall conduct a hearing and issue a final decision pursuant to the procedures specified in BWR 1.05(6).

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5. Where a request for a hearing is filed after the tentative decision is issued, the Commission shall conduct a hearing regarding the issuance of a final decision without prejudice to all parties.

(2) Enforcement Orders

(a) When the Commission determines that an activity is in violation of Article 3.7 of the Town of Bourne By-laws or a Permit and that action must be taken to correct the violation, the Commission may issue an Enforcement Order. Violations include, but are not limited to:

1. Failure to comply with a Permit, such as failure to observe a particular condition or time period specified in the Permit;
2. Failure to complete work described in a Permit, when such failure causes damage to the wetland resource values identified in Article 3.7 of the Town of Bourne By-laws; or
3. Failure to obtain a valid Permit or Final Extension Permit prior to conducting an Activity Subject to Regulation Under Article 3.7 of the Town of Bourne By-laws as defined in BWR 1.02(2).

(b) The members, officers, employees and agents of the Commission may enter upon privately owned land for the purpose of performing their duties under this section with prior approval of the property owner, or other legal authority as provided by law.

(c) An Enforcement Order shall be signed by a majority of the Commission after a hearing. Said hearing shall be conducted according to the provisions of BWR 1.05(6). In a situation requiring immediate action, an Enforcement Order may be signed by a single member, agent of the Commission, or Natural Resource Officer, prior to a hearing, provided a hearing is held at the soonest available time and said Order is ratified by a majority of the members after said hearing.

(3) Criminal Complaints filed pursuant to Chapter 1, section 1-1, of the Code of the Town of Bourne

(a) Section 3.7.6 of the By-laws of the Town of Bourne provides that: "Any person violating this bylaw shall be punished by a fine of not less than \$50.00 nor more than \$300.00 for each offense. Each day or portion thereof during which a violation continues shall constitute a separate offense."

(b) The Commission, or its agent at the direction of the Commission, may file a criminal complaint with the District Court if criminal intent has been demonstrated by those persons who have violated the provisions of Section 3.7 of the Town of Bourne By-laws.

(4) Non-Criminal Dispositions pursuant to Section 6.1.2 of the Town of Bourne By-laws and M.G.L. Chapter 40, section 21D

(a) Section 6.1.2 of the By-laws of the Town of Bourne states: "Police Officers, Fire Fighters, Board of Health Agent, Natural Resources Officers/The Harbormaster/ Shellfish Constable or their deputies, taking cognizance of a violation, of a specific by-law rule or regulation which he or she is empowered to enforce, hereinafter referred to as the enforcing person(s), as an alternative to initiating criminal proceedings, may give to the offender a written notice to appear before the Clerk of the District Court having jurisdiction thereof at any time during office hours, not later than twenty-one days after the date of such notice. Such notice shall be in triplicate and shall contain the name and address, if known, of the offender, the specific offense charged and the time and place for his/her required appearance. Such notice shall be signed by the enforcing person, and shall be signed by the offender whenever practicable, in acknowledgement that such notice has been received. Any notice and enforcement of violation shall be in accordance with the provisions of Massachusetts General Law, Chapter 40, Section 21D.

(b) Natural Resource Officers may issue citations to those violating the provisions of Section 3.7 of the By-laws of the Town of Bourne pursuant to Section 6.1.2 of the By-laws of the Town of Bourne.

BWR 1.09 Fees

(1) Consultant Fee

(a) The Commission, at its discretion, is authorized to require the posting of a Consultant Fee by an applicant. This fee shall be used to hire an independent, expert consultant to investigate the site for the proposed project and to examine the plans or other information submitted by the applicant to assist the Commission in evaluating potential adverse impacts upon a resource area by the proposed project. This fee will be required in those cases where the complexity of the activity, the difficulty in determining the threat to the wetland resource values or the size of the request or project involves and requires more information and analysis than can reasonably be supplied to the Commission without independent technical professional assistance.

(b) The Commission may require the payment of the Consultant Fee at any time in the deliberations prior to a final decision.

BWR 1.09 continued

(c) The Consultant Fee may be required for expert opinions regarding, but not limited to, wetland resource area surveys and delineations, analysis of wetland resource area surveys and delineations, wetland resources area reports, hydrological and drainage analysis, wildlife evaluation, shellfish surveys, and environmental/land use law.

(d) The Commission is hereby authorized to charge for said consultant fee when the Notice of Intent or Request for Determination of Applicability, proposes any of the following:

1. Five hundred (500) square feet or greater alteration of a resource area specified in BWR 1.02(a);
 2. Fifty (50) linear feet or greater of bank alteration to a coastal or inland waterway;
 3. Five hundred (500) square feet or greater alteration to the buffer zone;
 4. Five hundred (500) square feet or greater alteration of land under a water body or the ocean;
 5. Discharge of any pollutants into or contributing to surface or groundwater or the wetland resource area or buffer zone;
- or
6. Construction of any stormwater control facility, or water control structure.

(e) Determination of Amount of Consultant Fee for a Notice of Intent

1. The maximum consultant fee charged to reimburse the Commission for reasonable costs and expense shall be two thousand five hundred dollars (\$2,500).

(f) The applicant shall pay the consultant fee to the Town to be put into a special purpose account established by the Commission, which may be drawn upon by the Commission at one of its public meetings.

(g) The Commission shall return any unused portion of the consultant fee to the applicant.

(h) Any applicant aggrieved by the imposition of, or the amount of, the consultant fee, or any act related there to, may appeal according to the provisions of the Massachusetts General Laws.

(2) Pier Related Fees

(a) Applicants for docks, piers, and walkways must pay a shellfish mitigation fee when building in areas of Land Containing Shellfish. The fee shall be calculated using the Bourne Conservation Commission Shellfish Mitigation Calculation Sheet and the data provided in the shellfish report required in BWR 1.16(1)(d)7, as well as any additional data the Shellfish Constable may provide. The fee shall be collected after the applicant obtains all local, state and federal permits required for the proposed work and prior to the start of construction.

BWR 1.10 Appeal Procedure

(1) Procedure.

(a) The following persons may appeal a decision under the By-law:

1. Any applicant;
2. Owner;
3. Abutter;
4. Any party in interest aggrieved; or
5. Any person as provided by law.

(b) Appeals shall be made to the Superior Court of Barnstable County pursuant to M.G.L. Chapter 249, section 4, or as otherwise provided by law.

BWR 1.11 Incorporation

Where applicable, the definitions, presumptions of significance, and performance standards, set forth in the Massachusetts Wetlands Regulations, 310 CMR 10.00 et seq., and the Massachusetts Department of Environmental Program Policies, are Hereby incorporated herein, except where the language in BWR1.00 more definitive, in which event the language in BWR 1.00 shall prevail.

BWR 1.12 Severability

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

BWR 1.13 Variance

Reserved

BWR 1.14 Amendments

After public notice and public hearing, the Commission may amend BWR 1.00 to effectuate the purposes of the By-law. Notice Shall be given at least two (2) weeks prior to the public hearing by publication in a newspaper of general circulation in the Town and by posting with the Town Clerk.

BWR 1.15 Effective Date

(1) BWR 1.01 through 1.16 shall take effect on August 31, 2000 and shall apply to all Notice of Intents and Requests for Determinations of Applicability heard on or after that date and any subsequent procedures related to such filings made on or after that date.

BWR 1.16 Specific Activities Regulated

Introduction- Under the By-law, activities in the following areas are subject to Conditions by the Commission. The complexity of these activities warrants the specific requirements set forth below.

(1) Docks, Piers and Walkways

(a) Introduction. The construction, use, and maintenance of docks, piers and walkways are likely to have a significant or cumulative adverse effect on the wetland resource values of storm damage prevention, fisheries and shell fisheries, wildlife habitat, erosion and sediment control, and recreation and/or commercial uses. Construction, maintenance and use of piers can have adverse effects on resource areas and navigation for recreational purposes. Further, piers destroyed by storms pose a threat to nearby properties by increasing water borne debris. Debris from land structures or in water structures may require public funds for removal from public locations after storms and restoration of resource areas damaged by the debris. Turbulence and propeller dredging generated by boat traffic significantly increase turbidity levels. High turbidity levels attenuates light. Light is necessary for photosynthetic processes responsible for the primary productivity and oxygen regeneration of the water. The suspended sediments settle on shellfish beds, smothering existing shellfish and altering the quality of the sand bottom essential for spat (mollusk larvae) settlement. Resuspension of bottom sediments causes redistribution of sediments, alteration in sediment grain size distribution and causes changes in bottom topography relief, elevation and grade, including creation of depressions in the bottom. Resuspension of sediments into depressions creates deep pockets of sediment which may not be able to physically support shellfish or which can become anoxic and therefore not support shellfish. Resuspension of sediments during the period of shellfish larval settlement hinders or prevents the effective settlement of shellfish larvae. Boat traffic generated from piers will add to this disruption and may cause erosion of banks and marshes.

Construction of piers and subsequent boat activity causes resuspension of nutrient-laden sediment particles which may cause a release of sediment-bound nutrients to the water column resulting in a "bloom" of vegetation. Release of nutrients to the water column leads to eutrophication and anoxic bottom conditions. Anoxic sediments and anoxic bottom conditions create adverse impacts on benthic resources, including shellfish, eelgrass and fisheries.

While pier construction is typically the least environmentally destructive method of crossing a marsh, it may adversely affect the physical characteristics and functional value of a marsh. Marsh plants provide the major energy flow (detritus food chain) between the autotrophic and heterotrophic levels in a marsh-estuarine system. Many species of sport and commercial fish and shellfish are dependent upon this system. Plants adapted to high ambient light intensity, such as marsh grasses, are ill-adapted to the shaded conditions created by a pier. Shading may result in the loss of vegetative biomass (decreased plant height, population density, and leaf thickness) or alteration of species composition. Reductions in plant density result in the loss of sediment normally trapped by roots and culms. Tidal washout of sediment could result in localized depressions which, through evaporation of trapped water, concentrate salt. High sediment salt levels effectively preclude recolonization by original vegetation. Localized tidal washout may lead to further vegetative regression, erosion, and disruption of natural communities in the area.

Propeller turbulence near or in areas of submerged aquatic vegetation, such as eel grass, or salt marsh damages vegetation, thereby increasing the rate at which organic detritus is produced. If this organic detritus does not completely decompose aerobically, then anoxic bottom conditions will ensue, which adversely impact shellfish and fisheries.

Cumulative impacts of the construction, maintenance and use of piers threaten to decrease the overall productivity of the marsh ecosystem, to reduce its ability to absorb storm wave energy, and to reduce its contribution to ground water and surface water quality.

Piers, when placed in Land Containing Shellfish, have an adverse impact on the resource area value of recreational and/or commercial use. The placement length and size of the dock and the floats can interfere with the harvesting of quahogs and

BWR 1.16 continued

scallops.

Piers, depending on their length, can have an adverse impact on recreation by interfering with recreational boating activities. Not properly designed, piers can interfere with intertidal lateral access for recreational fishing and fowling. Any proposal that affects navigation is likely to have a significant or cumulative adverse effect on recreation. Excessive lighting on piers can cause temporary "night blindness" in boaters.

For the foregoing reasons, the following provisions will provide public environmental benefit that mitigates the risk of negative impacts to protected areas.

(b) Definitions.

Dock means the entire structure of any pier, wharf, walkway, bulkhead, or float, and any part there of including pilings, ramps, walkways, float and/or tie-off pilings, that is located on a Bank (inland), 310 CMR 10.54, Land Under Water Bodies and Waterway, 310 CMR 10.56, Land Under the Ocean, 310 CMR 10.25, Land Under a Salt Pond, 310 CMR 10.33, Rocky Intertidal Shore, 310CMR 10.31, or that portion of a Coastal Beach (310 CMR 10.27) seaward of the mean high water line. When a salt marsh (310 CMR 10.32) is below the mean high water line, the dock is that structure seaward of the salt marsh. Notwithstanding the above, either a swimming float or work float, kept at a mooring, that receives a permit from the Harbormaster, is not a float subject to regulation pursuant to the By-law.

Navigation means the ability to traverse a waterway.

Pier means the dock, walkway, wharf, bulkhead, piers, piles, ramp and floats.

Seasonal use means the dock, ramp, floats, and all supporting materials except approved anchorage systems may only be installed below MHW between April 1 and November 1 of each year and must adhere to storage requirements when not in use.

Storage means the dock, ramp, floats, and all supporting materials except approved anchorage systems must be stored securely outside of wetland resource areas. Storage area cannot cause an adverse effect on resource areas.

Walkway means the entire structure of any pier, wharf, walkway, or bulkhead, and any part thereof including pilings, or ramp, that is located on a Bordering Vegetated Wetlands, 310 CMR 10.55, Salt Marsh, 310 CMR 10.32, Dune, 310 CMR 10.25, or that portion of a Coastal Beach (310 CMR 10.27) landward of the mean high water line. When a salt marsh (310 CMR 10.32) is below the mean high waterline, the walkway is that structure landward of the seaward edge of the salt marsh.

(c) Presumption of Significance.

When a proposed project involves the dredging, removing, filling, altering, or causing adverse effect to an area subject to protection under the by-law by the construction, repair, replacement or enlargement of a pier, the Commission shall presume that the proposed activity will have a significant or cumulative effect upon, the wetland resource values specified in BWR 1.16(1)(a) . These presumptions are rebuttable and may be overcome only upon a clear showing that the work does not have a significant or cumulative effect upon, said wetland resource values. In the event that the presumptions are deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth the grounds.

(d) Submission Requirements for All Piers. Pursuant to BWR 1.02(2), a Notice of Intent is required for any new pier. A Notice of Intent is also required for any change or repair which alters any dimension, shape or function of an existing pier. Minor repairs involving work entirely above mean high water may be permitted through the filing of a Request for Determination of Applicability. The items listed below shall be submitted to the Commission as part of a Notice of Intent for all Piers:

1. A description of materials used, i.e., size of pilings, deck percent open area, the types of wood preservatives used in the construction materials, distance between the pilings supporting the structure, and flotation materials;
2. A description of the construction process, including the method for pile installation;
3. An accurate, detailed drawing showing type of construction, size, means for mooring if floating, exact location, depth of water within a fifty feet (50') of each side of the pier and at the end of the structure, mean high water line and mean low water line within two hundred feet (200') of the proposed structure, and general topography of the surrounding area within two

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hundred feet (200') of the proposed structure;

4. Wetland resource boundaries flagged/staked and numbered. These numbers must be shown on the Plan of Record.
5. A note on the plan indicating the site for storage of floats and method of hauling (if any);
6. The pier's effect on recreation and/or commercial use, including:
 - a. Location of all piers and other structures (groins, revetments, etc.) within a 200' radius of the proposed structure;
 - b. Distance from proposed structure to property lines and property line extensions;
 - c. Distance to all navigational channels, or to centerline of channel if no designated or customary channel exists, and boat mooring anchors within 300 feet; and
 - d. Distance to all boat ramps, public landings, or public swimming beaches within 300 feet.
7. A description of the shellfish resources;
 - a. The plan must show how the location of each transect and quadrat used in the shellfish fisheries survey performed pursuant to BWR 1.16(1)(d)7.b. These should be numbered/lettered for easy reference and for field identification purposes. A Shellfish/Fisheries Report based upon the findings and data collected pursuant to the Shellfish/Fisheries Survey must be appended to the Notice of Intent.
 - b. Shellfish/Fisheries Survey Methodology
 - (i.) The survey must employ the standard Transect Quadrat sampling method. A representative number of transects and quadrats must be used to adequately assess the standing shellfish crop. At least 0.5% of the subject area must be sampled. However, no survey consisting of fewer than 10 quadrats will be considered as sufficient information. Quadrats shall measure 1 foot square. The location of the quadrats shall be selected in a random fashion.
 - (ii.) All sediment removed shall be shaken through a 5 mm shaker screen and all shellfish and other marine organisms recovered must be individually measured, counted, speciated, and promptly returned to the water.
 - (iii.) A sediment sample must be analyzed in each quadrat, the data recorded and included within the Shellfish/Fisheries Report.
 - (iv.) An inventory of any macroinvertebrates (marine worms, crustaceans etc.) and vertebrates (finfish species) must appear within the Shellfish/Fisheries Report.
 - (v.) The minimum area surveyed shall include 50' in all directions from the proposed structure. The actual samples shall represent 0.5% of this area.
 - c. Shellfish/Fisheries Report The report must include as a minimum:
 - (i.) Resume of the person(s) conducting the survey that indicates their qualifications for conducting such a survey;
 - (ii.) The date, time of day and tidal conditions at the time of the survey;
 - (iii.) A narrative explaining the methodology and equipment utilized, location and number of transects/quadrats, shellfish/fisheries results, observations and conclusions;
 - (iv.) A data section by numbered quadrat indicating the species and numbers of shellfish sampled measurements of each specimen, the type of sediment within the quadrat (grain size analysis), and the presence of any eelgrass or other submerged vegetation. The results for each species shall be reported utilizing standard deviation. The total for each species; adults versus subadults and the frequency distribution must be included. The mean number of each species (adult vs. subadult) for the area must be compared against the following standards for shellfish areas: Commercial value = 3 or more adult shellfish per square foot, Recreational value = 1 or more adult shellfish per square foot; and
 - (v.) Historical data indicating the use of the area by recreational and/or commercial shellfishermen
 - d. The Bourne Shellfish Constable will review the submitted shellfish survey, perform a site visit of the project area, and review additional submittal information. If mitigation is required, the applicant shall pay the fee pursuant to BWR 1.09(2)(a).
8. Location of eel grass beds within two hundred feet (200 ft.) of the proposed structure;
9. How compliance with BWR 10.16(1)(c)15. (lighting) will be achieved;
10. Plans prepared by and stamped by both a Registered Engineer and a Registered Land Surveyor; and
11. A locus and title box which includes the street address.
12. Site Inspection Prior to the Public Hearing. The Commission and the Department of Natural Resources will inspect the locus of the proposed project before the public hearing and require that the following be done at the time of the on-site inspection:

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- a. The center of any proposed pier must be shown with stakes, the starting point and ending point must be clearly indicated (a buoy at the pier-end is suggested).
- b. All resource areas must be clearly marked and numbered. The numbers must correspond to those shown on the Plan of Record.
- c. A sign should be posted on the street indicating house address or lot number.

(e) General Performance Standards for all Piers. When a pier is determined to have a significant or cumulative effect upon the wetland resource values specified in BWR 1.16(1)(a), BWR 1.16(1)(e)1 through 20 shall apply.

1. The pier length shall not exceed one hundred twenty-five (125) feet in length beyond the mean high water line. In cases where there is salt marsh, the pier shall not exceed one hundred (100) feet in length beyond the seaward edge of the salt marsh.
2. Notwithstanding the provisions of BWR 1.16(1)(c), no pier shall extend more than 1/5 across a water body as measured linearly to the nearest shore line from MLW to MLW. This is intended to preserve at least 60% open water for recreational and/or commercial use. Only one measurement to the nearest shore line is required. The measurement must be displayed on the site plan.
3. To keep disturbance of the bottom minimal at all times during both construction and use, the distance from the lowest structural member of the float, or if no float then the seaward end of the pier, shall be a minimum of eighteen inches (1.5 feet) from the bottom measured at mean low water in coastal wetland resource areas and ordinary high water or annual high water for inland wetland resource areas. If the proposed project is located within Land Containing Shellfish the water depth at the end of the pier shall be a minimum of thirty inches (2.5 feet) at the time of mean low water.
 - a. Float stops can be used for the float to meet the thirty (30) inch requirement in Land Containing Shellfish. A minimum of eighteen (18) inches from the bottom without float stops is required for all piers.
 - b. Minimum required water depths for construction and use must be met without the benefit of dredging.
4. No float portion at the terminus of a pier, dock or float may exceed sound, stable design and size for the purpose, as certified by the engineer in BWR 1.16(e)(22). Float size should be the minimum length and width necessary to berth the vessel and dinghy docks should be considered where mooring space is available for larger boats.
5. Piers, not including floats, shall be no wider than 4 feet;
6. Spacing between pairs of piles for a walkway shall be no closer than 20X the diameter of the pilings and in no case closer than 10 feet.
7. Boats at the pier shall not be allowed to leak oil or other pollutants into water, nor shall oil or fuel be stored on the dock or pier;
8. Motor boats shall not be run in gear while tied to the pier, since prop wash disturbs shellfish beds, stirs up sediment and causes bank erosion.
9. Off-season storage of temporary/seasonal docks and floats shall cause no adverse impact to the to the jurisdictional wetland resource area. The off-season storage location of the floats and docks shall be shown on the plan of record.
10. The landward approach to a pier shall not harm vegetation on a coastal wetland, fresh water wetland or coastal bank (a freshwater wetland shall be crossed by a raised walkway, and coastal banks must be preserved by use of suitable stairs.);
11. The dock shall be designed so that the approach path of vessels is at least 50 feet from the edge of any salt marsh. And the active berthing area of the dock or any approach paths to be used shall be no closer than 50 feet to any salt marsh;
12. All floats, whether used for moorings or for pier support, must be positioned seaward of any freshwater wetlands, salt marsh, and/or eelgrass beds;
13. The mooring number as assigned by the Harbormaster shall be clearly displayed on the seaward face of the dock, using 2" numbers of a contrasting color;
14. Over freshwater wetlands and salt marshes, the decking surface shall have a minimum of 65% open area;
15. The maximum horizontal foot candle level as measured directly below each complete lighting unit shall not exceed 0.2 foot-candle (Fc);
16. No portion of the pier and floats shall be within:
 - a. Twenty five feet of a property line or property line extension,
 - b. One hundred feet (100 ft.) of a navigation channel or one hundred feet (100 ft.) from the location of any mooring anchor to the nearest edge of the float or pier if no float, or
 - c. Two hundred fifty feet (250 ft.) from boat ramp, public landing, or public swimming beach;
17. New piers, or replacement, expansion or substantial repair of an existing pier, shall be for seasonal use only;
18. If the pier is located in an anadromous fish run, the dock and supporting materials shall not be placed prior to June 15, of each year;
19. If treated lumber is used as a construction material, only non-leaching types of preservative shall be allowed; and

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20. Bubblers, or other such items that keep pilings free of ice, must not disturb the bottom.
 21. All piers shall include at the most appropriate location, signage stating that public passage is allowed laterally along the shoreline below the high water mark and in the water around the pier for the purposes of fishing, fowling and navigation on both sides of the pier. The signage may also include prohibition on public usage of private property for any other purpose.
 22. All pier applications, including those for temporary small residential piers, shall be accompanied by an engineering certification that the structure is designed and composed of materials appropriate for the site and conditions of usage.
 23. Alternatives Analysis. The project must be the least intrusive structure which will meet the applicant's goals but will also be the most protective of the wetland resources and values. The applicant must show that all alternatives to the proposed structure have been thoroughly investigated and that the proposed structure will provide at least as great protection to the wetland values cited herein as a less intrusive alternative or the greatest protection to the wetland values cited in the Act and the Bylaw. These alternatives include but are not limited to the use of an offshore mooring with dinghy access, dock sharing, use of a Town dock, reduction in the size of the structure, use of a haul rope and the no-build alternative.
- (f) The performance standards of BWR 1.16(1)(e)7, 8, 9, 15, 17, 18 and 20 when applicable, shall be included in all permits concerning docks as a continuing order, and shall be so designated on the Certificate of Compliance. Failure to comply with these conditions shall be grounds for the Commission to revoke the permit and order the removal of the pier.
- (g) Applications for Small Residential Piers in Velocity Zones (SR V-zone Pier). The Commission shall accept applications and plans for small, residential (non-commercial), seasonal piers and any associated temporary supports, walkways, ramps, or floats within Velocity Zones. SR V-zone piers can only be in areas which are historically (i) Harbors of safe refuge, as defined in 46 CFR Section 114.400, "a port, inlet, or other body of water normally sheltered from heavy seas by land and in which a vessel can navigate and safely moor... the suitability will vary for each vessel, depending on the vessel's size, maneuverability, and mooring gear;" or (ii) Not susceptible to significant storm damage, based on already-existent docks in Bourne waterfront locations. A chart marked with already existing docks is available on the Town of Bourne website.
1. Notwithstanding the provisions of BWR 1.16(1)(e) through (f), no expansion of an existing pier, ramp, or float shall be permitted within a Velocity Zone unless it is the determination of the Commission that the expansion of the pier, ramp or float has less environmental impact than the existing structure or that there will be a public benefit from the expansion.
 2. Notwithstanding the provisions of BWR 1.16(1)(e) through (f), no new structures shall be permitted within a Velocity Zone except for small residential piers and associated walkways meeting the following requirements:
 - a. Any new SR V-zone pier shall include no more than 600 sq. ft. of project structure seaward of mean high water (MHW) or seaward of salt marsh edge, or such amount as qualifies under 310 CMR 9.00 et seq. as a small residential dock. Associated walkways or structures landward of MHW shall not be included in the square footage calculation. The float portion may not exceed sound, stable design and size for the purpose, as certified by the engineer in BWR Section BWR 1.16(e)(22).
 - b. New SR V-zone piers must meet all other applicable performance standards herein, including the requirement to be seasonal only.
 - c. The float portion may not exceed sound, stable design and size for the purpose, as certified by the engineer in BWR Section BWR 1.16(e)(22).
 3. All structures approved by the Commission under this section are subject to inspection every 5 years for a structural assessment. Any such inspection requirement shall be included in the Order of Conditions and enforced at the discretion of the Conservation Commission.
 4. In addition to the enforcement orders available to the Conservation Commission pursuant to BWR 1.08 and other laws, SR V-zone piers may be ordered by the Conservation Commission not to be replaced in a subsequent season if it is found that said dock was not removed when required pursuant to this Section 1.16(g) or a required inspection was not performed or adequately acted upon or if vessel or pier usage violated conditions in the Order of Conditions, including any vessel size or location limits.
- (h) Notwithstanding the provisions of BWR 1.16(1)(a) through (g), the terminal float and any associated anchors or piles must maintain a 25' setback to the edge of existing eelgrass beds (*Zostera marina*). If there is any eelgrass within 50' of the structure, the float shall be at least four (4) feet from the bottom at mean low water. Float stops can be used to meet this requirement.
- (i) Notwithstanding the provisions of BWR 1.16(1)(a) through (g), no new dock or expansion of an existing dock shall be permitted within an ACEC.
- (j) Notwithstanding the provisions of BWR 1.16(1)(a) through (g), no new dock or expansion of an existing dock shall be permitted within wildlife habitat of species that are considered endangered, threatened, or of special concern, and in an area identified in the latest Estimated Habitat Map within the current edition of the Atlas of Estimated Habitat of State-Listed Rare Wetlands Wildlife if the project is identified as a take by the Natural Heritage and Endangered Species Program.
- (k) Notwithstanding the provisions of BWR 1.16(1)(e)1.,4.,5.,16.,17.,andBWR1.16(1)(g), the Commission may permit a pier

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provided that:

1. The pier meets the other provisions of BWR 1.00;
2. The pier meets the provisions of 310 CMR 10.00; and
3. The pier is owned by the Town of Bourne and used in the service of the public.

(l) Notwithstanding the provisions of BWR 1.16(1)(e)1. through 5., 16., through 18., 20., and BWR 1.16(1)(g), the Commission may permit a pier provided:

1. The project meets the other provisions of BWR 1.00;
2. The project meets the provisions of 310 CMR 10.00; and
3. The project is the repair or replacement, but not the expansion and/or enlargement, of a lawfully located structure in existence as of August 1, 2000, owned by the Town of Bourne and used in the service of the public or a commercial marina open to the public.

(m) Notwithstanding the provisions of BWR 1.16(1)(e)1., 3., 11., 12., 16., 17., 20., and BWR 1.16(1)(g), the Commission may permit a pier provided that:

1. The project meets the other provisions of BWR 1.00;
2. The project meets the provisions of 310 CMR 10.00; and
3. The project is the repair or replacement, but not the expansion and/or enlargement, of a pier provided that as of August 1, 2000:
 - (i) All applicable permits have been received; and
 - (ii) The pier is functional and in current use.

(n) Notwithstanding the provisions of BWR 1.16(1)(e) 3., 16., BWR 1.16(1)(g), and BWR 1.16(1)(j) the Commission may permit a pier provided that:

1. The pier meets the other provisions of BWR 1.00;
2. The pier meets the provisions of 310 CMR 10.00;
3. The pier is in full compliance with the Natural Heritage and Endangered Species Program and the Massachusetts Endangered Species Act
4. The pier is used to accommodate dinghies
5. The pier is owned by an association of fifteen or more members who have provided proof of their validity as recorded at the registry of deeds or through other acceptable recorded resolutions or articles of the Association; and
6. The pier allows for a maximum number of secured dinghies as determined by the Harbormaster

(o) The Commission may waive the requirements of BWR 1.16(1)(e) 4. and 5. to comply with ADA Guidelines and/or the need for disabled access is established.

Part II: Regulations for Coastal Wetlands

10.21 - 10.40 Reserved

Part III: Regulations for Inland Wetlands

10.51 - 10.99 Reserved

