

**Town of Marblehead
Wetlands Protection Bylaw Regulations
For
Administering Marblehead Bylaws Chapter 194, Sections 194-1 – 194-14**

1. Introduction and Purpose

1.1 Introduction. The Marblehead Conservation Commission pursuant to authority granted under Town of Marblehead Bylaws, Chapter 194, Section 194-8 promulgates these Wetlands Protection Bylaw Regulations. These Wetlands Protection Bylaw Regulations shall complement Town of Marblehead Bylaws, Chapter 194, Wetlands Protection, and shall have the force of law.

1.2 Purpose. Marblehead Bylaws, Chapter 194, Wetlands Protection, hereinafter referred to as the Wetlands Bylaw, sets forth a public review and decision-making process by which activities affecting Areas Subject to Protection Under the Wetlands Bylaw are to be regulated in order to contribute to wetland values, including but not limited to the following:

- Public or private water supply
- Groundwater
- Flood control
- Erosion and sedimentation control
- Storm damage prevention
- Water pollution prevention
- Fisheries
- Shellfish
- Wildlife habitat
- Recreation

The purpose of the Wetlands Protection Bylaw Regulations, hereinafter referred to as the Regulations, is to define and clarify that process by establishing standard definitions and uniform procedures by which the Marblehead Conservation Commission, hereinafter referred to as the Commission, may carry out its responsibilities under the Wetlands Bylaw. Applicants and the Commission shall use forms provided by the Commission to implement the Regulations.

The Regulations are intended solely for use in administering the Wetlands Bylaw; and nothing contained therein shall be construed as preempting or precluding more stringent protection of wetlands or other natural resource areas by Federal or Commonwealth law, ordinance or regulation.

1.3 Interpretation. The Regulations shall be interpreted and applied so as to be consistent with the Wetlands Bylaw.

1.4 Revision. The Commission may revise the Regulations from time to time after public notice and hearing as required by the Wetlands Bylaw.

2. Definitions

2.1 General. Except as otherwise specifically provided in the Regulations and the Wetlands Bylaw, terms used in the Regulations and the Wetlands Bylaw shall have the meanings attributed to them as defined in the Wetlands Protection Act (MGL c. 131, § 40), hereinafter referred to as the Act, and its regulations (310 CMR 10.00 et. seq.) issued pursuant to the Act by the Massachusetts Department of Environmental Protection, hereinafter referred to as DEP, as the same may be amended from time to time.

2.2 Abutter. Abutter means an owner of land in any direction sharing a common boundary or corner with the site of the proposed activity, including any land located directly across a street, way, river, stream, brook, channel, pond, or diagonally across from an intersection of roads. A landowner more than 300 feet across a body of water shall not be considered an abutter.

2.3 Application. Application means the forms prescribed by the Regulations together with all plans and other documents provided by the applicant seeking a permit for an activity subject to the Wetlands Bylaw.

2.4 Buffer Zone. Except as otherwise set forth in Section 2.13, buffer zone means that area of land extending 100 feet horizontally outward from the boundary of the following resource areas: freshwater wetland, coastal wetland, marsh, wet meadow, bog, swamp, bank, beach, dune, flat, river, pond, stream, estuary, ocean, land under water, or land subject to flooding or inundation by groundwater, surface water, tidal action or coastal storm flowage; and any area specified in 310 CMR 10.02(1)(a).

2.5 Determination. A Determination means a written finding by the Commission as to whether or not a proposed activity or an area is subject to the Wetlands Bylaw.

2.6 Freshwater Wetlands. Freshwater Wetlands are wet meadows, marshes, swamps and bogs. Also, they are areas where the topography is low and flat, and where soils are annually saturated such that groundwater, flowing or standing surface water or ice provides a significant part of the supporting substrate for a plant community. Also, freshwater wetlands may border creeks, rivers, streams, ponds, lakes or other bodies of water or wetlands, or they may be isolated. Freshwater wetlands also include that portion of any bank, which touches any inland waters. Where isolated, freshwater wetlands shall be at least 1,000 square feet in area. Wetland indicator plants shall include but not necessarily be limited to those plant species identified in the Act. Wetland indicator plants are also those classified in the indicator categories of Facultative, Facultative+, Facultative Wetland-, Facultative Wetland, Facultative Wetland+, or Obligate Wetland in the National List of Plant Species That Occur in Wetlands: Massachusetts (Fish & Wildlife Service, U.S. Department of the Interior, 1988). The presence of hydric soils or other indicators of

wetland hydrology will also be considered when delineating wetland boundaries. If freshwater wetlands lack wetland indicator species due to unpermitted alteration or winter conditions that do not allow for adequate identification of vegetation, delineation by the applicant may be based solely upon the presence of hydric soils and evidence of wetland hydrology.

The boundary of freshwater wetlands is the line within which the vegetation community is substantially characterized by wetland indicator species and within which hydric soils or other indicators of wetland hydrology are present. When vegetation appears to have been altered, is absent, or is not identifiable due to winter conditions, the boundary is the line within which hydric soils and indicators of wetland hydrology are present.

2.7 Hydric Soil. Hydric soil means a soil which, in its undrained condition, is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions which favor the growth and regeneration of hydrophytic (wetland) vegetation. The following types of soils are hydric:

- (a) All organic soils (Histosols) except Folists;
- (b) Mineral soils in Aquic suborders, Aquic subgroups, Albolls suborder, Salorthids great group, or Pell great groups of Vertisols which are:
 - (1) Somewhat poorly drained (as the soil type may be defined from time to time by the U.S. Soil Conservation Service) and have a water table less than 15 cm from the surface at some time during the growing season; or
 - (2) Poorly drained or very poorly drained (as those types may be defined from time to time by the U.S. Soil Conservation Service) and have either:
 - (i) A water table at less than 30 cm from the surface at some time during the growing season if permeability is equal to or greater than 15 cm/hour in all layers within 60 cm; or
 - (ii) A water table at less than 45 cm from the surface at some time during the growing season if permeability is less than 15 cm/hour in any layer within 60 cm;
 - (3) Mineral soils which are ponded during any part of the growing season; or
 - (4) Mineral soils, which are frequently flooded for long durations (more than 7 days) or flooded for a very long duration (more than one month) during the growing season.

Specific identification of hydric soil conditions will be based on the most current version of “Field Indicators for Identifying Hydric Soils in New England” issued by the New England Hydric Soils Technical Committee (NEHSTC).

2.8 Permit. Permit means the document, in a form prescribed by these Regulations, which authorizes work or activity subject to the jurisdiction of the Wetlands Bylaw. The Permit includes any findings of fact and conclusions of

law, which the Commission may make, and any conditions imposed by the Commission to preserve the interests protected by the Wetlands Bylaw.

2.9 Pond. Pond is defined in 310 CMR 10.04 with the modification that it shall include all bodies of water with a surface area observed or recorded within the last ten years of at least 5,000 square feet. Ponds shall contain standing water except for periods of extended drought.

2.10 Resource Area. Except as otherwise provided in these Regulations, resource area means: freshwater wetland, coastal wetland, marsh, wet meadow, bog, swamp, vernal pool, bank, beach, dune, flat, river, pond, stream, estuary, ocean, land under water, or land subject to flooding or inundation by groundwater, surface water, tidal action or coastal storm flowage; and any area defined as such in 310-CMR 10.00 et. seq., but does not include buffer zone.

2.11 Stream. Stream means a body of running water, including a brook or creek, which moves in a definite channel in the ground due to a hydraulic gradient, and which flows within, into or out of a Resource Area. 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. A body of water that flows throughout the year is considered a river.

2.12 Routine Stream or Brook Clearance. Routine stream or brook clearance means the removal of accumulated debris to restore the natural water flow, which removal does not change the width, depth or direction of flow from what existed prior to accumulation of the debris, provided that the work does not impair groundwater quality or surface water quality. Routine stream or brook clearance done by hand requires prior written consent of the Commission and a site visit by a representative of the Commission. All stream or brook clearance that will not be done by hand requires the filing of an application for a permit with the Commission.

2.13 Vernal Pool. Vernal pool means an intermittent body of water which meets the criteria, either as certified, or as determined by the Commission within its discretion and in accordance with criteria set forth in "Guidelines for Certification of Vernal Pool Habitat" issued by the Massachusetts Division of Fisheries and Wildlife. Prior Certification is not required. Vernal pools function as the only breeding habitat for a variety of amphibian species such as wood frog (*Rana sylvatica*) and various salamander species and provide other important wildlife habitat functions for amphibians and other wildlife. Vernal pool resource area includes the area within 100 feet of the mean annual boundaries of the pool. The buffer zone to a vernal pool resource area shall mean that area extending outward 100-feet horizontally from the mean annual boundary of the resource area (200-feet from the mean annual boundary of the pool).

3. Plans and Engineering Information

3.1 General. Plans shall describe the proposed activity and its effect on the environment. All 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 a professional surveyor or engineer registered in the Commonwealth of Massachusetts, if required by the Commission. Plans shall be consistent with those submitted to the Board of Appeals, Planning Board and/or Board of Health.

3.2 Plan Requirements. The purpose of plans is to identify the site and nearby features. Plans shall include, but not be limited to, the following features:

- (a) An 8.5 x 11 cut-out of a U.S. Geological Survey Quadrangle Sheet showing the location of the proposed activity;
- (b) Names of all nearby roads and streets, and the site street address along with the Assessor Map Number and Parcel Number;
- (c) Outline of the watershed areas related to the proposed activity, including floodplains;
- (d) Water quality classifications (General Laws Chapter 21, the Clean Waters Act);
- (e) Property lines, including distances, bearings, markers at the perimeter, and the names of owners.

3.3 Field Requirements. The purpose of field requirements is to allow the Commission to properly and accurately view existing and proposed site conditions in order to assess compliance with the Wetlands Bylaw. Project sites shall include, but not be limited to, the following features:

- (a) Location of all Resource Areas marked with a numbered sequence of flags in the field, corresponding to information provided on project plans submitted with a permit application;
- (b) Resource Areas delineated by a professional with knowledge of wetland vegetation and soils;
- (c) Corners of all proposed buildings or structures clearly marked by stakes corresponding to information provided on project plans submitted with a Permit Application.

3.4 Engineering Drawings and Information. The purpose of engineering drawings and information is to describe the proposed activity and its impact. Engineering drawings may be required by the Commission to include, without limitation, the following features:

- (a) A title designating the project location, the name of the person preparing the drawings, the date prepared, including latest revision dates, and an identifying reference number;
- (b) Present and proposed contours of the entire site and affected adjacent areas. Generally, 2-foot contours should be shown. Contours shall be keyed to known datum planes such as Marblehead

- Vertical Datum (MVD), National Geodetic Vertical Datum of 1929 (NGVD29) or North American Vertical Datum of 1988 (NAVD88);
- (c) Delineation of all Resource Areas and Buffer Zones, whether continuous or intermittent, natural or man-made;
 - (d) Present and proposed location of all rights of way and easements;
 - (e) Location of any underground utilities;
 - (f) Location, dimensions and area of all present and proposed structures and paved areas;
 - (g) Location of proposed and existing water retention areas and all existing and proposed storm drainage pipes, ditches, structures, culverts, and outfalls fully described with information on inverts, slopes, materials, entrance and outlet conditions, bedding in unstable soils, details of drainage structures and endwalls, and other standard engineering data on such work;
 - (h) Location of areas to be removed, dredged, filled or altered;
 - (i) Locations and elevations of cellars and floors and bottoms of septic systems and leaching fields, and any alternate sites;
 - (j) Sewage disposal systems, specifically showing the location and type to be used in compliance with state and local environmental codes;
 - (k) Cross sections showing slope, bank, and bottom treatment of each watercourse to be altered (Locations of cross sections to be specified.);
 - (l) Soil characteristics in representative portions of the site, including characteristics of hydric soils and depth of peat and muck in wetlands (Sampling sites shall be specified.);
 - (m) The maximum ground water elevation at the period of the year when the ground water table is at its highest elevation, including calendar dates of measurements, samplings, and percolation tests, if any;
 - (n) All calculations necessary to show the effect of the proposed activity on soil and water, both groundwater and surface water;
 - (o) Based on the drainage areas and physical features shown on the plans, calculation of runoff volumes, peak discharge rates, velocities and times of concentration for 24-hour duration storms of return periods of 2, 10, and 100 years. Calculations must show the existing condition, the condition at completion of the proposed work, and the condition upon further development planned or reasonably anticipated for the site. The 100-year, 24-hour storm shall be evaluated to show that there will be no offsite increased flooding impacts.
 - (p) The location of any spoil areas;
 - (q) Erosion and sedimentation prevention plans during and after construction;
 - (r) Typical cross-sections, elevations and stability calculations for water retaining weirs, dams and dikes, and of earth retaining structures alongside open waterways and wetlands;

- (s) Layout and site plans drawn at commonly acceptable scales, preferably 20' to the inch, with detail and profile drawings drawn to the appropriate scales;
- (t) Locations, logs, and water table information from all test borings, test pits, percolations tests, and other subsurface explorations (Direction of flow of groundwater across the site shall be indicated to the extent possible from available information.);
- (u) Flood plains and flood hazard areas.

3.5 Construction Methods. The applicant shall include a description of construction methods and, in particular, measures to minimize erosion, pollution, and damage to the biological environment both within and beyond the actual construction area, including the following:

- (a) Methods of erosion control during construction, including sedimentation ponds and slope protection;
- (b) Methods for protecting stripped and cleared areas of the site during extended shutdowns due to weather, economic conditions, or any other cause;
- (c) Methods of stockpiling excavated wetland spoil on the site or of transportation to offsite locations, as applicable;
- (d) Proposed sequence of construction of retention basins, vegetation clearing and land filling, grading or excavating.
- (e) Methods of preventing construction vehicles or equipment from transporting or depositing mud, dirt or debris on roadways as they leave the project site.

3.6 Environmental Impact Report. If an applicant is required by the Massachusetts Executive Office of Environmental Affairs to prepare an Environmental Impact Report (EIR) and if the EIR scope includes impacts on any Resource Areas, the Commission shall consider the EIR in any decision pursuant to the Wetlands Bylaw. The Commission shall have authority to continue it's hearing under the Wetlands Bylaw until the final EIR is certified by the Secretary of Environmental Affairs as complying with the Massachusetts Environmental Policy Act.

3.7 Other Information. The requirements stated above are not definitive or exclusive. Some may be omitted in a particular case, and an Applicant may be required to submit other additional information deemed necessary to determine compliance with the Wetlands Bylaw. The Commission encourages Applicants and their consultants to schedule a pre-filing conference to ascertain information requirements for specific projects.

3.8 Open Meeting Law Compliance. Pursuant to the Open Meeting Law, G.L. c. 30A, §§ 18-25, all Materials submitted to and/or used by the Commission at a meeting, hearing or executive session shall be retained by it as part of the official record thereof. For the purposes hereof, "Materials" include all documents and

other exhibits, including but not limited to plans, reports, drawings, photographs, recordings, maps or models, submitted to and/or used by the Commission, in any format whatsoever, whether provided as part of a formal application to the Commission, informally prior to or during a public meeting or otherwise. Included as Materials are e-mail communications with the Commission and/or its staff, electronic submittals to the Commission and Powerpoint or similar presentations made to the Commission. So as to satisfy its obligation under the Law, the Commission hereby requires that, whenever the submittal of Materials is required under these Regulations or is otherwise made by an applicant hereunder, the following rules shall apply:

- (a) Copies of all Materials shall be provided to the Commission for inclusion in the official record.
- (b) Full-size plans and other Materials larger than 11-inches-by-17-inches (11" x 17") shall be accompanied by a reduced-size version of the same, no larger than 11-inches-by-17-inches (11" x 17"), as aforesaid.
- (c) All Materials submitted, presented or utilized in electronic format shall also be provided in hard copy, subject to the foregoing provision as to size.
- (d) Where, due to the nature of the Material(s) used, submittal of the same is infeasible (e.g. models, specimens), a photograph or other representation of the same shall be submitted to the Commission.

3.9 Failure to Provide Information. Pursuant to Section 194-7 of the Wetlands Bylaw, failure to provide information required by these Regulations or other information requested by the Commission to produce adequate evidence to satisfy the Applicant's burden of proof shall constitute sufficient cause for a denial of a Permit.

4. Filing Procedures

4.1 Application. An application shall not be deemed filed pursuant to the Wetlands Bylaw unless it is completed in the appropriate form, includes plans and other information as required by these Regulations, and is accompanied by the filing fee.

4.2 Other Permits. All other permits, variances and approvals required by any other applicable statute, bylaw or regulation must be obtained prior to or concurrently with the filing of an application under the Wetlands Bylaw only if those permits, variances and approvals are obtainable at the time the application is filed.

5. Performance Standards

5.1 General. Except as otherwise specifically provided by these Regulations, the Commission shall apply the Performance Standards contained in the DEP Regulations, currently codified at 310 CMR 10.00 et. seq., as they may be amended from time to time. Presumptions of significance contained in the DEP Regulations shall extend to the wetland values protected by the Wetlands Bylaw.

5.2 Vegetated Wetlands. Except as provided in this subsection, the Performance Standards contained in the DEP Regulations, currently codified at 310 CMR 10.55, shall apply. Replacement of Bordering Vegetated Wetlands or Freshwater Wetlands with surface area equal to twice that altered is a preferred standard. In its discretion, the Commission may require replacement with an area greater or less than twice that altered. In exercising this discretion, the Commission shall consider the nature and significance of the Resource Area, the topography and other characteristics of the site, the difficulty of replacement, the area of land available, and other such factors as the Commission may determine to be relevant in a particular case. Replacement may not be required, in the Commission's discretion, when the alteration is temporary (i.e. during pipeline construction) and restoration of the disturbed area can be achieved.

5.3 Bordering Land Subject to Flooding. Except as provided in this subsection, the Performance Standards contained in the DEP Regulations, currently codified at 310 CMR 10.57, shall apply. Creation of compensatory flood storage equal in volume to that displaced by the proposed project is a minimum standard. In its discretion, the Commission may require compensatory flood storage of greater volume. In exercising this discretion, the Commission shall consider the extent of flooding and the resulting flood hazard, the topography of the site, the area of land available, and such other factors as the Commission may determine to be relevant in a particular case.

5.4 Buffer Zone. Buffer Zones are essential for protection of Resource Areas. A Buffer Zone adjacent to a Resource Area reduces adverse impacts to the wetland functions and values from nearby activities. A naturally vegetated Buffer Zone functions to protect the wetland values included in the Wetlands Bylaw. The elements of a Buffer Zone include setback distance, amount and type of vegetation, soil composition and slope of the land. Interaction of all of these elements determines the effectiveness of the Buffer Zone.

5.4.1 Presumptions. The Commission presumes that work in the categories below, within the tabulated distances from a Resource Area, will result in alteration of the Resource Area. This presumption is rebuttable and may be overcome upon a showing by a preponderance of credible evidence that the nature of the proposed work, special design measures, and construction controls or site conditions will prevent alterations of the Resource Area. For the purposes

of the table below, "disturb" means filling, excavation, grading, operation of motorized construction equipment and storage or stockpiling of earth or construction materials, alteration of vegetation, and "building" means a structure requiring a building permit.

<u>Type of Project</u>	<u>No Disturb Zone (ft)</u>	<u>No Building Zone (ft)</u>
Residential Lot	25	50
Commercial/Industrial	25	50
Driveways, Utilities, Roads and Drainage	25 (except for permitted crossings)	

A vegetated buffer strip directly abutting and along the resource area may be required if any encroachment into the No Disturb Zone or No Build Zone is allowed.

Notwithstanding the foregoing, the following activities shall not be subject to this Section 5.4.1:

1. Mowing lawns (planting new lawn areas is subject to Section 5.4.1);
2. Cutting, pruning, maintaining and replacing in kind landscaped vegetation existing as of the effective date of these Regulations, however cutting, pruning or altering any naturally occurring vegetation is subject to Section 5.4.1;
3. Activities that are temporary in nature and have a negligible impact and which upon completion, leave the buffer zone in its immediately pre-existing condition, examples of which are seasonal storage of boats where there is no impact to natural vegetation, seasonal firewood piles, temporary erection of tents and placement of lawn furniture;
4. The maintenance, repair or replacement, but not enlargement, of any structure for which a building permit or certificate of occupancy has been issued as of the effective date of these Regulations, however all other Sections of these Regulations do apply. A vegetated buffer strip directly abutting and along the resource area may be required if deemed feasible by the commission.

5.4.2 Protective Vegetative Cover. Protective vegetative cover shall be maintained on all embankments facing lakes, ponds, marshes, streams and marine waters. In particular:

- a. No removal of low brush within 25' of a Resource Area;
- b. No cutting of standing trees and surface vegetation, only selective thinning of standing trees with under 4 inch dbh (diameter at breast height), consistent with vista pruning as defined in 310 CMR 10.04.

5.4.3 Exposed Soil. Any area proposed for removal of vegetation where soil will be exposed for more than 10 days shall be mulched or otherwise treated to prevent erosion.

5.4.4 Minor Activities in Buffer Zones and/or within Land Subject to Coastal Storm Flowage. In addition to the Minor Activities specified in 310 CMR 10.02 (2)(b)1, additional minor activities for an existing dwelling within 100 feet from a resource area or within Land Subject to Coastal Storm Flowage are allowed under these Marblehead regulations. These additional minor activities are: new siding, replacing windows/doors, new roof shingles, re-painting and repair of existing decks (but not expansion). The following conditions apply for the foregoing minor activities to proceed without filing a Request for Determination or a Notice of Intent.

1. The dwelling can be either single or double family.
2. The work to be performed must be described in writing in sufficient detail to facilitate an accurate evaluation by the Conservation Commission.
3. The location of the dwelling with respect to the resource area must be accurately described in a sketch.
4. If required by the Conservation Commission, an appropriate erosion control/silt barrier must be erected and maintained during the work. This must be shown on the foregoing sketch.
5. All demolition debris will be removed from the site ASAP and not stored within a resource area or a buffer zone. If a dumpster is used to contain the debris, the dumpster shall be covered. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations. No debris or trash shall be allowed to enter resource waters.
6. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.
7. Any pressure-treated wood used in the construction shall be arsenic-free.
8. By voluntary agreement with the applicant, only organic fertilizers are to be used on the property landward of the resource areas. Fertilizers should not contain pesticides or herbicides; should contain slow release nitrogen and should not contain more than 3% phosphorous. To mitigate chemical runoff, do not fertilize directly before a rainstorm and do not over fertilize. Apply fertilizer in late April and in September (refer to: A Homeowner's Guide to Environmentally Sound Lawncare published by the Massachusetts Department of Food and Agriculture and the booklet, Don't Trash Grass, published by the Massachusetts Department of Environmental Protection). THIS CONDITION SHALL APPLY FOR THE CURRENT AND ALL FUTURE OWNERS.
9. Failure to comply with the above conditions may result in an Enforcement Order being issued whereby all work must cease and a Notice of Intent must be filed.
10. The Conservation Commission reserves the right to enter the property at its discretion to verify the work, resource location, erosion control and handling of materials.

11. A Minor Activity Permit is required before any work is started. Said permit may be issued by an individual member of the Conservation Commission or by the Conservation Administrator.

5.5 Coastal Banks. Except as provided in this subsection, the Performance Standards contained in the DEP Regulations, currently codified at 310 CMR 10.30 shall apply. New, or the expansion of existing, coastal engineering structures such as, but not limited to, bulkheads, revetments, seawalls, or groins will not be permitted without a clear showing that there is no other method of protecting an existing building other than the proposed coastal engineering structure. Preferred stabilization methods for coastal banks include, but are not limited to, protective plantings and other non-structural stabilization techniques.

5.6 Vernal Pools. No project or activity shall have an adverse effect on a Vernal Pool Resource Area by altering its topography, soil structure, plant community composition, and hydrologic regime and/or water quality. It is presumed, unless compelling evidence to the contrary is provided, that the following activities within the Vernal Pool Resource Area would fail to meet the aforementioned Performance Standards:

- (a) Disturbing the soil, humus layer and/or leaf litter at any time of the year;
- (b) The placement of sediments, brush clippings or other fill;
- (c) The changing of drainage patterns;
- (d) Alterations to vegetation to the canopy and/or understory (shrub layer).

The burden of proof shall be on the Applicant to demonstrate that any proposed project or activity within the vernal pool resource area shall meet the Performance Standards as described above.

5.7 Stormwater Management. MassDEP's Stormwater Management Policy and Stormwater Management Standards, as last revised, shall apply under Marblehead's Wetlands Protection Bylaw and Regulations to the same extent that they apply under the Massachusetts Wetlands Protection Act and its Regulations (310 CMR 10.00) with the following exception. There shall be no discharge of untreated stormwater directly into any wetlands or resource waters for any project nor shall such discharge cause any erosion. Rooftop runoff, except from metal roofs, can be considered as treated since it is considered uncontaminated for purposes of the Stormwater Standards. Driveway runoff is not considered as treated runoff. Refer to the Massachusetts Stormwater Handbook for guidance in implementing the Stormwater Management Policy and Standards.

5.8 Waiver of Regulations. Notwithstanding any other provision of these Regulations, the Commission may in its discretion, waive strict compliance with these Regulations when, in the judgment of the Commission, all of the following are met: 1) there are no reasonable conditions or alternatives to allow the

proposed activity to proceed in compliance with these Regulations; and 2) mitigating measures are proposed that will allow the proposed activity to be conditioned so as to contribute to the protection of the wetland values protected by the Wetlands Bylaw; and 3) such waiver would either serve a substantial public interest, or strict compliance with these Regulations would so restrict the use of property so as to constitute a taking of the property without compensation.

6. Consolidation with Hearing Under the Wetlands Protection Act

6.1 Authority. Pursuant to Section 194-5 of the Wetlands Bylaw, the Commission may in its discretion consolidate the hearing under the Wetlands Bylaw with the hearing under the Act. When the Commission consolidates the hearing under the Wetlands Bylaw with the hearing under the Act, the hearings shall be conducted concurrently, provided that the Commission may later sever the hearings, if necessary, to comply with the Act or the Wetlands Bylaw.

6.2 Request for Consolidation. Any Applicant desiring to consolidate the hearing under the Wetlands Bylaw with the hearing under the Act may so move at the initial public hearing on the application. The Commission shall grant or deny the motion at the hearing. The Commission may in its discretion consolidate on its own motion.

7. Severability

The invalidity of any section or provision of these Regulations shall not invalidate any other section or provision, nor shall it invalidate any Permit or Determination previously issued.

8. Effective Date

8.1 Effective Date. These regulations shall take effect on October 5, 2001. Promulgation of these Regulations shall not affect any action by the Commission, or any completed application filed with the Commission, which action or filing was done prior to the effective date.

8.2 Transition Rule. The Commission may in its discretion determine that its disposition of any Request for Determination or Notice of Intent pursuant to the Act and the Wetlands Bylaw prior to the effective date of the Regulations constitutes its Determination or Permit disposition under the Wetlands Bylaw and its Regulations. The Commission shall make such a determination if requested by the Applicant, and may also do so on its own motion. In deciding whether to do so in a particular case, the Commission shall consider whether its prior disposition under the Act and Wetlands Bylaw was sufficient to preserve the interests protected by the Wetlands Bylaw and its Regulations.

9. Fee Schedule

9.1 Fee for Request for Determination of Applicability.

- a. To determine if the Wetlands Bylaw applies to land or proposed work - \$50
- b. To request a formal review of a wetland delineation –
If no site visit, \$50; If site visit required, \$100

9.2 Fees for Permit Applications.

A fixed fee of \$50 will be imposed for a project review when the proposed work is located 75 feet or farther from a Resource Area.

Other projects, located less than 75 feet from a Resource Area, are subject to the following fee schedule:

- a. House addition, tennis court, swimming pool, utility work, septic system upgrade which meets Title V requirements for setbacks to wetlands, repairs to existing piers, docks, and coastal engineering structures) - \$100;
- b. Single family home (including accessory structures, driveways and utilities) - \$200;
- c. Multiple dwelling structure (including accessory structures, driveways and utilities) - \$400;
- d. Subdivisions (roads, utilities and storm water management only) - \$600
- e. Commercial and industrial projects - \$600
- f. New piers, docks and coastal engineering structures - \$200
- g. New septic system, or repair of existing system which does not meet Title V requirements for setbacks to wetlands - \$200
- h. Dredging activities (not associated with pier or dock construction) - \$600
- i. Any other activity not included in categories above and Minor Activity Permits - \$50
- j. An additional \$500 fee will be charged if the project requires wetland replication as a result of direct wetland impacts, or requires filling of Land Subject to Flooding when said filling exceeds 250 sq. ft.
- k. All permit applications filed after the work has commenced will be charged double the appropriate filing fee.

9.3 Fee for Amendment to Orders of Conditions. \$50

9.4 Fee for Extensions to Permits. \$50

9.5 Fee for Certificates of Compliance. \$50

9.6 Fees for Town Projects. Filing fees shall not be required for any application or filing by the Town of Marblehead.

9.7 Payment. Fees shall be payable upon filing of the application. Failure to pay the fee when due shall cause the application to be deemed incomplete.

10. Enforcement and Penalties

10.1 Violations of the Wetlands Bylaw or Permits. A fine of not more than \$300 shall punish any person or entity that violates any provision of the Wetlands Bylaw or a permit issued pursuant thereto. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the Wetlands Bylaw or applicable permit violated shall constitute a separate offense.

By administrative order, the Commission may: a) require any person or entity to remediate any damage or harm caused by any violation of the Wetlands Bylaw or any applicable permit. Such remediation shall be in the manner and to the extent specified by the Commission; b) permit all or a portion of any amount levied as a fine hereunder to be paid, in lieu of all or a portion of such fine, to a nonprofit organization approved by the Commission. Such payment shall only be permitted pursuant to the request of the aggrieved party. Any organization selected for such payment must be engaged in the protection or enhancement of the wetland values in the Town of Marblehead.

Each of the foregoing remedies shall be cumulative and not exclusive, and in addition to the remedies set fourth under Section 194-11 of the Wetlands Bylaw.

11. Security

The Commission may require, as a permit condition, that the performance and observance of the Order of Conditions be secured by one or both of the following methods:

1. By a bond or deposit of money or negotiable securities in an amount and form determined by the Commission to be sufficient to secure the completion of all conservation measures specified in its Order of Conditions; and, the Commission may require that the applicant specify the time within which such construction shall be completed.

The penal sum of any such bond shall bear a direct and reasonable relationship to the expected costs, including the effects of inflation, necessary to complete the work. Such amount or amounts shall be from time to time reduced as is, in the

determination of the Commission, necessary to reflect the actual expected costs of the work remaining to be completed. An amount equal to ten percent (10%) of the original bond amount shall be retained and not released by the Commission until the Commission has issued a Certificate of Compliance for the work covered by the bond.

2. By a covenant, executed and duly recorded by the owner of record, running with the land whereby such conservation measures, as are stated in the Order of Conditions, shall be fulfilled before any lot may be built upon or conveyed. A deed of any part of the subject property in violation hereof shall be voidable by the grantee prior to the release of the covenant, but not later than three years from the date of such deed.

The bond or covenant shall, in the case of the bond, be given to the Town of Marblehead, and, in the case of a covenant, be recorded in the Registry of Deeds within 14 days of the granting of the Order of Conditions.