

WETLANDS PROTECTION RULES AND REGULATIONS FOR NAS SOUTH WEYMOUTH

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WETLANDS PROTECTION RULES AND REGULATIONS FOR NAS SOUTH WEYMOUTH

ARTICLE I GENERAL

1.1 Purpose

The purpose of these Wetlands Protection Rules and Regulations for Naval Air Station (“NAS”) South Weymouth (the “regulations”) is to protect freshwater wetlands and other resources in NAS South Weymouth as defined in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, Section 40) (the “State Act”) and implementing regulations (310 CMR 10.00) (the “State Regulations”).

It is deemed in the public interest that activities determined by a Conservation Commission likely to have a significant or cumulative effect upon the resource areas and interests protected by the State Act and State Regulations be controlled.

1.2 Authority

- A. These regulations shall be known and may be cited as the Wetlands Protection Rules and Regulations for NAS South Weymouth.
- B. Under the authority vested in the South Shore Tri-Town Development Corporation (the “Corporation”) under Chapter 301, Sections 6(r) and 13(d) of the Massachusetts Acts and Resolves of 1998 adopted by the Massachusetts General Court on August 14, 1998 (“Enabling Legislation”) and under the Zoning and Land Use By-Laws of Naval Air Station (NAS) South Weymouth (“Zoning By-Laws”), the Corporation hereby adopts these Wetlands Protection Rules and Regulations for NAS South Weymouth.
- C. NAS South Weymouth is divided into a Central Redevelopment Area and Perimeter Area, as described in more detail in the Zoning By-Laws. The provisions of these regulations shall apply in both the Central Redevelopment Area and the Perimeter Area. The Corporation, acting in the capacity of a Conservation Commission, shall administer and enforce these regulations within the boundaries of the Central Redevelopment Area, and the Conservation Commission of each Town shall administer and enforce these regulations within the boundaries of that portion of the Perimeter Area located within such Town. Areas outside NAS South Weymouth shall remain entirely within the jurisdiction of the Towns and shall continue to be administered by officials of the Towns in accordance with all applicable laws, including the municipal laws and regulations applicable to the Towns.

- D. For the purposes of these regulations, the term “Commission” shall mean the Corporation with respect to the Central Redevelopment Area and the Conservation Commission of the Town of Abington, Rockland or Weymouth with respect to that portion of the Perimeter Area located within such Town.
- E. Within the Central Redevelopment Area, these regulations shall also be enforced by the Conservation Agent employed or designated by the Corporation. The Conservation Agent shall coordinate with the Conservation Commissions of the Towns of Abington, Rockland and Weymouth on issues of mutual concern. Duties of the Conservation Agent shall be specified by the Corporation.
- F. The Corporation shall maintain full authority to administer these regulations until that authority is transferred to another board established in accordance with Section 30 of the Enabling Legislation.

1.3 Jurisdiction and Definitions

The jurisdiction of the Commission shall be in accordance with the State Act and State Regulations. Definitions set forth in the State Act and State Regulations shall have the same meaning under these regulations. Capitalized terms used but not defined in these regulations or the State Act or State Regulations shall have the meaning ascribed to such terms in the Zoning By-Laws.

ARTICLE II ADOPTION OF THE STATE ACT AND STATE REGULATIONS

The State Act and State Regulations are hereby adopted by the Corporation and all provisions, performance standards and requirements set forth under the State Act and State Regulations shall be enforceable under these regulations.

ARTICLE III FILING REQUIREMENTS

Any person filing an Abbreviated Notice of Resource Area Delineation, a Request for Determination of Applicability, a Notice of Intent, a request for amendment to or extension of a Determination of Applicability or an Order of Conditions, or a request for a Certificate of Compliance (the “application”) with the Commission in connection with a project proposed in any portion of NAS South Weymouth shall adhere to the filing requirements as outlined below.

If the filing pertains to land within the Central Redevelopment Area, a minimum of ten (10) copies of the application shall be provided by certified mail or by hand delivery to the Corporation. In addition, each filing shall contain one (1) electronic copy of the application. The Corporation will affix an official stamp on the application stating the date received (the official filing date). The Corporation shall expeditiously forward one or more copies of the application to the Corporation’s appropriate boards, officials,

employees and designees. The Corporation shall expeditiously forward one copy of the application to the Conservation Commission of the Town which the proposed project is located within. If the filing pertains to land within 300 feet of an adjoining municipality, the Corporation shall also provide one (1) copy of the application to the Conservation Commission of that municipality.

If the filing pertains to land in the Perimeter Area, a minimum of ten (10) copies of the application shall be provided by certified mail or by hand delivery to the applicable Commission and one (1) copy of the application shall be provided by certified mail or by hand delivery to the Corporation. In addition, each filing with the applicable Commission shall contain one (1) electronic copy of the application. The applicable Commission will affix an official stamp on the application stating the date received (the official filing date). Simultaneous with the filing with the applicable Commission, the applicant shall forward one copy of the application by certified mail or hand delivery to any and all appropriate boards and officials within such Town, which appropriate boards and officials are named in a list maintained by the Corporation for such purpose. If the filing pertains to land within 300 feet of an adjoining municipality, the applicant shall also provide one (1) copy of the application to the Conservation Commission of that municipality.

In cases where copies of an application are sent to the appropriate boards and officials mentioned above, said application shall be provided under a cover letter that shall inform the appropriate boards and officials that under the provision of these regulations they have 14 days from the official filing date in which to file advisory comments and recommendations with the Commission and the applicant. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the boards and officials have had 14 days from the official filing date to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

In addition to the filing requirements outlined above, all applicants shall also adhere to the filing requirements outlined in the State Regulations.

ARTICLE IV FEES

4.1 Filing Fees

In addition to those fees payable to the Commission in accordance with the State Regulations, each submittal to the Commission shall include a filing fee consistent with the requirements set forth in the schedule of fees adopted annually by the Corporation (the "Schedule of Filing Fees"). The Schedule of Filing Fees shall be kept on file at the offices of the Corporation and with each Commission in the Towns of Abington,

Rockland and Weymouth. All fees shall be paid by check or money order payable to (i) “South Shore Tri-Town Development Corporation” where the Corporation is the Commission, (ii) the “Town of Abington” where the Abington Conservation Commission is the Commission, (iii) the “Town of Rockland” where the Rockland Conservation Commission is the Commission, and (iv) the “Town of Weymouth” where the Weymouth Conservation Commission is the Commission. The filing fee shall be presented to the Commission at the time an application is filed with the Commission. No submittal will be processed without the requisite fee, except as otherwise provided in these regulations.

4.2 Advertising and Notification Fees

In addition to the filing fee, an applicant must also pay for any mailings and legal notices published by the Commission in conjunction with the applicant’s filing.

4.3 Consultant Fees

Upon receipt of an Abbreviated Notice of Resource Area Delineation, a Request for Determination of Applicability, a Notice of Intent, a request for amendment to or extension of a Determination of Applicability or an Order of Conditions, or a request for a Certificate of Compliance, or at any point during the application and hearing process, the Commission is authorized per M.G.L. Ch. 44, Section 53G to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering, environmental and other consultant services deemed necessary by the Commission to come to a final decision on the application or request. This fee is called the “consultant fee.”

The specific consultant services may include, but are not limited to the following:

- Application review, and the preparation of draft Determinations of Applicability and Orders of Conditions;
- Field investigations to document and/or confirm site conditions;
- Review and confirmation of resource area/buffer zone impact analyses and mitigation plans, including plans for wetland replication;
- Review and confirmation of engineering design plans;
- Review and confirmation of drainage and stormwater management calculations and plans;
- Review and confirmation of soil erosion and sediment control plans;
- Construction and post-construction monitoring and reporting; and
- Attendance at Commission meetings and hearings.

The applicant shall also pay the consultant's direct expenses in performing tasks for which the consultant was retained by the Commission. These expenses include, but are not limited to mileage, postage, overnight delivery, photocopies, reprographics, presentation materials, and other out-of-pocket expenses.

All consultants shall be retained and supervised by the Commission. All requests for meetings, site visits, reports, and questions of the consultant shall be routed through the Commission or its agent, or similar, unless the Commission authorizes the consultant to work directly with the applicant to resolve project-related issues. A copy of all consultant reports shall be provided by the Commission to the applicant in a timely manner.

Should the Commission determine that consultant fees are necessary for a proposed project, the Commission shall select a qualified consultant(s) and request a written estimate of costs for the provision of the requested services. Said estimate shall be provided to the applicant. Barring an administrative appeal relative to consultant selection, the applicant shall transmit to the Commission a check or money order equal in amount to the consultant cost estimate.

The consultant fee shall be deposited with the Corporation or the applicable Town Treasurer, who shall establish a special account in accordance with M.G.L., Ch. 44, Section 53G. If a revolving fund for consultant fees is established, the applicant's payment shall be put into such revolving fund, and the Commission may draw upon that fund for specific consultant services approved by the Commission at one of its public meetings.

The Commission's consultant shall not begin work until payment is made by the applicant. Once the review is completed, the Commission shall release any unexpended funds, including any accrued interest, to the applicant unless the Commission decides at a public meeting that additional consultant services will be required.

If the actual charges are more than the estimated charges, the applicant will be required to pay the additional cost prior to authorization of further work and prior to rendering of the Commission's decision.

The Commission shall exercise its discretionary authority in making a determination to require the payment of a consultant fee. Any applicant aggrieved by the imposition or amount of the consultant fee, or any action related thereto, may appeal the Commission's decision(s) according to the provisions of M.G.L., Ch. 44, Section 53G or other Massachusetts General Laws, as may be applicable.

ARTICLE V BURDEN OF PROOF

Any applicant proposing alterations to any area subject to regulation under these regulations shall have the burden of proving by a preponderance of the credible evidence that the proposed work complies with the provisions, performance standards and requirements set forth in the State Act and State Regulations. Any applicant filing a request for a Certificate of Compliance shall have the burden of proving by a preponderance of the credible evidence that the work approved by an Order of Conditions issued by the Commission pursuant to these regulations conforms and complies with said conditions.

Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny issuing an Order of Conditions, grant an Order of Conditions with conditions, or refrain from issuing a Certificate of Compliance.

ARTICLE VI SECURITY

As a condition of an Order of Conditions issued under these regulations, the Commission may require that compliance with the conditions imposed with said Order of Conditions (including conditions requiring mitigation work) be secured wholly or in part by one or both of the following methods:

- By a proper bond, deposit of money or negotiable securities, or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the Order of Conditions;
- By the Corporation's acceptance of a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, attached to the land to the benefit of the Corporation whereby the requirements of the Order of Conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

ARTICLE VII ENFORCEMENT

The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under these regulations and may make or cause to be made such examinations, surveys, or sampling, as the Commission deems necessary, subject to the Constitutions and laws of the United States and the Commonwealth of Massachusetts.

The Commission shall have authority to enforce these regulations, and permits issued there under by violation notices, administrative orders, and civil and criminal court actions.

In emergency situations, or when an imminent threat to human health or the environment exists, the Commission, its agents, officers, and employees shall have the authority to immediately stop any and all work, which is in violation of these regulations, the State Act and/or the State Regulations. A written stop work notice shall be presented to any person who is found to be in violation. The Commission, its agents, officers, and employees shall provide written approval for re-commencement of work once the infraction has been remedied and the offender has provided written confirmation to the Commission documenting the implementation of the remedy.

Any person who violates provisions of these regulations may be ordered to restore the property to its original condition and take other action deemed necessary by the Commission to remedy such violations. Fines established by the Commission also may be imposed. Upon request of the Commission, the Corporation or applicable Town shall take legal action for enforcement under civil law.

Any person who violates any provision of these regulations, permits, or administrative orders issued hereunder, shall be subject to a fine of not more than \$300 per day per offense. Each day or portion thereof during which a violation continues shall constitute a separate offense. If the person violates more than one provision of these regulations or any condition or permit issued hereunder, each provision, condition, or permit so violated shall constitute a separate offense. If in the estimation of the Commission, corrective work is required to protect wetland resource areas, and the applicant fails to perform said corrective work within a reasonable period of time as set by the Commission, the Commission may order the same to be performed by a party to be determined by the Commission. The landowner shall be required to reimburse the Commission for all costs incurred. These costs will be in addition to the fines described above.

As an alternative to criminal prosecution in a specific case, the Commission and its agents may issue citations under the non-criminal disposition procedure set forth in M.G.L. Ch. 40, Section 21D.

If a civil fine for a violation is contemplated, the Commission shall hold a public hearing to discuss the alleged violation and to give the landowner and/or violator an opportunity to respond to the evidence and circumstances. The landowner and/or violator shall be given at least 48 hours notice in writing of the date, time and place of the hearing, by certified mail/return receipt requested or hand delivery. The fine is payable to the Commission within 21 days.

ARTICLE VIII APPEALS

A decision of the Commission under Articles I, II and V, as well as Article IV provisions pertaining to filing fees required by the Department of Environmental Protection, may be appealed to the Department of Environmental Protection in accordance with the State Act and State Regulations.

**ARTICLE IX
SEVERABILITY**

The invalidity of any section or provision of these regulations shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued by the Commission.