

**REGULATIONS OF THE
CONSERVATION COMMISSION**

TOWN OF EASTHAM, MASSACHUSETTS



**PART ONE: AMENDED & RESTATED REGULATIONS UNDER THE
EASTHAM WETLANDS PROTECTION BYLAW, ADOPTED PURSUANT TO
THE AUTHORITY OF SECTION 9 AND OF SECTION 11 OF SAID BYLAW**

Effective Date: August 14, 2018

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Section I. Introduction, Purpose and Authority

Under authority vested in the Eastham Conservation Commission by the Town of Eastham Wetlands Protection Bylaw (hereinafter "Bylaw"), said Commission hereby adopts these Wetlands Protection Regulations (hereinafter, "Regulations"). These Regulations shall complement the Bylaw, and shall have the force of law upon their effective date. The purpose of these Regulations is not to reiterate definitions, provisions or procedures already provided in the Bylaw, but rather to expand upon said Bylaw by defining additional terms not inconsistent with the Bylaw, identifying more detailed performance standards for work within or adjacent to wetland resource areas protected by the Bylaw, and providing for uniform procedures by which the Commission may carry out its responsibilities under the Bylaw. All provisions of the Bylaw are hereby incorporated in these Regulations by reference.

The regulatory scheme provided by the Bylaw and these Regulations is in addition to the regulatory scheme provided by G.L. c. 131, §40, the Massachusetts Wetlands Protection Act (hereinafter, "Act") and 310 CMR 10.00, et seq., the regulations the Commonwealth of Massachusetts Department of Environmental Protection has established under that Act. So as to avoid confusion, all definitions in 310 CMR 10.04 are hereby incorporated in these Regulations by reference; provided, however, that in the event any definition in Section II, below, is inconsistent with a definition in 310 CMR 10.04, the definition in Section II shall control. The Commission is also the regulatory agency that enforces the Act. From time to time, the Commission may approve or deny an application or other matters before it under the Act and come to a different decision under the Bylaw because of a difference between the Act and its regulations and the Bylaw and these Regulations (see 310 CMR 10.01(2)). To the extent the Commission issues a decision under the Bylaw based on a provision more protective of a resource area than the Act, the Commission's decision under the Bylaw shall control.

Section II. Definitions

Accessory Structure means any structure located outside the exterior walls of a dwelling, including but not limited to: freshwater and saltwater docks, decks, porches, sheds, fencing, retaining walls, edging, stairways, handrails, outdoor showers, raised garden beds or boxes, picnic tables and benches.

ACEC or **Area of Critical Environmental Concern** means any area within the Town of Eastham designated as an Area of Critical Environmental Concern by the Massachusetts Executive Office of Environmental Affairs in accordance with MGL Ch 21A, Section 2(7).

Acquired Real Estate means any real estate that comes into the possession or control of a person by purchase, inheritance or any other means.

Act means the Massachusetts Wetlands Protection Act, G.L. c. 131, §40.

Additional Regulations are Regulations that do not apply to all areas within the jurisdiction of the Commission, but apply only to those areas clearly identified in the individual regulation.

Compost means the biologically stable humus-like material derived from composting, or the aerobic, thermophilic decomposition of, organic matter, which is used as a fertility source for turf.

Continuing Violation means an activity conducted within a Protected Area that may create a continually violative condition with respect to a Protected Area irrespective of the passage of time, including without limitation, the addition of structures, changes to land contours, filling, dredging, discharging into or onto, or removing or cutting trees, shrubs or other vegetation because the adverse effect of such activity persists on a value or interest protected by the By-law.

Cultivar means a plant variety that has been produced in cultivation by selective breeding. Cultivars are usually designated in the style *Taxus baccata* "Variegata."

Fertilizer means a substance that enriches the soil with elements essential for plant growth, such as nitrogen and phosphorus or other substances. The term Fertilizer does not include compost, dolomite, limestone, or lime.

Foundation Plantings means vegetation located or planted along the foundation of a dwelling located within a planting bed no greater than four feet away from the foundation.

Freshwater Dock means an accessory structure located in or on a pond, river or other freshwater Resource Area, whether or not it extends from the shoreline, including ramps and floats and any portion extending to the shoreline and/or upland.

Mitigation Plantings mean plantings planted to replace or enhance vegetation removed from the buffer zone or resource area.

Mulch means wood chips or other organic plant matter used for the purposes of retaining water for newly planted vegetation.

Native Plant(s) means plants indicated to be native to Barnstable, Nantucket, Dukes and Plymouth Counties according to the most recent revision of "The Vascular Plants of Massachusetts: A County Checklist," published by the Massachusetts Division of Fisheries and Wildlife or its successor organization. Cultivars are not considered native plants.

New Lawn(s) or **New Turf** are planting activities that require prior approval from the Eastham Conservation Commission pursuant to the Eastham Wetlands Bylaw and this regulation.

No Mow Zone means an area that may be managed as a meadow and that is not regularly mowed.

No Disturb Zone means an area that is to be left to naturalize without intrusion, including but not limited to, mowing, pruning or other interference by management or human use.

Permit means an Order of Conditions, a Superseding Order of Conditions, an Amended Order of Conditions, a condition attached to an Administrative Review, a condition attached to a Negative Determination of Applicability or a Continuing Condition pursuant to a Certificate of Compliance.

Plastic or Composite Wood Product(s) means a construction material used instead of lumber such as glass, recycled wood or plastic.

Pressure Treated Wood means wood that has been chemically treated or infused in order to extend its useful life, and to increase durability and resistance to insect and water damage. Pressure treated wood includes, but is not limited to, wood treated with Alkaline Copper Quaternary (ACQ).

Protected Area(s) means Resource Area(s), Riverfront Area(s) and Buffer Zone(s) as defined in the Bylaw.

Recycled Wood means wood that has been previously used for some other purpose.

Saltwater Dock means an accessory structure, including ramp and floats, on or over saltwater for the purpose of access to vessels, swimming or fishing, including any portion extending to the shoreline and/or upland.

Sealant means a chemical material applied to the surface of a natural wood product in order to extend its useful life, and to increase durability and resistance to insect and water damage, by isolating the wood from the elements.

Turf means grass-covered soil held together by the roots of the grass, also known as “sod” or “lawn.”

View Corridors means selectively pruned vegetation to create a view or glimpse of resource areas. It does not include removal of trees or understory vegetation.

Section III. Procedures

WAIVERS

Wetlands Protection Bylaw Text (passed May 2022 Town Meeting and approved from Attorney General’s office August 29, 2022):

155 §15. Waiver. The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after a public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation. Waiver shall only be granted upon five (5) affirmative votes of the commission.

Section III. Procedures

A. Waivers

The Commission intends the waivers to specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in the Eastham Wetlands Regulations will be a rare occurrence granted under the limited conditions detailed in §155-15 of the Eastham Wetlands Bylaw. Waiver shall only be granted upon five (5) affirmative votes of the commission.

It shall be the responsibility of the applicant to provide to the Conservation Commission any and all relevant information that the applicant wishes the commission to consider in deliberating the waiver request. Failure of the applicant to provide such information with the filing may be grounds for the denial of a waiver.

It shall be the responsibility of the applicant to provide the Commission with any and all information that the Commission may request orally or in writing in order to enable the commission to ascertain adverse effects, including adequate engineering and expert evidence to permit the Commission to evaluate the basis for the applicants' contentions in support of the waiver request. Failure of the applicant to furnish any information that has been so requested shall result in the denial of a waiver.

1. Filing Requirements

- a. Requests for waivers from provisions of the Eastham Wetlands Protection Bylaw and Eastham Wetlands Regulations shall be submitted to the Commission in writing and shall be presented at the time of permit filing.
- b. Such application shall be a Notice of Intent.
- c. There will be no adverse impact from the proposed project.
- d. Applications for waivers shall:
 - i. Describe how the project qualifies for a waiver in accordance with §155-15.
 - ii. Describe how a waiver for the project is necessary to accommodate an overriding public interest or that is necessary to avoid a decision that so restricts the use of the property that it constitutes an unconstitutional taking without compensation.
 - iii. Identify the specific procedures, design specifications, performance standards, or other requirements set forth in the regulations for which a waiver is being requested.
 - iv. Describe how the resources areas delimited in Chapter 155 will be better protected if the project is allowed than if the project is denied and/or provide evidence that an overriding public interest is associated with the project which justifies a waiver under the Bylaw.
 - v. Provide detailed descriptions of alternatives explored that would allow this project to proceed in accordance with the Eastham Wetlands Regulations. including adequate engineering and expert evidence to permit the Commission to evaluate the basis for the applicants' contentions in support of the waiver request.

- vi. Describe any mitigating measures that are proposed that will allow the project to be conditions so that it contributes to the protection of the resource values identified in the Eastham Wetlands Bylaw.
- vii. Include a detailed explanation of why the applicant believes that there are no reasonable conditions or alternatives that would allow the proposed activities to be compliant with said regulations.
- viii. Include an explanation of how avoidance, minimization, and mitigation have been employed to the maximum extent feasible;
- e. The commission may request an opinion from Town Counsel or other legal consultant, at the expense of the applicant, as to whether the application of the Bylaw to a particular application will result in a taking of the property without compensation.
- f. If a waiver is granted, it will be valid for the same three-year period as the Order of Conditions. The Commission reserves the right to deny an extension of any waiver if, in the determination of the Commission, conditions have changed.

Section IV. Guidelines for Forms, Plans and Submissions

[reserved]

Section V. Additional Regulations for Coastal and Inland Wetlands

A. Buffer Zones

1. Buffer Zone Slope Gradient Multiplier

The effectiveness of buffer zones in removing pollutants depends on slope, soil conditions, pollutant type, location, flow patten, vegetation, exposure to sunlight, width, and upland land use. Steep slopes increase the velocity at which water travels through a buffer, thereby decreasing the amount of time that water can filter through soil and vegetation. For removal of most pollutants, flat slopes with gradients of less than 5% are optimal and for sediment removal, slopes between 8.14% and 11.72% are optimal (Zhang et al 2010).

Zhang X, Liu X, Zhang M, Dahlgren RA, Eitzel MV (2010) A review of vegetated buffers and a meta-analysis of their mitigation efficacy in reducing nonpoint source pollution. Journal of Environmental Quality 39:76. doi: 10.2134/jwq2008.0496

1.1 Applicability

This regulation applies to Buffer Zones to any Resource Area in the Eastham Wetlands Bylaw with a slope gradient of 5% or greater and shall also apply to any regulation where specific buffer zone setbacks apply.

1.2 Exemptions.

None

1.3 Regulations

- A. Where Buffer Zone slopes have gradients of 5% of greater, the following Additional Buffer Multipliers shall apply.

Slope Gradient	Additional Buffer Multiplier
5-14%	1.3
15-40%	1.4
>40%	1.5

Source: MACC Wetlands Buffer Zone Guidebook, August 2019.

- B. Where work is constrained to a particular buffer zone setback, the Additional Buffer Multiplier shall apply.
- C. Where the Additional Buffer Multiplier increases the buffer zone width beyond the 100' and 200' buffer zones defined in the Eastham Wetlands Protection Bylaw, §155-4 of the Bylaw shall apply.

1.4 Effective Date

This regulation is effective as of April 1, 2023.

Adopted by the Eastham Conservation Commission on March 14, 2023.

Section VI. Additional Regulations for Areas of Critical Environmental Concern

- Purpose** - The Commission, recognizes the need to affirm and strengthen the intent of state legislation establishing Areas of Critical Environmental Concern, GL c. 21A, Sec. 2(7), namely to protect environmental values significant to flood control, the prevention of storm damage, the protection of waters containing shellfish and fisheries, and other public interests protected by the Wetlands Protection Act (GL c. 131, § 40 and § 40A) and the Bylaw.
- Applicability** - The following Additional Regulations shall apply to any Area of Critical Environmental Concern (ACEC) within the Town of Eastham as designated by the Massachusetts Executive Office of Environmental Affairs in accordance with MGL Ch 21A, Section 2(7).

3. **Additional Regulations** -

A. There will be no brushing or clear cutting of existing vegetation or alteration of wildlife habitats except that selective pruning or the clearing of foot paths may be authorized by the Commission after the filing of a Notice of Intent.

B. No dumping, filling, paving, removing of material, dredging or altering may be done, except that projects involving salt marsh creation, beach nourishment, dune stabilization, maintenance of anadromous fish runs, or aquaculture may be authorized by the Commission after the filing of a Notice of Intent.

C. Construction of any new road, bikeway or other way requiring paving, fill or other significant construction is prohibited. Repair and maintenance of any existing road, way, bikeway or trail within an ACEC may be permitted subject to the filing of a Notice of Intent. Any repair, maintenance, or improvements of such road, bikeways or other ways shall be in conformance with the requirements of MGL, Ch 131, sec. 40 and 40A and all other applicable laws, by-laws, and regulations.

D. There shall be no underground storage of gasoline, oil or other fuels, or any hazardous materials within an ACEC.

4. **Administration** - No provisions of this Section are intended to supersede or otherwise limit the authority of the Commission under MGL Ch 131, Sec. 40 and 40A of the Bylaw.

5. **Performance Standards** - When a proposed project involves the removing, filling, dredging or altering of land within the ACEC, the Commission shall presume that such land is significant to one or more of the environmental values and public interests listed in MGL Ch 131, sec. 40 and 40A and Section 1 of the Bylaw. This presumption may be overcome only by a clear showing by the applicant that such land does not play a role in the protection of said values and interests, and if the Commission makes a written determination to such effect. Where the presumption has been overcome, the proposed work must still meet performance standards as stated in these regulations and any other conditions specified by the Commission pursuant to an Order of Conditions.

Where the presumption of significance has not been overcome, any work in an ACEC shall have no adverse effect on the wetlands values and interests described above.

In all cases, the following specific performance standards shall apply:

A. 1. The Commission may authorize foot paths two feet wide for the private use of a single-family dwelling and five feet wide for common uses. The slope shall be less than one in three, or steps shall be installed. The area shall be stabilized with indigenous grasses or wood chips.

2. [Reserved]

3. Selective pruning and clearing of foot paths may be permitted by the Commission provided that no more than 30% of crown cover is lost and provided that the viability of the pruned vegetation is not impaired.

B. Salt marsh creation, beach nourishment, dune stabilization, maintenance of anadromous fish runs or aquaculture may be authorized in accordance with the performance standards under the Act and Bylaw.

C. 1. Projects shall be completed within six months of commencement unless the Commission grants an extension for due cause.

2. There shall be no increase in the volume of storm water runoff and no runoff from roads, bikeways, or trail projects shall be allowed to flow to resource areas. No degradation to water quality or wildlife habitats shall be permitted.

3. Any embankments to such roadways, bikeways and trails shall be re-vegetated and stabilized.

4. No materials which shall be detrimental to the areas protected by these regulations shall be used during such repair or maintenance.

D. Above-ground storage of gasoline, oil, or other hazardous materials shall be subject to the Eastham Board of Health and Eastham Fire Department regulations.

[Adopted June 7, 1988, superseding a regulation adopted July 7, 1987]

Section VII. Specific Activities Regulated

A. Septic Systems

No leaching component of a septic system installed for any new dwelling on a previously undeveloped lot shall be located within the 100' buffer zone of a resource area as defined by the Act, MGL Ch. 131, Sec. 40.

[Adopted January 31, 1995]

B. Fertilizer, Nitrogen and Phosphorus Control

1.0 Purpose. A town regulation to preserve and protect the environment by regulating the outdoor application of nitrogen and phosphorous in order to reduce the overall amount of excess nitrogen and phosphorous entering the town's Resource Areas. Reducing excess nitrogen and phosphorous helps to protect and improve water quality of Eastham's valuable surface waters, both salt and fresh.

2.0 Applicability. This regulation applies to any application of fertilizer to turf or lawns located within the Resource Areas or Buffer Zones identified in Section 2 of the Bylaw.

3.0 Exemptions/ Exceptions. This regulation applies to applications of Fertilizer to Turf and lawns. The regulation exempts the application of fertilizer for agriculture, gardens, trees, and shrubs. There is a limited exception for composting, subject to the applicable provisions of Section 4.0, below.

4.0 Performance Standard.

4.1. The application of Fertilizer to lawns or Turf is prohibited within the Resource Area or Buffer Zone as defined in the Bylaw, except as provided below.

4.2. The use of Fertilizer for lawn maintenance purposes is not permitted, including to lawn or Turf that existed at the effective date of this regulation.

4.3. New Lawns or New Turf may be approved by the Commission subject to the following:

4.3.1. So that New Turf or New Lawn can properly be established, but not to exceed one growing season, the nitrogen content of Fertilizer approved for this purpose shall not exceed of 1.0 pound of actual nitrogen per thousand square feet per application, shall not exceed at the annual rate per 12 month period 3.2 pounds of actual nitrogen per thousand square feet, and shall contain at least 20% slow-release nitrogen. Single applications may be done at intervals of no less than four weeks until the annual maximum is reached.

4.3.2. An appropriate seed mix shall be used, such as a 'conservation'-type mix, that has low nutrient and water needs.

4.3.3. Fertilizer containing Phosphorus may be used to establish a New Lawn/ Turf or to re-establish or repair a lawn after substantial damage or land disturbance, in an effort to prevent incremental water runoff.

4.3.4. Fertilizer shall not be applied during or immediately prior to heavy rainfall, such as but not limited to thunderstorms, hurricanes, or northeastern storms, or when the soil is saturated due to intense or extended rainfall, or to impervious areas or compacted soil/ lawn/ Turf.

4.3.5. Neither Fertilizer nor Compost shall be applied between November 12 and April 14.

4.3.6. Fertilizer shall not be applied beyond the Buffer Zone directly to the abutting Resource Area.

4.3.7. IRRIGATION. Above ground temporary irrigation is allowed during the first 2-3 growing seasons to allow for plant establishment and shall be immediately removed no later than after the third growing season. Underground irrigation systems, including permanent underground irrigation systems, are prohibited.

5.0 Enforcement.

5.1. The enforcement authority shall be the Conservation Commission and the Conservation Agent.

5.2. The enforcement authority may enforce this regulation or enjoin violations thereof through any lawful process, and the election of one remedy by the enforcement authority shall not preclude enforcement through any other lawful means.

6.0 Amendments. Amendments to this regulation may be made in this same manner it was adopted, including according to the relevant provisions in Sections 10 & 11 of the Cape Cod Commission Act, Ch. 716 of the Acts of 1989.

7.0 Effective Date. The effective date of this regulation shall be the date it is duly adopted by the Eastham Conservation Commission, so long as it is determined by the Cape Cod Commission as consistent with the Fertilizer Management District of Critical Planning Concern Designation, Barnstable County Ordinance 13-07.

[Adopted December 9, 2014]

C. Use of Chemically Treated and Alternative Wood Products

- Preamble.** Wood products treated with chemicals, including but not limited to, Chromated Copper Arsenicals, Creosote, or Pentachlorophenol, and fine plastic cutting debris from plastic wood products may adversely impact wetlands Resource Areas and Buffer Zones protected under the Bylaw. It is important to minimize to the extent feasible the use of wood treated with such chemicals and plastic residues within Resource Areas and Buffer Zones because they may persist and accumulate over time in the soil and substrate of the Buffer Zones and Resource Areas, adversely affecting water quality and the healthy functioning of plants and animals in Resource Areas and Buffer Zones protected under the Bylaw.¹ Freshwater Resource Areas, because of their enclosed waterbodies and potential effects on the water supply, are given more scrutiny towards the application of chemically treated wood products and sealants used within and adjacent to these waterbodies.
- Applicability.** This regulation applies to any use of pressure treated wood and/or sealant within Resource Areas or Buffer Zones identified in Section 2 of the Eastham Wetlands Bylaw.
- Performance Standards.** The following performance standards apply to Accessory Structures located within a Resource Area or Buffer Zone, proposed or existing, including any repair or replacement of such an Accessory Structure.

¹ Cobb, David, Mark Levenson, Cheryl Osterhaut, and Jacqueline Ferrante. *Evaluation of the Effectiveness of Surface Coatings in Reducing Dislodgeable Arsenic from New Wood Pressure-Treated with Chromated Copper Arsenate (CCA)*. United States Consume Products Safety Commission, May 2005. Web.

- a. The use of Pressure Treated Wood and/or Recycled Wood treated with Chromated Copper Arsenate (CCA), including railroad ties, timber or telephone poles, is prohibited within Buffer Zones and Resource Areas, unless otherwise specified below.
- b. Plastic or Composite Wood Products processed onsite may be used provided that the product is cut and processed in a sheltered and windless location outside of the Buffer Zones and/or Resource Areas, using a vacuum assisted saw and tarp floor base, and cleaned daily.
- c. Pressure Treated Wood may be used for Accessory Structures provided that it does not come into contact with soil so as to leach into the substrate.
- d. Pressure Treated Wood may be used for Saltwater Docks, but not for pilings.
- e. Pressure Treated Wood may not be used in the construction, repair or replacement of Freshwater Docks, ramps and floats.
- f. Sealants may be used on a natural untreated wood product provided the applicant supplies the Commission with the details of the product proposed to be used and the Commission determines that it will not adversely affect the Resource Area(s) or Buffer Zones. Application of sealant may not occur within Buffer Zones or Resource Area(s). Sealed wood products may not be brought to the buffer zone or resource area unless completely dry.
- g. The applicant shall have the burden of demonstrating that any construction material chosen meets the performance standards of this regulation.

Adopted: September 12, 2017

D. Land Management

1. Preamble. This Regulation concerns how the landscape within the jurisdiction of the Commission under the Bylaw is to be managed.

Eastham's Resource Areas suffer from excess nutrients that find their way into the wetlands from septic systems, run-off, and other human activity (so much so that the Town has had to treat a number of ponds in an attempt to reduce that damage). It is the plants and root systems in the

transition habitat between wetland environments and their uplands that help to mitigate nutrient migration. The root systems absorb those excess nutrients and use them for growth. They also help to stabilize the soil and reduce erosion of soil into the wetlands. This transition habitat is also especially important for wildlife due to high ecological diversity and biological productivity.

Consequently, it is important to carefully manage activities in the Protected Areas to ensure that any landscape disturbed by human activity is restored and conserved in such a way that it best protects the values and interests under the Bylaw, including those of providing for wildlife habitat, erosion control and the safeguarding of water quality.

To best accomplish this, attention must be paid to what plant species may be controlled by a landowner, what plant species may be added to the landscape, the ways both may be accomplished, and how the landscape may be maintained. A practical way must be established for landowners and their contractors to determine what plants may and may not be added to the landscape.

The Commonwealth of Massachusetts provides guidance, in the form of the Prohibited Plants List maintained by the Department of Agricultural Resources (the "List"), as to what plants are undesirable in Massachusetts because they have been shown to aggressively take over the landscape. Therefore, a landowner may plant plants on the List, provided that the Commission reviews and approves the methods and protocols for planting and maintenance, in the sole judgment of the Commission in each case.

The addition of plants to the landscape can affect and alter its nature and function and the native plants and animals it supports. Many native wildlife species, such as butterflies, require particular native plant species to meet their survival and reproductive needs. The planting of native vegetation suited to specific site conditions, in addition to better preserving the integrity of native ecosystem process and plant and animal communities, means those plants are adapted to our local environment and would not require extraordinary measures such as watering or fertilization for them to thrive. These principles are recognized by natural resource conservation agencies on all levels of government, as well as conservation organizations, who advocate planting native plant species whenever possible.

The Commission has determined that plants native to Barnstable County are most likely to support the full range of wildlife indigenous to Eastham, that the great preponderance of plant material introduced to the Protected Areas should be native to Barnstable County, and that the simplest and most practical means to identify those plants is a finding by the Commonwealth of Massachusetts that those plants are Native to Barnstable County. The Massachusetts Natural Heritage & Endangered Species Program in the Massachusetts Division of Fisheries and Wildlife maintains such a list and database indicating the status of vascular plants found in Massachusetts, including whether they are Native to Barnstable County. This document, *The Vascular Plants of Massachusetts: A County Checklist*, is readily available online and at the Conservation Commission office.

It is also important that the methods and protocols to remove, plant and maintain the landscape are followed to, among other things, minimize possible disturbance to the soil. Soil disturbance makes the soil more vulnerable to erosion and provides an occasion for dormant seeds of undesirable non-native plants to germinate and begin to take hold in the landscape. Therefore, the Commission will

carefully evaluate what individual plants may be controlled by any means involving soil disturbance on a project site, as well as establish conditions controlling the soil disturbance in planting approved plants.

Because of the importance of native species biodiversity to a healthy ecosystem on Cape Cod, landowners are encouraged, but not required, to plan for the management of their properties in such a way as to develop or maintain a diversity of native plant species. Such diversity provides habitat for a wider range of insects and other animals, and guards against the denuding of the landscape if disease or invasive pest attacks a dominant plant species.

2. **Applicability.** This regulation applies to any alteration of vegetation or other land management activities in Protected Areas.
3. **Performance Standards.** The following performance standards shall be met.
 - a. **Native Plants.** Non-Native Plants may not be planted within the 100' Buffer Zone to a Resource Area, unless the applicant demonstrates that the front entry of the dwelling is already located within the 100' Buffer Zone, in which case such non-Native Plants may only be planted within 25' of either or both sides of the front entry that faces away from Resource Areas, and may account for no greater than a total of 50 square feet of surface area. The front entry may include a primary walkway from a vehicle parking area leading to the dwelling provided the total allowable square footage is not exceeded.
 - b. **Cultivars.** A Cultivar of a Native Plant may be planted within the 100' Buffer Zone in limited circumstances provided it will not impact the values of the Buffer Zone, upon review and Approval by the Conservation Agent.
 - c. **No Mow Zones.** When the Commission requires that a No Mow Zone/Meadow Zone be installed, the following conditions shall be met:
 - (i) There shall be no storage of items of any kind: including but not limited to, canoes, kayaks, dinghys, beach chairs, yard debris, trailers, chairs and tables, flag poles, or buildings , Accessory Structures. or construction of any kind.
 - (ii) However, natural pathways no more than 3' (three feet) wide may be located through a No Mow Zone if it is required to circumnavigate a dwelling or to access a Resource Area for recreational use provided, they impose minimal effects to the No Mow Zone/Meadow Zone, unless further restricted by the ACEC regulations in Section VI above.
 - (iii) Management of the No Mow Zone is typically required in order to enhance the functioning and benefit of the area to serve as a meadow wildlife habitat. Unless the Commission has specified a different frequency, No Mow Zones may be mowed annually in late fall or winter, but no more frequently than twice per year.

(iv) The Commission may require that the No Mow Zone be delineated by some physical feature such as a split rail fence, boulders or the like.

d. **No Disturb Zones.** When the Commission requires that a No Disturb Zone be installed, the following conditions shall be met:

(i) There shall be no storage of items of any kind: including but not limited to, canoes, kayaks, dinghies, beach chairs, yard debris, trailers, chairs and tables, and flag poles.

(ii) However, natural pathways may be located through a No Disturb Zone if it is required to circumnavigate a dwelling or to access a resource area for recreational use provided they impose minimal effects to the No Disturb Zone.

(iii) The Commission may require that the No Disturb Zone be delineated by some physical feature such as a split rail fence, boulders or the like.

(iv) The No Disturb Zone shall be left to naturalize as an undisturbed woodland or natural area that is not managed unless approved by the Commission for one of the following reasons:

A. Removal of invasive species in accordance with a management plan, provided that they are replaced with Native Plants and managed for a period of at least 3 years; including monitoring reports.

B. Removal of a tree(s) that fell from the No Disturb Zone into another area.

e. **Application of Mulch.** Newly planted vegetation may have Mulch applied around the drip line in a one-time application for purposes of establishment of the plant or tree, provided that the mulch is neither dyed nor treated with any chemical or other substance.

f. **Mitigation Plantings.** Any activity that requires the removal of trees or other vegetation within the 100' buffer zone, may require the installation and establishment of Mitigation Plantings at a rate of up to 2:1 based on the following:

(i) Significance of habitat and resource area values;

(ii) Level of naturalized vegetated areas existing on the property; and

(iii) The significance of the effect on the Resource Area and/or the Buffer Zone of the activity.

g. **View Corridors.** View Corridors may be permitted provided the following performance standards are met:

(i) View Corridors shall consist of the selective pruning of tree and shrub branches for viewing Resource Areas in such a manner as to not impact the overall health of the tree or shrub based upon amount removed, current health of the vegetation and current susceptibility to disease. View Corridors may not be clear cut or grubbed and all grasses and other low vegetation shall remain.

(ii) The commission may require dead trees to be left as snags and wildlife habitat.

(iii) Topping trees is not permitted.

(iv) Pruned vegetation shall be replaced with native trees and/or shrubs so as to achieve an approximate replacement of biomass, that is to say, vegetative mass serving as wildlife habitat at a rate of up to 2:1 within 10 years.

(v) Initial pruning and/or maintenance pruning shall not occur between April 1 – and August 31 to protect wildlife nesting periods.

4. **Reports.** It is a condition of every Order of Conditions issued for land management activities that an Annual Report be provided to the Commission in both hard copy and electronically on or before each July 31 until a Certificate of Compliance has been issued. The Annual Report shall include: a detailed chronology of land management activities specifying date(s) of activity; quantification of plants added or removed, by species; plant survival data, by species; description of any management issues, such as erosion or inadequate plant survival, together with detail on corrective action; photographic documentation of the project site showing the primary management area(s) taken from the same vantage points each year, all with reference to the approved planting plan. Failure to timely file an Annual Report shall be a material violation of these Regulations.

The following items shall be included in each annual report and each new annual report shall include prior annual reports:

- 1.) A copy of the original proposal with the annual goals clearly identified.
- 2.) A copy of the landscape/mitigation plan detailing current conditions and the proposed changes.
- 3.) A detailed annual chronology of land management activities specifying dates of activity.
- 4.) Annual quantification of plants added or removed by species.
- 5.) Annual detailed explanation of the method used to remove, or control species growth or prorogation.

- 6.) Annual Plant survival data by species.
- 7.) Annual description of any management issues such as erosion or inadequate plant survival, ecological conditions, or unforeseen species appearance.
- 8.) Annual description of any corrective action taken.
- 9.) An annual evaluation of the project to date.

E. Docks and Piers

1) Freshwater Docks and Piers

- a) **Preamble.** Land under freshwater ponds and land within 100 feet of freshwater ponds, pond shores, and wetlands is likely to be significant to the protection of groundwater, pond water quality, and wildlife.

In land under freshwater ponds (LUFP), soil and sand sediments play an important role in the process of removing and retaining dissolved and particulate nutrients (such as nitrogen and phosphorus) from the surface water above. They also serve as traps for toxic substances (such as heavy metal compounds). Activities that stir up bottom sediments, such as dock installations or sandy bottom construction, are likely to release these substances back into the water, potentially contributing to eutrophication or pollution.

LUFP is also important to a large assortment of warm water fish during their spawning period; species such as largemouth bass, and other sunfish such as blue gills, pumpkinseeds and black crappie, build nests on the pond bottom substrates where they deposit and fertilize their eggs. Plant communities under freshwater bodies and waterways provide important food, shelter, and breeding area for migratory and overwintering wildlife. Water fowl and some mammals rely on submerged, rooted vegetation for food. Amphibians and certain invertebrates attach their eggs to these plants. Emergent vegetation (live and dead) is used for nesting, feeding and basking. The substrate requires at least six (6) months of unfiltered sunlight, unless otherwise determined by the Commission. LUFP is also important to species that hibernate in the substrate. It is therefore important that any activities that might disturb these resources be carefully managed and regulated.

- b) **Definitions.**

- i) **“Dock”** means any structure including but not limited to ramp, pier, wharf, dock, which could be used to access boats whether or not tied.
- ii) **“Piers”** See “docks.”
- iii) **“Seasonal”** means the dock is installed no earlier than April 15 and is removed on or before November 15 of each year.

c) Procedures

- i) Notice of Intent: A Notice of Intent (NOI) is required for any new or replacement dock. All plans submitted shall be stamped by a Registered Civil Engineer. In addition to the standard NOI requirements, the Conservation Commission requires the following documents be submitted with all freshwater dock filings:
 - (1) Abutter Notification – For ponds not classified as Great Ponds, notification of abutters shall, in addition to the requirements stated in the Wetlands Protection Act regulations, include an abutter notification letter to properties located along the pond shore of the proposed project, via certified mail, return receipt requested.
 - (2) A detailed assessment of potential Resource Area impacts shall be provided.
 - (3) Concurrently with the filing of an NOI, the dock location within the pond shall be clearly staked and marked with a temporary buoy.

d) Performance Standards.

- i) Freshwater docks shall consist of only seasonal docks and floats unless the Commission determines that an alternative design would have less impact on the shoreline, water body, and/or land under the water body at a particular site.
- ii) All freshwater docks (herein referred to as docks) shall be designed and installed and removed in a manner that will minimize effects to the pond shore or pond shore vegetation including but not limited to banks, wetlands, and sediment, land under the waterbodies.
- iii) Dock access paths shall be no greater than four (4) feet wide.
- iv) Mitigation may be required by the Conservation Commission to minimize adverse effects caused by the structure's presence within the resource area and in order to improve resource area function.
- v) There shall be no storage of boats or equipment of any kind on the dock, shoreline, shoreline vegetation, banks or vegetated wetlands. The applicant shall provide an upland storage location for boats and equipment, and for the upland off-season storage of the dock which shall be indicated on proposed plans
- vi) The maximum dock width shall be four (4) feet. Docks shall be anchored from the shoreline at a maximum of twenty-five (25) feet or at a water-depth of two-and-a-half (2½) feet, measured during the spring season, whichever is closest to the shoreline. Docks shall be subject to the following design requirements:
- vii) Dock supports shall be set eight (8) feet apart.

- viii) Docks shall be elevated at a minimum of eighteen (18) inches above the water surface to permit wildlife movement and vegetation growth under and around the dock.
- ix) Docks cannot be dug into the bank but must be laid and anchored on the bank for easy removal.
- x) The minimum distance between decking slats shall either be three-quarter (3/4) inches, or the dock shall have a grated surface to allow for sunlight penetration.
- xi) The maximum size of the dock structure shall be one-hundred (100) square feet.
- xii) The dock shall be installed and removed with minimal adverse impacts to the resource areas, for example: a float with an easily removed anchoring system or a dock with a modular aluminum walkway.
- xiii) Building materials: All building materials must adhere to the Eastham regulations on alternative and pressure treated wood products.
- xiv) Lighting and/or electric services to new docks and dock maintenance are not permitted.
- xv) Notwithstanding any other provisions contained herein, no new or expansion of an existing dock shall be permitted within an ACEC (Area of Critical Environmental Concern).

Adopted: December 8, 2020

2) Saltwater Docks and Piers

[reserved]

F. Pools

1.0 Preamble

A town regulation to preserve and protect the environment by regulating the construction and operation of outdoor pools, both in-ground and above-ground, and associated pool surroundings in order to protect groundwater, wildlife and wildlife habitat, including rare species and their habitats, reduce buffer zone disturbance in order to protect wetlands values attendant thereto, and to reduce the overall amount of chlorine, filter media, and other pool chemicals entering the town's Resource Areas.

It is important not to disrupt the natural functions of coastal beaches, coastal dunes, and coastal

banks that make them significant to protecting landward areas from storm damage and flooding. Construction of swimming pools (large impervious structures filled with chemically treated water) in these areas would cause adverse impacts; interfere with sediment transport from coastal beaches and banks; affect hydrology and wave patterns; and increase erosion and scouring.

Coastal beaches are dynamic systems that change with wind and wave actions, are important buffers against storm damage and flooding, and may provide feeding and nesting habitat for a large variety of shore birds. Constructing a solid structure, such as a pool, on a coastal beach would change wave dynamics, potentially increasing erosion and altering sediment transport.

Coastal dunes are dynamic landforms that need to be able to respond to wind and wave action to move. They are significant to the interests of storm damage prevention and flooding. Dunes provide significant wildlife habitat to nesting birds and may be breeding areas for rare species. Beach grass that covers dunes and spreads through underground rhizomes is extremely important to building and stabilizing dunes. Building pools on dunes would negatively impact dune dynamics, impede the free movement of sediment, and impact vegetation likely destabilizing the dune and therefore increasing the risks for storm damage and flooding, and likely cause adverse impacts to wildlife and wildlife habitat.

Coastal banks provide sediment to coastal beaches through wave action and are significant to storm damage prevention and flood control. Constructing a pool on a coastal bank would change the hydrology of the bank, reducing its ability to absorb stormwater while increasing runoff and creating a greater potential for erosion. The integrity of coastal banks should not be breached by solid structures and should be kept vegetated in order to maintain stability of the bank.

In land subject to coastal storm flowage and bordering land subject to flood, the impervious nature of pools would likely impact hydrology, prevent the ground from absorbing stormwaters, and increase runoff and erosion.

In buffer zones, construction of a pool creates a large impervious structure that would change the hydrology of the area, preventing stormwater from penetrating into the ground, impeding pollution control, and increasing stormwater runoff, leading to more erosion and to the transport of sediments and debris into nearby waterways and salt marshes. This would cause adverse impacts to water quality, wildlife and wildlife habitats, fish and fisheries, and shellfish, and vegetation.

Artificial lighting, such as those used in pools and their surroundings, brightens the night, creating light pollution. This radically alters the environment, turning night into day, and can disrupt the resting, feeding, hunting, mating, and nesting patterns of nocturnal, diurnal, and crepuscular wildlife. Thirty percent of vertebrates and 60 percent of invertebrates are nocturnal. Darkness, moonlight and starlight can play a critical role in their behavior and survival. Artificial light at night alters nighttime behaviors, interferes with navigation, hunting patterns or the ability to evade predators. Species negatively impacted by light pollution include amphibians, zooplankton, fish, hummingbirds, monarch butterflies, bats, owls, mice, insects, and fireflies. It is important, therefore, to limit the introduction of artificial lighting into resource areas and their buffer zones and to ensure that lighting is shielded and directed away from resource areas.

The Commission further takes notice of the fact that a pool is an accessory structure and not a necessity.

For all of these reasons, the Eastham Conservation Commission makes the following findings:

1. Construction of pools on coastal beaches, coastal dunes, coastal banks, land subject to coastal storm flowages, bordering land subject to flooding and within the 0-50' buffer zone to resources named in the Town of Eastham General Bylaw, Chapter 155 Wetlands Protection, §155-2, §155-3, and §155-4, will cause adverse impacts that no amount of mitigation would be sufficient to overcome.
2. Construction of pools within the 50-100' buffer zone may be able to overcome any adverse impacts through mitigation and no disturb areas as described in the performance standards below.

2.0 Applicability

This regulation applies to the construction or reconstruction of any outdoor or indoor pool, upon construction of a new pool or modification of an existing pool, when they are located within the Resource Areas or Buffer Zones identified in the Town of Eastham General Bylaw, Chapter 155 Wetlands Protection, §155-2, §155-3, and §155-4, also known as the Eastham Wetlands Bylaw.

3.0 Definitions

Chlorine-Based Pool means any pool that typically requires the addition of some form of chlorine directly to the water on a regular basis in a liquid, tablet, or powder form.

Diatomaceous Earth (DE) means the ground up fossilized remains of diatoms, a type of tiny hard-shelled organism that lived in rivers, streams, lakes, and oceans. Pool-grade DE, used in pool filtration systems, is toxic to humans when inhaled, and because of its abrasive nature, can be harmful or fatal to some aquatic organisms and to insects.

Municipal Water Supply means the Town of Eastham public water system.

Impervious means surfaces or structures that prevent aeration, infiltration, and water penetration changing the hydrology of an area, increasing the chance of flooding from stormwater runoff. Impervious surfaces include but are not limited to roof coverings, sheds, and other accessory structures; pools; concrete, brick, and stone; compacted soils, and paved driveways.

Light Pollution means brightening of an area at night by artificial lighting sources.

Pervious means that water can directly infiltrate to the area underneath rather than becoming runoff. Pervious surfaces include mulch, vegetative groundcover, lawns, soil, sand, silt, pervious concrete (highly porous concrete), permeable pavers (concrete or stone pieces with open spaces between to allow water to pass through), porous asphalt, or pavers in a grid or lattice pattern with spaces between for groundcover to grow.

Pool means any outdoor or indoor structure intended for swimming or bathing, including in-ground and above-ground structures, and non-portable wading pools, along with a mechanical

water management system including, but not limited to, pumps, filters, piping, and water treatment modules. Inflatable systems or other water-holding structures or devices with a volume capacity not exceeding 1500 gallons of water are not pools within the meaning of this regulation. A pool is an impervious structure.

Pool Surroundings means any pool plus its associated patios, decks, walkways, ladders, fencing, privacy plantings, pool shed, changing cabana, filters or other water management equipment.

Salt System Pool or **Saltwater Pool** means a pool that uses a salt cell (chlorine generator) to produce chlorine through the process of electrolysis of the salt dissolved in water. Salt is added directly to the pool water, with additional salt usually required only to replace salt lost through backwashing, splashing that requires topping the pool with freshwater, or through excessive rain on an uncovered pool.

Topping means to add fresh water to a pool to replace water lost through evaporation or through splashing. On average pools lose 1/8" to 1/4" per day to evaporation. Using a pool cover can avoid up to 85% of evaporation.

4.0 Exemptions/Exceptions

None.

5.0 Performance Standards

1. No pools shall be built on any resource areas as defined by the Eastham Wetlands Bylaw.
2. No pool shall be constructed within any 0-50' buffer zone. Pool construction shall have a maximum 10'-wide work zone around the pool proper, with no encroachment into the 0-50' buffer zone.
3. No pool shall be constructed within undisturbed areas in the 50-100' buffer zone without a permanent demarcated no disturb zone that is twice the area of the pool, its surroundings, and any work area that is within an undisturbed area. Trees and shrubs shall be replaced at a 2:1 ratio in the no disturb zone.
4. Pools constructed in already disturbed areas in the 50-100' buffer zone shall comply with mitigation requirements in Eastham Conservation Commission Regulations §D.3.f.
5. No waivers shall be granted relating to the location for the construction of new pools.
6. Pools being razed or replaced are not automatically grandfathered at their existing location and may be required to conform to Eastham Conservation Commission Pool Regulations in place at the time of proposed work.
7. New pools shall not use diatomaceous earth filter systems.
8. For any new pool, if the filter or management system requires backwashing, a dry well shall be included and no new surface discharge of pool water will be permitted.
9. Pool water may not be drained onto the ground or into water bodies within the 0-100' buffer zone or within the 200' riverfront area. and pools being emptied must truck pool water to an alternate location for appropriate disposal.

- a. Alternately, property owners who wish to drain pools into the ground outside of the above areas must do so in accordance with 105 CMR 435.26 and the most recent version of the Town of Eastham Stormwater Management Regulations. The homeowner or pool company shall provide 48-hour notice of any draining to the Commission with a plan showing where the pool is to be drained.

10. Filling and Refilling of Pools.

- a. Pools may not be filled or refilled from private well water.
 - b. Routine topping of pools is allowed from domestic water sources, except during periods of level 2 or higher drought.
 - c. Pools may be filled or refilled from the municipal water supply. The Town of Eastham Water Department shall be contacted prior to attempting to fill a pool from a domestic source or if interested in using a hydrant to fill the pool.
 - d. Pools may be filled or refilled with water trucked in from outside the jurisdiction of the Eastham Conservation Commission.
11. Decks and pool deck surfaces shall be pervious or shall require appropriate drainage such as to a bioretention area, infiltration basin, infiltration trench or French drain.
 12. Pools shall be checked annually for leaks and repaired promptly, so as not to allow pool water to seep into the ground.
 13. All pool area lighting shall be shielded to direct light downward and away from resource areas, trees, and vegetation in order to reduce light pollution and its adverse impact to wildlife.
 14. Pool-related chemicals shall be stored as far as feasible from the resource areas, with a minimum of 50', and outside land subject to coastal storm flowage or any bordering land subject to flooding.
 15. Pools shall be covered as often as practicable in order to reduce evaporation and UV depletion of chlorine and shall in all cases be covered when the pool will not be in use for longer than a week.
 16. Seasonal pools shall remain covered during the "off" season, generally from November 1st through May 1st and no chemicals shall be added to the pool during this time.

6.0 Effective Date

This regulation is effective as of April 1, 2023.

Adopted by the Eastham Conservation Commission on March 14, 2023.

Section VIII. Enforcement

1. **Violations.** When the Commission determines that an activity has occurred or is occurring in violation of the Bylaw, any Regulation promulgated by the Commission pursuant to its authority under said Bylaw, or any Permit, the Commission may issue an Enforcement Order or take any other action authorized by law. It shall be a violation of the Bylaw and Regulations to: (a) fail to comply with or observe the terms or conditions of any Permit and limit work to

that explicitly authorized by such Permit, (b) fail to complete work described in any Permit if the failure to complete such work may have an adverse effect on any Resource Area, Riverfront Area or Buffer Zone under the Bylaw, (c) fail to obtain a Permit before conducting any activity within a Resource Area, Riverfront Area or Buffer Zone, or (d) fail to comply with a Stop Work Order or an Enforcement Order. For purposes of this section, an “activity” shall include, in the judgment of the Commission, each separate individual action occurring in a Buffer Zone or Resource Area, such as the felling of a tree.

2. **Continuing Violations.** Certain activities conducted within a Protected Area may create a Continuing Violation. The Commission shall determine whether any such activity has created a Continuing Violation and shall use such finding in determining the appropriateness of any Enforcement Order and/or Fines pursuant to the provisions, below. Any owner of Acquired Real Estate shall forthwith comply with any Enforcement Order issued by the Commission with respect thereto; provided, however, that no Enforcement Order shall be valid and no action shall be brought against such person unless issued or commenced within three (3) years following the date of acquisition of the real estate by such person. When calculating appropriate fines for a Continuing Violation with respect to Acquired Real Estate, there shall be considered to be one violation only for the time period prior to ninety (90) days following the date of acquisition of such real estate. Following the expiration of the ninety (90) days following the date of acquisition of such real estate, each day the continuing violation(s) remains in place shall constitute a separate violation(s).
3. **Stop Work Order.** When the Conservation Agent determines that an activity is occurring in violation of the Bylaw, any Regulation, or any Permit, the Conservation Agent may issue a Stop Work Order or take any other action authorized by law. A Stop Work Order shall be reviewed by the Commission at its next regularly scheduled meeting, at which time the Commission shall determine whether the activity which is the subject of the Stop Work Order should be the subject of an Enforcement Order. If the Commission determines that such activity should **not** be the subject of an Enforcement Order, then the Stop Work Order shall be withdrawn in writing and sent to the owner. If the Commission is not scheduled to meet within 15 calendar days of the issuance of a Stop Work Order, then the Chair of the Commission shall determine whether there is good cause to continue the Stop Work Order in effect, failing which, the Stop Work Order shall be withdrawn.
4. **Enforcement Order.** An Enforcement Order issued by the Commission shall be signed by a majority of the Commission. An Enforcement Order may require the restoration of property to its original condition and/or such other actions to mitigate of the effects of a violation as the Commission determines are required to further the interests and values protected by the Bylaw and Regulations.
5. **Fines.** The fines authorized by the Bylaw and this Regulation may be in addition to any levied under the Wetlands Protection Act, M.G.L. Chapter 131 Section 40. The Commission may impose fines on landowners and/or on contractors (a) to assure timely compliance with Stop Work Orders and Enforcement Orders and (b) to deter violations of the Bylaw, Regulations and the terms of Permits. Fines issued pursuant to M.G.L. Chapter 40 Section 21D, shall be authorized by a majority vote of the Commission and shall be implemented by the issuance of non-criminal disposition tickets by the Conservation Agent or other employees of the Town's Natural Resources Department. Tickets shall be issued by mailing them by certified mail.

Fines shall be **up to** \$100 per violation per day or part thereof for a first offense, \$200 per violation per day or part thereof for a second offense, and \$300 per violation per day or part thereof for a third offense and all subsequent offenses. Each provision of the By-law, Regulations, and each Permit shall be the basis for a separate offense.

6. **Request for Hearing and Reconsideration.** Any person aggrieved by the issuance of a Stop Work Order, Enforcement Order or fine may request a hearing by delivering such a request in writing to the office of the Commission within seven (7) days of the receipt of the Stop Work Order, Enforcement Order or ticket, as the case may be. Such person shall be entitled at such hearing to present evidence and witnesses in support of their request for reconsideration.

Section IX. Effective Dates & Amendments

1. **Effective Dates.** These Amended and Restated Regulations shall become effective after notice and public hearing and an affirmative vote of adoption by a majority of the Commission, and the filing of such Regulations with the Town Clerk, such Effective Date being indicated, above. Individual Sections of these Regulations, however, have been or will be adopted and have or will become effective as of the date of their adoption and filing with the Town Clerk. Consequently, each individual Section which had been previously adopted and effective shall continue to have been effective as of the date noted at the end of each such Section. Each new or amended Section or part thereof adopted and effective after the date of this restatement of the Regulations shall be marked with the effective date of such Section or part thereof.

2. **Application of Enforcement Provisions.** Notwithstanding the above, enforcement provisions as set forth in Section VIII of these Regulations shall apply to violations of any Permit in effect or under consideration, on, before or after the effective date of the relevant Section of these Regulations.

Section X. 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, approval or determination which previously has been issued.