

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

310 CMR 13.00: ADOPTING INLAND WETLAND ORDERS

Section

- 13.01: Introduction
- 13.02: Definitions
- 13.03: Notice
- 13.04: Preliminary Informational Meetings
- 13.05: Public Hearings
- 13.06: Combined Inland and Coastal Wetlands Preliminary Informational Meetings and Public Hearings
- 13.07: Wetland or Flood Plain Boundary or Encroachment Line Delineation Procedures
- 13.08: Adoption of Orders
- 13.09: Recording of Orders
- 13.10: Notice of Orders
- 13.11: Recording in the Public Restriction Tract Index
- 13.12: Amending or Modifying Orders
- 13.13: Repeal of Orders
- 13.14: Correcting Orders
- 13.15: Monitoring Procedures
- 13.16: Department Review of Orders
- 13.17: Judicial Review of Orders
- 13.18: Public Meetings
- 13.19: Effect on Other Orders
- 13.20: Existing Structures
- 13.21: Severability
- 13.22: Appendix A - Request for On-Site Inspection

13.01: Introduction

(1) Authority. 310 CMR 13.00 is issued by the Department of Environmental Protection pursuant to the authority granted under M.G.L. c. 21A, § 2(28).

(2) Purpose. 310 CMR 13.00 is promulgated in order to:

- (a) define and explain the language of M.G.L. c. 131, § 40A, and
- (b) establish the procedures under which the Department will exercise its responsibilities under M.G.L. c. 131, § 40A.

It is the intent of the Department that these definitions and procedures are to be used to preserve and promote the public safety, private property, wildlife, fisheries, water resources, flood plain areas and agriculture, and to prevent damage to the environment.

It is further intended that these goals shall be accomplished through the adoption of Orders imposing restrictions on the inland wetlands and flood plain areas of the Commonwealth. The Orders shall regulate, restrict, or prohibit certain specified activities or uses, including dredging, filling, removing or otherwise altering or polluting inland wetlands and shall establish encroachment lines along waterways or flood-prone areas beyond which in the direction of the waterway or flood-prone area, no obstruction or encroachment shall be placed unless authorized by the Commissioner of the Department of Environmental Protection.

It is also the intent of the Department that, where inland wetlands and flood plain areas occur within the boundary of the Massachusetts coastal zone as defined in the Commonwealth's Coastal Zone Management Program (hereinafter "CZM Program"), 310 CMR 13.00 be consistent with and form a part of the CZM Program as it has been promulgated and defined in 301 CMR 20.00 issued pursuant to M.G.L. c. 21A entitled "Establishment of the Coastal Zone Management Program by the Executive Office of Environmental Affairs". 310 CMR 13.00, however, is adopted independently under M.G.L. c. 131, § 40A and would remain in full force and effect in the absence of the CZM Program or 301 CMR 20.00.

The interpretation and application of 310 CMR 13.00 to inland wetlands and flood plain areas within the boundary of the coastal zone shall be consistent with the policies of the CZM Program to the maximum extent permissible under M.G.L. c. 131, § 40A; except when to do so would require an act impermissible at law, or where the Secretary of Environmental Affairs, pursuant to the conflict resolution procedures of M.G.L. c. 21A, § 4 and 301 CMR 20.06, has resolved any conflict and has

determined that the CZM policies should or should not apply.

13.01: continued

(3) Coordination with the CZM Office and Local Governments. If inland wetlands and flood plain areas proposed for restriction occur within the Coastal Zone, as defined in 301 CMR 20.03 the Department, in accordance with 301 CMR 20.06, shall notify the CZM Office at least 60 days beforehand of the adoption of any proposed Order and shall provide local government agencies with notice of the proposed Order at least 30 days prior to its adoption.

(4) Restriction of Areas of Critical Environmental Concern. Whenever the Secretary notifies the Commissioner that he has accepted the nomination of an inland wetland or flood plain area for designation as an Area of Critical Environmental Concern (hereinafter "ACEC"), the Commissioner shall, within 30 days of such acceptance, submit the following to the Secretary, and to the Director of the Coastal Zone Management Office if the nominated inland wetland or flood plain area lies within the coastal zone as defined in 301 CMR 20.03:

(a) a narrative description of the current status of mapping activity and of any past or current wetlands restrictions activity within the suggested boundaries of the nominated ACEC.

(b) a schedule for restricting the inland wetlands and flood plain areas in the nominated ACEC within 15 months of the Secretary's designation of the ACEC. In carrying out the restriction of the inland wetlands and flood plain areas of an ACEC within 15 months of its designation, the Department shall review the adequacy and consistency of all previously recorded restrictions within the ACEC and shall, as necessary, amend or modify and rerecord such restrictions to ensure full compliance with the management goals of the Secretary's designation of the ACEC.

If the Commissioner determines that the process of restricting all of the inland wetlands and flood plain areas in an ACEC cannot be completed within 15 months of designation, the Commissioner may request that the Secretary grant a one-time extension of up to 90 days.

13.02: Definitions

Act means M.G.L. c. 131, § 40A.

Agriculture purposes means one or more of the following activities or uses: raising, breeding or producing a specified type of animal or vegetable life, including, but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees, fur-bearing animals, and fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or green house products, forest products, and ornamental plants, shrubs, fish and shellfish, provided that such activity or use results in or is or was clearly intended to result in a product of demonstrable market value.

Altering means causing change, directly or indirectly within any inland wetland or flood plain area and includes, but is not limited to, one or more of the following actions:

(a) changing pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns and flood storage retention areas;

(b) draining or otherwise disturbing surface or groundwater levels;

(c) degrading water quality;

(d) driving pilings or erecting buildings or structures of any kind;

(e) placing any obstruction to water flow;

(f) destroying plant life, but not including the limbing of trees;

(g) discharging, releasing, or causing to be released, any contaminating materials, including sediments, from any source directly into any inland wetland or flood plain area whether by overland flow or through a new or existing pipe or other conduit;

(h) causing adverse effects to wildlife, inland fisheries, or to their habitat;

(i) lowering, polluting, or otherwise changing the level, quantity, or quality of ground water by doing any work in an inland wetland or flood plain area.

13.02: continued

Amendment means any change in the allowed or prohibited activities or uses contained in any Order adopted under M.G.L. c. 131, § 40A; any addition to or deletion of, including any change in the definition of, the types of inland wetlands defined in any Order; any addition to or deletion of any wetland or flood plain area; any change in the location of any wetland boundary or encroachment line which does not constitute a correction; or any addition to any list of assessed owners adopted as part of the Order. An amendment shall not include a correction as defined in 310 CMR 13.02.

Assessed owner means the person to whom land within an inland wetland or flood plain area affected by an Order was assessed in the last preceding annual tax levy.

Bank means the contiguous upland slope landward of any inland water or freshwater wetland up to and including the crest of the slope, which may or may not include vegetation characteristic of transitional zones (ecotones) or plant communities immediately adjacent to any inland water or freshwater wetland.

Commissioner means the Commissioner of the Department of Environmental Protection.

Correction means any minor change in the location of the inland wetland or flood plain area boundary or encroachment line on a plan, the substitution or deletion of any name or names from the list of assessed owners adopted as part of any Order, or any typographical, grammatical or other correction which does not change the sense or meaning of any Order.

Department means the Department of Environmental Protection.

Dredging means the removal of materials including, but not limited to, rock, bottom sediment, debris, loam, peat, soil, sand, refuse, plant or animal matter, in any excavating, grading, cleaning, deepening, widening or lengthening, either permanently or temporarily, of any inland wetland or flood plain area. Dredging shall include improvement dredging, maintenance dredging, back-filling or other dredging and subsequent refilling.

Encroachment Line means any boundary line which is based upon an inland wetland boundary line beyond which no structures or other encroachments may be established in the direction of the waterway or flood-prone area.

Filling means the placing of any material that raises, either temporarily or permanently, the existing elevation of any inland wetland or flood plain area.

Flood Plains, means for the purposes of M.G.L. c. 131, § 40A, inland wetlands that are subject to flooding, and normally dry land areas which are subject to a general and temporary condition of partial or complete inundation by runoff from surface water or by overflow of inland waters. Flood plains or flood plain areas may further include those areas of land which have been designated as being within the 100-year flood as determined by the Office of Federal Insurance and Hazard Mitigation within the Federal Emergency Management Agency.

Flood Plain Area means any inland wetland or flood plain delineated by a continuous boundary line which encloses that area.

Flooding means a local and temporary inundation or rise in the surface water level of any inland water such that it inundates or overflows land not usually under water.

Inland Wetlands means "freshwater wetlands" as defined in M.G.L. c. 131, § 40 and that portion of any bank which touches any inland waters or any freshwater wetland, and any freshwater wetland subject to flooding.

Improvement Dredging means any dredging in an area which has not previously been dredged or which extends the original dredged width, depth, length, or otherwise alters the original boundaries of a previously dredged area.

13.02: continued

Inland Wetland affected by an Order means any inland wetland or flood plain area that is subject to any restriction under an Order.

Modification means any amendment as defined in 310 CMR 13.02 Amendment.

Obstruction or Encroachment shall be defined as including, but not limited to, any structure, building, fence, wall, fixture, or other barrier.

Maintenance Dredging means any dredging under a License in any previously dredged area which does not extend the originally dredged width, depth, or length, but does not mean improvement dredging or backfilling.

National Map Accuracy Standards means meeting or exceeding the map accuracy standards established by the U.S. Bureau of the Budget on June 10, 1941, as revised April 26, 1943 and June 17, 1947, and as amended from time to time. For maps on publication scales larger than 1:20,000, not more than 10% of the points tested may be in error by more than 1/30 inch (0.846mm) measured on the publication scale; for maps on publication scales of 1:20,000 or smaller, 1/50 inch (0.508mm). These limits of accuracy shall apply in all cases to positions of well-defined points only. Well-defined points are those that are easily visible or recoverable on the ground. In general, what is well-defined will also be determined by what is plottable on the scale of the map within 1/100 inch (0.254mm).

Order means any instrument issued by the Commissioner that imposes restrictions on any inland wetland or flood plain area in accordance with M.G.L. c. 131, § 40A.

Person means any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof, any administrative agency, public or quasi-public corporation or body or any other legal entity or its legal representative, agents or assigns.

Person having an ownership interest means any assessed owner or any record holder of an easement, covenant, restriction or any other ownership interest, any lessee holding a lease of 25 years length or more and any mortgagor.

Plan means a map made by surveying techniques, a line and symbol photogrammetric map or an orthophoto map, which meets National Map Accuracy Standards, upon which inland wetlands and flood plain areas are delineated.

Polluting means, but is not limited to, the discharge, release or flow of any product, by-product, material or waste resulting from sewage, sewage processing, or from any industrial, commercial, or other man-made process, any man-made thermal discharge, run-off, leachate, or any other substance in any form, which is or can be drained, discharged or infiltrated, or otherwise introduced into any inland wetland or flood plain area, or any discharge or release of agricultural waste or chemicals for non-agricultural purposes.

Removing means to take away any type of material that alters the elevation of any inland wetland or flood plain area.

Repeal means the rescinding of any Order, including the plan or plans and list of assessed owners incorporated with the Order.

Restriction means any provision in any Order limiting activities or uses in or on inland wetlands or flood plain areas.

Wetland area means any inland wetland or flood plain delineated by a continuous boundary line which encloses that area.

13.03: Notice

Prior to adopting any Order under M.G.L. c. 131, § 40A, the Commissioner shall first give notice, as provided below, of a preliminary informational meeting and a public hearing.

(1) Persons To Be Given Notice. The Department shall mail notice of the meeting and the hearing to the following persons by certified mail at their address as listed in the assessor's records, at least 14 days prior to the date of the preliminary informational meeting and at least 21 days prior to the date of the public hearing:

- (a) any assessed owner, unless a different owner or different address is known to the Commissioner to be the correct one, in which case the notice shall be so addressed;
- (b) any person, other than an assessed owner, having an ownership interest in any inland wetland or flood plain area to be affected and whose name appears in the assessor's records; (c) any person who has acquired, subsequent to the last annual tax levy, an ownership interest in any inland wetland or flood plain area to be affected and whose name has been entered in the records of the assessor's office and is available to the Department at least 60 days prior to the date of the public hearing;

(d) the State Reclamation Board, the Department of Public Works, the Department of Environmental Management, the Metropolitan District Commission, the Coastal Zone Management Office, other agencies of the Commonwealth, federal and local government as the Commissioner deems appropriate regional planning agencies within the area to be affected, and to the Selectmen or Mayor, Conservation Commission, Planning Board and Assessors of the city, town or watershed region in which the inland wetlands or flood plain areas to be affected are located.

The Commissioner shall give notice by regular mail to any person who has filed a written request to receive notice of public hearings to be held pursuant to M.G.L. c. 131, § 40A, and to any other person he may deem appropriate, at least 14 days prior to the date of the preliminary informational meeting and at least 21 days prior to the date of the public hearing.

Any of the notices required to be given pursuant to 310 CMR 13.03(1) shall be deemed to have been given upon mailing a copy of the notice. The number of days between the giving of notice and the date of the preliminary informational meeting and public hearing shall include Saturdays, Sundays and legal holidays.

(2) Publication of Notice. The Commissioner shall publish notice of the preliminary informational meeting and public hearing at least 14 days prior to the date of the preliminary informational meeting and at least 21 days prior to the date of the public hearing in a newspaper or newspapers of general circulation in the city, town or watershed region in which the inland wetlands or flood plain areas to be affected are located, and where appropriate, in such trade, industry or professional publications as the Commissioner may select.

(3) Posting of Notice. The Commissioner shall post notice of the preliminary informational meeting and public hearing at least 14 days prior to the date of the preliminary informational meeting and at least 21 days prior to the date of the public hearing in the city or town hall of the city or town in which inland wetlands or flood plain areas to be affected are located, and in any other location as determined by the Commissioner.

(4) Filing Notice With the Secretary of the Commonwealth. The Commissioner shall file notice of the public hearing with the Secretary of State at least 21 days prior to the date of the public hearing.

(5) Content of Notice. Notice, other than notice by publication, shall include, but need not be limited to, the following information and materials:

- (a) A description of the Department's statutory authority to adopt Orders, a copy of the statute,

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

M.G.L. c. 131, § 40A, and a copy of the proposed Order.

(b) A copy of an index map or portion of the proposed plan with the inland wetland or flood plain area or areas to be affected identified thereon.

(c) Notice that the Department's wetland boundary delineation services are available to persons having an ownership interest in land to be affected by the Order.

(d) The time, place and location of the preliminary informational meeting and public hearing.

13.03: continued

(e) The name of the Commissioner or his agent or agents designated to receive inquiries or requests prior to the public hearing.

(f) Notice that any person may submit written comments concerning the proposed Order to the Department, and/or request to speak at the hearing.

Notice published in newspapers or posted in the city or town hall or other public place pursuant to 310 CMR 13.03(5) shall include the items listed in 310 CMR 13.03(5)(c), (d), and (f), and may also contain a list of parcels within which inland wetlands or flood plain areas are located, and for which no assessed owner is known.

13.04: Preliminary Informational Meetings

The Commissioner shall, at least seven days prior to the date of the public hearing, hold a preliminary informational meeting in a city or town in which the inland wetlands or flood plain areas to be affected are located.

(1) Materials for Display and Inspection. The following information and materials shall be available for display and inspection:

- (a) photogrammetric, line and symbol, or orthophoto maps depicting inland wetland or flood plain area boundaries or encroachment lines, or any other maps intended for use as plans;
- (b) aerial photographs of the inland wetlands or flood plain areas to be affected;
- (c) assessor's maps depicting the area to be affected;
- (d) a list of all persons who have been given notice of the preliminary informational meeting and the public hearing.

(2) Materials for Distribution. The following information and materials shall be available for distribution:

- (a) copies of M.G.L. c. 131, § 40A and 310 CMR 13.00;
- (b) copies of the proposed Order;
- (c) on-site inspection request forms as shown in Appendix A.

(3) Conduct of the Preliminary Informational Meeting. A representative of the Department shall be present at the preliminary informational meeting to distribute materials upon request, to answer questions concerning the location of proposed inland wetland or flood plain area boundary lines or encroachment lines, and if time permits, to answer other questions concerning the program.

13.05: Public Hearings

Prior to adopting any Order under M.G.L. c. 131, § 40A, the Commissioner shall first hold a public hearing in a city or town in which the inland wetlands or flood plain areas to be affected are located.

The Commissioner or his agent designated as the Presiding Officer shall conduct the public hearing. Copies of all information and materials available at the preliminary informational meeting shall be available at the public hearing.

The Presiding Officer shall convene the public hearing. He or she or a representative of the Department shall first state the statutory authority under which the program operates, and shall explain the purpose of the program, effect of the proposed Order, and the Department's mapping, designating and recording procedures. The Presiding Officer shall inform persons having an ownership interest in any affected inland wetland or flood plain area of their right to request an onsite inspection and other procedures pursuant to 310 CMR 13.07.

The Presiding Officer shall specify the order of participation. Representatives of the Department shall speak first, followed by elected officials. Persons or groups representing agencies of the Commonwealth, federal agencies or local governments who have requested permission to speak shall proceed next, followed by those persons who have submitted requests to comment. Other persons who wish to speak may then proceed at the discretion of the Presiding Officer. The Presiding Officer shall have the right to limit the length of time for each presentation.



13.05: continued

The Presiding Officer may entertain questions from the audience. The Presiding Officer shall have the authority to adjourn the public hearing and to continue it to another date.

A record of the public hearing shall be compiled by having the proceedings recorded by a stenographer or on tape.

Findings will be made by the Presiding Officer and recommendations based on said findings submitted to the Commissioner within four weeks following the public hearing.

13.06: Combined Inland and Coastal Wetlands Preliminary Informational Meetings and Public Hearings

Where coastal wetlands within a city or town are also concurrently proposed for restriction under M.G.L. c. 130, § 105, the preliminary informational meeting and public hearing required under that statute shall also serve as the preliminary informational meeting and public hearing required under M.G.L. c. 131, § 40A.

13.07: Wetland or Flood Plain Boundary or Encroachment Line Delineation Procedures

Any person having an ownership interest in any affected inland wetland or flood plain area, (hereinafter referred to in 310 CMR 13.07 as the "requesting person") shall have the right to request a wetland, flood plain boundary or encroachment line delineation in accordance with the procedures set forth below.

Prior to the adoption of any Order, such a request may be made at any time subsequent to the Department's giving notice pursuant to 310 CMR 13.03, but not later than 14 days after the close of the public hearing record, unless good cause for the delay in making such a request can be shown to the Department.

Subsequent to the adoption of any Order, such a request may be made only for good cause shown.

(1) On-Site Inspections. The Department shall make available, for the purpose of requesting on-site inspections pursuant to 310 CMR 13.07, request forms as shown in Appendix A of 310 CMR 13.00. These forms shall be available at the preliminary informational meeting and public hearing held pursuant to 310 CMR 13.00, and at the Wetlands Restriction Program of the Department's offices, during normal business hours, at 1 Winter Street, Boston, Massachusetts 02108.

Completed request forms shall be sent to the Department at the above address. No form shall be deemed to be received unless properly completed, and improperly completed forms shall be returned.

The requesting person shall also contact the Department to arrange a time, date and meeting place for the on-site inspection. The location of the inspection shall be at the place or places specified on the request form.

The Department's representative shall meet with the requesting person at the agreed upon time, date and place.

The Department's representative shall indicate the location of the inland wetland and flood plain boundary or encroachment line on the site. The Department may, through its representative, conduct the on-site inspection without the requesting person, if the Department, prior thereto, has secured permission to do so from the requesting person.

The Department may answer any questions posed by the requesting person concerning the designation of the site inspected as land affected by an Order.

(2) Delineation of Inland Wetlands, Flood Plain Areas or Encroachment Lines on Assessor's Maps. The Department, if requested, shall send the requesting person a tracing or copy of the applicable portion of the assessor's map or maps indicating the location of the inland wetland or flood plain boundary or encroachment line of the affected land in relation to the requesting person's land. The Department does not accept responsibility for the accuracy of any assessor's map or maps.

(3) Delineation of Inland Wetlands, Flood Plain Areas or Encroachment Lines on Plot Plans. The Department, if requested, shall indicate the location of the boundary of the inland wetland or flood plain area, or encroachment line on an individual plot plan submitted by the requesting person to the Department. The Department does not accept responsibility for the accuracy of any plot plan submitted.

13.08 Adoption of Orders

The Commissioner shall adopt Orders, including Amending, Modifying and Repealing Orders. No Order shall be adopted for any city or town until it is approved by the Selectmen or City Council of the city or town in which the inland wetlands or flood plains are located; provided, that if the Selectmen or the City Council fail to approve or disapprove in writing, stating reasons for the disapproval of the proposed Order within 30 days after receipt of a written request from the Commissioner, such Order shall be deemed to have been approved, and provided, further, if such Order is so disapproved the Commissioner may, after expiration of six months from the date of such disapproval and after due consideration of the reasons for such disapproval, adopt such order.

No order shall be adopted until the close of the public hearing record.

13.09: Recording of Orders

The Commissioner, upon the adoption of any Order, including the adoption of any Amending, Modifying or Repealing Order shall record a copy of the Order, together with the plan and list of the assessed owners of land affected by the Order, in the registry of deeds or, if such inland wetlands or flood plain areas are registered, in the registry of the land court. The list of assessed owners shall include a reference to the book and page number in the registry where the deed for the affected parcel is recorded.

The Commissioner shall also cause the Order to be marginally referenced to the deeds of the list of assessed owners of land affected by the Order.

13.10: Notice of Orders

The Commissioner shall, following completion of the recording procedures pursuant to 310 CMR 13.09, send by certified mail a copy of the Order and plan to each person having an interest in wetlands who was given notice and to the clerk and board of assessors of each city or town in which the affected wetlands are located.

13.11: Recording in the Public Restriction Tract Index

If any county or district having inland wetlands or flood plain areas affected by an Order has established a Public Restriction Tract Index pursuant to M.G.L. c. 184, § 33, the Commissioner shall request that the Order or any Amending, Modifying or Repealing Order, be indexed in the Public Restriction Tract Index for that county or district and that reference be made to the Order, list and plan. The Order shall be indexed pursuant to the statutory procedures established under M.G.L. c. 184, § 33 as most recently amended, and pursuant to the rules established by the Register of Deeds for the county or district.

13.12: Amending or Modifying Orders

Prior to adopting any Amending or Modifying Order under M.G.L. c. 131, § 40A, the Commissioner shall first give notice as required by, and shall hold a public hearing pursuant to, 310 CMR 13.03 and 13.05. The Commissioner shall also conduct any boundary delineation procedures as required by 310 CMR 13.07.

Any Amending or Modifying Order shall be adopted and recorded in the manner required by 310 CMR 13.08 and 13.09, and a copy of the Amending or Modifying Order and plan shall be sent by certified mail to those assessed owners affected by the Amending or Modifying Order.

13.13: Repeal of Orders

Prior to adopting any Repealing Order under M.G.L. c. 131, § 40A, the Commissioner shall first give notice in the manner required by 310 CMR 13.05.

Any Repealing Order shall be adopted and recorded in the manner required by 310 CMR 13.08 and 13.09 and a copy of the Repealing Order and plan shall be sent by certified mail to those persons whose names appear on the list of assessed owners recorded with the Order being repealed.

13.14: Correcting Orders

Any person having an ownership interest in inland wetlands or flood plain areas affected by any Order adopted pursuant to M.G.L. c. 131, § 40A, and who has reason to believe that the wetland or flood plain boundary or encroachment line of his or her wetland or flood plain areas has been incorrectly delineated on the plan which has been included with an Order, may request the Department to have the location of his or her boundary or encroachment line redrawn on a corrected plan.

Upon receipt of the request, a representative of the Department shall, within 15 days, arrange to conduct an on-site field inspection. If the Department finds that the boundary or encroachment line is incorrectly delineated, the Commissioner shall record, pursuant to the procedures provided in 310 CMR 13.09 and send to the person requesting the correction, a corrected plan with the new boundary or encroachment line delineated thereon. The Commissioner may also correct any typographical, grammatical or other errors contained in any Order by recording a copy of the corrected Order pursuant to the procedures provided in 310 CMR 13.09 and by sending a copy of the corrected Order to the assessed owner or person having an ownership interest in inland wetlands or flood plain areas affected by the Order.

13.15: Monitoring Procedures

The Commissioner shall periodically review and examine the inland wetlands affected by Orders.

In addition, any person who has an interest in any inland wetland or flood plain area affected by an Order may request the Department of Environmental Protection to conduct a review. Upon receipt of the request, the Department shall conduct an on-site inspection. If the Commissioner determines, following examination, that significant change has occurred in any such inland wetland or flood plain area, the Department shall adopt an Amending, Modifying or Repealing Order or shall correct the Order pursuant to the procedures provided in 310 CMR 13.00.

13.16: Department Review of Orders

Any Conservation Commission, Mayor or Board of Selectmen may petition the Department to conduct a review to determine if an Order has been violated. Upon receipt of such a petition, the Department shall conduct an on-site inspection of the area and shall take corrective measures as are warranted. Any abutter or other person having an interest in any inland wetland affected by an Order may request a review to determine if an Order has been violated, to be granted at the discretion of the Department.

13.17: Judicial Review of Orders

Any person having an ownership interest, any lessee holding lease of 25 years length or more, and any mortgagor having an interest in land affected by any such Order, may within 90 days after receiving notice thereof, petition the Superior Court to determine whether such Order so restricts the use of his property as to deprive him of the practical uses thereof and is therefore an unreasonable exercise of the police power because the Order constitutes the equivalent of a taking without compensation.

If the court finds the Order to be an unreasonable exercise of the police power, and enters a finding that such Order shall not apply to the land of the petitioner, the Commissioner shall cause a copy of such finding to be recorded in the proper registry of deeds or, if the land is registered, in the registry district of the land court.

The Department may, after a finding has been entered that such Order shall not apply to certain land as provided in the preceding paragraph, take the fee or any lesser interest in such land in the name of the Commonwealth by eminent domain under the provisions of M.G.L. c. 79 and hold the same for the purposes set forth in 310 CMR 13.17.

13.18: Public Meetings

The Commissioner may, from time to time, hold public meetings in any municipality in which inland wetlands or flood plain areas are located, for the purpose of describing or explaining the status of the Inland Wetlands Restriction Program or any other aspect of the Program.

13.19: Effect on Other Orders

All Orders adopted under M.G.L. c. 131, § 40A prior to the effective date of 310 CMR 13.00 shall remain in full force and effect.

13.20: Existing Structures

Any existing buildings or structure within an area subject to an Order of Restriction may continue to exist and may be repaired and maintained.

Any existing building or structure which is accidentally destroyed, may be rebuilt on the same location but no larger than the original overall dimensions.

13.21: Severability

If any provision of 310 CMR 13.00 is held to be invalid, such invalidity shall not affect any provision of 310 CMR 13.00 not specifically held to be invalid.

13.23: (Inland): Storm Emergency Provisions in the Aftermath of TROPICAL STORM SANDY (ON OR ABOUT OCTOBER 28, 2012)

The terms of any restriction order adopted pursuant to M.G.L. c. 131, § 40A, that are inconsistent with the provisions of 310 CMR 10.61: *Storm Emergency Regulations in the Aftermath of TROPICAL STORM SANDY (ON OR ABOUT OCTOBER 28, 2012)* shall not prohibit work undertaken in accordance with 310 CMR 10.61. Work initiated in accordance with 310 CMR 10.61 may continue until FEBRUARY 23, 2013 if an Emergency Certification pursuant to 310 CMR 10.06: *Emergencies* or 10.61 is granted not later than DECEMBER 26, 2012.

REGULATORY AUTHORITY

310 CMR 13.00: M.G.L. c. 21A, §§ 2(2), (3), (5), (7), (9), (10), (11), (13), (15), (20) and (28).

13.22: Appendix A

TOWN \_\_\_\_\_  
LOT # \_\_\_\_\_  
DATE INSPECTED \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
WETLANDS RESTRICTION PROGRAM  
1 WINTER STREET, BOSTON, MA 02108

REQUEST FOR ON-SITE INSPECTION

The Department will conduct on-site inspections in the town of \_\_\_\_\_  
from \_\_\_\_\_ to \_\_\_\_\_. Please fill out and send in the following information to the above address.  
In addition, please telephone the Department, by \_\_\_\_\_ a time and place for the inspection.

1. Name of owners: \_\_\_\_\_

Name of person requesting on-site inspection (if different from owner)

\_\_\_\_\_

2. Address of person requesting on-site inspection \_\_\_\_\_

\_\_\_\_\_

3. Address of property \_\_\_\_\_

4. Telephone # of person requesting on-site inspection home: \_\_\_\_\_

work: \_\_\_\_\_

5. Reason for on-site inspection

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NON-TEXT PAGE