

## Chapter 11

### NATURAL RESOURCE PROTECTION

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#### CROSS REFERENCES

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#### STATE LAW REFERENCES

Natural resources, environmental management, G.L. 1956, §§46-1-1–  
46-23-17  
Conservation commissions, G.L. 1956, §45-35-1 et seq.  
Conservation of open spaces, G.L. 1956, §45-36-1 et seq.

### ARTICLE I Flood Ordinance

#### § 11-1. Statement of purpose. [Ord. No. 2013-10, October 7, 2013, § 11-1]

The purpose of this ordinance is to ensure public safety; minimize hazards to persons and property from flooding, to protect watercourses from encroachment, and to maintain the capability of floodplains to retain and carry off floodwaters. The Town of New Shoreham elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

#### § 11-2. Applicability. [Ord. No. 2013-10, October 7, 2013, § 11-2]

- (a) Special Flood Hazard Areas.
- (a) The special flood hazard areas are herein established as a floodplain overlay district. The

district includes all special flood hazard areas within the Town of New Shoreham designated as Zone A, AE, AH, AO, A99, V, or VE on the Washington County Flood Insurance Rate Map (FIRM) and Digital FIRM issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Washington County FIRM that are wholly or partially within the Town of New Shoreham are panel numbers 44009C0352J, 44009C0353J, 44009C0354J, 44009C0356J, 44009C0358J, 44009C0361J, 44009C0362J, 44009C0363J, 44009C0364J, 44009C0366J and 44009C0368J dated October 16, 2013. The exact boundaries of the district may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Washington County Flood Insurance Study (FIS) report dated October 16, 2013. The office of the Building Official is responsible for floodplain management. The FIRM and FIS report and any revisions thereto are incorporated herein by reference and are on file with the Building Official.

**§ 11-3. Administrative provisions.** [Ord. No. 2013-10, October 7, 2013, § 11-3]

- (a) Building permit. All proposed construction or other development within a special flood hazard area shall require a permit.
- (a) The National Flood Insurance Program Special Flood Hazard Area requires permits for all projects that meet the definition of development, not just "building" projects. Development projects include any filling, grading, excavation, mining, drilling, storage of materials, temporary stream crossings. If the construction or other development within a special flood hazard area is not covered by a building permit, all other non-structural activities shall be permitted by either the Rhode Island Coastal Resources Management Council and/or the Rhode Island Department of Environmental Management as applicable. Therefore if another state agency issues a permit, the local building official must have the opportunity for input and keep a copy of the respective permit in their files.
- (a) Prior to the issuance of a building or development permit, the applicant shall submit evidence that all necessary permits and approvals have been received from all government agencies from which approval is required by federal or state law.
- (a) A permit fee (based on the cost of the construction) may be required to be paid to the Town of New Shoreham and shall be collected prior to the issuance of the permit. An additional fee may be charged if the code enforcement officer and/or board of appeals needs the assistance of a professional engineer.
- (b) Disclaimer of liability. The degree of flood protection required by the ordinance is considered reasonable but does not imply total flood protection.
- (c) Severability. If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court, the remainder of the ordinance shall not be affected.
- (d) Abrogation and greater restriction. This ordinance shall not in any way impair/remove the necessity of compliance with any other applicable laws, ordinances, regulations, etc. Where this ordinance imposes a greater restriction, the provisions of this ordinance shall control.
- (e) Enforcement. The building official shall enforce all provisions as applicable in reference to RIGL § 23-27.3-108.1.

- (f) Penalties. Every person who shall violate any provision of this code shall be subject to penalties put forth in RIGL § 23-27.3-122.3.

**§ 11-4. Use regulations.** [Ord. No. 2013-10, October 7, 2013, § 11-4]

- (a) Reference to existing regulations.

- (a) The special flood hazard areas are established as a floodplain overlay district. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with the following:

- (1) Rhode Island State Building Code (As established under Rhode Island General Law § 23-27.3);
- (2) Coastal Resources Management Act, Rhode Island Coastal Resources Management Council (RIGL § 46-23)
- (3) Endangered Species Act, Rhode Island Department of Environmental Management (RIGL § 20-1-2)
- (4) Freshwater Wetlands Act, Rhode Island Department of Environmental Management (RIGL § 2-1-18)
- (5) Minimum Standards Related to Onsite Wastewater Treatment Systems, Rhode Island Department of Environmental Management. (RIGL § 5-56, 5-56.1, 23-19.15, 23-19.5, 23-24.3, 42-17.1, and 46-13.2)
- (6) Water Quality Regulations, Rhode Island Department of Environmental Management (RIGL § 42-17.1 and 42-17.6 and 46-12).
- (6) Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

- (b) Other use regulations.

- (1) Within Zones AH and AO on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.
- (2) Within Zones AO on the FIRM, new and substantially improved residential structures shall have the top of the lowest floor at least as high as the FIRM's depth number above the highest adjacent grade and non-residential structures shall be elevated or flood-proofed above the highest adjacent grade to at least as high as the depth number on the FIRM. On FIRMs without a depth number for the AO Zone, structures shall be elevated or flood proofed to at least two feet above the highest adjacent grade.
- (3) In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Washington County FIRM encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

- (4) All subdivision proposals must be designed to assure that:
  - a. Such proposals minimize flood damage;
  - b. All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
  - c. Adequate drainage is provided to reduce exposure to flood hazards.
- (5) Detached accessory structures in Zones A, AE, A1-30, AO, and AH (i.e., garages, sheds) do not have to meet the elevation or dry flood-proofing requirement if the following standards are met:
  - a. The structure has a value less than \$1000.
  - b. The structure has unfinished interiors and must not be used for human habitation. An apartment, office or other finished space over a detached garage is considered human habitation and would require the structure to be elevated.
  - c. The structure is not in the floodway.
  - d. The structure is not used for storage of hazardous materials.
  - e. The structure is used solely for parking of vehicles and/or limited storage.
  - f. The structure must be wet flood proofed and designed to allow for the automatic entry and exit of flood water.
  - g. The accessory structure shall be firmly anchored to prevent flotation, collapse and lateral movement.
  - h. Service facilities such as electrical, mechanical and heating equipment must be elevated or flood proofed to or above the base flood elevation.
  - i. The structure must not increase the flood levels in the floodway.
- (6) No person shall change from business/commercial to residential use of any structure or property located in the floodway of a special flood hazard area so as to result in a use or expansion that could increase the risk to the occupants.
- (7) The space below the lowest floor:
  - a. Free of obstructions as described in FEMA Technical Bulletin 5 "Free of Obstruction Requirements for Buildings Located in Coastal High Hazard Area in Accordance with the National Flood Insurance Program", or
  - b. Constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or,
  - c. Designed with an enclosed area less than 300 square feet that is constructed with non-supporting breakaway walls that have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.

- (8) For any main structure located in a special flood hazard area, as shown on the official FEMA Flood Insurance Rate Maps, the maximum building height set forth in Article 3 of the Zoning Ordinance, as applicable, shall be reduced by seven (7) feet. For any accessory structure, the maximum building height shall be a percentage set forth in Article 3 of the Zoning Ordinance, as applicable, of the building height of the main structure. [Added 7-15-2020 by Ord. No. 2020-06]

**§ 11-5. Base flood elevation and floodway data.** [Ord. No. 2013-10, October 7, 2013, § 11-5]

- (a) Floodway data. In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available federal, state, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- (b) Base flood elevation data. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or five acres, whichever is the lesser, within unnumbered A zones.
- (c) Base flood elevations in A Zones. In the absence of FEMA BFE data and floodway data, the best available federal, state, local, or other BFE or floodway data shall be used as the basis for elevating residential and non-residential structures to or above the base flood level and for floodproofing non-residential structures to or above the base flood level.

**§ 11-6. Definitions.** [Ord. No. 2013-10, October 7, 2013, § 11-6]

**AREA OF SHALLOW FLOODING (FOR A COMMUNITY WITH AO OR AH ZONES ONLY)** — A designated AO, AH, AR/AO, AR/AH, or VO Zone on a community's Flood Insurance Rate Map (FIRM) with a 1% or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**BASE FLOOD** — The flood having a 1% chance of being equaled or exceeded in any given year.

**BASE FLOOD ELEVATION (BFE)** — The elevation of the crest of the base flood or 100-year flood. The height, as established in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum where specified), in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.

**COASTAL A ZONE** — Area within a special flood hazard area, landward of a V Zone or landward of an open coast without mapped V Zones. The principal source of flooding must be astronomical tides, storm surges, seiches, or tsunamis, not riverine flooding. During the base flood conditions, the potential for breaking wave heights shall be greater than or equal to 1.5 feet.

**COST** — As related to substantial improvements, the cost of any reconstruction, rehabilitation, addition, alteration, repair or other improvement of a structure shall be established by a detailed written contractor's estimate. The estimate shall include, but not be limited to: the cost of

materials (interior finishing elements, structural elements, utility and service equipment); sales tax on materials, building equipment and fixtures, including heating and air conditioning and utility meters; labor; built-in appliances; demolition and site preparation; repairs made to damaged parts of the building worked on at the same time; contractor's overhead; contractor's profit; and grand total. Items to be excluded include: cost of plans and specifications, survey costs, permit fees, costs to correct code violations subsequent to a violation notice, outside improvements such as septic systems, water supply wells, landscaping, sidewalks, fences, yard lights, irrigation systems, and detached structures such as garages, sheds, and gazebos.

**DEVELOPMENT** — Any man-made change to improved or unimproved real estate, including but not limited to the construction of buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**EXISTING MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION** — A manufactured home park or manufactured home subdivision for which the construction of facilities for servicing the lots on which the manufactured home are to be affixed (including, as a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR EXISTING MANUFACTURED HOME SUBDIVISION** — The preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)** — The federal agency that administers the National Flood Insurance Program (NFIP).

**FLOOD INSURANCE RATE MAP (FIRM)** — The official map of a community on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community effective April 3, 1985, as amended. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

**FLOOD INSURANCE STUDY (FIS)** — The official study of a community in which the Federal Emergency Management Agency (FEMA) has conducted a technical engineering evaluation and determination of local flood hazards, flood profiles and water surface elevations. The Flood Insurance Rate Maps (FIRM), which accompany the FIS, provide both flood insurance rate zones and base flood elevations, and may provide the regulatory floodway limits.

**FLOOD OR FLOODING** — A general and temporary condition of partial or complete inundation of normally dry land areas from either the overflow of inland or tidal waters, or the unusual and rapid accumulation or runoff of surface waters from any source.

**FLOOD PROOFING** — Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY** — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water

surface elevation more than a designated height. For the purposes of these regulations, the term "Regulatory Floodway" is synonymous in meaning with the term "Floodway".

**FREEBOARD** — A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

**FUNCTIONALLY DEPENDENT USE OR FACILITY** — A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities.

**HIGHEST ADJACENT GRADE (HAG)** — The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**HISTORIC STRUCTURE** — Any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historic significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) By an approved state program as determined by the Secretary of the Interior or (2) Directly by the Secretary of the Interior in states without approved programs.

**LIMIT OF MODERATE WAVE ACTION (LIMWA)** — An advisory line indicating the limit of the 1.5-foot wave height during the base flood.

**LOWEST FLOOR** — The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 Code of Federal Regulations § 60.3.

**MANUFACTURED HOME** — A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

**MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION** — A parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

**MARKET VALUE** — The price of a structure that a willing buyer and seller agree upon. This can be determined by an independent appraisal by a professional appraiser; the property's tax assessment, minus land value; the replacement cost minus depreciation of the structure; the

structure's actual cash value.

**NEW CONSTRUCTION** — Structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures, (required)

**NEW MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION** — A manufactured home park or manufactured home subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain regulations adopted by the community.

**RECREATIONAL VEHICLE** — A vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

**REGULATORY FLOODWAY** — See definition for "Floodway".

**SHEET FLOW AREA (FOR COMMUNITY WITH AO, AH, OR VO ZONES ONLY)** — See definition for "Area of Shallow Flooding".

**SPECIAL FLOOD HAZARD AREA (SFHA)** — The land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

**START OF CONSTRUCTION** — For other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erections of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.



STRUCTURE — For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground.

SUBSTANTIAL DAMAGE — Damage of any origin sustained by a structure, whereby the cost of restoring the structure to before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any reconstruction, rehabilitation, addition or other improvements to a structure, the cost of which equals or exceeds 50% of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include:

- (a) Any project to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
- (b) Any alteration of the "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

VARIANCE — A grant of relief by a community from the terms of the floodplain management ordinance that allows construction in a manner otherwise prohibited and where specific enforcement would result in unnecessary hardship.

VIOLATION — Failure of a structure or other development to be fully compliant with the community's floodplain management ordinance. Construction or other development without required permits, lowest floor elevation documentation, flood-proofing certificates or required floodway encroachment calculations is resumed to be in violation until such time as that documentation is provided.

§ 11-7. through § 11-9. (Reserved)

**ARTICLE IA  
Protection of Dunes**

**[Adopted 1-16-2019 by Ord. No. 2019-01]**

**§ 11-10. Protection of dunes on public property.**

- (a) Purpose. The purpose of this ordinance is to enhance the ability of dunes to serve as a natural storm buffer protecting property from damage and destruction, and to protect the scenic and ecologic value of dunes.
- (b) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection:

DUNE — An elevated accumulation of sand shaped primarily by wind action appearing as hills, mounds, or ridges, typically vegetated with beach grass and shrubs, and located parallel to and just landward of the beach.

PUBLIC PROPERTY — Any property owned by the State of Rhode Island or the Town of New

Shoreham.

(c) Regulations.

- (1) It shall be unlawful for any person to enter upon or cross over any dune on public property whether by walking or by vehicle, bicycle, moped or other form of transportation, except at authorized, marked crossovers or other designated beach access locations.
- (2) It shall be unlawful for any person to destroy, move, or alter in any manner dunes, dune vegetation, whether occurring naturally or planted, sand fencing or other dune protection measures on public property.
- (3) Nothing in this section shall be construed so as to prohibit officers, employees and/or other authorized agents or volunteers of the State of Rhode Island or the Town of New Shoreham from entering upon dunes located on public property for purposes of cleaning, maintaining, repairing, restoring, monitoring, planting and/or preparing for storm events.

(d) Penalty. Any person who violates this section will be subject to a fine of up to \$50 for each violation payable to the Town of New Shoreham.

**§ 11-11. through § 11-15. (Reserved)**

**ARTICLE II  
Conservation Commission**

State law reference – Conservation commission, G.L. 1956, § 45-35-1 et seq.

**§ 11-16. Purpose.** [Rev. Ords. 1989, § 11-16]

The town council, as authorized by G.L. 1956, § 45-35-1, in § 902 of the Charter, establishes a conservation commission within the town for the purpose of promoting and developing the natural resources and protecting the watershed resources, and to preserve natural esthetic areas within the town and the waters adjacent thereto.

State law reference – Authority to create conservation commission, purpose, G.L. 1956, § 45-35-1.]

**§ 11-17. Membership.** [Rev. Ords. 1989, § 11-17]

The conservation commission membership shall be as provided in § 902 of the Charter. The members of such commission shall be appointed during the month of December for staggered terms of three years. In the event of a vacancy, interim appointments may be made by the town council to complete the unexpired term of such position. All members shall hold their respective offices until their successors are qualified. Members of the conservation commission shall serve without pay.

**§ 11-18. Organization.** [Rev. Ords. 1989, § 11-18]

The conservation commission shall organize annually by electing a chairman, a vice-chairman and a secretary. The commission may adopt bylaws for the performance of the duties prescribed by law and this article.

**§ 11-19. Meetings.** [Rev. Ords. 1989, § 11-19]

The conservation commission shall hold regular meetings once a month open to the public. Special meetings shall be held at the call of the chairman or upon the request of three of the members. Any person or his duly constituted representative shall be entitled to appear and be heard on any matter before the commission prior to the commission's reaching any decision on that matter. All records of the commission proceedings, resolutions and actions shall be open to public view, and copies of approved minutes of all meetings shall be filed with the town clerk's office.

**§ 11-20. through § 11-35. (Reserved)**

**ARTICLE III  
Environmental Protection**

**DIVISION 1  
GENERALLY**

**§ 11-36. Gasoline and diesel fuel powered motors prohibited on freshwater ponds.** [Rev. Ords. 1989, § 11-36]

All forms of gasoline or diesel fuel powered motors on boats, breathing apparatus or pumps or use in any other manner shall be banned on all freshwater ponds on Block Island.

**§ 11-37. Dumping pollutants or contaminants in ponds.** [Rev. Ords. 1989, § 11-37]

No person shall dump, discharge or introduce into any pond on Block Island any sewage, petroleum products, detergents, pesticides or any other form of pollutants or contaminants.

**§ 11-38. Protection of wetlands and certain inland areas.** [Rev. Ords. 1989, § 11-38]

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

**BOG** — An area of any size where at least 50% of the ground or water surface is covered by sphagnum moss.

**FLOODPLAIN** — Any land adjacent to the water having an elevation less than 10 feet above mean tide.

**MARSH** — Shall be an area of any size, characterized by grassy vegetation (e.g., cattails, sedges and reeds), where the water table is at or near the surface.

**OPEN LAND** — Areas that are deeded to the town or set aside by the owners thereof for purposes of recreation, wildlife sanctuary, preservation of natural and historic resources, education and scientific study.

POND — An area of any size where open standing water is present at least six months a year.

RIVER — Any body of water which flows at least six months of the year.

SHORES — Land areas adjoining the ocean and which are subject to erosion from the action of its waters.

STONE WALL — Shall be stone walls enclosing a lot of record as in existence at the date of the zoning ordinance.

SWAMP — An area of any size where the water table is at or near the surface and which is characterized by woody vegetation such as red maple, white cedar, and blueberry, as well as sphagnum moss and skunk cabbage.

TIDEWATER — Areas subject to inundation by seawater tide flow.

WELLS — Penetration of land by digging, driving, or drilling to obtain fresh water.

WETLANDS — Includes, but not be limited to, marshes, swamps, bogs, ponds, rivers, river and stream floodplains and banks, areas subject to storm flowage, and emergent and submergent plant communities in any body of water, including rivers and streams and that area within 50 feet of the edge of any bog, marsh, swamp or pond.

(b) Controls.

- (1) No alteration shall be made to land, wetland, shore or inland water areas as herein defined unless authorized by the town council and the coastal resources management council, and, where applicable, the Department of the Army Corps of Engineers.
- (2) Conservation commissioners may inspect any land areas within the boundaries of the town to evaluate conformance to this section and may recommend the issuance of cease and desist orders for suspected violations.

(c) Enforcement.

- (1) Enforcement of the coastal waters act is conducted through the coastal resources management council, and enforcement of the wetlands act is conducted through the state department of environmental management. The agents of that division and department will investigate, file complaints, and/or provide forms for applications for approval for alterations. In some cases, fees will be charged for applications and the cost of conducting hearings. The coastal resources management council and the department of environmental management will provide the local conservation commission with copies of all transactions and the commission shall transmit its recommendations in the matter to the town council.
- (2) All alterations pertaining to tidewater areas shall also require approval permits from the Army Corps of Engineers.
- (3) The zoning board of review and the building official shall forward copies of all applications received to the conservation commission for perusal and comment relative to conformance with the coastal resources management code as established by G.L. 1956, § 46-23-1.

**§ 11-39. through § 11-50. (Reserved)**

DIVISION 2  
**GROUNDWATER**

**§ 11-51. Definitions.** [Rev. Ords. 1989, § 11-51]

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**HYDROCARBON CHEMICAL** — Any compound composed of carbon and hydrogen.

**RESTRICTED CHEMICAL MATERIAL** — Any halogenated hydrocarbon chemical (aliphatic or aromatic), including but not limited to trichloroethane, tetrachloroethylene, methylene chloride, halogenated benzenes, or carbon tetrachloride, or any aromatic hydrocarbon chemical, including but not limited to benzene, toluene, or naphthalene, or any halogenated phenol derivative in which a hydroxide group and two or more halogen atoms are substituted onto the aromatic carbons of a benzene ring, including but not limited to trichlorophenol, pentachlorophenol or acrolein, acrylonitrile, or benzidine.

**SEWAGE SYSTEM** — Any part of a wastewater disposal system, including but not limited to all toilets, urinals, piping, drains, sewers, septic tanks, distribution boxes, absorption fields, seepage pits, cesspools and dry wells.

**SEWAGE SYSTEM CLEANER** — Any solid or liquid material intended or used primarily for the purpose of cleaning, treating or unclogging any part of a sewage system, or any solid or liquid material intended or used primarily for the purpose of continuously or automatically deodorizing or disinfecting any part of a sewage system, including but not limited to solid cakes or devices placed in plumbing fixtures. Excluded from the definition are products intended or used primarily in the manual surface cleaning, scouring, treating, deodorizing or disinfecting of common household plumbing fixtures.

**§ 11-52. Purpose and intent.** [Rev. Ords. 1989, § 11-52]

- (a) The purpose and intent of this division is to minimize the potential contamination of the groundwaters and surface waters, which in the future will supply water to the residents of the town, a sole source aquifer.
- (b) In promoting the general intent of this division, the specific intent is to:
  - (1) Minimize surface water and groundwater pollution which may affect human, animal, fish and/or plant life in and around the town.
  - (2) Control storage, use and discharge of these materials so as to avoid any possible contamination and/or pollution of the aquifer.
  - (3) Promote the general health, welfare and safety within the town.

**§ 11-53. Use of certain cesspool cleaners and antifreeze products prohibited.** [Rev. Ords. 1989, § 11-53]

- (a) Because of the potentially adverse effects of certain halogenated hydrocarbon cesspool

cleaners, also known as drain additives, and the lack of a demonstrated positive effect on the cesspool leaching rate, the use of these types of cleaners and/or drain additives shall be prohibited. Prior to marketing other cesspool additives, manufacturers shall be required to demonstrate to the town council that their product is effective and poses no adverse environmental impact.

- (b) No person shall import, transfer, sell, exchange, give or dispose of to another or agree to do the same for use within the town any cleaner containing any of the following surface active agents:
- (1) Alkyl benzene sulfonates.
  - (2) Alcohol sulfates.
  - (3) Methelene blue active substances.
  - (4) Non-ionics.
  - (5) 1,1,2-trichloro-1,2,2-trifluoroethane.
  - (6) Chloroform.
  - (7) 1,1, 1 trichloroethane.
  - (8) Carbon tetrachloride.
  - (9) 1,1,2 trichloroethylene.
  - (10) Chlorodibromomethane.
  - (11) Tetrachloroethylene.
  - (12) Bromoform.
  - (13) Bromodichloromethane.
  - (14) Methylene chloride.
- (c) Because of the potentially adverse effects of toxic antifreeze components on domestic potable water and the potential for pollution of the aquifer, the use of the antifreeze products containing methanol, ethanol or ethylene glycol for household uses shall be prohibited. Household uses are intended to include both residential and commercial uses, but shall not include the use of such products in automobiles, boats or the like. Only antifreeze products consisting of propylene glycol-based products shall be utilized for the uses restricted herein.

**§ 11-54. through § 11-70. (Reserved)**

#### **ARTICLE IV Wildlife Refuge**

**§ 11-71. Protected wildlife area designated.** [Rev. Ords. 1989, § 11-71; Ord. of 1-5-2009, § 11-71]

- (a) Except as provided in subsection (b) of this section, no person shall hunt, shoot, trap or

annoy wildlife nor destroy or disturb the eggs, nests or nesting areas of the wildlife within or upon Sachem Pond and the land areas adjacent thereto, both private and public, within that certain area bounded:

- (a) Northerly and easterly by Corn Neck Road and also northerly by the extensions of Corn Neck Road from Settler's Rock running northwesterly with the shoreline to a line running due east and west through the base of the North Lighthouse and by the same line running westerly to the shoreline referred to as the "West Beach"; westerly by the shoreline of the "West Beach" from the aforesaid line south to a point being the westerly terminus of a roadway running easterly from the shoreline to Corn Neck Road through lands of F. Nelson Breed and Edna Sheffield White, and southerly by said roadway.
- (b) The town council may vote on an annual basis to allow the hunting of deer on those areas of Assessor's Plat 1, Lot 16, which lie within the above-described property during such limited periods of time and under such conditions as the town council shall deem appropriate. In allowing any such hunting of deer, the town shall clearly mark the area(s) where deer hunting is permitted.

**§ 11-72. Additional protected wildlife areas.** [Rev. Ords. 1989, § 11-72]

The town council may from time to time upon petition of property owners designate such other protected wildlife areas in other parts of the town to be designated as wildlife refuges. All protected areas shall be conspicuously posted and such areas shall be laid out and designated on a map to be maintained by the town clerk and posted in public areas.

**§ 11-73. through § 11-100. (Reserved)**

**ARTICLE V  
Soil Erosion and Sediment Control**

**§ 11-101. Definitions.** [Ord. of 6-3-1991, art. VII, § 1]

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**APPLICANT** — Any persons, corporation, or public or private organization proposing a development which would involve disturbance to the natural terrain as herein defined.

**COASTAL FEATURE** — Coastal beaches and dunes, barrier beaches, coastal wetlands, coastal cliffs, bluffs, and banks, rocky shores, and manmade shorelines as defined in "The State of Rhode Island Coastal Resources Management Program" as amended June 28, 1983.

**CUT** — An excavation. The difference between a point on the original ground and designated point of lower elevation on the final grade. Also, the material removed in excavation.

**DEVELOPMENT PROJECT** — Any construction, reconstruction, demolition, or removal of structures, roadways, parking or other paved areas, utilities or similar facilities, including any action requiring a building permit by the town.

**EROSION** — The removal of mineral and/or organic matter by the action of wind, water, and/or gravity.

**EXCAVATE** — Any act by which earth, sand, gravel, rock, or any other similar material is dug into, cut, quarried, uncovered, removed, displaced, relocated, or bulldozed, and shall include the conditions resulting therefrom.

**FILL** — Any act by which earth, sand, or other material is placed or moved to a new location above-ground. The fill is also the difference in elevation between a point of existing undisturbed ground and a designated point of higher elevation of the final grade.

**LAND DISTURBING ACTIVITY** — Any physical land development activity which includes such actions as clearance of vegetation, moving or filling of land, removal or excavation of soil or mineral resources or similar activities.

**RUNOFF** — The surface water discharge or rate of discharge of a given watershed after a fall of rain or snow and including seepage flows that do not enter the soil but run off the surface of the land. Also, that portion of water that is not absorbed by the soil, but runs off the land surface.

**SEDIMENT** — Solid material, both mineral and/or organic, that is in suspension, is being transported, or has been moved from its site of origin by wind, water, and/or gravity as a product of erosion.

**SOIL EROSION AND SEDIMENT CONTROL PLAN** — The approved document required before any person may cause a disturbance to the natural terrain within the town as herein regulated. Also, referred to in this article as erosion and sediment control plan or approved plan.

**WATERCOURSE** — Any water or coastal wetland at its mean high water level, any freshwater wetland at its seasonal high water level, including but not limited to, any river, stream, brook, pond, lake, swamp, marsh, bog, fen, wet meadow, or any other standing or flowing body of water. The edge of the watercourse as herein defined shall be used for delineation purposes.

**§ 11-102. Purpose.** [Ord. of 6-3-1991, intro.]

The town finds that excessive quantities of soil are eroding from certain areas of the town that are undergoing development for certain nonagricultural uses such as housing development, industrial areas, recreational facilities, commercial facilities, and roads. Erosion occurring in these areas makes necessary costly repairs to gullies, washed out fills, roads, and embankments.

**§ 11-103. Applicability – Generally.** [Ord. of 6-3-1991, § 1]

This article shall be applicable to any situation involving any disturbance to the terrain, topsoil or vegetative ground cover upon any property within the Town of New Shoreham after determination of applicability by the building official or his designee based upon criteria outlined in § 11-106. Compliance with the requirements as described herein shall not be construed to relieve the owner/applicant of any obligations to obtain necessary state or federal permits.

**§ 11-104. Same – Determination.** [Ord. of 6-3-1991, art. I, § 1]

- (a) It shall be unlawful for any person to disturb any existing vegetation, grades, and contours of land in a manner which may increase the potential for soil erosion, without first applying for a determination of applicability from the building official or his designee. Upon determination of applicability, the owner/applicant shall submit a soil erosion and sediment



control plan for approval by the building official or his designee, as provided in § 11-105. The application for determination of applicability shall describe the location, nature, character, and time schedule of the proposed land disturbing activity in sufficient detail to allow the building official or his designee to determine the potential for soil erosion and sedimentation resulting from the proposed projects. In determining the applicability of this soil erosion and sediment control article to a particular land disturbing activity, the building official or his designee shall consider site topography, drainage patterns, soils proximity to watercourses, and other such information as deemed appropriate by the building official or his designee. A particular land disturbing activity shall not be subject to the requirements of this article if the building official or his designee finds that erosion resulting from the land disturbing activity is insignificant and represents no threat to adjacent properties or the quality of any coastal feature watercourse, as defined herein. The current Rhode Island Soil Erosion and Sediment Control Handbook, U.S. Department of Agriculture Soil Conservation Service, state department of environmental management, and state conservation committee shall be consulted in making this determination.

- (b) No determination of applicability shall be required for the following:
- (1) Construction, alteration or use of any additions to existing single-family or duplex homes or related structures, provided the ground coverage of such addition is less than 1,000 square feet, and such construction, alteration and use does not occur within 100 feet of any watercourse or coastal feature, and the slopes at the site of land disturbance do not exceed 10%.
  - (2) Use of a home garden in association with on-site residential use.
  - (3) Accepted agriculture management practices such as seasonal tilling and harvest activities associated with property utilized for private and/or commercial agricultural or silvicultural purposes.
  - (4) Excavations for improvements other than those described in subsection (b)(1) of this section which exhibit all the following characteristics:
    - a. Does not result in a total displacement of more than 50 cubic yards of material;
    - b. Has no slopes steeper than 10 feet vertical in 100 feet horizontal or approximately 10%; and
    - c. Has all disturbed surface area promptly and effectively protected to prevent soil erosion and sedimentation from occurring.
  - (5) Grading, as maintenance measure, or for the landscaping purposes on existing developed land parcels or lots, provided that all bare surface is immediately seeded, sodded or otherwise protected from erosive actions and all of the following conditions are met:
    - a. The aggregate of areas of such activities does not exceed 2,000 square feet; and
    - b. The change of elevation does not exceed two feet at any point. The grading does not involve a quantity of fill greater than 18 cubic yards; except where fill is excavated from another portion of the same parcel and the quantity does not

exceed 50 cubic yards.

- (6) Grading, filling, removal, or excavation activities and operations undertaken by the town under the direction and supervision of the director of public works for work on streets, roads or rights-of-way dedicated to public use; provided, however, that adequate and acceptable erosion and sediment controls are incorporated in engineering plans and specifications are employed. Appropriate controls shall apply during construction as well as after the completion of these activities. All such work shall be undertaken in accordance with the performance principles provided for in § 11-106(c) and such standards and definitions as may be adopted to implement said performance principles.

**§ 11-105. Provisions of the plan; procedures.** [Ord. of 6-3-1991, art. II, § 1]

(a) Plan required.

- (1) To obtain approval for land disturbing activity as found applicable by the building official or his designee under § 11-104, an applicant shall first file an erosion and sediment control plan signed by the owner of the property, or authorized agent, on which the work subject to approval is to be performed. The plan or drawings, as described in § 11-106, shall include proposed erosion and sediment control measures to be employed by the applicant or the applicant's agent.
- (2) State freshwater wetlands permit. Where any portion of a proposed development requires approval under the state Freshwater Wetlands Act (G.L. 1956, § 2-1-15 et seq.), as amended, and where the approval contains provisions for soil erosion and sediment controls, that approved plan shall be a component of the overall soil erosion and sediment control plan required under this article for the development.

(b) Fees. The town council of will set fees collected from each applicant requesting approval of a soil erosion and sediment control plan for the purpose of administering this article. Said fees will remain on file in the office of the town clerk.

(c) Plan review.

- (1) Within five working days of the receipt of a completed plan, the building official or his designee shall send a copy of the plan to the review authorities which may include the public works department, the planning board, or planning department, and conservation commission for the purpose of review and comment. The building official or his designee may also within the timeframe in this subsection submit copies of the plan to other local departments, or agencies, including the conservation district that services their county, in order to better achieve the purposes of this article. Failure of the aforementioned review authorities to respond within 30 days of their receipt of the plan shall be deemed as no objection to the plan as submitted.
- (2) The time allowed for plan review shall be commensurate with the proposed development project, and shall be done simultaneously with other reviews.

(d) Plan approval.

- (1) The building official or his designee shall take action in writing either approving or

disapproving the plan with reasons stated within 10 days after the building official has received the written opinion of the aforementioned review authorities.

- (2) In approving a plan, the building official or his designee may attach such conditions deemed reasonably necessary by the aforementioned review authorities to further the purposes of this article. The conditions pertaining to erosion and sediment control measures and/or devices may include, but are not limited to, the erection of walls, drains, dams, and structures, planting vegetation, trees and shrubs, furnishings, necessary easements and specifying a method of performing various kinds of work, and the sequence or timing thereof. The applicant/owner shall notify the building inspector or his designee not less than 48 hours in advance of his or her intent to begin clearing and construction work described in the erosion and sediment control plan. The applicant shall have the erosion and sediment control plan on the site during grading and construction.

(e) Appeals.

(1) Administrative procedures.

- a. If the ruling made by the building official or his designee is unsatisfactory to the applicant/owner, the applicant/owner may file a written appeal. The appeal of plans for soil erosion and sediment control shall be to the zoning board of review or other appropriate board of review, as determined by the town council.
- b. Appeal procedures shall follow current requirements for appeal to the boards above.
- c. During the period in which the request for appeal is filed, and until such time as a final decision is rendered on the appeal, the decision of the building official or his designee shall remain in effect.

- (2) Expert opinion. The building official or his designee, the zoning board of review or other board of review may seek technical assistance on any soil erosion and sediment control plan. The expert opinion must be made available in the office of the building official or his designee as a public record prior to the appeals hearing.

**§ 11-106. Soil erosion and sediment control plan.** [Ord. of 6-3-1991, art. III, § 1]

- (a) Plan preparation. The erosion and sediment control plan shall be prepared by a registered engineer, or landscape architect or a Soil and Water Conservation Society certified erosion and sediment control specialist and five copies of the plan shall be submitted to the building official or his designee.
- (b) Plan contents. The erosion and sediment control plan shall include sufficient information about the proposed activity and land parcel(s) to form a clear basis for discussion and review and to ensure compliance with all applicable requirements of this article. The plan shall be consistent with the data collection, data analysis, and plan preparation guidelines in the current Rhode Island Soil Erosion and Sediment Control Handbook, prepared by the U.S. Department of Agriculture, Soil Conservation Service, state department of environmental management, state conservation committee and, at a minimum, shall

contain:

- (1) A narrative describing the proposed land disturbing activity and the soil erosion and sediment control measures and stormwater management to be installed to control erosion that could result from the proposed activity. Supporting documentation, such as a drainage area, existing site, and soil maps shall be provided as required by the building official or his designee.
  - (2) Construction drawings illustrating in detail existing and proposed contours, drainage features, and vegetation; limits of clearing and grading, the location of soil erosion and sediment control and stormwater management measures, detail drawings of measures; stockpiles and borrow areas; sequence and staging of land disturbing activities; and other such information needed for construction.
  - (3) Other information or construction plans and details as deemed necessary by the building official or his designee for thorough review of the plan prior to action being taken as prescribed in this article. Withholding or delay of such information may be reason for the building official or his designee to judge the application as incomplete and grounds for disapproval.
- (c) Performance principles. The contents of the erosion and sediment control plan shall clearly demonstrate how the principles, outlined in this subsection, have been met in the design and are to be accomplished by the proposed development project.
- (1) The site selected shall show due regard for natural drainage characteristics and topography.
  - (2) To the extent possible, steep slopes shall be avoided.
  - (3) The grade of the slopes created shall be minimized.
  - (4) Postdevelopment runoff rates should not exceed predevelopment rates, consistent with other stormwater requirements which may be in effect. Any increase in storm runoff shall be retained and recharged as close as feasible to its place of origin by means of detention ponds or basins, seepage areas, subsurface drains, porous paving or similar technique.
  - (5) Original boundaries, alignment, and slope of watercourses within the project locus shall be preserved to the greatest extent feasible.
  - (6) In general, drainage shall be directed away from the structures intended for human occupancy, municipal or utility use, or similar structures.
  - (7) All drainage provisions shall be of such a design and capacity so as to adequately handle stormwater runoff, including runoff from tributary upstream areas which may be outside the locus of the project.
  - (8) Drainage facilities shall be installed as early as feasible during construction, prior to site clearance, if possible.
  - (9) Fill located adjacent to watercourses shall be suitably protected from erosion by means of rip-rap, gabions, retaining walls, vegetative stabilization, or similar

measures.

- (10) Temporary vegetation and/or mulching shall be used to protect bare areas and stockpiles from erosion during construction; the smallest areas feasible shall be exposed at any one time; disturbed areas shall be protected during the nongrowing months, November through March.
- (11) Permanent vegetation shall be placed immediately following fine grading.
- (12) Trees and other existing vegetation shall be retained whenever feasible; the areas beyond within the dripline shall be fenced or roped off to protect trees from construction equipment.
- (13) All areas damaged during construction shall be resodded, reseeded, or otherwise restored. Monitoring and maintenance schedule, where required, shall be predetermined and submitted in writing and signed by applicant.

**§ 11-107. Performance bond.** [Ord. of 6-3-1991, art. IV, § 1]

- (a) Before approving an erosion and sediment control plan, the building official or his designee may require the applicant/owner to file a surety company performance bond, deposit of money or negotiable securities or other method of surety, as specified by the building official or his designee. When any land disturbing activity is to take place within 100 feet of any watercourse or coastal feature or within an identified flood hazard district, or on slopes in excess of 10%, the filing of a performance bond shall be required. The amount of the bond, as determined by the public works department, or in its absence, the building official or his designee, shall be sufficient to cover the cost of implementing all erosion and sediment control measures as shown on the plan.
  - (1) The bond or negotiable security filed by the applicant shall be subject to approval of the form, content, amount, and manner of execution by the public works director and the town solicitor.
  - (2) A performance bond for an erosion and sediment control plan for a subdivision may be included in performance bond of the subdivision. The posting of the bond as part of the subdivision performance bond does not, however, relieve the owner of any requirements of this article.
- (b) Notice of default on performance secured by bond.
  - (1) Whenever the building official or his designee shall find that a default has occurred in the performance of any terms or conditions of the bond or in the implementation of measures secured by the bond, written notice thereof shall be made to the applicant and to the surety of the bond by the town solicitor. The notice shall state the nature of default, work to be done, the estimated cost thereof, the period of time deemed by the building official or his designee to be reasonably necessary for the completion of the work.
  - (2) Failure of the applicant to acknowledge and comply with the provisions and deadlines outlined in such notice of default shall mean the institution, by the town solicitor, without further notice of proceedings whatsoever, of appropriate measures to utilize

the performance bond to cause the required work to be completed by the town, by contract or by other appropriate means as determined by the town solicitor.

- (c) Notice of default on performance secured by cash or negotiable securities deposit. If a cash or negotiable securities deposit has been posted by the applicant, notice and procedure shall be the same as provided for in subsection (b) of this section.
- (d) Release from performance bond conditions. The performance bonding requirement shall remain in full force and effect for 12 months following completion of the project, or longer if deemed necessary by the building official or his designee.

**§ 11-108. Expiration; renewal.** [Ord. of 6-3-1991, art. IV, § 2]

- (a) Every approval granted under this article shall expire at the end of the time period set forth in the conditions. The developer shall fully perform and complete all the work required within the specified time period.
- (b) If the developer is unable to complete the work within the designated time period, he or she shall, at least 30 days prior to the expiration date, submit a written request for an extension of time to the building official or his designee, setting forth the reasons underlying the requested time extension. If the extension is warranted, the building official or his designee may grant an extension of time up to a maximum of one year from the date of the original deadline. Subsequent extensions under the same conditions may be granted at the discretion of the building official.

**§ 11-109. Maintenance of measures.** [Ord. of 6-3-1991, art. IV, § 3]

Maintenance of all erosion-sediment control devices under this article shall be the responsibility of the owner. The erosion-sediment control devices shall be maintained in good condition and working order on continuing basis. Watercourses originating and located completely on private property shall be the responsibility of the owner to their point of open discharge at the property line or at a communal watercourse within the property.

**§ 11-110. Liability of applicant.** [Ord. of 6-3-1991, art. IV, § 4]

Neither approval of an erosion and sediment control plan nor compliance with any condition of this article shall relieve the owner/applicant from any responsibility for damage to persons or property, nor impose any liability upon the town for damages to persons or property.

**§ 11-111. Inspections.** [Ord. of 6-3-1991, art. V, § 1]

- (a) Periodic inspections. The provisions of this article shall be administered and enforced by the building official or his designee. All work shall be subject to periodic inspections by the building official or his designee. All work shall be performed in accordance with an inspection and construction control schedule approved by the building official or his designee, who shall maintain a permanent file on all of his inspections. Upon completion of the work, the developer or owner(s) shall notify the building official or his designee that all grading, drainage, erosion and sediment control measures and devices, and vegetation and ground cover planting has been completed in conformance with the approval, all attached

plans, specifications, conditions, and other applicable provisions of this article.

(b) Final inspection.

- (1) Upon notification of the completion by the owner, the building official or his designee shall make a final inspection of the site in question and shall prepare a final summary inspection report of its findings which shall be retained in the department of inspections and in the department of public works permanent inspection file.
- (2) The applicant/owner may request the release of his/her performance bond from the building official or his designee 12 months after the final site inspection has been completed and approved. In the instance where the performance bond has been posted with the recording of the final subdivision, the bond shall be released after the building official or his designee has been notified by the town engineer of successful completion of all plat improvements by the applicant/owner.

**§ 11-112. Noncompliance.** [Ord. of 6-3-1991, art. VI, § 1]

If, at any stage, the work in progress and/or completed under the terms of an approved erosion and sediment control plan does not conform to the plan, a written notice from the building official or his designee to comply shall be transmitted by certified mail to the owner. The notice shall set forth the nature of the temporary and permanent corrections required and the time limit within which corrections shall be completed as set forth in § 11-113(b). Failure to comply with the required corrections within the specified time limit shall be considered in violation of this article, in which case the performance bond or cash or negotiable securities deposit shall be subject to notice of default, in accordance with § 11-107(b) and (c).

**§ 11-113. Penalties.** [Ord. of 6-3-1991, art. VI, § 2]

- (a) Revocation or suspension of approval. The approval of an erosion and sediment control plan under this article may be revoked or suspended by the building official and all work on the project halted for an indefinite time period by the building official after written notification is transmitted by the building official to the developer for one or more of the following reasons:
  - (1) Violation of any conditions of the approved plan, or specifications pertaining thereto;
  - (2) Violation of any provision of this article or any other applicable law, ordinance, rule, or regulation related to the work or site of work; and
  - (3) The existence of any condition or the performance of any activity constituting or creating a nuisance, hazard, or endangerment to human life or the property of others, or contrary to the spirit or intent of this article.
- (b) Other penalties. In addition thereto, whenever there is a failure to comply with the provisions of this article, the town shall have the right to notify the applicant/owner that he has five days from the receipt of notice to temporarily correct the violation and 30 days from receipt of notice to permanently correct the violations. Should the applicant/owner fail to take the temporary corrective measures within the five-day period and the permanent corrective measures within the thirty-day period, the town shall then have the right to take

whatever actions it deems necessary to correct the violations and to assert a lien on the subject property in an amount equal to the costs of remedial actions. The lien shall be recorded with the records of land evidence of the town, and the lien shall incur legal interest from the date of recording. The imposition of any penalty shall not exempt the offender from the compliance with the provisions of this article, including revocation of the performance bond or assessment of a lien on the property by the town.

**§ 11-114. Building official to administer article.** [Ord. of 6-3-1991, art. VIII, § 1]

- (a) For the purposes of this article, the building official and/or his designee reviewing soil erosion and sediment control plans shall have the following qualifications:
  - (1) Be a registered engineer, surveyor, or landscape architect or a Soil and Water Conservation Society certified erosion and sediment control specialist; or
  - (2) Shall have attended a soil erosion and sediment control training session sponsored by the United States Department of Agriculture, Soil Conservation Service and Conservation Districts.
- (b) The building official and his designee shall be granted the necessary authority to administer this article, including entry onto private property when necessary for periodic inspections to ensure compliance with provisions of the approved soil erosion and sediment control plan.