Proposer Registration Form

It is the Bidder's responsibility to make certain they have received any/all addenda relating to their proposal prior to the proposal opening date. If you are downloading a proposal we strongly encourage you to notify the City of Beverly Purchasing Department at dgelineau@beverlyma.gov and provide us with the following information. In the event any addenda is issued it will be sent to all proposers who have provided the City with this information.

Request for Proposal or Invitation for Bid Number: __14-017_

Contact Name:

_____

Company Name:

_____

Address:

_____

City/Town: State: Zip Code:

_____ _____ _____

Phone:

_____

Fax:

_____

Cell:

_____

Email:

_____

CITY OF BEVERLY, MASSACHUSETTS

REQUEST FOR PROPOSALS
#14-017
SALE OF FORMER MCKAY ELEMENTARY SCHOOL

Proposals Due:

Tuesday, August 12, 2014 at 11:00 A.M.
At the Office of the Purchasing Agent, City Hall
191 Cabot Street, Beverly, Massachusetts 01915

CITY OF BEVERLY, MASSACHUSETTS

REQUEST FOR PROPOSALS
#14-017
SALE OF FORMER ELEMENTARY SCHOOL ON MCKAY STREET

PROPOSAL DUE DATE: 11:00 A.m. (local time), Tuesday, August 12, 2014

Return proposals to: City of Beverly
Purchasing Department
City Hall, 191 Cabot Street
Beverly, Massachusetts 01915

Competitive sealed proposals will be received by the Purchasing Department, at the above-specified location, until the time and date cited.

Proposals must be in the actual possession of the Purchasing Department on or prior to the exact time and date indicated above. **NO INCOMPLETE, FAXED, ELECTRONICALLY MAILED, OR LATE PROPOSALS WILL BE CONSIDERED.**

All procurement activities conducted by the City of Beverly are in conformance with the rules and regulations of Massachusetts General Laws, Chapter 30B. The law is available for review in the Purchasing Department at the above address. Copies of the law are also available for sale to the public at a fee of 20 cents per page at the Purchasing Department or available on line at **http://www.state.ma.us/legis/laws/mgl/index.htm**.

Questions regarding this Request for Proposals should be addressed to: David Gelineau, Purchasing Agent, City Hall, 191 Cabot Street, Beverly, MA 01915; phone (978) 921-6000, ext. 2350 or **(dgelineau@beverlyma.gov)**.

REQUEST FOR PROPOSALS (RFP)
Sale of
Former McKay Elementary School

1.0 INTRODUCTION

The City of Beverly ("the City") seeks sealed proposals from qualified parties for the purchase and redevelopment of the former McKay Elementary School property, a 2.14 acre parcel overlooking both the municipal golf course and the Shoe Pond.

Specifically, the City intends to sell the 2.14 acre site (currently assessed at $2.034 million) to a development entity that will redevelop the property and generate property tax revenue in the long term. The property is currently zoned for residential uses but the City is willing to consider alternative uses that might require zoning amendment(s) or other relief.

In the event the successful proposer qualifies for tax-exempt status, the "price portion" of the proposal shall set forth a schedule and list of proposed payments in lieu of taxes ("PILOT") to be paid to the City which shall, at a minimum, be equal to the real estate and personal taxes that would have been due and payable if the proposer was not a tax-exempt organization. The schedule and list must clearly specify the intended duration of payments in lieu of taxes and must include a proposed legal mechanism to obligate payment.

Responses to this RFP must propose the purchase and redevelopment of the building and grounds. Incorporation of public access along the property line abutting the Shoe Pond shoreline is strongly encouraged (see Section 3.2.3. for more details) as is a mechanism for maintenance of the public access in perpetuity. Proposers are encouraged to suggest site amenities and improvements other than public access that provide public benefit.

The Purchase and Sales Agreement between the City and the successful proposer will reserve to the City certain rights if the permitting or construction phases are not pursued diligently or effectively, if the redevelopment entity declares bankruptcy, or becomes insolvent prior to the sale. See Appendix A for a sample Purchase and Sales Agreement which will be executed by the City and the successful proposer prior to commencement of permitting and as a precursor to the eventual sale.

2.0 PROPERTY INFORMATION

2.1 General Description

The 2.14-acre parcel of land subject to this RFP is located at the corner of McKay and Balch Streets, across the road from the Beverly Golf and Tennis Club and next to the Upper Shoe Pond.

The neighborhood around the school is a mix of single-family homes, a Beverly Housing Authority-owned property, the City's 18-hole municipal golf course and the Cummings Center, a thriving office complex with over 2 million square feet of floor space in mixed office and retail use. The site also has views of the Shoe Pond, which is on the abutting Cummings Center property.

2.2 Site Information

The site is shown as lot #76 on City of Beverly Assessors' Map #41. It has approximately 348' and 430' of frontage on McKay and Balch Streets respectively. The site is serviced by municipal water and sewer, natural gas, cable, electricity and telephone utilities and the heating system for the existing building relies on an underground storage tank (see Section 2.2.2. for more information).

The McKay School site holds a special place in Beverly's history for a number of reasons. A bronze plaque and marker erected at the southern end of the property near the Upper Shoe Pond commemorate the landing site of Beverly's first English settlers, known as "the planters", in 1628. The school site itself was only one of several donations the United Shoe Machinery Company made to the City during the years it was the City's largest employer in the 1900's. The RFP property was donated to the City for a school to educate the children of many of the company's workers.

The school building was constructed in 1906 and 1907 at a cost of about $75,000 and was named after the company's then-president Sidney Winslow. It opened in 1908 with an enrollment of 135 children which grew over time to several hundred pupils. In 1927 a new assembly hall was added at the rear of the existing building and the roof converted from a pitched to a flat style.

The school building was eventually renamed the McKay School to honor another founder of the USM Corporation. It was used as an elementary school until the late 1990's when its students were moved to the newly-constructed McKeown School nearby on Balch Street. It was subsequently declared surplus by the City's School Department and City Council and is currently vacant. A horseshoe-shaped driveway services the front façade of the building, and driveways lead to and from the rear of the site. A portion of the rear yard is paved for parking and general playground use.

2.2.1 Former School Building

The site is cleared and improved with a former elementary school building consisting of two stories and a semi-basement level. The building has approximately 41,706 sq. ft. of floor area and a footprint of approximately 15,400 sq. ft. Both the interior and exterior are in good physical condition, with the roof and windows replaced in the late 1990's. The exterior brickwork was repointed at that time as well. Plans of the building can be found in Appendix B.

2.2.2 Grounds

The remainder of the site is either landscaped or devoted to parking areas and driveways. A horseshoe-shaped driveway services the front façade of the building, and driveways lead to and from the rear of the site. A portion of the rear yard is paved. Approximately 40% of the site is paved or improved by the building and the remaining 60% is landscaped or in its natural state.

There is a 5,000 gallon underground oil tank on the premises used to store the building's heating fuel which was installed in 1955. In 1998 the City retrofitted the tank with a spill containment box around the fill port of the tank, replaced the fill pipe and internal fill stem with an overflow prevention valve, and upgraded the tank vent pipe to a minimum of 12 feet above grade. The tank and lines were tested in October 2013 and passed successfully. A copy of the report from P.M. Environmental, Inc. is attached as Appendix C.

Appendix D contains a GIS map of the site showing topographic and other site information. (Readers should note that the information in Appendices B and D is included for general information purposes only, and should not be relied upon as accurately depicting actual on-the-ground conditions).

3.0 ZONING AND PERMITTING

3.1 Reuse Options and Zoning Requirements

The site is located in a single family (R-10) zoning district. In accordance with that zoning designation, the property can be redeveloped into house lots (by right) or subsidized elderly housing (by special permit from the Zoning Board of Appeals). Under current zoning, the site may also be redeveloped into apartments or condominiums by special permit from the City Council under the provisions of Section 38-24.E. entitled "Residential Reuse of Existing and Former Public Buildings".

Although the current zoning designation is residential, the City is receptive to considering proposals for mixed and non-residential uses for this site.

The City's zoning ordinances are available online at:
http://www.beverlyma.gov/departments/planning/zoning-ordinance/:

Copies of the following sections of the City's zoning ordinance are attached as Appendix E for reference:

- Section 38-11 entitled R-10 One Family District
- Section 38-2.B.71, definition of "Subsidized Elderly Housing"
- Section 38-24.E. entitled Residential Reuse of Existing and Former Public Buildings
- Section 38-24.B. entitled Open Space Residential Design (OSRD) Site Plan Ordinance;
- Section 38-29.C. entitled Site Plan Review Requirements for Certain Commercial, Industrial, and Multi-family Developments; and
- Section 38-34 entitled Inclusion of Affordable Housing

Proposers are expected to review and analyze all of the City's zoning requirements (including those not provided herein), the site's physical and environmental conditions and reuse potential, required governmental approvals, and other development and legal considerations beyond that which is provided in this RFP. The City's zoning ordinance is available for public review in both the Planning and Development Department (City Hall, **191 Cabot Street**) and the Office of Municipal Inspections (Memorial Building, **502 Cabot Street**). It is also available on line at www.beverlyma.gov by clicking on the "City Government" and "Planning Department" links on the web page.

Proposals must adhere to all applicable State and local building codes, ordinances, regulations and laws, subject to any relief that may be granted by the governing agency.

3.2 Environmental Considerations

3.2.1. Local Environmental Permitting

Any construction within 100' of the bank of the Upper Shoe Pond, the edge of any associated bordering vegetated wetland or within the 100-year floodplain will necessitate the filing of a Notice of Intent with the Beverly Conservation Commission for the respective construction activities.

The Beverly Conservation Commission administers not only the requirements of the Wetlands Protection Act (M.G.L. Chapter 131) but also the City's non-zoning wetlands ordinance and regulations. The State's Wetlands Protection Act can be viewed on line at **http://www.mass.gov/legis/laws/mgl/131-40.htm** ; the attendant regulations can be viewed at **http://www.mass.gov/dep/service/regulations/310cmr10a.pdf.**

The City of Beverly's Wetlands Ordinance and Regulations are attached as Appendix E for reference. The City's wetlands ordinance and regulations can also be found at: http://www.beverlyma.gov/boards-commissions/conservation-commission/ordinances-and-regulations/

3.2.2. FEMA Designated Flood Zones

The site lies outside of any special flood hazard areas, according to FEMA's current Flood Insurance Rate Maps (Map Number 25009C0409F, Panel 409 of 600, effective date July 3, 2012). The FEMA flood zones are shown on a GIS map included in Appendix G.

3.2.3. Public Access

Through a combined effort of the City of Beverly and its various boards, several State agencies and Cummings Properties, most of the shoreline abutting the Upper Shoe Pond is accessible to the public via walkways and sidewalks. One segment (between the McKeown School property and McKay Street) remains unconstructed. If built, the missing segment of walkway would complete the circumferential shoreline path along the Pond. While the current walkway terminus on Balch Street allows pedestrians to continue strolling on public sidewalks, the beauty and experience of the Shoe Pond setting is lost. Accordingly, the City strongly encourages proposals that will increase the public's access to the shoreline of the Upper Shoe Pond, particularly those which connect the existing walkway along the pond to McKay Street. The map in Appendix H shows the existing walkway and sidewalk network providing public access and identifies the segment of walkway yet to be constructed.

3.3 Developer's Permitting Obligations

It will be the responsibility of the successful proposer to acquire at his/her expense all necessary waivers, approvals and permits from appropriate regulatory agencies that may be needed for the project, including but not limited to the Beverly Zoning Board of Appeals, City Council, Conservation Commission and Planning Board, various City departments and the State's Department of Environmental Protection. If the successful proposal requires zoning changes or a special permit, site plan review, subdivision or conservation commission review the City will assist the successful proposer throughout the process to ensure timely consideration.

The successful respondent will be required to file all permit applications needed for the project within one hundred and twenty (120) days of signing the Purchase and Sales Agreement and shall be obligated to proceed with due diligence in obtaining necessary permits and approvals and a Building Permit. The City of

Beverly will provide appropriate information, documentation, and assistance to the successful proposer during the permitting process.

4.0 PROPOSAL REQUIREMENTS

4.1 General

Copies of this RFP may be downloaded at: http://www.beverlyma.gov/departments/procurement/forms/ or obtained for $50.00 by contacting the City's Purchasing Department at (978) 921-6000, extension 2350 or by visiting City Hall at 191 Cabot Street during City Hall business hours (Monday through Wednesday, 8:30 a.m. to 4:30 p.m.; Thursday, 8:30 a.m. to 7:30 p.m.; Friday, 8:30 a.m. to 1:00 p.m.).

A deposit of Five Thousand Dollars ($5,000.00) (cash, treasurers' check, cashiers check, certified check or money order) must be submitted as part of the proposal package. Deposits shall be returned to unsuccessful proposers within seven (7) business days after the City executes a Purchase and Sales Agreement with the successful proposer. If the successful proposer fails to execute a purchase and sales agreement with the City after award, the deposit shall be retained by the City.

4.2 Pre-Proposal Conference

A pre-proposal conference may be scheduled on the McKay School site if interest from prospective proposers warrants.

4.3 Proposal Format and Deadline

Respondents must submit twelve (12) copies of their proposal containing complete information as requested and required by the terms of this RFP. Proposals must be submitted in a sealed envelope marked "McKay School RFP" on the outside of the envelope. **Please take note that there is NOT a separate price proposal**. Proposals must be completed in ink or typewritten and delivered to:

City of Beverly Purchasing Department
City Hall, 191 Cabot Street, Second Floor
Beverly, MA 01915

on or before 11:00 a.m. on Tuesday, August 12, 2014, at which time the proposal(s) will be publicly opened. No late, incomplete, faxed, or electronically mailed proposals will be accepted. Proposals must be in the possession of the Purchasing Department on or prior to the exact time and date indicated above in order to be considered. Any late, incomplete, faxed, or electronically mailed proposal(s) will be rejected.

4.4 Required Submissions

4.4.1 Letter of Transmittal

The proposal shall include a one-page letter of transmittal signed by the principal(s) of the proposer and addressed to the City's Purchasing Department.

4.4.2 Summary of Price Proposal Form

The form included in Appendix I must be included in your proposal section of each submitted response as noted in Section 4.3 above.

4.4.3 Description of Development Proposal

The proposal must include a detailed description of the proposed development concept including (but not limited to) the proposed use of the property, and all associated improvements arising from the development including the benefits and impacts of the development on the City, all as set forth below:

- A description of the proposed use(s) and estimated square footage of floor space by use. Include any proposed construction, renovation, or demolition of structures, additions, outbuildings, parking lots, landscaped areas, driveways and other modifications to the site in at least a conceptual format;

- A description and quantification of the populace the development is expected and intended to serve including the expected number of units and occupants;

- A description of the benefits of the project to both the City in general and the neighborhood surrounding the project site;

- A description of how the proposer plans to renovate the building and property, including a list of all permits that would be needed to construct the proposed development and a timeline for obtaining permits, completing improvements and making capital investments, if any;

- A discussion of municipal services required to service the new development, including traffic impacts, water consumption, and drainage;

- An analysis of the ways in which the proposal satisfies the evaluation criteria in Section 6.0; and

- Adherence to the requirements of this RFP.

4.4.4 Design Drawings

Proposals must include 11"x17" copies of the plans listed below sufficient to adequately describe the development concept. Color illustrations are preferred and additional plans are welcome.

- Site plan, schematic elevations, and renderings
- Typical floor plan(s)
- Landscaping and parking plan indicating open spaces, planting areas, and parking lot(s).

The plans shall include approximate dimensions and heights of proposed building(s) and other structures and site features, setback distances from property lines, parking calculations and total square footage estimates for all floors and structures.

4.4.5. Permitting, Construction, and Initial Investment Details and Timeline

Proposers shall provide a narrative description of the proposed project's permitting and construction phases, including permitting and construction milestones. Proposers must also provide a detailed breakdown of the investment expected to be made during the first twenty four (24) month period following execution of the Purchase and Sales Agreement.

4.4.6 Development Team Information

The proposal should include a description of the development team or ownership entity, the individuals and firms to be involved in the redevelopment project and their experience. Individuals

and/or firms may be part of more than one team submitting proposals. The description of the development team must include the name, address, and telephone number of the proposer, the name of any representative authorized to act on the proposer's behalf, the name and address of the contact person to whom all correspondence should be addressed, and the names and primary responsibilities of each member of the development team.

The RFP must include:

- A description of the organizational structure of the development team or ownership entity.

- A summary of the team's/entity's experience, collectively and individually, with similar projects. Demonstrated ability to perform as proposed and to complete the project in a competent and timely manner including, without limitation, the ability to pursue and carry out design, permitting, financing, marketing (if applicable), construction, and operation (if applicable).

- If the proposer is not an individual doing business under his/her name, a description of the firm/organization and its organizational status (whether a for-profit, not-for-profit, or charitable institution, a general or limited partnership, a corporation, LLC, LLP, business association, or joint venture) and the jurisdiction(s) in which it is registered to conduct business.

- The legal entity owning any land other than the City land included in this RFP that may be included as part of the development proposal.

4.4.7 Project Financing and Financial Analysis

The proposer must submit a financial analysis sufficient to demonstrate the financial feasibility of the proposal. At a minimum, the proposal must include:

- A plan for financing the development, including a "sources and uses" of funds statement, evidence that the proposer has the financial capability to obtain the necessary funding, and if the financing sources are not recognized lending institutions, background information evidencing the soundness of such financing sources; and

- A development budget for the project, including hard and soft construction costs, and a five-year operating pro-forma (if applicable) or five-year investment rate and schedule.

4.4.8 Projection of Municipal Revenue

The proposal shall contain a statement of the real estate, personal property, excise and other tax revenue anticipated to be generated as a result of the development over the next ten years, with underlying calculations. If the proposer is a tax-exempt organization, the proposal shall instead set forth a schedule and list of proposed Payments In Lieu of Taxes (PILOT) to be paid to the City of Beverly and an explanation of how the figure was determined. The schedule and list must clearly specify the intended duration of PILOT payments in years and must include a proposed legal mechanism to obligate payment.

4.4.9 References

The proposal shall include descriptions of comparable projects and references for those projects with names and telephone numbers. At least three (3) letters of references shall be provided. The reference letters shall include at least one (1) banking or other financial reference and one (1) client reference.

4.4.10 Disclosure of Beneficial Interest in Real Estate Property Transaction Statement and Non-Collusion/ Tax Certification

The proposal must include an executed Disclosure of Beneficial Interest in Real Estate Property Transaction Statement as well as an executed Non-Collusion/Tax Certification on forms included in Appendices J and K.

4.4.11 Minority and Women Owned Business Enterprises

The City encourages, to the extent allowed under the law, the active and meaningful equity participation of Minority-Owned Business Enterprises (MBE's) and Women-Owned Business Enterprises (WBE's) as certified by the State Office of Minority and Women Owned Business Assistance (SOMWBA). Proposals shall state whether the development team or the proposed end user includes any MBE's or WBE's and shall state the commitment to MBE's or WBE's to be made during construction.

4.4.12 Proposed Terms

Proposals shall specify the proposed terms of the sale and any non-monetary considerations, insurance, any easements or cross-easements needed for the development, mortgage financing contingencies, if any, and rights of mortgagees.

5.0 SELECTION PROCESS

5.1 Rule for Award

The most advantageous proposal from a responsive and responsible proposer, taking into consideration price and all other evaluation criteria set forth in the RFP, will be selected.

5.2 Evaluation Committee and Process

The City of Beverly will appoint an Evaluation Committee for the purposes of evaluating responses to this RFP. The Committee will be responsible for determining whether any or all proposals should be rejected in the best interest of the City, and for recommending to the Mayor as the City's Chief Procurement Officer which proposal, in its collective opinion, is the most advantageous proposal to the City.

Following the Committee's recommendation, the City will enter into a Purchase and Sale Agreement with the proposer submitting the most advantageous proposal. The Purchase and Sale Agreement shall, among other things, require the proposer to begin the permitting and approval process. The mutually agreed upon sale or lease will occur after all permits and approvals have been obtained for the development and all appeal periods have expired without an appeal having been filed or otherwise resolved.

Should the City and the proposer who submits the most advantageous proposal be unable to execute a Purchase and Sale Agreement, the City may, at its sole discretion, enter into negotiations to execute a Purchase and Sale Agreement with the next most advantageous proposal. The City may, at its sole discretion, repeat this procedure with each proposer who submits an advantageous proposal until a Purchase and Sale Agreement is successfully executed between the City and a proposer.

6.0 RFP EVALUATION CRITERIA

6.1 Minimum Criteria

Only those proposers who submit all forms and materials listed in Section 4.0 "Proposal Requirements" of this RFP will be considered responsive and responsible proposers. Any proposal

that fails to include all of the required submissions shall be deemed non-responsive and will not be further considered.

6.2 Evaluation Criteria

The following criteria will be used to rate the proposals:

6.2.1 Completeness of the proposal:

a. *Highly Advantageous:* The proposal contains a clear and comprehensive plan that addresses and/or complies with all of the core elements and requirements stated in the RFP.

b. *Advantageous:* The proposal contains a clear and comprehensive plan that addresses and/or complies with most of the core elements and requirements stated in the RFP.

c. *Unacceptable:* The proposal does not contain a clear plan that addresses and/or complies with most of the core elements and requirements stated in the RFP.

6.2.2 Relevant experience of development team with similar projects:

a. *Highly Advantageous:* The proposer has at least seven (7) years of experience designing, developing, marketing and, where applicable, managing projects of similar size and scope to this project and has the demonstrated financial capacity to complete the proposed project. Demonstrated understanding of permitting requirements and ability to manage State and local permitting processes.

b. *Advantageous:* The proposer has at least four (4) years of experience designing, developing, marketing and, where applicable, managing projects of similar size and scope to this project and has the demonstrated financial capacity to complete the proposed project. Demonstrated understanding of permitting requirements and ability to manage State and local permitting processes.

c. *Unacceptable:* The proposer has less than four (4) years of experience designing, developing, marketing, and, where applicable, managing projects of similar size and scope to this project, and/or does not have the demonstrated financial capacity to complete the proposed project, and/or fails to demonstrate an understanding of permitting requirements and an ability to manage State and local permitting processes.

6.2.3. Evaluation of References:

a. *Highly Advantageous:* All of the proposer's references indicate that the projects were completed satisfactorily and on schedule or with minimal, insignificant delays. Financial reference(s) are positive.

b. *Advantageous:* Only one of the proposer's references indicates that the project was completed unsatisfactorily, or with substantial delays attributable to the proposer. Financial reference(s) are positive.

c. *Unacceptable:* Two of the proposer's references indicate that the project was completed unsatisfactorily, with substantial delays attributable to the proposer, or financial reference(s) are negative.

6.2.4. Development projects that demonstrate a positive fiscal impact on the City will be viewed as favorable:

a. *Highly Advantageous*: The proposal calls for the investment of at least Two Million Dollars ($2,000,000) within the first twenty four (24) months of ownership *exclusive of the cost of acquisition.*

b. *Advantageous*: The proposal calls for the investment of at least One Million Dollars ($1,000,000) within the first twenty four (24) months of ownership *exclusive of the cost of acquisition.*

c. *Not Advantageous*: The proposal calls for the investment of less than One Million Dollars ($1,000,000) within the first twenty four (24) months of ownership *exclusive of the cost of acquisition.*

6.2.5 Real Estate/Lease, Other Tax, and/or PILOT Revenue (not including fees for services such as utility payments)

a. *Highly Advantageous*: The proposal will result in more than Fifty Thousand ($50,000.00) in annual tax revenue or PILOT payments to the City upon completion of the project.

b. *Advantageous*. The proposal will result in more than Thirty Thousand ($30,000.00) but less than Fifty Thousand Dollars ($50,000.00) in annual tax revenue or PILOT payments to the City upon completion of the project.

c. *Not Advantageous*. The proposal will result in less than Thirty Thousand Dollars ($30,000.00) PILOT payments to the City upon completion of the project.

6.2.6. Historical and Neighborhood Considerations

a. *Highly Advantageous*: The proposed site design and use are compatible with the character and architecture of the surrounding neighborhood; overall impact on the City in the long term is extremely positive in terms of spin-off benefits and impacts.

b. *Advantageous*: The proposed site design and use are compatible with the character and architecture of the surrounding neighborhood; overall impact on the City is acceptable in terms of spin-off benefits and impacts.

c. *Unacceptable*: The proposed site design and/or use are not compatible with the character or architecture of the surrounding neighborhood; overall impact on the City is unacceptable in terms of spin-off benefits and impacts.

6.2.7 Consistent with City of Beverly development regulations;

a. *Highly Advantageous*: The proposal is consistent with applicable zoning, subdivision, and wetlands regulations. The proposal does not require a variance or waiver from Beverly development regulations.

b. *Not advantageous*: The proposal is generally consistent with applicable zoning, subdivision, and wetland regulations, however requires a waiver from subdivision regulations or the wetlands ordinance.

c. *Unacceptable*: The proposal is inconsistent with applicable zoning, subdivision, and wetlands regulations and requires one or more variances from the Zoning Ordinance.

6.2.8 Neighborhood Considerations

a. *Highly Advantageous*: The proposal does not include more than twenty eight (28) dwelling units;

b. *Advantageous*: The proposal includes more than twenty eight (28) dwelling units but fewer than thirty three (38) dwelling units;

c. *Not Advantageous*: The proposal includes more than thirty eight (38) dwelling units

6.2.9 Site and Landscaping Considerations

a. *Highly Advantageous*: The proposed site and landscape plans are designed to minimize the visual impact of parking facilities from public ways, and includes landscaping that complements the building and character of the surrounding neighborhood.

b. *Not Advantageous*: The proposed site plan locates parking facilities such that they negatively impact the aesthetic value of the school building and the surrounding neighborhood.

6.3.0 Provision of Public Access

a. *Highly Advantageous.* Project includes permitting, constructing, and maintaining an extension of the public walkway along the Shoe Pond shoreline from its current terminus at the McKeown School to McKay Street.

b. *Advantageous.* Project calls for permitting, constructing, and maintaining public access along the Shoe Pond shoreline on only the RFP site, or a combination of the RFP site and City property.

c. *Unacceptable.* Project does not include permitting, constructing, and/or maintaining additional public access along the Shoe Pond shoreline.

6.3.1 Other Public Benefits

a. *Highly Advantageous.* Project proposes several public improvements/benefits not otherwise evaluated by this RFP such as parks, special treatment of historical marker location, infrastructure and streetscape improvements, etc.

b. *Advantageous.* Project proposes one public improvement/benefit not otherwise evaluated by this RFP such as parks, special treatment of historical marker location, infrastructure and streetscape improvements, etc.

c. *Unacceptable.* Project does not propose a public improvement/benefit not otherwise evaluated by this RFP such as parks, special treatment of historical marker location, infrastructure and streetscape improvements, etc.

6.3.2 Historic Preservation & Architectural Considerations

a. *Highly Advantageous*: : The proposed development project will preserve and restore the original school building constructed in 1907; and any new construction, building materials, and site design proposed in conjunction with redevelopment will complement the scale, design, materials, site and other historic elements of the original building.

b. *Not Advantageous*: The proposed development project includes demolition of the original school building or a development proposal that preserves the original school building, however new construction, materials or site development of the proposal does not complement the scale, design, building materials and other historic elements of the original building.

6.4 Price Proposal

The Price Proposal must state clearly the lump sum purchase price (which will be considered the total proposed price for the parcel).

7.0 OTHER GENERAL RFP PROVISIONS

Should the proposer find a discrepancy in, or omission from, the general terms and conditions or instructions to proposers, or should there be any doubt as to their meaning, proposers shall notify the Purchasing Department in writing at least seven (7) days prior to the deadline for submission of responses for clarification. No oral interpretations shall be considered valid.

Any person, firm, or corporation desiring to submit a proposal for the land shall be responsible for examining the terms and conditions of this RFP and the inspection of the parcel which is to be sold, and shall judge for themselves all of the circumstances and conditions affecting their proposal. Failure on the part of any proposer to make such examination or to thoroughly investigate and research existing conditions shall not be grounds for any declaration that the proposer did not understand the conditions of the RFP or of their proposal.

No proposal will be considered from any person, firm, or corporation that is in arrears or is in default to the City of Beverly on any fees, taxes, debt or contract, or that is defaulter as surety or otherwise upon any obligations to the City of Beverly or has failed to faithfully perform any previous contract with the City of Beverly.

Written addenda are the sole source of correction or change to the RFP, and if any are required they shall be sent in writing to all individuals and/or firms registered with the Purchasing Department.

The City of Beverly reserves the right to extend the deadline for submission of proposals, to request supplementary information and to negotiate the most favorable sale on behalf of the City. The City further reserves the right to reject any and all proposals, waive any defects, informalities, and minor irregularities, and make such award or act otherwise as it may deem in its best interest.

LIST OF APPENDICES

APPENDIX A	SAMPLE PURCHASE AND SALES AGREEMENT
APPENDIX B	BUILDING PLANS
APPENDIX C	P.M. ENVIRONMENTAL, INC. TANK TESTING REPORT
APPENDIX D	GIS MAPS OF RFP PARCEL
APPENDIX E	SELECTED ZONING ORDINANCE EXCERPTS
APPENDIX F	CITY OF BEVERLY WETLANDS ORDINANCE AND REGULATIONS
APPENDIX G	FEMA FLOOD ZONE INFORMATION
APPENDIX H	MAP OF PUBLIC WALKWAYS NEAR RFP PARCEL
APPENDIX I	SUMMARY OF PRICE PROPOSAL FORM
APPENDIX J	DISCLOSURE OF BENEFICIAL INTEREST IN REAL ESTATE PROPERTY TRANSACTION STATEMENT
APPENDIX K	NON-COLLUSION/TAX CERTIFICATION
APPENDIX I	REQUIRED SUBMISSION CHECKLIST FORM

APPENDIX A

SAMPLE PURCHASE AND SALE AGREEMENT

APPENDIX A

SAMPLE PURCHASE AND SALE AGREEMENT

This_____day _____2014

1. **PARTIES AND MAILING ADDRESSES:** The City of Beverly, Essex County Massachusetts, a municipal corporation, hereinafter called the SELLER, agrees to SELL and

_____

hereinafter called the BUYER, agrees to BUY, upon the terms set forth, the following described premises:

2. **DESCRIPTION:** a parcel of land consisting of approximately 2.14 acres, more or less, situated at the corner of Balch and McKay Streets, Beverly, Massachusetts. [Title Reference: Essex South District Registry of Deeds, Book 1773 Page 316.]

3. **BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES:** Included in the sale as a part of said premises are the buildings, structures, and improvements now thereon, and the fixtures used in connection therewith including, if any, all wall-to-wall carpeting, drapery rods, blinds, window shades, screens, screen doors, storm windows and doors, awnings, shutters, furnaces, heaters, heating equipment, stoves, ranges, oil and gas burners and fixtures appurtenant thereto, hot water heaters, plumbing and bathroom fixtures, garbage disposers, electric and other lighting fixtures, mantels, fences, gates, trees, shrubs, plants, and, ONLY IF BUILT IN, refrigerators, air conditioning equipment, ventilators, dishwashers and signage.

   The land and buildings are commonly known as the "McKay School."

4. **TITLE DEED:** Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except

   (a) Provisions of existing building and zoning laws;
   (b) Existing rights and obligations in party walls which are not the subject of written agreement;
   (c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
   (d) Any liens for municipal betterments assessed after the conveyance date in this agreement;
   (e) Easements, restrictions and reservations of -record, if any, so long as the same do not prohibit or interfere with the Buyer's intended development (described herein below) and the subsequent use of said premises.

5. **PLANS**: If said deed refers to a plan necessary to be recorded therewith the SELLER shall deliver such plan with the deed in form adequate for recording or registration.

6. **REGISTERED TITLE**: In addition to the foregoing, if the title to said premises is registered, said deed shall be in a form sufficient to entitle the BUYER to a Certificate of Title of said premises, and the SELLER shall deliver with said deed all instruments, if any, necessary to enable the BUYER to obtain such Certificate of Title.

7. **PURCHASE PRICE**: The agreed purchase price for said premises is _____ ($_____) dollars, of which $_____ has been paid as a deposit this day and the balance is to be paid at the time of delivery of the deed in cash, or by certified, cashier's, treasurer's or bank check(s) or by wire transfer.

8. **TIME FOR PERFORMANCE; DELIVERY OF DEED:** Such deed is to be delivered at Noon on the 30th day (or the next business day after the 30th day if the Registry of Deeds is not open on the 30th day) after all of the following pre-conditions have been satisfied: (a) Governmental Approvals (as defined below) have been issued and all appeal periods regarding those Governmental Approvals have lapsed with no adverse appeals having been taken or, if appeals have been taken, then within 30 days after all appeals as to Governmental Approvals have been disposed of to the Buyer's favor and satisfaction; and (b) The Buyer has the right to accelerate the closing date and to close sooner, at the Buyer's option, on thirty days' written notice to the Seller. As between the Seller and the Buyer, each party named in any appeals shall pursue or defend same vigorously. The closing shall be held at the Essex South District Registry of Deeds, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement.

9. **POSSESSION AND CONDITION OF PREMISES**: Full possession of said premises, vacant and free of all tenants and occupants is to be delivered at the time of the delivery of the deed, said premises to be then (a) in the same condition as they now are, reasonable use and wear thereof excepted, and (b) not in violation of building, environmental (except as addressed in paragraph 27), health and zoning laws, and (c) in compliance with provisions of any instrument referred to in clause 4 hereof. Seller shall remove all school related furniture and other personal property and debris prior the closing. The BUYER shall be entitled personally to inspect said premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.

10. **EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM**: If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of the delivery of the deed the premises do not conform with the provisions hereof, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto, shall cease and this agreement shall be void

without recourse to the parties hereto, unless the SELLER use reasonable and diligent efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER not less than 10 days before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty days.

11. **FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, etc.**: If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, or if at any time during the period of this agreement or any extension thereof, the holder of a mortgage on said premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

12. **BUYER's ELECTION TO ACCEPT TITLE** The BUYER shall have the option, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefore the purchase price without deduction, in which case the SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said premises shall have been damaged by fire or casualty insured against, then the SELLER shall, unless the SELLER has previously restored the premises to their former condition, either
(a) pay over or assign to the BUYER, on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by the SELLER for any partial restoration, or (b) if a holder of a mortgage on said premises shall not permit the insurance proceeds or a part thereof to be used to restore the said premises to their former condition or to be so paid over or assigned, give to the BUYER a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amounts reasonably expended by the SELLER for any partial restoration.

13. **ACCEPTANCE OF DEED**: The acceptance of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

14. **USE OF MONEY TO CLEAR TITLE:** To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed.

15. **INSURANCE**: Until the delivery of the deed, the SELLER shall maintain insurance on the premises in an amount at least equal to 80 % of the purchase price. All risk of

loss, damage and destruction remains on the Seller until the deed is recorded and the full purchase price is paid.

16. **ADJUSTMENTS**: Water and sewer use charges shall be apportioned, as of the day of performance of this agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the BUYER at the time of delivery of the deed.

17. **ADJUSTMENT TAXES**: Buyer shall make the payment required by Massachusetts General Laws Chapter 44, section 63A at the time for performance. The deed shall recite that there has been full compliance with the provisions of such law.

18. **BROKER**: Buyer represents and warrants to the Seller that the Buyer has not used a real estate broker in this transaction and so indemnifies the Seller. Seller represents and warrants to the Buyer that the Seller has not used a real estate broker in this transaction and so indemnifies the Buyer. This provision survives the closing.

19. **DEPOSIT**: All deposits made hereunder shall be held in escrow by the Seller subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement.

20. **BUYER's DEFAULT; DAMAGES**: If the BUYER shall fail to fulfill the BUYER's agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages without further recourse against the Buyer, either in law or in equity.

21. **NO LIABILITY OF INDIVIDUALS**: The persons signing this agreement on behalf of the SELLER and BUYER do so in a representative or fiduciary capacity, and only the principal or the estate represented shall be bound, and neither the person so executing, nor any official, member or manager of the Seller or Buyer shall be personally liable for any obligation, express or implied, hereunder.

22. **AUTHORITY**: The Seller represents that it has taken all steps required by law to sell and convey the premises to the Buyer, including votes of the School Committee determining the premises to be surplus and not needed for educational purposes and turning over control of the premises to the City and votes of the City Council authorizing the Mayor, on behalf of the Seller, to sell and convey the premises on the terms contained in this agreement and that said votes are valid and now in full force and effect.

23. **CONSTRUCTION OF AGREEMENT**: This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns, and may be cancelled, modified or amended only by a written instrument executed by both the SELLER and the BUYER. The captions and marginal notes

are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.

24. **LEAD PAINT LAW:** The parties acknowledge that, under Massachusetts law, whenever a child or children under six years of age resides in any residential premises in which any paint, plaster or other accessible material contains dangerous levels of lead, the owner of said premises must remove or cover said paint, plaster or other material so as to make in inaccessible to children under six years of age.

25. **ENTRY:** Buyer may enter the premises for the purpose of conducting inspections, site visits, testing, studies, surveys, borings, test pits and the like. Such entries may be from time to time and shall be at Buyer's sole risk and expense. Buyer or its designee shall notify the Seller before entering.

26. **NOTICE:** Any notice to be given under this agreement shall be in writing and shall be either delivered in hand or mailed via U.S. mail, certified mail, return receipt requested or served by constable in the manner allowed for the service of legal process, at the following address:

If to Seller:
Michael P. Cahill, Mayor
Beverly City Hall
191 Cabot Street
Beverly, MA

with a copy to:
Stephanie Williams, City Solicitor
Beverly City Hall
191 Cabot Street
Beverly, MA

with a copy to:
Aaron Clausen, City Planner
Beverly City Hall
191 Cabot Street
Beverly, MA

If to Buyer:

with a copy to:

with a copy to:

Either party may change the address to which notice is to be given by delivering notice in the procedure required of that party's new address. No address may be a post office box, but must be an actual street address.

27. **AFFORDABLE HOUSING:** % of dwelling units shall be reserved for purchase by households whose gross annual income is equal to or below eighty (80%) of the Boston area median household income, adjusted for household size (hereinafter, the affordable units) in perpetuity or as long as permitted by law. The affordable units shall be designated as such in a Regulatory Agreement and Condominium Documents, if applicable.

28. **DISCLOSURE:** The Buyer has filed a disclosure statement with the Commissioner of Capital Asset Management and maintenance pursuant to Massachusetts General Law Chapter 7, Section 40J.

City of Beverly

By

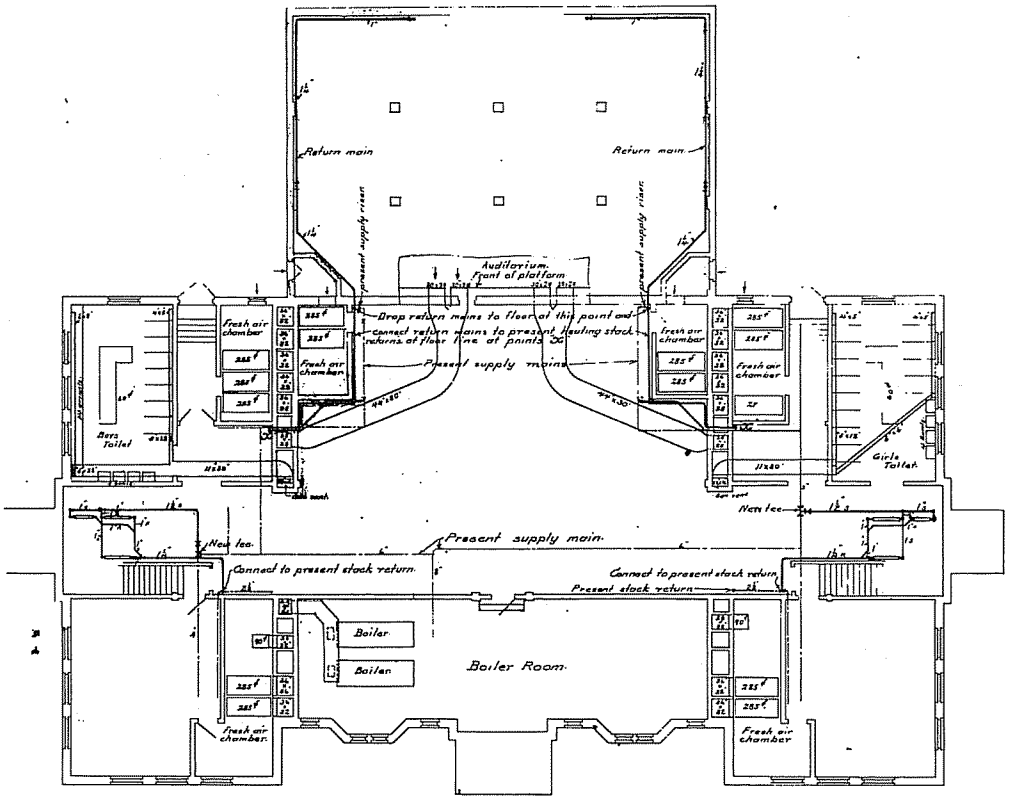
_____ _____

As Mayor

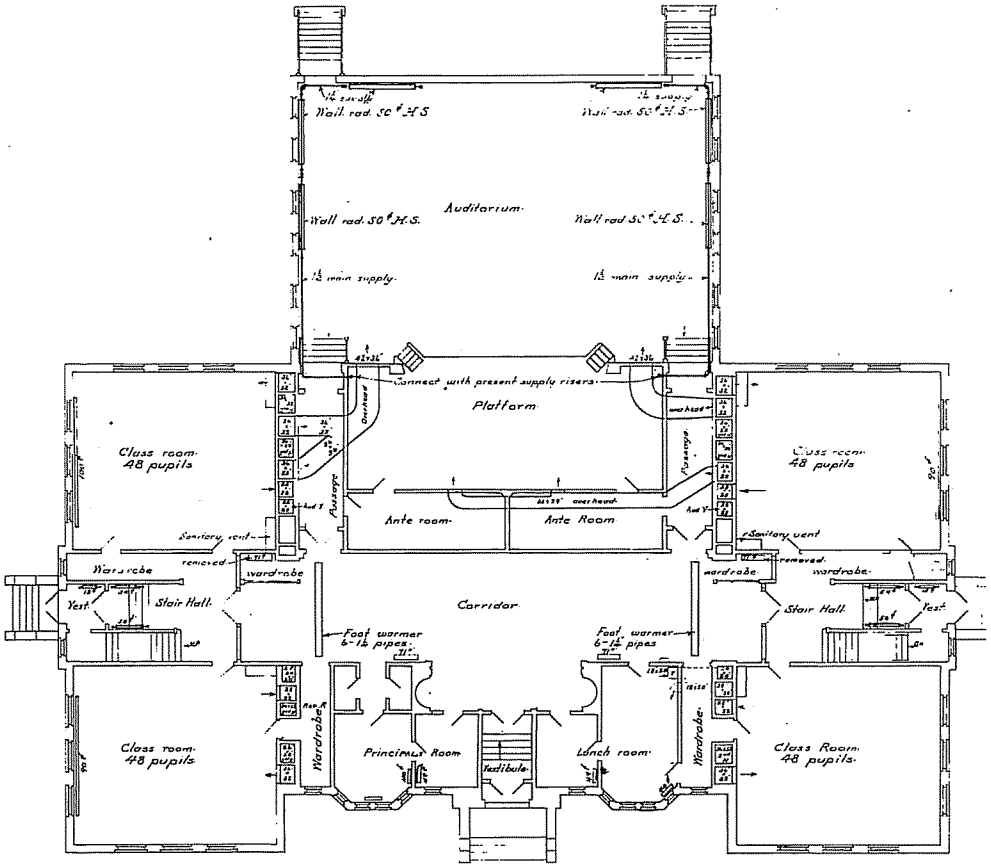
F:\Docs\Noreen \McKay\P&S.doc

APPENDIX B

BUILDING PLANS



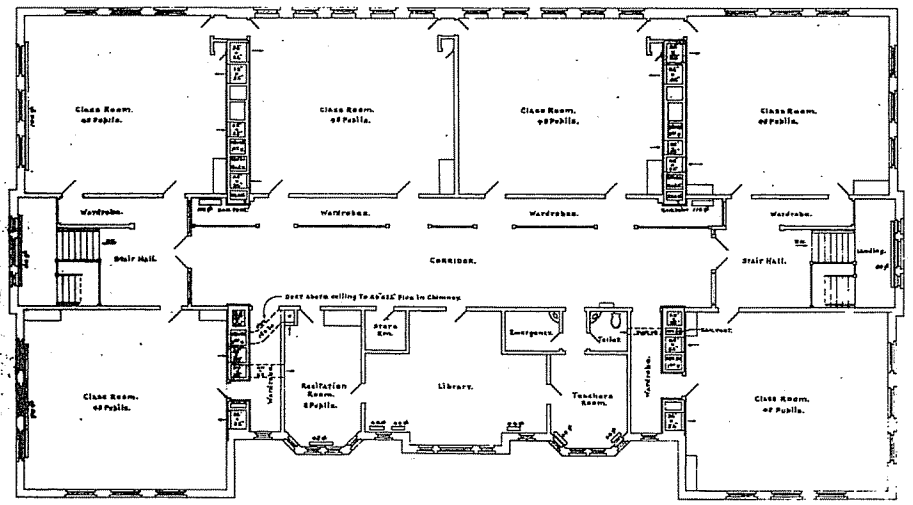
Plan of Basement Heating & Ventilating



Plan of First Floor Heating & Ventilating

Note: New heating piping shown in heavy full lines
Old " " " " light broken lines

CITY OF BEVERLY
McKAY STREET SCHOOL, BEVERLY, MASS
ALTERATIONS & ADDITIONS
HEATING & VENTILATING
CHAS. T. MAIN, INC., ENGINEERS.
301 DEVONSHIRE ST. BOSTON, MASS. U.S.A.
REVISIONS
IN CHARGE OF H.E.S.
DRAWN
TRACED
CHECKED
SCALE
DATE



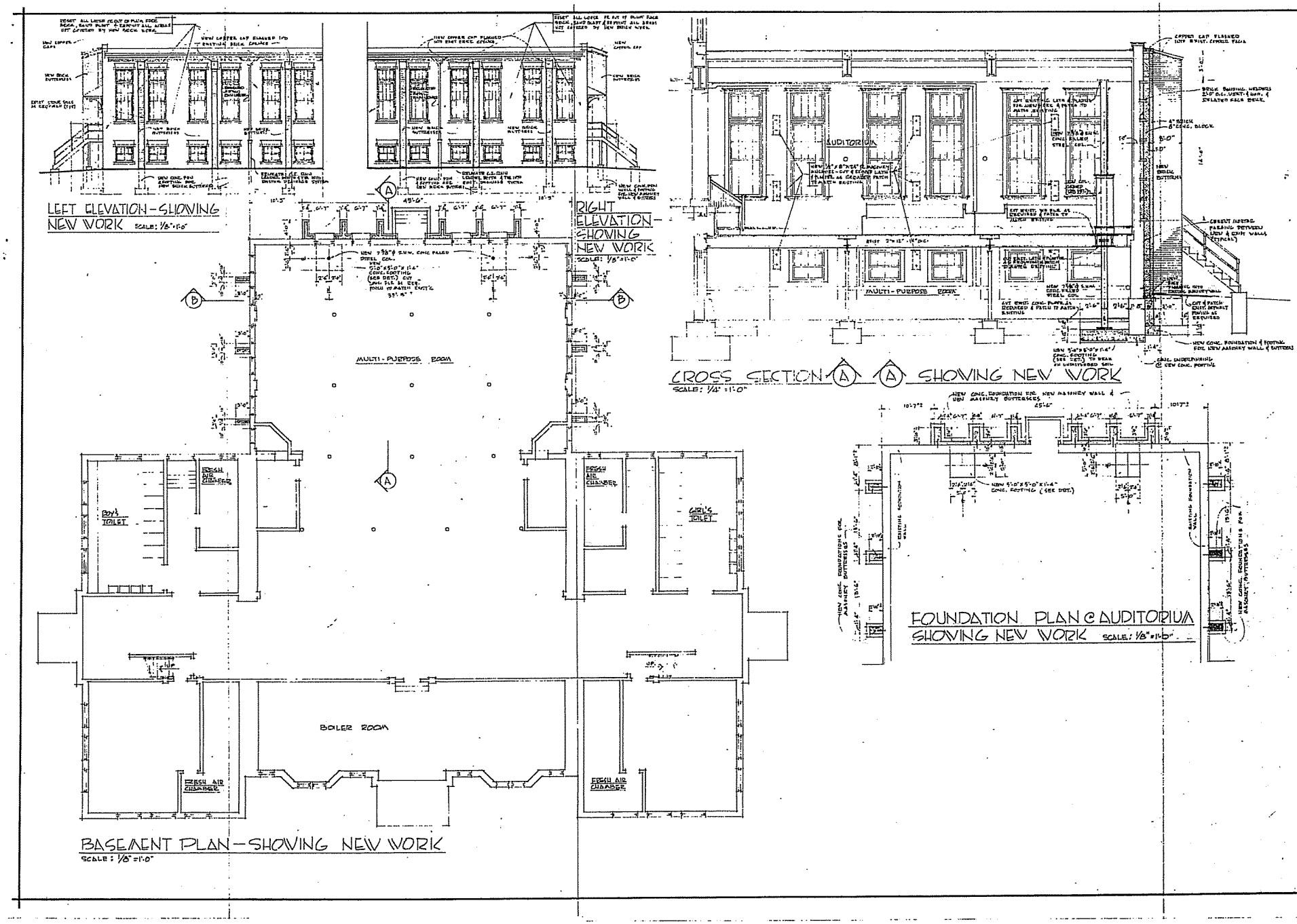
PLAN OF SECOND FLOOR.

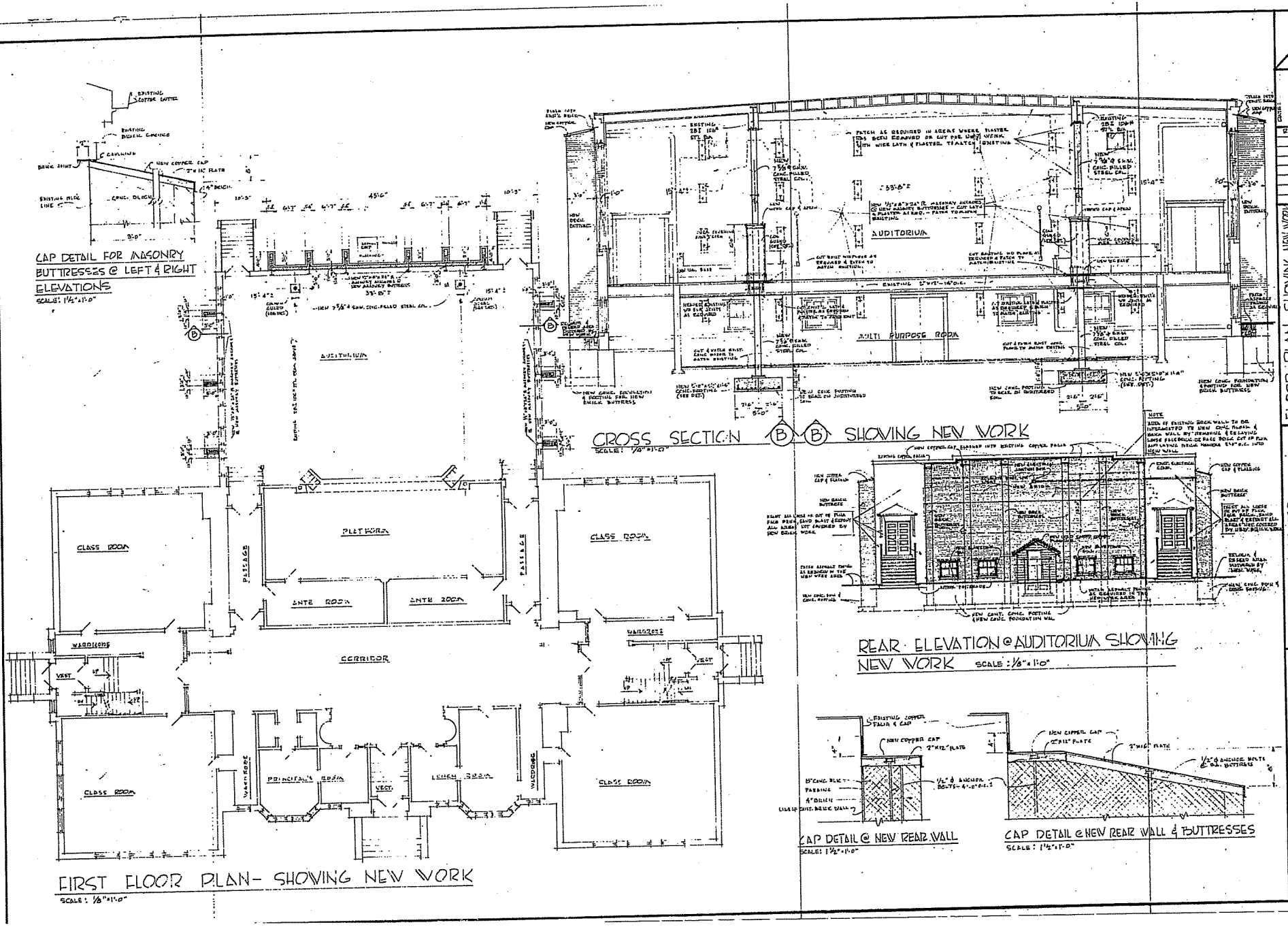
CITY OF BEVERLY
McKAY STREET SCHOOL. BEVERLY, MASS.
ALTERATIONS & ADDITIONS.
HEATING & VENTILATING.

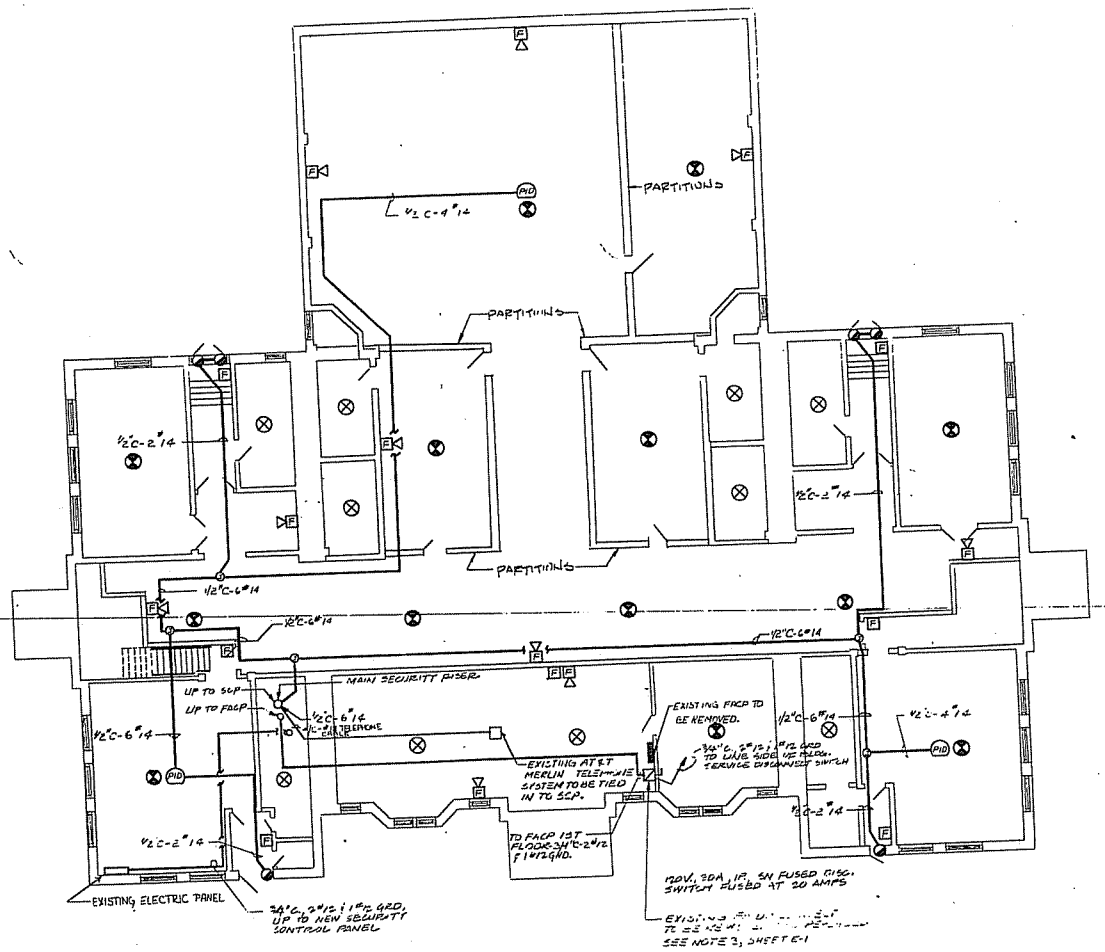
CHAS. T. MAIN, INC., ENGINEERS.
201 DEVONSHIRE ST. BOSTON, MASS., U.S.A.

REVISIONS

In Charge of H. E. S.			Scale 1/8" = 1'-0"	986-16
Drawn	Traced	Checked	Date June 15, 1927	
R.K.W.	A.K.W.	A.K.W.		


LEFT ELEVATION - SHOWING NEW WORK
SCALE: 1/8" = 1'-0"
RIGHT ELEVATION - SHOWING NEW WORK
SCALE: 1/8" = 1'-0"
CROSS SECTION (A) (A) SHOWING NEW WORK
SCALE: 1/4" = 1'-0"
AUDITORIUM
MULTI-PURPOSE ROOM
BOILER ROOM
BOY'S TOILET
GIRL'S TOILET
FRESH AIR CHAMBER
BASEMENT PLAN - SHOWING NEW WORK
SCALE: 1/8" = 1'-0"
FOUNDATION PLAN @ AUDITORIUM SHOWING NEW WORK
SCALE: 1/8" = 1'-0"
REVISIONS:
LEFT, RIGHT ELEV. SHOW'G NEW WORK
CROSS SECTION
FOUNDATION PLAN
BASEMENT PLAN
ALTERATIONS TO
KAY STREET SCHOOL
DIAEO ASSOCIATES
ARCHITECTURE, PLANNING
DWG. No
A3


CAP DETAIL FOR MASONRY BUTTRESSES @ LEFT & RIGHT ELEVATIONS
SCALE: 1½"=1'-0"
AUDITORIUM
CLASS ROOM
PLAYROOM
ANTE ROOM
ANTE ROOM
PASSAGE
PASSAGE
CLASS ROOM
WARDROBE
WARDROBE
CORRIDOR
VEST
VEST
VEST
WARDROBE
PRINCIPAL'S ROOM
LEHCH ROOM
WARDROBE
CLASS ROOM
CLASS ROOM
FIRST FLOOR PLAN- SHOWING NEW WORK
SCALE: 1/8"=1'-0"
AUDITORIUM
MULTI PURPOSE ROOM
CROSS SECTION (B)-(B') SHOWING NEW WORK
SCALE: 1/8"=1'-0"
REAR ELEVATION @ AUDITORIUM SHOWING NEW WORK
SCALE: 1/8"=1'-0"
CAP DETAIL @ NEW REAR WALL
SCALE: 1½"=1'-0"
CAP DETAIL @ NEW REAR WALL & BUTTRESSES
SCALE: 1½"=1'-0"
REVISIONS:
FLOOR PLAN - SHOWING NEW WORK
CROSS SECTION
REAR ELEVATION
ALTERATIONS TO:
McKAY STREET SCHOOL
McKAY STREET, BEVERLY, MASSACHUSETTS
DIAEO ASSOCIATES
ARCHITECTURE - PLANNING
489 MAIN ST., STONEHAM, MASS.
DWG NO
A-4
OF 5



McKay

BASEMENT FLOOR PLAN

SCALE: 1/8" = 1'-0"

LEGEND:

- RATE OF RISE, 250° FIXED TEMP. HEAT DETECTOR
- SMOKE DETECTOR
- HEAT DETECTOR
- F MANUAL PULL STATION
- F AUDIO / VISUAL DEVICE
- FAA FIRE ALARM ANNUNCIATOR
- FACP FIRE ALARM CONTROL PANEL
- FAPB FIRE ALARM PULL BOX
- MB MASTERBOX (EXISTING)
- CONCEALED DOOR CONTACT
- PID PASSIVE INFRA-RED DETECTOR
- SECURITY CONTROL PANEL
- DK DIGITAL KEYPAD / ANNUNCIATOR
- EXISTING FACP
- CONDUIT TURNING DOWN
- CONDUIT TURNING UP
- CONDUIT EXPOSED
- CONDUIT ROUTED ABOVE DROP CEILING
- J JUNCTION BOX
- WATER FLOW SWITCH (EXISTING)
- TAMPER SWITCH (NEW)

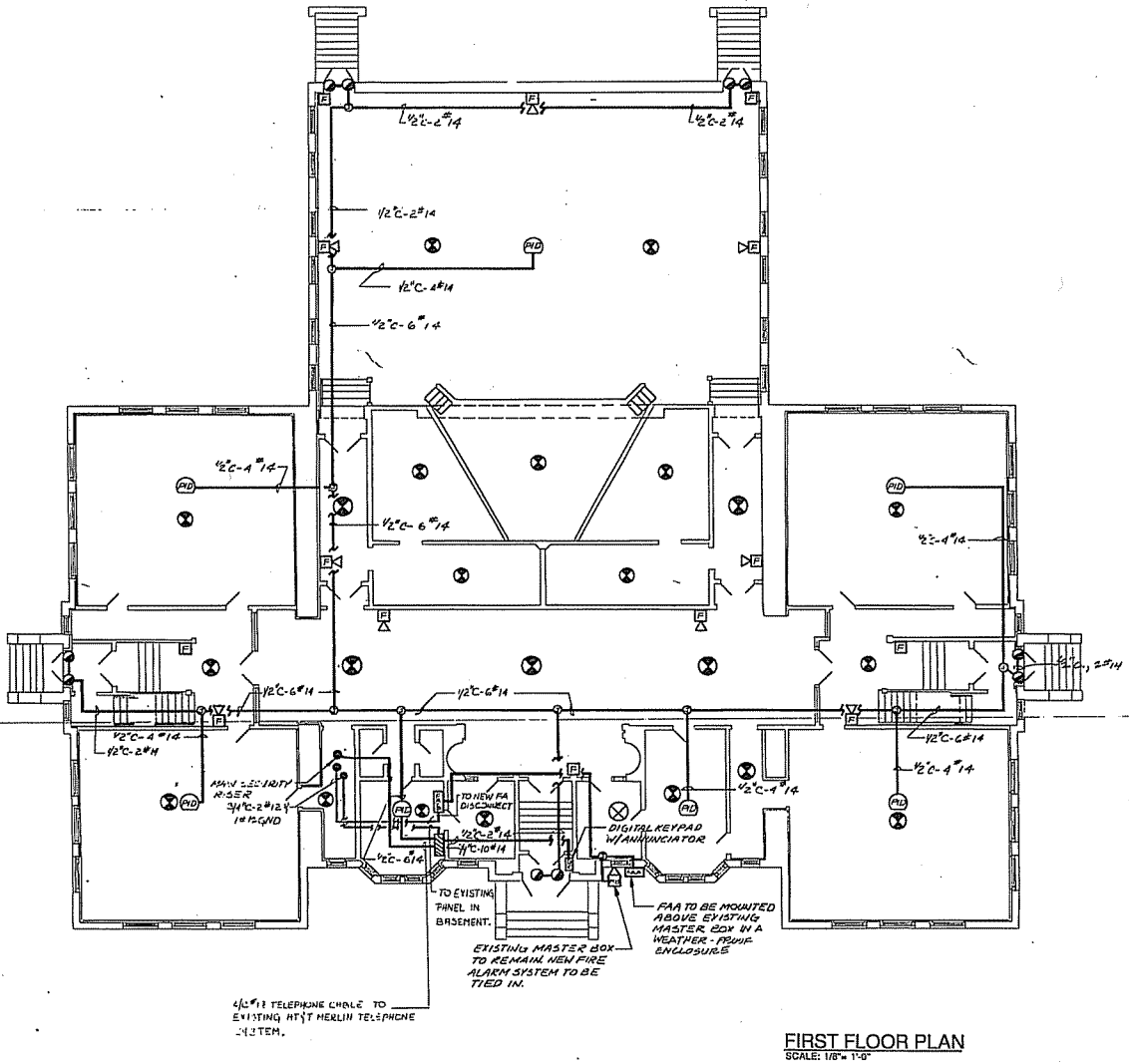
GENERAL NOTES (APPLICABLE TO ALL SCHOOLS)

1. ALL END OF LINE RESISTORS TO BE LOCATED IN THE FIRE ALARM CONTROL PANEL LOCATED ON THE FIRST FLOOR LEVELS.
2. INTERCONNECTING CABLE BETWEEN FACP AND REMOTE ANNUNCIATOR FURNISHED AND INSTALLED BY CONTRACTOR.
3. CONTRACTOR SHALL FURNISH AND INSTALL NEW FIRE ALARM DISCONNECT SWITCH PAINTED RED WITH WARNING LABEL " FIRE ALARM CONTROL PANEL". POWER HEAD OF FIRE ALARM DISCONNECT SHALL BE CAPABLE OF BEING LOCKED IN THE "ON" POSITION.
4. UNLESS OTHERWISE NOTED, ALL DETECTORS SHALL BE MOUNTED ON CEILINGS.
5. CONDUIT SIZES CALLED OUT ON FLOOR PLANS & RISER DIAGRAMS.
6. RACEWAY TO BE CONCEALED ABOVE CEILING WHERE POSSIBLE · CONDUIT SHALL BE EMT.
7. CONTRACTOR TO VERIFY IN FIELD DIMENSIONS OF RECENTLY PARTITIONED AREAS AS NOTED ON DWG. INSTALLATION OF THE NEW FIRE PROTECTION AND SECURITY ALARM SHALL BE ADJUSTED ACCORDINGLY IN THE FIELD BY THE CONTRACTOR.

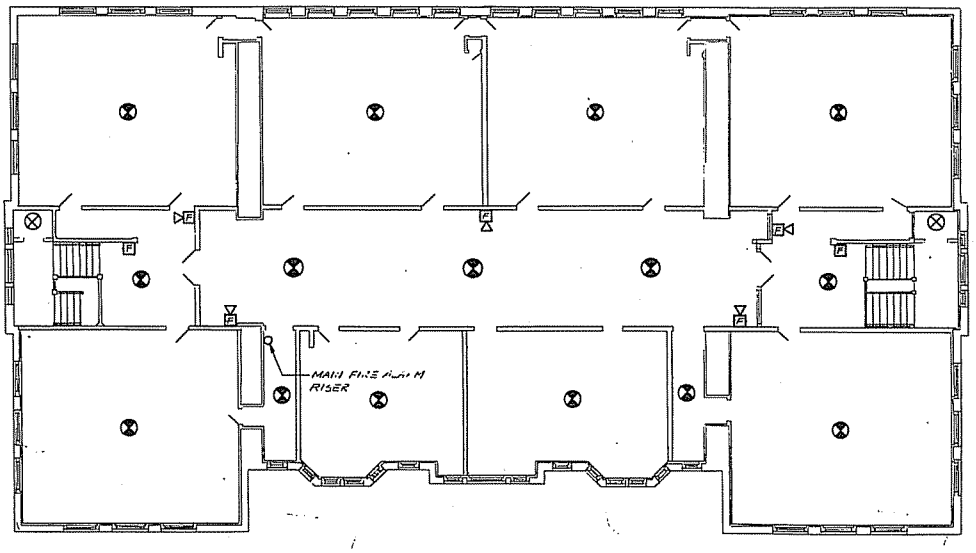
E-1

BEVERLY PUBLIC SCHOOLS	Scale as shown	Revisions	SEA CONSULTANTS INC. Engineers/Architects
FIRE ALARM & SECURITY SYSTEMS	Date May, 1988		Cambridge, Massachusetts South Portland, Maine Wethersfield, Connecticut
McKAY SCHOOL BASEMENT PLAN & NOTES	Job no. 415-8013		
	Designed by RFC		
	Drawn by JMC		
	Checked by VAD	Approved by	
	Sheet E-1		

File No.



FIRST FLOOR PLAN
SCALE: 1/8" = 1'-0"

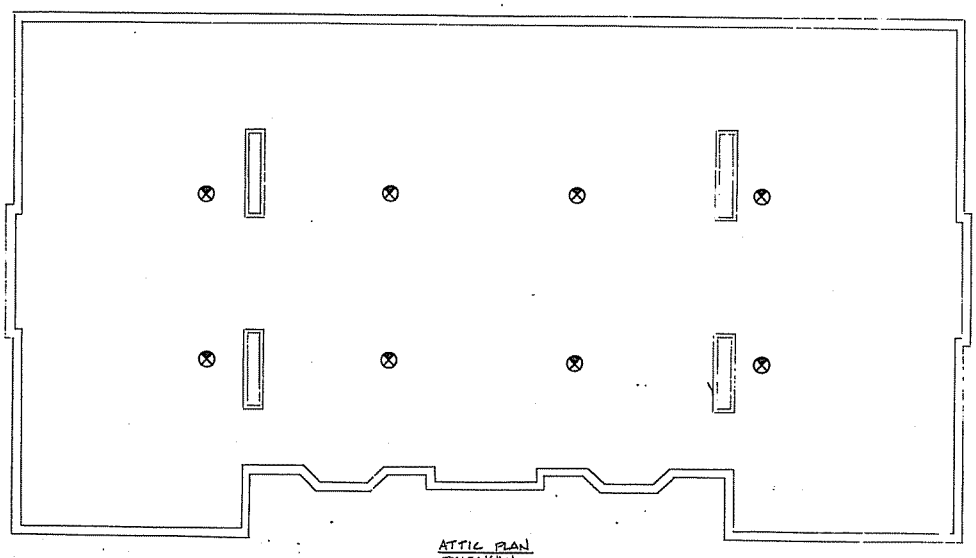


SECOND FLOOR PLAN
SCALE: 1/8" = 1'-0"

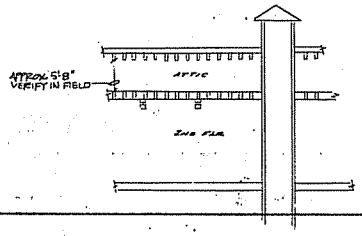
E-2

BEVERLY PUBLIC SCHOOLS	Scale AS SHOWN	Revisions	
FIRE ALARM & SECURITY SYSTEMS	Date MAY, 1988		
McKAY SCHOOL	Job no. 415-2213		
FIRST FLOOR & SECOND FLOOR PLANS	Designed by RFC		
	Drawn by JMC		
	Checked by VAD		
File No.	Sheet E-2	Approved by	

SEA CONSULTANTS INC.
Engineers/Architects
Cambridge, Massachusetts South Portland, Maine
Wethersfield, Connecticut



ATTIC PLAN
SCALE: 1/8"=1'-0"



SECTION
SCALE: 1/8"=1'-0"

BEVERLY PUBLIC SCHOOLS	Scale AS SHOWN		
	Date MAY, 1988		
FIRE ALARM & SECURITY SYSTEMS	Job no. 815-8818		
	Designed by AMC		
	Drawn by AMC		
	Checked by VAD	No.	Date
	Approved by E.S.		

SEA Consultants Inc.
Engineers/Architects
Cambridge, Massachusetts South Portland, Maine Wethersfield, Connecticut

APPENDIX C

P.M. ENVIRONMENTAL, INC TANK TESTING REPORT

P.M. Environmental

Alert
Technologies

Certification Report

P.M. ENVIRONMENTAL, INC.
P.O. Box 392, Manchester, MA 01944

Tel: (978) 526-8255
Fax: (978) 526-8513
1-800-628-2799

City Of Beverly
ATTN: Jim Turcotte
148 Park Street
Beverly MA 01915

October 13, 2013

RE: Job # 33100701
Test Date 10/7/2013
City Of Beverly
134 Mc Kay Street
Beverly MA 10915

Dear Sir:

A precision test was performed on tanks at the above location using the Alert 1000 underfill system and the Alert 1050 ullage system. I have reviewed the data produced in conjunction with this for purposes of verifying the results and certifying the tank systems. Certification is at the time of testing and implies no warratny of the tank or piping systems. The testing was performed in accordance with the Alert protocol and therefore satisfies all requirements for such testing as set forth by NFPA-329092 and USEPA 40 CFR part 280.

The results of testing are shown on the following page and indicate whether the wetted and non-wetted portions passed or failed. Included with the report are reproductions of data compiled during the test which formed the basis for these conclusions. This information is sotred in a file in case future verification of the test results is needed.

Test results have been sent to the Fire Department of Beverly

Tested and Certified by:

Peter O'Beirne
AL/NC 011

P.M. ENVIRONMENTAL, INC.
P.O. Box 392, Manchester, MA 01944

Tel: (978) 526-8255
Fax: (978) 526-8513
1-800-628-2799

Job # 33100701

Test Date 10/7/2013

City Of Beverly

City Of Beverly

Beverly MA 10915

TEST RESULTS

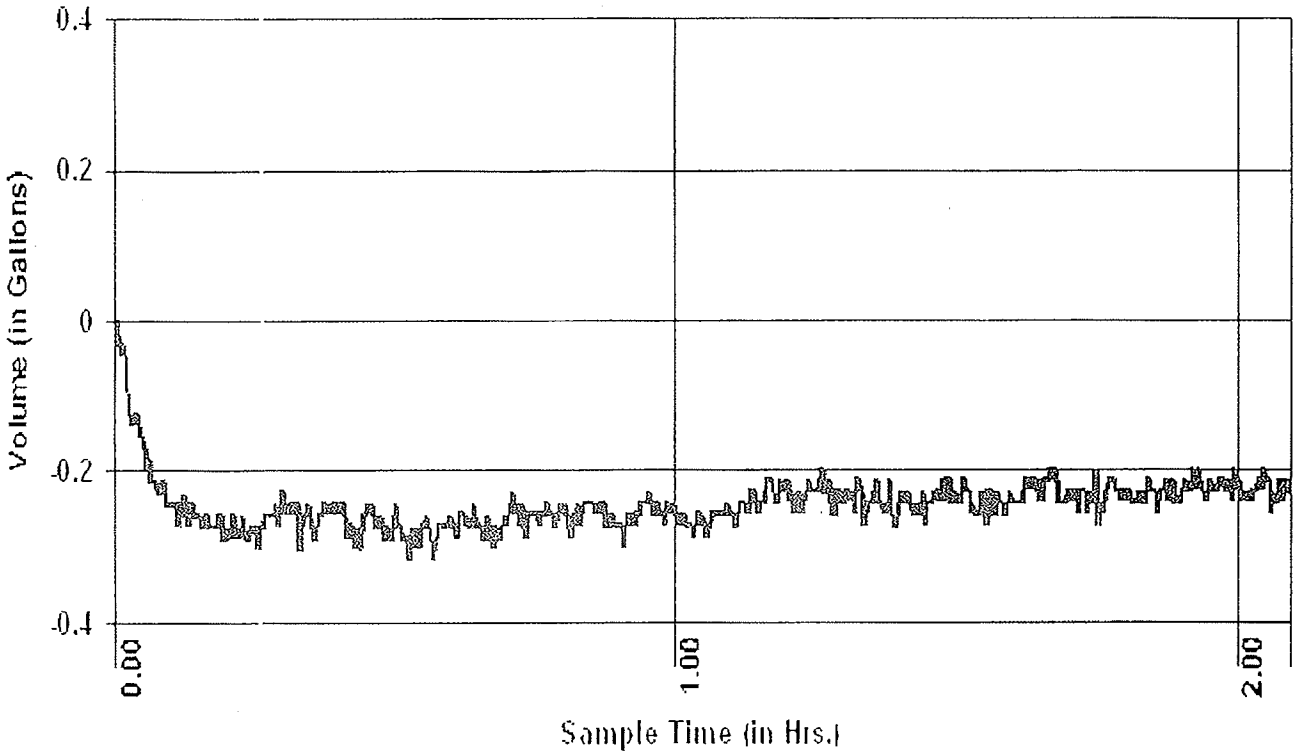
Product	Volume (Gal)	Leak Rate	Wetted Portion	Non-Wetted Portion	Water in Tank
TWO OIL	5,000	-0.011	Pass	Pass	0.0"

ALL LINES TESTED. ALL LINES PASSED

Comments:

PM ENVIRONMENTA#33100701 13-Oct-13

P.M.ENVIRONMENTAL



Client/Operator Data

Client:	CITY OF BEVERLY
Address:	134 MC KAY STREET
City, St:	BEVERLY,MA. 01915
Telephone:	
Contractor:	PM ENVIRONMENTAL
Address:	P.O. BOX 392
City, St:	Manchester, MA 01944
Telephone:	(978) 526-8255
Operator:	
Certification #:	
Expiration Date:	
Tank #:	1
Tank Address:	
City, St:	

Tank and Test Parameters

Tank Identification:	TK-1 TWO OIL
Product Type:	TWO OIL
Tank Capacity:	5000
Product Level:	21
Water in Tank:	0
Water Level ATB:	0
Tank Material:	
Tank Manufacturer:	
Load Cell S/N:	232400000020
Probe S/N:	16
Probe Length:	65.00 Inches
Test Duration (min):	2.093 Hours
Sample Time:	2.097 Hours
Product SGU:	.82
Leak Rate (G/h):	-0.011 G/h

APPENDIX D

GIS PLAN OF SITE

McKay St
429.8
McKay School
229.06
347.72
Balch St
271.07
Map13-022A

APPENDIX E

SELECTED ZONING ORDINANCE EXCERPTS

APPENDIX E
EXCERPTS FROM BEVERLY ZONING ORDINANCE

1. DEFINITION OF SUBSIDIZED ELDERLY HOUSING (Section 38-2.60)

"60. Subsidized Elderly Housing – A residential development in which (a) at least eighty percent (80%) of the units are occupied by at least one person age fifty five (55) and over, (b) at least fifteen percent (15%) of the units ("the affordable units") are designated for occupancy by persons of low or moderate income as determined by the Federal Department of Housing and Urban Development ("HUD") for the Boston, MA/New Hampshire PMSA, and (c) at least ten percent (10%) of the constructed units are designed and equipped for those with disabilities. There shall be a deed restriction for such affordable units, regardless of the form of ownership or tenancy, that ensures occupancy of the units by those of low or moderate income as defined by HUD in perpetuity. (Ord. No 206, 12-29-05)

2. R-10 ZONING REGULATIONS (Section 38-11)

38-11 R-10 - ONE-FAMILY DISTRICT

A General Description

This district is established to principally provide for single-family detached residences at urban density on small sized lots (approximately 1/4 acre minimum). Related recreational, agricultural, and educational facilities are allowed under special conditions.

B Uses by Right

Property and buildings shall be used only for the following purposes:

1. Detached one-family dwelling.
2. Historic site including historic dwellings, or museum not operated for profit.
3. Sanitary landfill facilities; provided that the same are operated by the municipality or pursuant to a municipal lease or license.
4. Home occupation as defined herein.
5. Agricultural, horticultural, and floricultural (as defined in M.G.L. Chapter 61A) uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of five (5) acres. (Ord. No. 57, 1-2-96)

6. Those uses, including accessory buildings, allowed by right under Section 38-6.

C Uses By Special Permit

The following uses are only allowed by a Special Permit, granted by the Board of Appeals:

1. Subsidized elderly housing.
2. Commercial marina for the sale, mooring, and rental of boats.
3. Private, non-commercial stable.
4. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
5. Bed and breakfast establishments. (Rev. 3-19-91)
6. Those uses, including accessory uses, allowed by Special Permit under Section 38-6.
7. Pork-chop lots on streets in existence prior to December, 1984, subject to the provisions of Section 38-5.I. above.
8. Horticultural and floricultural (as defined by M.G.L. Chapter 61A) uses on lots with at least one (1) acre but less than five (5) acres. (Ord. No. 57, 1-2-96)
9. Commercial Mobile Radio Service transmission facilities, structures, and/or towers (Ord. No. 115, 6-11-96)

D Building and Area Requirements

1. Minimum lot area: 10,000 square feet
2. Minimum lot frontage: 100 feet (Rev. 7-1-92)
3. Minimum front yard setback: 20 feet
4. Minimum side yard setback: 15 feet
5. Minimum rear yard setback: 25 feet
6. Maximum building height: 35 feet
7. For "Cluster" development, see Section 38-24.B.

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below.

F Sign Requirements

1. All signs in the R-10 District shall conform to the regulations set forth in Section 38-26 below.

G Special Requirements

1. No major recreational equipment as defined herein shall be parked or stored in the District, except in a carport, or enclosed buildings, or in the side yard or rear yard area. No such equipment shall be used for living, sleeping, or housekeeping purposes on the lot on which it is stored.

3. OPEN SPACE RESIDENTIAL DESIGN (OSRD) SITE PLAN ORDINANCE (SECTION 38-24.B.)

B <u>Open Space Residential Design (OSRD) Site Plan Ordinance</u>
(Ord. No. 105, 12-29-05)

This Open Space Residential Design Site Plan Ordinance encourages land-sensitive construction, siting and design of significant new residential projects through a cooperative exploration of alternatives which allows relaxation of current zoning and subdivision dimensional standards and which permits increased density in return for achievement of open space preservation targets.

I. Purpose and Intent

1. The Primary Purposes for this OSRD ordinance are the following:

(a) To allow for greater flexibility and creativity in the design of residential developments;

(b) To encourage the protection and permanent preservation of open space, forestry land, wildlife habitat, other natural resources including public water supplies, aquifers, water bodies and wetlands, and historical resources in a manner that is consistent with Beverly's Master Plan and Open Space and Recreation Action Plan (together, the "Master Plans");

(c) To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision;

(d) To minimize the total amount of disturbance on the site;

(e) To further the goals and policies of the Master Plans;

(f) To facilitate the construction and maintenance of housing, streets, utilities, and public service in a more economical and efficient manner;

(g) To protect the regional water supply from contamination and to ensure it will be adequate to serve population requirements in the future.

2. The Secondary Purposes for the OSRD ordinance are the following:

(a) To protect the value of real property;

(b) To provide for a diversified housing stock;

(c) To provide affordable housing to persons of low and moderate income.

II. Applicability

1. Covered Projects. A covered project shall include any development or construction of new housing (including a condominium) on a tract of land that

(a) will create four (4) or more buildable lots by reason of a subdivision in the R-10, R-15 and R-22 zones or
(b) will create four (4) or more new dwelling units (excluding new units in an existing building) in the R-10, R-15 and R-22 zones or
(c) consists of an area of 2 acres or more in the R-10, R-15 and R-22 zones or
(d) consists of an area of 180,000 square feet (i.e. just over 4 acres) or more in the R-45 zone and will create three (3) or more buildable lots by reason of a subdivision or four (4) or more dwelling units (excluding new units in an existing building) or
(e) consists of an area of 300,000 square feet (just under 7 acres) or more in the R-90 zone and will create three (3) or more buildable lots by reason of a subdivision or four (4) or more dwelling units (excluding new units in an existing building)

shall be subject to this OSRD ordinance.
(Ord. No. 24, 7-2-08)

2. Zoning Classification. This OSRD ordinance shall apply only to those tracts (or to the portions thereof) located in one or more of the City's R-10, R-15, R-22, R-45, and R-90 residential zoning districts,

but shall not apply to any tract or portion of a tract in an R-6, RSD, RHD or RMD zoning district. Any other residential project in a zoning district other than R-6, RSD, RHD, or RMD, may elect to be subject to this OSRD ordinance, but such election shall not eliminate the requirement to obtain a use variance or special permit where otherwise required in such non-residential zoning district.

3. Tract. A "tract" for the purposes of this OSRD ordinance shall consist of one or more contiguous lots under single legal or beneficial ownership or proposed to be developed as a single project, including in phases. Lots separated only by a private way shall be considered contiguous for the purposes of this OSRD ordinance.

   The calculation of the area of a "tract" shall be the same as the calculation of the area of a lot as set forth in the definition of "Lot" in Section 38-2 of this ordinance.
   (Ord. No. 24, 7-2-08)

   This ordinance shall not prevent endorsement of any qualified Approval Not Required ("ANR") plan but shall apply to all Covered Projects after ANR endorsement has been received or obtained.

   The Planning Board may waive the requirements of this Ordinance for any Approval Not Required ("ANR") plan, provided that it finds that:

   (a) no new building lots are being created; or
   (b) no more than two (2) new building lots are created **and**

      (i) the owner and his/her successors in title, through deed restriction, relinquish all rights of future division that will create additional building lots together or in conjunction with land outside the tract; and
      (ii) the applicant provides a plan identifying and delineating primary and secondary conservation areas, potentially buildable areas, and, where possible, proposed house location(s); and
      (iii) the applicant satisfies the Planning Board that siting of the new house(s) and associated site improvements, including stormwater management, conform to the purposes and intent of this Ordinance.
      (Ord. No. 24, 7-2-08)

4. OSRD Site Plan Approval. No building permit shall be issued for, nor any construction or foundation work be commenced on, any

portion of a Covered Project without first obtaining OSRD Site Plan Approval pursuant to this OSRD Ordinance for the entire project.

III. Initial Review

1. Initial Review. Prior to submitting its application for an OSRD site plan approval, the applicant shall participate in initial review at one or more meetings of the Planning Board.

   (a) The Planning Board shall send prior written notice of such review to the Beverly City Council, the Beverly Conservation Commission, the Beverly Board of Health, the Beverly Open Space and Recreation Committee, and such other municipal or regional entities as it shall judge appropriate. Such Council, Commission, Board, Committee, or other entity may send a representative to speak in an official or unofficial capacity during such review. In addition, the Planning Board shall, at the applicant's expense, send written notice, at least seven (7) days prior to the initial meeting at which such review shall take place, to each abutter and abutter of an abutter of the tract. The Planning Board shall also, at the applicant's expense, send legal notice of the initial meeting for publication in a newspaper of general circulation at least seven (7) days prior to said meeting. The purpose of initial review is to commence discussions with the Planning Board at the earliest possible stage in the development.

   (b) At or during the initial review, the applicant shall submit two or more conceptual plans showing materially different alternative development configurations, shall describe the development and how it furthers the goals of this ordinance, shall incorporate the four-step General Design Process described in Section V.3 below, seek feedback from the Planning Board and/or its technical experts, and indicate a possible timetable for submittal of a formal application. Conceptual plans shall not be detailed, but shall show the general features of the site and the possible location of structures and ways. Imaginative and creative land use planning should be applied with the aim of furthering the purposes of this ordinance.

   (c) At the expense of the applicant, the Planning Board may engage technical experts to perform preliminary review of the plans submitted by the applicant in order to facilitate selection of a Preferred Plan (as described in Section III.2 below) and submittal of a formal application for OSRD site

plan approval. Prior to the initial review meeting, the Planning Board shall request comments from the Conservation Commission on all ecologically sensitive areas within its jurisdiction, including, but not limited to, wetlands, water bodies, and their buffer zones.

(d) The initial review may extend over more than one meeting or session and shall not constitute or require a public hearing. However, members of the public shall be welcome to speak during a required public comment period to be held prior to the selection of a Preferred Plan. The public is also encouraged to submit comments in writing to the Planning Board with respect to any proposed concept plan or Preferred Plan.

(e) The applicant is encouraged to meet with abutters and neighbors prior to submitting a Preferred Plan to discuss the applicant's intentions and possible alternative configurations. The applicant shall inform the Planning Board of the substance of its meetings with abutters and neighbors.

2. Preferred Plan. At least one concept plan submitted during the initial review shall be amended, refined and conditioned so as to constitute a "Preferred Plan" as described below. Submission during the initial review stage of at least three concept plans showing alternative development configurations is strongly encouraged.

(a) The applicant shall not submit a Preferred Plan until the Planning Board and the applicant have discussed the initial concept plans and alternative development and conservation configurations so that the input of the Planning Board and Conservation Commission can be taken into account in the creation of a Preferred Plan depicting the configuration which best addresses the objectives of this OSRD ordinance.

(b) Preferred Plan shall address the general features and topography of the land, identify major types and the size of vegetation, and give configurations of the lots. The Preferred Plan shall also show roadways, open space, wetlands, water bodies, and their buffer zones and shall include such other information as may be required in the OSRD Site Plan Rules and Regulations.

(c) The applicant must demonstrate that the Preferred Plan incorporates the four-step General Design Process set forth in

Section V below, and the Design Standards according to VI.3 below, when determining a proposed design for the development.

3. Yield Plan. Before approval of the Preferred Plan by the Planning Board in the initial review, the applicant shall submit a Yield Plan (as defined in Section IV. below). Approval of a yield plan shall be subject to a public hearing, which shall occur as early in the initial review process as reasonably possible but no later than 45 days after submission of the Initial Review Application. The Planning Board shall, at the applicant's expense, send written notice, at least seven (7) days prior to the public hearing, to each abutter and abutter of an abutter of the tract. The Planning Board shall also, at the applicant's expense, send legal notice of the public hearing for publication in a newspaper of general circulation at least seven (7) days prior to said meeting. (Ord. No. 24, 7-2-08)

4. Rules and Regulations. The Planning Board shall adopt rules and regulations relative to the size, form, number and contents of the Conceptual plans, Preferred plan, Yield plan and OSRD Site Plan. (Ord. No. 24, 7-2-08)

5. Approval of Preferred Plan. A Preferred Plan which does not exceed the Basic Maximum Number of dwelling units possible under the Yield Plan shall be approved by the Planning Board subject to such conditions as it deems appropriate to achieve the goals of this OSRD ordinance. When the Planning Board approves the Preferred Plan, the applicant may then file an application for OSRD Site Plan Approval. Approval of a Preferred Plan shall not foreclose further review or amendment of the Yield Plan or Preferred Plan during public hearings on an OSRD Site Plan Application under Section VI below.

IV. Basic Maximum Number (Of Lots/Units)

In order for a Preferred Plan to be approved, the number of lots or dwelling units on the tract shall not exceed the Basic Maximum Number, as defined below.

1. The Basic Maximum Number shall be the maximum number of lots (or, where no subdivision or lot division is involved, number of dwelling units) that could be placed upon the tract under a conventional subdivision or development plan pursuant to then applicable zoning and subdivision requirements (other than this OSRD ordinance), without variances or waivers of any kind, including from other bodies having regulatory authority over the

development or any portion thereof (such as the Conservation Commission and Board of Health) unless such variances or waivers have already been obtained from such other authority, and accurately depicted on a "Yield Plan". Waivers from the Planning Board's Rules and Regulations Governing the Subdivision of Land are permitted in determining the Basic Maximum Number. Such waivers must be sought and obtained during the OSRD process, but prior to acceptance of a Yield Plan. The Yield Plan shall display the general features and topography of the land shown on the Preferred Plan, the dimensions, areas, and locations of the lots, open space, roadways, wetlands, water bodies, and their buffer zones and such other information as is required from time to time by the OSRD rules and regulations.
(Ord. No. 24, 7-2-08)

2. The applicant shall have the burden of proof in establishing the Basic Maximum Number of lots (or dwelling units) resulting from the design and engineering specifications shown on the Yield Plan. The Planning Board shall consider at least the following factors in determining if such burden of proof has been met:

   (a) the applicant has demonstrated through title insurance or other acceptable evidence that it is the owner of, or in control of, the entire tract depicted within the OSRD Site Plan;

   (b) the existence of wetlands pursuant to an approved Abbreviated Notice of Resource Area Delineation ("ANRAD") as described in Section V.1. below and other environmental and regulatory constraints upon development has been adequately shown and dealt with; and

   (c) the applicant demonstrates that under then current market conditions the number of dwelling units, and their related improvements and infrastructure, as shown on the Yield Plan could be reasonably and economically constructed.

V. General Design Process

During the OSRD site plan initial review and approval process, but no later than the time of submittal of the Preferred Plan described above, applicants shall demonstrate to the Planning Board that the following steps, in the order indicated, (i) were performed by a licensed Landscape Architect and Registered Professional Engineer and (ii) were followed in determining the layout of proposed streets, buildings, house lots, and open space as shown on the required plans.

1. Step One: Identifying Conservation Areas. Identify preservation land by two steps.

   First, Primary Conservation Areas (such as wetland resource areas, riverfront areas, and floodplains regulated by local, state or federal law) and Additional Conservation Areas (including elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and cultural features such as historic sites, historic structures, and scenic views) shall be identified and delineated. Wetlands resource areas shall be determined by the Conservation Commission pursuant to the ANRAD process under the Beverly wetlands ordinance and regulations.

   Second, the Potentially Developable Area will be identified and delineated. To the maximum extent feasible, the "Potentially Developable Area" shall consist of land outside identified Primary and Additional Conservation Areas. The Potentially Developable Area shall not be construed as the final "Buildable Area" as defined by Section VIII.1.(b).
   (Ord. No. 24, 7-2-08)

2. Step Two: Locating Housing Sites. Locate the approximate sites of all residential buildings within the Potentially Developable Area.
   (Ord. No. 24, 7-2-08)

3. Step Three: Aligning Streets and Ways. Align streets in order to access the house lots and residential buildings. Additionally, new access ways should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks, trails and bicycle paths.

4. Step Four: Lot Lines. Draw in new lot lines (where applicable) and include the delineation of private yards, exclusive easement areas, and shared amenities, with a design that seeks to encourage an integrated community within the proposed development and further the goals of the Master Plan and the Open Space and Recreation Action Plan. Shared amenities should be located so as to encourage use by persons inside and outside of the Covered Project.
   (Ord. No. 24, 7-2-08)

VI. Site Plan Approval Process

1. <u>OSRD Site Plan</u>. A proposed OSRD Site Plan shall be a fully engineered plan, conforming to the provisions of this OSRD

ordinance, all the provisions of the OSRD Site Plan Rules and Regulations, and the City of Beverly Site Plan Zoning Ordinance Section 38-29.C.2, to the extent that Section 38-29.C.2. does not conflict with this ordinance. The proposed OSRD Site Plan shall incorporate the features and comply with the conditions of the approved Preferred Plan and in addition shall also include storm-water management including Best Management Practices, wastewater management, utilities, and all other information as required by subdivision ordinances, rules and regulations.
(Ord. No. 24, 7-2-08)

2. General Procedures.

(a) When an application for approval of an OSRD Site Plan is filed with the Planning Board, the applicant shall also file, within five (5) working days of the filing of the completed application, a copy of the full application, including proposed site plan and other documentation, with each of the Board of Health, Conservation Commission, Building Inspector, Design Review Board, Parking and Traffic Commission, Department of Public Works, Police Chief, Fire Chief, and City Engineer for their consideration, review, and report. The applicant shall furnish the copies necessary to fulfill this requirement. Reports from other boards and officials shall be submitted to the Planning Board within forty-five (45) days of receipt by the reviewing party of all of the required materials. In the event that the public hearing by the Planning Board is commenced prior to the expiration of the 45 day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that forty-five (45) day period.

(b) The Planning Board shall hold a public hearing within ninety (90) days of receipt of a complete application. The decision of the Planning Board shall be upon a majority of its members. After consideration of the public's concerns, the Planning Board shall make and file its decision with the City Clerk within sixty-five (65) days from the close of the public hearing, and shall notify the applicant of its decision. A copy of the decision, certified by the City Clerk as appropriate, shall be recorded with the Essex South District Registry of Deeds or the Essex South Registry District of the Land Court, as appropriate, by the applicant prior to the commencement of work. The decision shall be binding on the land depicted on the approved Site Plan.

(c) OSRD Site Plan approval shall lapse after one year from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended from time to time in writing by the Planning Board, without public hearing, upon the written request of the applicant.

3. Design Standards. In approving an OSRD Site Plan, the Planning Board may impose conditions to ensure that the site plan furthers the objectives of the Master Plans and complies with the following design standards.

(a) Generic Design Standards

(i) The site plan shall promote more effectively permanent preservation of open space, agricultural land, forestry land, natural resources and historical and archeological resources than would a conventional subdivision (for purposes of this OSRD ordinance a "conventional subdivision" shall mean a subdivision designed in full accordance with applicable subdivision rules and regulations [other than pursuant to this OSRD ordinance] without waivers of any kind).

(ii) The site plan shall consume less undeveloped land and shall conform to existing topography and natural features more than a conventional subdivision.

(iii) The site plan shall have less total amount of disturbance on the site than a conventional subdivision.

(iv) The site plan shall facilitate the construction and maintenance of streets, utilities, and public service in a more economical, safe and efficient manner than a conventional subdivision and all utilities shall be underground within the proposed development.

(v) The landscape within the site plan shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. The orientation of building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, and natural drainage ways shall be treated as primary determinants of road and lot configuration.

(vi) Streets and other ways within the site plan shall be designed, dimensioned and located, consistent with the needs of public safety, in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and insofar as practicable to preserve and enhance views and vistas on or off the subject parcel.

(vii) All open space (landscaped and usable) shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.

(viii) The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized, whether these exist on the site or on adjacent properties.

(ix) Parking areas shall be screened to the extent required by Section 38-25 of the ordinances of the City of Beverly.

(b) Site Specific Design Standards

(i) Parking. Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation.

(ii) Buffer Areas. A buffer area of at least twenty-five (25) feet shall be provided at the following locations: (a) perimeter of the property; and a buffer area of at least one hundred (100) feet around Primary Conservation Areas (as defined in Section V.1 above). Such buffer areas shall be free of above-ground structures and improvements, except that driveways necessary for access and egress to and from the tract and other access ways may cross such buffer areas. No vegetation in this buffer area will be disturbed, destroyed or removed, except for installation and normal maintenance of structures and landscapes approved as part of the project. The Planning Board may waive, reduce or increase the buffer requirement in those locations where it determines that a smaller or larger buffer (or no buffer) is necessary, or will suffice, to accomplish the objectives set forth herein; provided always that no buffer requirement herein shall be applied so as to render any tract unusable, and any variation from

the required buffer area shall be rationally related to accomplishing the objectives of this OSRD ordinance. (Ord. No. 24, 7-2-08)

(iii) Drainage. The Planning Board shall encourage the use of non-structural storm water management techniques (such as rain gardens and open grass and bio-retention swales) and other drainage techniques that do not create impervious surface and that enable infiltration. Storm water should be treated at the source to limit non-source pollution. Water conservation measures, including but not limited to the use of rainwater retention systems, such as rain barrels and cisterns for water irrigation purposes, are also strongly encouraged.

(iv) Common/Shared Driveways. A common or shared driveway may serve a maximum number of six (6) lots.

(v) Storm Water Management Facilities. All structural surface storm water management facilities shall be accompanied by a conceptual landscape and screening plan.

(vi) On-site Pedestrian and Bicycle Circulation. Walkways and bicycle paths shall be provided to link residences with parking areas, adjacent public transportation, recreation facilities (including parkland and open space) and adjacent land uses, such as trails and open space identified in the Open Space and Recreation Action Plan, where appropriate. The feasibility of a perimeter path shall be considered.

(vii) Undisturbed Areas. At least 50% of the total tract shall be undisturbed, whether by initial or subsequent construction or structures and, except as otherwise provided in Section VIII.1.d, shall be shown on the OSRD Site Plan as "Not To Be Disturbed." An undisturbed area is any land left in its natural vegetated state.

(viii) Disturbed Areas. Within areas to be disturbed, the applicant shall show all trees of ten (10) inches caliper or greater and present justification for their disturbance or removal.

4. Site Visit.

The Planning Board shall conduct a site visit during the site plan approval process. At the site visit, the Planning Board and its agents shall be accompanied by the applicant and its agents. Members of the general public may be included at the discretion of the applicant and the acquiescence of the Board.

5. Other Information.

The submittals and permits of this Section VI shall be in addition to any other requirements of the Subdivision Control Law, the applicable Subdivision Rules and Regulations or any other provisions of this Zoning Ordinance.

VII. Permitted Reduction of Dimensional Requirements

The Planning Board, which shall have the power in its discretion to waive or reduce frontage or other dimensional or subdivision requirements for such purpose, shall encourage applicants to modify lot size, shape, and other dimensional requirements for lots and ways within an OSRD Site Plan, in order to further the goals of this OSRD ordinance, subject to the following limitations:

1. Lots having reduced area or frontage shall not have their legal frontage on a street other than a street created by the OSRD, provided that this limitation shall not apply in the case of lots created by an ANR plan, nor shall it apply to lots created by a subdivision plan if its application would conflict with the purposes or with other provisions of this OSRD; and (Ord. No. 24, 7-2-08)

2. Reduction of otherwise applicable setback requirements shall not be permitted with respect to those setbacks measured from any exterior boundary of the tract.

3. Nothing in this Section VII shall permit, or be deemed to permit, the construction or use of more dwelling units per lot than is otherwise permitted in the applicable zoning district.
(Ord. No. 24, 7-2-08)

4. The dimensional requirements imposed upon any lot created by the OSRD shall not be less than a lot area of six thousand (6000) square feet, a front yard setback of twenty (20) feet, a side yard setback of ten (10) feet on one side (one side yard may have a zero (0) foot side yard setback provided that only a lot line created by the proposed OSRD may have such a zero [0] foot side yard setback), and a rear yard setback of twenty-five (25) feet: nor shall a building

height greater than thirty-five (35) feet be permitted. However, a dimensional limitation imposed by this paragraph shall not apply to a lot if a majority of members of the Planning Board entitled to vote, determines that such an application unnecessarily frustrates the purposes of this Ordinance. (Ord. No. 24, 7-2-08)

5. The subdivision requirements imposed upon any roadway created within the OSRD development shall not be less than a right of way width of forty (40) feet, a roadway width of twenty-four (24) feet, and a maximum roadway grade of eight (8) percent. However, a dimensional limitation imposed by this paragraph shall not apply to an OSRD development if a majority of members of the Planning Board entitled to vote, determines that such an application unnecessarily frustrates the purposes of this Ordinance. (Ord. No. 24, 7-2-08)

6. The sidewalk requirements for any way created within the OSRD development shall be the following: A sidewalk shall extend the full length of one side of the way and shall be a minimum width of five (5) feet. The Planning Board may allow pedestrian access that is not parallel to the street in lieu of one (1) or more sidewalks as described above. The sidewalk requirement may be eliminated by the Planning Board if it makes a finding that the connecting, existing roadways do not have existing sidewalks, or if alternative pedestrian access is provided within the OSRD development. When it determines that it is appropriate to do so, the Planning Board may waive the sidewalk requirement if it makes a finding that other provisions are made within the tract to safely and adequately lead pedestrians to connecting sidewalks outside of the tract. (Ord. No. 24, 7-2-08)

VIII. Open Space Requirements

1. Open Space. A minimum of fifty percent (50%) of the Buildable Area (as defined below in Section VIII.1(b)) shown on the OSRD site plan shall be open space meeting the following criteria:

   (a) All proposed open space shall be conveyed to at least one Conservation Entity (as defined below in Section VIII.2) for conservation purposes. The open space shall be perpetually preserved in an open or natural state as described below exclusively for the purposes set forth herein, and shall be maintained in a manner which will ensure its suitability for such intended purposes.

(b) The Buildable Area shall consist of that portion of the tract that does not consist of either (i) wetlands, (ii) that portion of the wetland buffer zone within twenty five feet (25') of a wetland, or (iii) areas having a slope of more than twenty percent (20%); however, the Planning Board may reduce such open space requirement in any instance where the strict application thereof would render a tract effectively unbuildable. Input from the Conservation Commission concerning the wetland resources shall be requested.

(c) The open space sufficient to meet the minimum requirements shall be contiguous. Open space shall be considered contiguous if a roadway or an accessory amenity separates it.

(d) The primary purpose of the open space shall be for wildlife habitat and conservation. The open space can also be used for the following secondary purposes: historic preservation, education, outdoor education, passive recreation, or a combination of these uses, and shall be served by suitable access. The Planning Board may permit up to five percent (5%) of the open space to be paved for the dedicated use of such open space (e.g., pedestrian walks and bike paths). Limited portions of the open space may be reserved for active outdoor recreation when consistent with the goals of the Beverly Open Space and Recreation Plan, provided that such reservation is not materially inconsistent with the wildlife habitat and conservation purposes of this ordinance.

(e) The open space shall be subject to a management plan to be approved by the Planning Board as part of the OSRD Site Plan approval. The purpose of the management plan is to provide guidance for the maintenance and stewardship of the open space and any facilities accessory thereto. Input from the Conservation Commission and Open Space and Recreation Committee concerning the management plan is encouraged.

(f) Wastewater and storm water management systems serving the OSRD may be located within the open space; however, surface systems, such as retention and detention ponds, shall not qualify toward the minimum open space required.

(g) Open space shall be disturbed to the minimum extent possible during construction upon the tract. The applicant shall show all areas proposed to be disturbed within the tract and shall present justification for the use or disturbance of those areas.

A higher level of scrutiny will be applied to areas within the proposed open space that are proposed to be disturbed.

(h) No provision in this OSRD ordinance shall be deemed to preclude an applicant from providing an endowment to a Conservation Entity for the purpose of securing the maintenance, stewardship, and enforcement of the open space, and applicants are encouraged to provide such an endowment. In the case of a Conservation Entity under subsection VIII.2(c)(i) below, however, any such endowment shall be in addition to, and not in replacement of, the cash bond referred to in subsectionVIII.2(c)(ii).

(i) Each deed conveying open space to a Conservation Entity under subsection VIII.2(a) or VIII.2(b) below shall include a provision expressly stating that the preservation of such open space constitutes a public purpose within the meaning, and subject to the protections of Article 97 of the Massachusetts Constitution, as it may be amended from time to time. Each deed conveying open space to a Conservation Entity under subsection VIII.2(c) below also shall be deemed for the benefit of the owners of the lots within the OSRD Site Plan. Such deed provisions shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

(j) Nothing in this ordinance shall prohibit building within a wetlands resource area (as defined in the City of Beverly Wetlands Ordinance and Regulations) with the permission of the Conservation Commission to the extent such permission is required by law, ordinance, or regulation.

(k) Other than perimeter buffer zones required by this ordinance, required open space shall be provided to the maximum extent possible within wetlands buffer zones.

2. Ownership of the Open Space. The open space and any facilities accessory thereto shall, at the applicant's election, be conveyed to, and shall be held as Open Space in perpetuity by, one or more of the following (each a "Conservation Entity"):

(a) the City, acting by and through its Conservation Commission or its Parks and Recreation Department or the Commonwealth of Massachusetts as part of a state forest, park, or wildlife management area; provided further that in the case of the City, any endowment provided under subsection VIII.1(h) above shall be administered by the

Planning Board in the same manner as a cash bond under subsection VIII.2(c) below, except that all such endowments held by the City may be pooled and administered and applied collectively.

(b) a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;

(c) (i) a corporation or trust owned jointly or in common by the owners of lots within the OSRD Site Plan (either an "Association"). If an Association is used an ownership interest in the Association shall pass with conveyance of each of the lots in perpetuity. Physical maintenance and stewardship of the open space and any facilities accessory thereto, and legal enforcement of the provisions of the site plan approval applicable to the open space and accessory facilities, including the management plan (hereinafter the "Association Obligations") shall be permanently guaranteed by, and at the sole expense of, such Association which shall provide for mandatory assessments for such purposes to each lot.

(ii) In addition, the applicant shall post a cash bond to secure the Association Obligations. Such cash bond shall be in the initial amount of up to $25,000 per project, to be held by the City in a segregated fund for such project solely for such purposes, any use thereof to be subject to the prior approval of the Planning Board in each instance. Each Association shall be deemed to have assented to allow the City to perform maintenance of such open space and accessory facilities, if the Association fails to perform the Association Obligations and shall grant the City an easement for this purpose. In such event, the City shall first provide fourteen (14) days written notice to the Association as to the inadequate performance of the Association Obligations, and, if the Association fails to correct in a timely manner its inadequate performance, the City may perform the Association Obligations on its behalf, and the cost thereof may be paid from the cash bond and any interest accrued thereon. The City shall assess the Association for (i) amounts so used by the City from the cash bond, and (ii) any excess above the cash bond paid or incurred by the City, in exercise of the provisions of this subsection V.2(c), including expenses of enforcing the Association Obligations. Any amounts not paid in a timely manner by the Association shall constitute a lien on each of the lots within the OSRD Site

Plan, which may be collected and enforced by the City in the same manner as real estate taxes. Each individual deed, and the deed of trust or articles of incorporation of the Association, shall include provisions designed to effect these provisions. Documents creating such Association shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

(iii) Any open space conveyed to an Association shall not be deemed or required to be dedicated or conveyed for use for a public purpose, and shall be preserved as open space for the benefit of the owners of the lots within the OSRD Site Plan. Nevertheless, an applicant or an Association may elect to dedicate or convey some or all of the open space for use by the public, provided that such a dedication or conveyance shall be subject to Site Plan review and approval by the Planning Board. A second Site Plan Review and Approval shall be necessary if the Association changes the applicant's initial decision after it acquires the lots.

IX. Amendment Or Modification Of Approved OSRD Site Plans

No amendment or modifications of an approved OSRD Site Plan shall be valid unless first approved by the Planning Board, and no approval, special permit or variance with respect to same shall be required from the Zoning Board of Appeals. In its sole discretion, the Planning Board may approve without public hearing those amendments or modifications that are determined by a two-thirds (2/3) majority of the Planning Board members to be minor in nature.

X. Relationship Between The OSRD Site Plan And Definitive Subdivision Plan

1. For projects subject to this OSRD ordinance for which approval under the Subdivision Control Law is necessary, the filing of either a Preliminary or a Definitive Subdivision Plan with the Planning Board shall be deemed the start of the initial review required by Section III, unless such review has already started. Any Site Plan Approval issued by the Planning Board shall specifically state that the Definitive Subdivision Plan shall substantially comply with the approved OSRD Site Plan.

2. Upon written request of the applicant, the Planning Board in its sole discretion, may conduct the public hearings on the applications concurrently, provided:

(a) by so requesting the applicant shall be irrevocably deemed to have requested extensions from the Planning Board of the timeframes for hearing and final action under the Subdivision Control Law in order to allow Site Plan Approval to proceed as stated in this ORSD ordinance, including the provisions of Section X.3 below,

(b) that the Planning Board's decision on Site Plan Approval shall be rendered separately from and prior to taking final action on the Definitive Subdivision Plan, and

(c) that the Planning Board shall take final action with respect to the Definitive Subdivision Plan not later than one hundred thirty-five (135) days after the close of the public hearing on the Site Plan Approval.

3. If such hearings are conducted concurrently, they may at any time be severed by the Planning Board and thereafter conducted separately, provided that in no event shall the public hearing on the Definitive Subdivision Plan be closed before the public hearing on the OSRD Site Plan.

4. A Definitive Subdivision Plan will be considered not to substantially comply with the approved Site Plan if the Planning Board determines that the Definitive Subdivision Plan displays, in comparison to such approved Site Plan:

   (a) an increase in the number of building lots or dwelling units;
   (b) a significant decrease in the open space acreage;
   (c) a significant change in the lot layout;
   (d) a significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
   (e) significant changes to the storm water management facilities; and/or,
   (f) significant changes in the wastewater management systems.

5. If the Planning Board determines that the Definitive Subdivision Plan does not substantially comply with the approved Site Plan, the Board may disapprove the definitive subdivision plan for failure to comply with the conditions of the Site Plan requiring that the Definitive Plan substantially comply with the Site Plan.

6. The Planning Board may conditionally approve a Definitive Subdivision Plan that does not substantially comply with the approved Site Plan. However, such conditional approval must identify where the plan does not substantially comply with the approved Site Plan and shall require that the approved Site Plan be amended to be in compliance with the significant changes identified by the Planning Board. The Planning Board shall also require that the applicant file an application to amend the Site Plan within a specified time period.

7. The public hearing on the application to amend the Site Plan shall be limited to the significant changes identified by the Planning Board in their conditional approval of the Definitive Subdivision Plan. These changes are the only considerations that the Planning Board may take into account in deciding whether to amend the Site Plan. (Ord. No. 105, 12/29/05)

4. RESIDENTIAL REUSE OF EXISTING AND FORMER PUBLIC BUILDINGS (SECTION 38-24.E.)

E <u>Residential Reuse of Existing and Former Public Buildings</u>
(Ord. No. 1., 4-6-07; Ord. No. 3A, 4-22-10)

1. Purpose - To provide for the productive reuse of existing or former public buildings and the lots on which they are located primarily for residential purposes, and to provide affordable housing opportunities for low/moderate income households.

2. Use Regulation - In any zoning district, the City Council may allow by Special Permit the reuse of an existing or former public building and the lot on which it is located, as hereinafter defined, for residential purposes and for other supporting use(s) the Council may determine are appropriate, provided that twelve percent (12%) of such allowed housing units are set aside for low or moderate income tenants or owners as hereinafter defined. The Special Permit may allow a greater number of residential units than would otherwise be permitted under the building and area requirements applicable to the zoning district in which such building and lot are located.

   In the case of units to be owned or occupied by low or moderate income households, such units shall be subject to an affordable housing restriction that contains limitations on use, occupancy, sale, resale and rents, and provides for periodic monitoring to verify compliance with and to enforce said

restriction. The affordable housing restriction shall run with the land and be in force in perpetuity or for the maximum period allowed by law, and be enforceable under the provisions of Chapter 184, Section 26 or Sections 31-32 of the Massachusetts General Law.

Each affordable unit created under this Section shall be sold or rented to a household with income at or below 80% of the area median income that applies to subsidized housing in the City of Beverly, as reported annually by the U.S. Department of Housing and Urban Development (HUD), adjusted for household size.

For any special permit issued under this Section, the provisions of Section 38-24.B. (Open Space Residential Design – OSRD) shall be optional.

3. Public Building Defined - For purposes of this section, "public building" shall be defined as any building together with the lot on which it is located that is currently or formerly owned by the City of Beverly or any of its departments, authorities, or agencies.

4. Low or Moderate Income Household - For purposes of this section, "low or moderate income household" shall be defined as those whose annual income falls within the income guidelines for low or moderate income as determined by the US Department of Housing and Urban Development for the Boston-Cambridge-Quincy MA – NH – MSA.

5. Parking – Parking shall be provided as required by Section 38-25. of the Zoning Ordinance.

6. Procedure – A special permit application and twelve (12) copies of a site plan meeting the requirements of Section 38-29.C. of the Zoning Ordinance shall be filed with the Beverly City Council and processed by the City Council in accordance with the provisions of M.G.L. Chapter 40A, Section 9 and, to the extent practical, the rules and regulations of the Planning Board with respect to special permits.

   In reviewing a special permit application under this Section, the City Council shall consider the conditions outlined in Section 38-28.C.2. of the Zoning Ordinance, along with any

other considerations it deems advisable and reasonable within the parameters of M.G.L. Chapter 40A, Section 9.

The City Council shall open a public hearing on the special permit application and provide the applicant with initial feedback regarding the basic elements of the proposed project, including density. Six (6) copies of the site plan (which may be amended to reflect Council feedback) shall then be transmitted by the City Council to the Planning Board, which shall review the proposed site plan and provide recommendations to the City Council for its consideration. The City Council shall not close the public hearing on a special permit application until it has received a recommendation from the Planning Board on the site plan, or until sixty-five (65) days have elapsed since the plans were submitted to the Planning Board without the submission of a recommendation. The Planning Board's review of a site plan submitted to it by the City Council for a project under this Section shall be deemed compliance with Section 38-29.C., and no subsequent site plan review by the Planning Board under Section 38-29.C. shall be necessary.

The City Council may elect to refer a special permit application or site plan to any other board, commission, or city department for review and comment during the course of the public hearing.

7. The provisions of this Section are optional, and nothing herein shall require the City Council to grant a Special Permit where it finds that the proposed project's overall impact on the general area would be adversely affected. (E 1. - 9. Rev. 5-9-88; E 1 – 7 Rev., Ord. No. 1, 4-6-07; E1.-5. Rev. Ord. No. 3A, 4-22-10)

5. SITE PLAN REVIEW REQUIREMENTS FOR CERTAIN COMMERCIAL, INDUSTRIAL AND MULTI-FAMILY DEVELOPMENTS (SECTION 38-29.C)

C <u>Site Plan Review Requirements for Certain Commercial, Industrial and Multi-Family Developments</u> (whole section amended as of 11/21/88)

1. Projects requiring site plan review are listed in Tables I and II below. Table I lists those projects involving new construction which are subject to site plan review. Table II lists those projects involving expansion of existing structures which are subject to site plan review. In addition, any project granted a

Special Permit for additional building height by the Planning Board in accordance with Section 38-17.D.2, 3, or 5 shall be subject to site plan review.

TABLE I: NEW CONSTRUCTION

Zoning Classification	Building Size Requiring Site Plan Review
IG	5,000 sq. ft. (Rev. 7-1-92)
IR	25,000 sq. ft. or more than one (1) structure on a lot
CG	Lot coverage over 65%
CC	1,000 sq. ft.
CN	1,000 sq. ft.
WD	1,000 sq. ft. (Rev. 7-1-92)
HD	5,000 sq. ft. (Rev. 7-1-92)
Multi-family	Over ten (10) units; more than two (2) townhouses or similar building type on a single lot

TABLE II: EXPANSION CONSTRUCTION

Zoning Classification	**Percent Increase in Gross Square Footage Requiring Site Plan Review**
IG-zoned buildings over 10,000 sq. ft.	30%
IR-zoned buildings over 25,000 sq. ft. or more than one structure on a lot	30%
CG-zoned buildings with total lot coverage exceeding 65%	1%
CC-zoned buildings over 1,000 sq. ft.	40%
CN-zoned buildings over 1,000 sq. ft.	40%
WD-zoned buildings over 5,000 sq. ft.	20% (Rev. 7-1-92)
HD-zoned buildings over 5,000 sq. ft.	20% (Rev. 7-1-92)
Multi-family buildings over ten (10) units, or more than two (2) townhouses or similar building type on a lot	20%

2. Procedure - Applicants shall submit to the Planning Board ten (10) copies of an application for site plan review and ten (10) sets of plans, size 24" x 36". The applicant shall also submit ten (10) sets of plans, size 11" x 17". The applicant shall also file one (1) copy of the site plan review application with the City Clerk.
(Ord. No. 49, 4-9-08)

An application for site plan review shall also be accompanied by the following:

a. A list of the names and addresses of all property owners of record who share a common property line with any portion of the property specified on the site plan review application and plan;

b. A filing fee of $35 per 1,000 s.f. gross floor area (min. of $350, max of $5,000) for site plan review; or $350 for a modification of site plan review; and
(Ord. No. 49, 4-9-08)

c. Written permission from the owner of the property to apply for site plan review, if the applicant is not the owner.

At least seven (7) days prior to the date of the public hearing, the Planning Board shall advertise the public hearing in a newspaper of local circulation and shall send written notice by mail to all abutters.

Final action on the site plan shall be taken by the Planning Board after a public hearing has been held and within sixty-five (65) days of the date of the public hearing.

All applications for site plan review shall be forwarded to both the Parking and Traffic Commission and the Design Review Board for their comments and recommendations. The recommendations of this Board and Commission shall be received by the Planning Board within thirty (30) days of submission to the Board/Commission. Failure to forward comments within thirty (30) days will be deemed conclusion of review by the Design Review Board or the Parking and Traffic Commission. All applications for site plan review will also be forwarded to the City Engineer for his review and approval.

Failure of the Planning Board to act within sixty-five (65) days of the public hearing shall be deemed as conclusion of review and it

shall forthwith make its endorsement on said plan and, on its failure to do so, the City Clerk shall issue a certificate to the same effect. The Planning Board shall communicate to the appropriate municipal officials and to applicant the results of its review.

The Planning Board may waive any of the requirements of this Section if deemed in the best interest of the City to do so.

3. Contents of plan - A plan accompanying an application for site plan review shall be drawn to whatever scale necessary to show clearly all site features, and shall include or be accompanied by the following:

   a. A locus map drawn at a scale of 1" = 800';

   b. The location and name of all streets in the immediate vicinity of the proposed project with a notation as to whether the street is a public or private right-of-way;

   c. Zoning and Historic District boundary lines;

   d. Existing and proposed contour lines at one (1) or two (2) foot intervals;

   e. The location and dimensions of all existing and proposed buildings on the site, and on abutting properties; elevation and facade treatment plans of all proposed-buildings and signs;

   f. Information on the location, size, and capacity of existing and proposed utilities which will service the project (water, sewer, electric, etc.) as well as hydrant location(s), and design plans and specifications/information for HVAC equipment and other noise emitting equipment proposed on the roof of the building(s) or elsewhere on site;

   g. Information on the method of surface and subsurface drainage disposal; location, type, and intensity of lighting; location, size, type, and number of existing and proposed landscape features; location and dimensions of signage; location of waste and refuse disposal facilities, and snow removal plans for the property post construction, and adequacy of same;

h. Calculations of amount of parking required, and the location, size, and type of parking, loading and unloading, and service areas;

i. Information sufficient to demonstrate that satisfactory arrangements will be made to facilitate traffic movement to, from, and within the site, such arrangements to be subject to the review and approval of-the Parking and Traffic Commission ("sufficient information" may require the submission of a traffic study); and

j. Any additional data (including but not limited to drainage studies, demographic studies, shadow studies, etc.) which the Planning Board may deem necessary to evaluate the proposed project as it relates to surrounding areas, anticipated traffic and public safety and the intent of the Comprehensive Plan and this Ordinance.

4. Modification to Approved Site Plan – Subsequent to a site plan granted by the Planning Board pursuant to this section, minor modifications to the site plan may be made from time to time in accordance with applicable City ordinances and regulations. The development approved under such site plan shall otherwise be in accordance with the approved plans and such conditions, as may be included, in the decision of the Planning Board. The developer shall notify the Planning Board in writing well in advance of any such modification, which shall not be effective until approved by vote of the Planning Board. The developer shall also submit a plan depicting such modification. Should the Planning Board determine that such revisions are not minor, it shall order that an application for a modification of site plan be filed and a public hearing be held in the same manner as set forth in Section 38-29.C.
(Ord. No. 49, 4-9-08)

APPENDIX F

CITY OF BEVERLY
WETLANDS ORDINANCE AND REGULATIONS

CITY OF BEVERLY

WETLANDS PROTECTION ORDINANCE

Beverly Conservation Commission
191 Cabot Street
Beverly, MA 01915

(978) 921-6000; Fax (978) 921-6187

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(Ord. No. 234, 12-6-01)

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Sec. 24. 1. PURPOSE

The purpose of this ordinance is to provide more protection to the wetland resource areas of the City of Beverly than is already granted by the Wetland Protection Act M.G.L. Chapter 131, Section 40 and the Regulations 310 CMR 10.00. It is intended to be more protective than the existing regulations and therefore more beneficial to the specific needs and values of this community. It would provide the Conservation Commission more authority to regulate activities that might have a harmful effect on the following important interests: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution control, fisheries, shellfish, wildlife and rare species habitat, agriculture, aquaculture and recreation.

Sec. 24. 2. JURISDICTION

Except as permitted in writing by the Commission, or as provided in this Ordinance, no person shall engage in the following activities ("activities"): removal, filling, dredging, discharging into, building upon, or otherwise altering or degrading the City's wetland resource areas, consisting of:

1) any isolated vegetated wetland,
2) any vernal pool,
3) any vegetated wetland bordering on any creek, river, stream, pond or lake,
4) any bank, beach, fresh or salt water marsh, wet meadow, bog or swamp,
5) any land under any creek, river stream, pond or lake,
6) any 100-foot buffer zone of wetland areas 1-5 listed above,
7) any land subject to storm flowage, or flooding by groundwater or surface water,
8) the 200-foot riverfront area,
9) ocean

The wetland resource areas listed in 1-9 above may also be protected under the Massachusetts Wetlands Protection Act. M.G.L. Chapter 131, Section 40 ("the Act") and its accompanying regulations 310 CMR 10.00.

The Commission shall not grant such permission without receiving written notice of the intention to conduct such activity, and without issuing written permission to do so all in compliance with the provisions of this Ordinance.

Sec. 24.3. EXEMPTIONS

This Ordinance shall not apply to the following activities:

1. Emergency projects as defined in the Commission's regulations (Section II); or

2. Maintenance, repair, or replacement, without substantial change or enlargement, of existing and lawfully located structures or facilities used in the service of the public and used to provide electric, gas, water distribution, telephone, or other telecommunication services to the public; or

3. Normal maintenance of land in active agricultural use, as defined in the Commission's regulations (Section II); or

4. Maintenance and repair of existing public ways; and

All appropriate measures should be undertaken to prevent damage to any resource areas that would have a detrimental effect on the interests of the Ordinance and the Act.

Sec. 24.4. APPLICATIONS TO PERFORM WORK AND INFORMATION REQUIRED

All applications to perform activities in the City's resource areas shall be either in the form of a Request for Determination of Applicability or a Notice of Intent, or both. Such applications shall contain data and plans as specified in the Commission's regulations, and shall be submitted in complete written form to the Commission as required by this Ordinance, regulations, and application checklist (Appendix A of Regulations). The date which serves to commence the Commission's deliberation period is the date of receipt of the application at its offices, during regular office hours. The City's Conservation Administrator shall be authorized to make determinations of completeness for applications submitted to the Commission and shall reject, within two (2) business days, those applications that do not meet the minimum submittal requirements of this Ordinance, regulations, and application checklist. In order to provide sufficient review time the Commission may continue a public hearing or public meeting if new information is submitted by the applicant, or applicant's agent, less than seven (7) business days before the scheduled public hearing or public meeting.

The applicable forms may be obtained from the Commission and must be signed by the applicant or applicant's agent where required. The Commission may require further information by Regulations, guideline, or as otherwise deemed necessary by the Commission. No such application shall be accepted as complete before all permits, variances, and approvals required by the Ordinances of the City with respect to the proposed activity, at the time of such Notice, have been applied for or obtained. Such application shall also include any information submitted in connection with such permits, variances, and approvals which is necessary to describe the effect of the proposed activity on the resource area(s).

Upon receipt of a permit application or RFD for complex projects such as subdivisions, the Commission is authorized to require the applicant to pay with a reasonable cost determined by the Commission (not to exceed 0.5% or $5,000) for specific expert engineering and other consultant services deemed necessary by the Commission to finalize the decision on the application. Any unused portion will be returned to applicant.

Sec. 24.5. HEARINGS

A) Combination with State Law Hearing:

The said Commission, in its discretion, may hear any oral presentation under this Ordinance at the same public hearing required to be held under the provisions of Chapter 131, Section 40 of the Massachusetts General Laws. Notice of the time and place of such hearing(s) shall be given as required below.

B) Notice:

Notice of the time and place of the hearing shall be given at the applicant's expense, not less than seven (7) calendar days prior to the public hearing, by publication in a newspaper of general circulation in Beverly, and by mailing a copy of such notice to all land owners within 300 feet of land on which the work is proposed. All publications and notices shall contain the name of the applicant, a description of the area where the activity is proposed by street address, if any, or other adequate identification of the location of the area or premises which is the subject matter of the hearing, and the nature of the action or relief requested, if any. Public notice requirements for continued public hearings under this Ordinance shall be the same as the notification requirements set forth in 310 CMR 10.05(5)(b)3.

C) Proof:

The applicant shall have the burden of providing by a preponderance of credible evidence that the activity proposed in the Notice of Intent will not cause adverse
impacts to any of the interests and values intended to be protected by this Ordinance. Failure to provide the Commission adequate evidence for it to determine that the proposed activity will not cause adverse impacts shall be sufficient cause for the Commission to deny permission or to grant such permission with such conditions as it deems reasonable, necessary, or desirable to carry out the purposes of this Ordinance; or to postpone or continue the hearing to another date certain to enable the applicant and others to present additional evidence, upon such terms and conditions as deemed by the Commission to be reasonable.

Due consideration shall be given to possible effects of the proposal on all interests and values to be protected under this Ordinance and to any demonstrated hardship on the petitioner by reason of a denial, as brought forth at the public hearing.

Filing fees are non-refundable. Review fees not totally expended by the Commission shall be refunded.

D) Continuances:

The Commission may continue a public hearing or public meeting in the following situations:

1. With the consent of the applicant, to an agreed-upon date which shall be announced at the hearing; or

2. Without the consent of the applicant, to a specific date for the reasons stated at the hearing, including but not limited to receipt of additional information from the applicant or others; and

3. Any application that expires would require refiling of the Notice of Intent.

E) Investigations:

The Commission, its agents, officers, and employees, may enter upon privately owned land for the purpose of carrying out its duties under this Ordinance and may make or cause to be made such examination or survey as deemed necessary.

Sec. 24.6. ORDERS AND DECISIONS

A) All Orders and Decisions:

If the Commission determines that the proposed activity does not require the imposition of conditions to preserve and protect the interests of this Ordinance, the applicant shall be so notified in writing.

If, after the hearing, the Commission determines that the proposed activity is significant to one or more interests and values of this Ordinance, the Commission may vote to issue written Orders of Conditions within 21 days of the close of the public hearing. The Commission may impose such conditions, safeguards, and limitations on time and use upon such activity as it deems necessary to protect those interests and values.

The Commission may prohibit such activity altogether, in the event that it finds that the interests and values of this Ordinance cannot be preserved and protected by the imposition of such conditions, safeguards, or limitations.

B) Security to Assure Performance:

The Commission may, as part of its Order of Conditions, require, in addition to any security required by any other City or State Board, Commission, agency, or officer, that the performance and observance of the conditions, safeguards, and limitations imposed under this Ordinance on the applicant and owner be secured by one, or both, of the following methods:

1. Deposit:

By the deposit of money, sufficient to complete the work as proposed, to secure performance of the conditions and observance of the safeguards of such Order of Conditions. Such security, if filed or deposited, shall be approved as to form and manner of execution by City Counsel or the City Treasurer.

2. Land Restriction(s):

By a Conservation restriction, easement, or other covenant running with the land, executed and properly recorded (or registered, in the case of registered land).

C) Duration of Orders:

All Orders of Conditions shall expire three (3) years after the date of issuance. An Order of Conditions may be extended for one (1) year upon the request of the applicant. The request for an extension of an Order of Conditions shall be made to the Commission at least 30 days

prior to expiration of the Order of Conditions. The Commission may grant only two (2) extensions for an individual Order of Conditions.

No activity governed by an Order of Conditions shall be performed unless and until all permits, approvals, and variances required by the Ordinances of the City shall have been obtained, such Order of Conditions or notification shall have been recorded or registered at the Essex South District Registry of Deeds, and all applicable appeal periods have expired. The Commission shall have the right to record or register its Order of Conditions with said Registry of Deeds. No work shall proceed until proof is provided that the Order of Conditions has been properly recorded at the Registry of Deeds. In the event that an Order of Conditions issued pursuant to this Ordinance is identical to a final Order of Conditions issued pursuant to the provisions of M.G.L Chapter 131, Section 40, only one such order need be recorded or registered.

D) Modifications, Amendments, Revocations:

The Commission shall have the authority (on its own motion or upon the petition of the applicant, or any person interested) to modify, amend, or revoke an Order of Conditions. In revoking an Order of Conditions, the Commission shall officially notify the interested parties through certified mail and hold a public hearing within 21 days of the notification date. In the case of an amendment to an Order of Conditions, the Commission shall have the discretion to decide if a public hearing is warranted. This decision shall be based on the potential impact of the proposed work and its effect on the ability of the identified wetland resource areas to provide those interests as defined under the Act and Ordinance. No public hearing is required for a modification to an Order of Conditions. Written notification to the applicant by certified mail is required in all cases where the Commission initiates a modification, amendment, or revocation of an Order of Conditions.

Sec. 24.7. CERTIFICATES OF COMPLIANCE

The Commission shall, upon receiving a written request and weather permitting, inspect the resource areas where the activity governed by an Order of Conditions was carried out and issue a Certificate of Compliance (or Partial Certificate of Compliance) to the owner of the property, applicant, or applicant's representative, in a form suitable for recording or registering, if it shall determine that all of the activity (ies), or portions thereof, limited thereby have been completed in accord with said Order.

Sec. 24.8. RULES AND REGULATIONS

The Commission shall be empowered to establish Rules and Regulations to govern its affairs, including but not limited to fees, definitions, use of consultants, security to assure performance, performance standards for work in wetland resource areas, and such other information the Commission deems necessary to discharge its responsibilities. After due notice and public hearing, the Commission may promulgate such rules and regulations to effectuate the purposes of this Ordinance, by a majority vote of the duly appointed members.

Failure by the Commission to promulgate such rules and regulations, or a legal declaration of their validity by a court of law, shall not act to suspend or invalidate the effect of this Ordinance.

Sec. 24.9. ENFORCEMENT, INVESTIGATIONS, VIOLATIONS

In accord with the provisions of M.G.L. Chapter 40, Sections 21D and 31 as well as every other authority and power that may have been or may hereafter be conferred upon it, the City may enforce the provisions of this Ordinance, restrain violations thereof, and seek injunctions and judgments to secure compliance with its Orders of Conditions. Without limiting the generality of the foregoing:

A) Any person who violates any provision of this Ordinance or of any condition of a permit issued pursuant to it may be punished by a fine pursuant to Massachusetts General Laws, Chapter 40, Section 21. Each day or portion thereof during which a violation continues shall constitute a separate offense; if more than one, each condition violated shall constitute a separate offense. This Ordinance may be enforced pursuant to Massachusetts General Laws Chapter 40, Section 21D, by a City police officer, other persons having police powers, Conservation Commissioners, or the Conservation Administrator.

In accordance with Ch. 40 S. 21D, violators shall, at the discretion of the enforcement authorities, be charged a penalty. The penalties for violations of this Ordinance or regulations promulgated hereunder may be assessed as follows:

Violation	Penalty/Violation/Day
Alteration of any wetland resource area identified in Section I.2 of this Ordinance:	**$100**
Violation of any Order of Conditions:	**$100**
Depositing any refuse, debris, yard waste in a wetland or water body:	**$100**
Depositing any construction material in a wetland or water body:	**$500**
Alteration of any stream or water body:	**$100**
Violation of any section of this Ordinance that occurs in the Watershed Overlay District:	**$200**

B) In the event of a violation of this Ordinance or of any order issued thereunder, the Commission or its agents may issue a stop work order to the owner, the applicant, or the applicant's agent by certified mail, return receipt requested, or by posting the same in a conspicuous location on said site. Any person who shall violate the provisions of a stop work order shall be deemed in violation of the Ordinance; but the failure of the Commission to issue a stop work order for any reason shall not prevent the City from pursuing any other legal remedy at law or in equity to restrain violations of this Ordinance or promulgated regulations and to secure compliance with its Orders.

C) The City shall be the beneficiary of all fines imposed on account of the violation of this Ordinance or promulgated regulations in order to defray the expense of enforcing the same.

D) Upon request of the Commission, the City Council and City Solicitor shall take such legal action as may be necessary to enforce this Ordinance or promulgated regulations and permits issued pursuant to it.

E) Upon recommendation of the Commission, the City Council may employ Special Counsel to assist the Commission in carrying out the legal aspects, duties, and requirements of this Ordinance and promulgated regulations.

Sec. 24.10. RESPONSIBILITY FOR COMPLIANCE AFTER OWNERSHIP TRANSFERS

After the recording of a Notice of Violation or Order, any person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of the provisions of this Ordinance or in violation of any Order issued under the Ordinance shall forthwith comply with any such Order or restore such land to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three years following the recording of the deed or the date of death by which such real estate was acquired by such person.

Sec. 24.11. CAPTIONS AND SEVERABILITY

The captions used herein are for convenience only and are expressly intended to have no legal or binding significance. The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision thereof, nor shall it invalidate any Order of Conditions or decisions which have previously become final.

CITY OF BEVERLY

WETLANDS PROTECTION REGULATIONS

EFFECTIVE 06-17-2003

AMENDMENTS THROUGH November 22, 2005

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SECTION I – GENERAL PROVISIONS

A. AUTHORITY

These Regulations are promulgated under the authority of the Home Rule Amendment Article LXXXIX (89), of the amendments of the Constitution of Massachusetts, 1966 as amended from time to time, and in accordance with the City of Beverly Wetlands Protection Ordinance, Chapter 24 of the revised Ordinance of the City of Beverly, and shall be effective upon fulfillment of all legal requirements.

B. PURPOSE

The purpose of the Beverly Wetlands Protection Ordinance (hereafter referred to as the "Ordinance") is stated in Section 24.1 of the Ordinance. These Regulations are promulgated to ensure fairness, to create uniformity of process, and to clarify and further define the provisions of the Ordinance, administered by the Beverly Conservation Commission, (hereafter called the "Commission").

Wetlands contribute to a wide array of public interests and are therefore protected by the Ordinance. Interests protected by the Wetlands Protection Act (hereinafter called the "Act") include: public and private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, fisheries, land containing shellfish, and protection of wildlife habitat, and are hereby incorporated by reference and made part hereof. The Ordinance identifies five additional public interests not recognized by the Act and they include: the prevention and control of erosion and sedimentation, the protection of rare plant and animal species habitat, the protection of agriculture, the protection of aquaculture and the protection of recreation. Any permit issued under the Ordinance must therefore not adversely affect these public interests, as well as those recognized by the Act.

C. JURISDICTION

The areas subject to protection under the Ordinance differ from those protected solely by the Act in that additional wetland resource areas are protected by the Ordinance, as well as the additional interests previously described. Wetland resource areas protected by the Ordinance include:

1.) any Isolated Vegetated Wetland;

2.) any Vernal Pool (certified or uncertified);

3.) any vegetated wetlands bordering on any creek, river, stream, pond or lake;

4.) any bank, beach, fresh or saltwater marsh, wet meadow, bog or swamp;

5.) any land under any creek, river, stream, pond or lake;

6.) any 100-foot Buffer Zone of wetland areas 1 through 5 listed above;

7.) any land subject to storm flowage, or flooding by groundwater or surface water;

8.) the 200-foot Riverfront Area;

9.) the ocean.

Water bodies located in Beverly, and their contiguous 200-foot Riverfront Areas have been identified by the Commission and include, but are not limited to, the following: Bass River, Danvers River, Lawrence Brook, Chubbs Brook, and Centerville Creek.

D. FEE SCHEDULE

1. Request for Determination of Applicability (RDA):

A. Standard Filing Fee - There shall be a charge of **$50.00** to be submitted with the RDA application.

2. Abbreviated Notice of Resource Area Delineation (ANRAD):

A. Standard Filing Fee – ANRAD's submitted under the Act and the Ordinance shall be subject to the filing fees as outlined in Appendix B – Wetland Fee Transmittal Form as well as an additional **$25.00** for each 100 linear feet of resource area to be reviewed by the Commission, not to exceed **$1,000.00**.

3. Notice of Intent (NOI) or Abbreviated Notice of Intent (ANOI):

A. Standard Filing Fee – NOI's and ANOI's submitted under the Act and the Ordinance shall be subject to the filing fees mandated by State Regulations (310 CMR 10.03(7)) as well as an additional fee for each activity under review by the Commission as follows:

1. Category 1 - $50.00 for each activity
2. Category 2 - $150.00 for each activity
3. Category 3 - $300.00 for each activity
4. Category 4 - $500.00 for each activity
5. Category 5 - $1.00/linear foot, not less than $50.00 or more than $1,000.00
6. Category 6 - $1.00/linear foot, no more than $100.00 for Single Family Homes or $1,000.00 for all other activities

4. Order of Conditions (OOC):

A. Modification/Amendment – A fee of **$50.00** shall be charged for the first requested modification and/or amendment as well as an additional **$25.00** for each additional modification and/or amendment (for example: 1st modification/amendment = $50.00, 2nd = $75.00, 3rd = $100.00, 4th = $125.00 etc.)

B. Certificates of Compliance (COC) – A fee of **$25.00** shall be charged for a request for a Certificate of Compliance. If the first request has been denied, there shall be a charge of **$50.00** for each additional request.

C. Extension Permit – A fee of **$50.00** shall be charged for each request for an Extension Permit of an Order of Conditions.

5. Emergency Certification

A. Standard Filing Fee – A fee of **$100.00** shall be charged for a request for an Emergency Certification.

An instruction sheet and fee form for calculating these fees can be found in Appendix A at the end of these Regulations.

E. OFFICERS AND MEMBERS

1. Officers:

(a) There shall be a Chair and a Vice-Chair, who shall be elected by a majority vote of the eligible Commission members. The term of office shall be one year, commencing and ending with the second regular Commission meeting following the end of the calendar year. In the event of a vacancy in either position, a new Chair or Vice-Chair shall be elected by a majority vote of the eligible Commission members.

2. Members:

(a) New Commission members shall be appointed by the Mayor, and approved by the City Council. The Commission may, through its Chairman, offer its views to the Mayor on the qualifications and suitability of potential candidates.

(b) A quorum consists of a majority of the Commission members who are serving in office at the time a vote is taken by the Commission. A majority vote of a quorum of the Commission shall constitute the decision of the Commission.

(c) The Commission members have such powers as are vested in them by law, regulation, custom, and practice.

3. Committees:

(a) There shall be such committees as the Commission may decide are necessary for the efficient execution of its duties.

4. Consultants

(a) The Commission may, by vote at any public meeting, appoint consultants to the Commission as allowed in Section 24.8 of the Ordinance and in M.G. L. Chapter 40, Section 8C. Such consultants shall not have the right to vote, nor to represent themselves as official members of the Commission, but shall have the right to advise the Commission, as the Chair may designate upon the advice and consent of the Commission.

(b) As provided by M.G.L. Chapter 44 Section 53G, the Beverly Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of the Wetlands Protection Act (M.G.L. Chapter 131, Section 40), the Beverly Wetlands Protection Ordinance, Conservation Commission Act (M.G.L. chapter 40 Section 8C) or regulation, as they may be amended or enacted from time to time.

Funds received by the Conservation Commission pursuant to these rules shall be deposited with the City treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriation as provided in M.G.L. Chapter 44 Section 53G. Expenditures from this account shall be made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant.

Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. The consultant shall be chosen by, and report only to, the Conservation Commission and/or its Administrator.

The Conservation Commission shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application request is withdrawn within five days of the date notice was given.

The fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to deny the permit.

The applicant may appeal the selection of the outside consultant to the City Council, who may disqualify the outside consultant selected only on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the City Council and a copy received by the Conservation Commission, so as to be received within ten (10) days of the date of consultant fees were requested by the Conservation Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

SECTION II – DEFINITIONS

M.G.L. Chapter 40, Section C, and Chapter 131, Section 40 (hereafter referred to as the "Act"), as well as 310 CMR 10.00 Wetlands Regulations, are hereby incorporated by reference and made part hereof, except as otherwise modified by the Beverly Wetlands Protection Ordinance and the Regulations promulgated herein and any subsequent amendments. The definitions provided in the State Regulations 310 CMR 10.04 shall apply to the Ordinance and Regulations except as otherwise modified below:

1.) Abutter shall mean those property owners whose land abuts the subject land described in a plan subject to Commission review including those across a traveled way, across a body of water and those within 300 feet of the subject parcel lot lines.

2.) Alter shall include without limitation, the following actions when undertaken in areas subject to the Ordinance:

   a. Changing the pre-existing drainage characteristics, sedimentation patterns, flow patterns or flood retention characteristics;
   b. Placement of fill, excavation, or re-grading;
   c. Destruction of plant life, including mowing, cutting, removal and/or stockpiling of trees and shrubs;
   d. Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
   e. Any activities, changes, or work which pollute or cause displacement of any body of water or groundwater;
   f. Any activities, changes or work that cause negative impact or loss of rare or critical wildlife habitat.
   g. Driving of piles, erection or repair of buildings or structures of any kind.

3.) Amendment means a change in the project that the Commission deems of sufficient magnitude to require the imposition of additional conditions to ensure adequate protection of resource areas and interests covered under this Ordinance and Regulations.

4.) Bordering Land Subject to Flooding means an area which floods from a rise in a bordering waterway or water body (i.e. surface water). (see 310 CMR 10.57 (2) (a) for definition, critical characteristics and boundaries for this resource area).

5.) Buffer Zone is that resource area which extends one hundred feet (100') from the edge of those wetland resource areas identified in Section I (C)(1-5); however, it is possible that these resource areas will overlap in some instances (e.g., Riverfront Area and Land Subject to Flooding).

   a. 25-Foot No-Disturbance Zone is that portion of the Buffer Zone which extends twenty-five (25) feet from the edge of those wetland resource areas identified in

Section I(C) (1,3,4,5); however, it is possible that these resource areas will overlap in some instances (e.g., Riverfront Area and Land Subject to Flooding). Disturbance of any kind is prohibited within this Zone including but not limited to grading, landscaping, vegetation removal, pruning, cutting, filling, excavation, roadway construction and /or driveway construction.

b. 100-Foot No-Disturbance Zone is the land area that extends one hundred (100) feet from the edge of any Vernal Pool that is located in an upland area or, in the case of a wetland resource area that encompasses the pool (Section 1(C)(1,3,4,5), within one hundred (100) feet from the edge of the said wetland resource area. Disturbance of any kind is prohibited within this Zone including but not limited to grading, landscaping, vegetation removal, pruning, cutting, filling, excavating, roadway construction and/or driveway construction. The extent and location of this No-Disturbance Zone is subject to change based on the results of a biological and/or habitat evaluation, which may be required to determine the migratory pathways and other important habitat usage of Vernal Pool breeders.

6.) Burden of Proof means the applicant shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application shall not have significant or cumulative effect upon the wetland values protected in the Ordinance. Failure to provide such credible evidence shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

7.) Emergency Project means an activity undertaken to provide immediate protection to public health, safety and welfare.

8.) Extended Drought shall coincide with an "Advisory" or more severe drought as declared by the Massachusetts Drought Management Task Force in accordance with a statewide drought management plan.

9.) Vernal Pool is defined in Section I(C) and III (A) of these regulations.

10.) Growing Season means the period from March 15th to October 15th.

11.) Isolated Land Subject to Flooding means an isolated depression or a closed basin which serves as pond area for surface run-off (i.e. storm flowage) or high groundwater which has risen above the ground surface (see 310 CMR 10.57(2)(b) for definition, critical characteristics and boundaries of this resource area).

12.) Isolated Vegetated Wetland is defined in Section I(C) and III (B).

13.) Modification means a minor or insignificant project change, as determined by the Commission, that will not result in an adverse impact on the wetland resource area(s) and/or interests protected under the Act or the Ordinance.

14.) Normal Maintenance of Land in Agricultural is defined under these regulations the same as it is in 310 CMR 10.04 (Agriculture) (b).

15.) Permits shall collectively refer to Orders of Conditions, Notice(s) of Non-Significance, Enforcement Order(s), Determinations of Applicability, and/or Orders of Resource Area Delineation.

16.) Pond means any open body of fresh water, either naturally occurring or man-made, with a surface area observed or recorded within the last ten (10) years of at least 5,000 square feet, and which is never without standing water due to natural causes, except during periods of extended drought, as defined above.

17.) Public Hearing(s) means a formal meeting, subject to statutory requirements, at which certain and specific determinations are made. A public hearing is required for a Notice of Intent, Abbreviated Notice of Intent, Abbreviated Notice of Resource Area Delineation, Amendments to Orders of Conditions under the Act and the Ordinance.

18.) Public Meeting(s) are held when a formal hearing is not required and the Commission is not legally required to accept input from the public. Requests for Determination of Applicability, Requests for Extension, Modifications, and Requests for Certificate of Compliance are reviewed and determined at public meetings.

19.) Recreation means passive recreation activities that do not conflict with or diminish other wetland values and functions. Examples include, without limitation, bird watching, nature studies, walking, hiking, and canoeing.

20.) Revocation means to revoke an Order of Conditions issued under the Act and Ordinance.

21.) River means any natural flowing body of water that empties to any ocean, lake, pond or other river and which flows throughout the year. Rivers include streams (see 310 CMR 10.04: Stream) that are perennial because surface water flows within them throughout the year (see 310 CMR 10.58 (2) et seq. for what constitutes a perennial stream).

22.) Wetland Resource Area means those areas subject to protection under the Act, the Ordinance and these Regulations.

23.) Wildlife Habitat means those areas subject to the Ordinance which, due to their plant community composition and structure, hydrologic regime or other characteristics, provide food, shelter, migratory or over-wintering areas or breeding areas for wildlife.

SECTION III – ADDITIONAL WETLAND RESOURCE AREAS PROTECTED UNDER THE BEVERLY WETLAND PROTECTION ORDINANCE

A. Vernal Pool and 100-Foot No-Disturbance Zone

1. Preamble:

Vernal Pools and their associated 100-foot No-Disturbance Zones are likely to be significant to the protection of wildlife habitat and rare plant and animal habitat. Vernal Pools constitute a unique

and increasingly rare type of wetland that is inhabited by many species of wildlife, some of which are totally dependent on Vernal Pools and their associated habitat for their survival. Areas in the immediate vicinity of the Vernal Pool (i.e., 100-foot No-Disturbance Zone) provide these species with important non-breeding habitat functions, such as migratory pathways, feeding, shelter, and over-wintering sites. Many other species utilize Vernal Pools and their associated 100-foot No-Disturbance Zones for breeding and non-breeding functions, although they are not restricted to this type of wetland. The protection of Vernal Pools and their associated 100-foot No-Disturbance Zones are essential for the survival of wildlife species that depend on these unique and threatened resource areas. Vernal Pools need not be certified in order to be protected under the Ordinance or these Regulations.

2. Definition, Critical Characteristics and Boundary:

a. Vernal Pools exhibit a tremendous variation in physical, geographic, hydrologic and vegetative conditions, and therefore, for the purposes of this Ordinance, the preceding features are not considered reliable criteria for their identification. A Vernal Pool is a temporary freshwater body, which, in most years holds water for a minimum of two (2) months and is free of established, reproducing fish populations, and is protected under this Ordinance if it meets any of the following criteria:

I. The Vernal Pool contains evidence of the presence of any one (1) of the following obligate indicator species: Spotted Salamander, Blue-Spotted Salamander, Jefferson Salamander, Marbled Salamander, Wood Frog or Fairy Shrimp, or;

II. In the absence of any obligate indicator species, the Vernal Pool contains evidence of two (2) of any of the following facultative indicator species: Spring Peeper, American Toad, Green Frog, Pickerel Frog, Gray Tree Frog, Four-Toed Salamander, Spotted Turtle, Caddisfly larvae or cases of Caddisfly larvae, Dragonfly or Damselfly larvae or shed skins (exuvia) of Dragonfly or Damselfly larvae, adults, juveniles or shells of either Fingernail Clams or Amphibious, air-breathing Snails.

3. Timing of Evidence Collection:

Many of the indicators of Vernal Pool habitat are seasonal. For example, certain salamander egg clusters are only found between late March and late May. Wood Frog chorusing only occurs between late March and late May, and then only at night. Consequently, failure to find evidence of breeding must be tied explicitly to those periods during which the evidence is most likely to be available.

Accordingly, in the case of challenges to the presumption of Vernal Pool habitat the Commission may require that the determination be postponed until the appropriate time period consistent with the evidence being presented. The Commission may also require its own site visits as necessary to confirm the evidence.

4. Presumptions of Significance:

a. Where a proposed activity involves the removing, filling, dredging, or altering of a Vernal Pool or its 100-foot No-Disturbance Zone, the Commission shall presume that the

Vernal Pool and its 100-foot No-Disturbance Zone is significant to the protection of wildlife habitat and rare plant and animal habitat. This presumption may be rebutted by a showing of clear and convincing evidence that the Vernal Pool or its 100-foot No-Disturbance Zone does not play a role in the protection of said interests. In the event that the presumption is deemed by the Commission to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

5. Performance Standards:

When the presumption set forth in Section III 4. a. of these Regulations is not overcome, the following standards shall apply to Vernal Pools and their 100-foot No-Disturbance Zones:

a. **100-foot No-Disturbance Zone:** No activity shall be permitted within 100 feet of the delineated edge of a Vernal Pool, or in the case of a wetland resource area that encompasses the pool, (Section I C. 1,3,4,5), within 100 feet of the delineated edge of the said wetland resource area. Prohibited activities include, but are not limited to, grading, landscaping, vegetation control, pruning, cutting, filling, excavation, roadway construction and/or driveway construction. It is the opinion of the Commission that due to the uniqueness of Vernal Pool resource areas, the associated 100-foot No-Disturbance Zone is necessary in order to protect wildlife and rare plant and animal habitat.

b. **100-foot Septic System Setback:** Components of subsurface sewage disposal systems shall not be permitted within 100 feet of the delineated edge of a Vernal Pool or the delineated edge of the encompassing wetland resource area when the proposed system is located up-gradient of the Vernal Pool.

c. **No-Disturbance Zone Demarcation:** To maintain the perpetual integrity of the 100-foot No-Disturbance Zone and to ensure that there will be no encroachments into this Zone by the applicant or future owners of the subject property, the Commission may require the No-Disturbance Zone to be marked on the ground, at the applicant's expense, with permanent markers. These markers shall be made of weather resistant material (i.e. granite or concrete), and the Commission shall determine their number, location and size. The Commission may require one or more of these markers to bear, on their upland side, writing (i.e. a permanent plaque or engraving) that shall read "No Disturbance Beyond This Point By Order Of The Beverly Conservation Commission".

d. **Migratory Pathway of Vernal Pool Breeders:** Work shall not be allowed that obstructs the migratory pathways of Vernal Pool breeding species.

B. <u>Isolated Vegetated Wetland</u>

1. Preamble:

Isolated Vegetated Wetlands are likely to be significant to the interests identified in CMR 10.55 (1) that are supported by Bordering Vegetated Wetlands, as well as those interests identified in the Ordinance. These interests include: private and public water supply, groundwater, flood control, storm damage prevention, prevention of pollution, protection of fisheries, wildlife habitat, erosion and sedimentation control, and rare plant and animal habitat.

2. Definition, Critical Characteristics, and Boundary:

Isolated Vegetated Wetlands protected under this Ordinance are freshwater wetlands, of at least 1,000 square feet in area that do not border on creeks, rivers, streams, ponds or lakes. The types of Isolated Vegetated Wetlands include wet meadows, marshes, swamps and bogs. In addition to the minimum size requirement, Isolated Vegetated Wetlands must also meet at least two (2) of the following three (3) criteria:

i. The vegetation community of an Isolated Vegetated Wetland consists of 50% or more wetland indicator plants. Wetland indicator plants are classified in the following categories: Facultative, Facultative +, Facultative Wetland -, Facultative Wetland, Facultative Wetland +, or Obligate Wetland (*source: U.S. Fish & Wildlife Service)* or,

ii. Other indicators of hydrology including site inundation or saturation, water marks, drift lines, sediment deposits, oxidized rhizospheres, water-stained leaves, shallow root systems, buttressed tree trunks, and recorded hydrologic data (stream gauge, aerial photo, or other) or,

iii. Presence of Hydric Soils.

3. Presumption of Significance:

Where a proposed activity involves the removing, filling, dredging, or altering of an Isolated Vegetated Wetland, the Commission shall presume that the Isolated Vegetated Wetland is significant to the interests specified in Section III B. 1. of these Regulations. This presumption may be rebutted by a showing of clear and convincing evidence that the Isolated Vegetated Wetland does not play a role in the protection of said interests. In the event that the presumption is found by the Commission to have been overcome, it shall make a written determination to this effect, setting forth its grounds.

4. Performance Standards:

When the presumption set forth in Section III B. 3. of these Regulations is not overcome, any proposed work in the Isolated Vegetated Wetlands shall not destroy or otherwise impair any portion of said area. The following standards apply to Isolated Vegetated Wetlands:

a. **25-foot No-Disturbance Zone:** No activity is permitted within 25 feet of the delineated edge of an Isolated Vegetated Wetland boundary. Prohibited activities include, but are not limited to, grading, landscaping, vegetation clearing, cutting, filling, excavating, road construction, and driveway construction. The Commission has adopted this standard because the alteration of land immediately adjacent to a wetland is likely to result in the alteration of the wetland itself. Alterations typically

result from extension of lawns, depositing/dumping of yard waste, over-grading, siltation, deposition of construction debris, unregulated filling, and clearing of vegetation, all of which is prohibited.

b. **No-Disturbance Zone Demarcation:** To maintain the perpetual integrity of the No-Disturbance Zone and to ensure that there will be no encroachments into this Zone by the applicant or future owners of the subject property, the Commission may require the No-Disturb Zone to be marked on the ground, at the applicant's expense, with permanent markers. These markers shall be made of weather resistant material (i.e. granite, or concrete), and the Commission shall determine their number, location and size. The Commission may require one or more of these markers to bear, on their upland side, writing (i.e. a permanent plaque or engraving) that shall read "No Disturbance Beyond This Point By Order Of The Beverly Conservation Commission".

C. <u>Buffer Zone</u>

1. Preamble:

Buffer Zones are likely to be significant to the interests identified for the specific resource area as identified in Section I.1 of the Ordinance and 310 CMR 10.01 (2). Buffer Zones are considered resource areas, as they perform vital functions in protecting the interests of the Ordinance in the following ways:

a. **Temperature:** Shade and cover provided by vegetation can influence water temperature in resource areas.

b. **Sediments and Other Contaminants:** Buffer Zones filter sediments and other contaminants (i.e., pesticides, heavy metals etc…) from surface runoff. Buffer Zones also prevent erosion in resource areas and preclude any activity or development that could increase sediment or contaminant loading.

c. **Nutrients (Nitrogen and Phosphorous):** Buffer Zones reduce nutrient inputs into resource areas by 1) filtering sediment-bound nutrients from surface runoff, 2) removing nutrients from groundwater by uptake in vegetation and by de-nitrification and 3) precluding any activity or development which could increase nutrient loading.

d. **Stream Flow Maintenance:** Buffer Zones can store water and help maintain stream base flow and provide water quality benefits during low flow periods.

2. Definition, Critical Characteristics, and Boundary:

A Buffer Zone is the area of land extending 100 feet horizontally from the delineated edge of the following resource areas:

a. Bordering Vegetated Wetlands;

b. Isolated Vegetated Wetlands as provided above;

c. Bank, beach, fresh or salt water marsh, wet meadow, bog, or swamp;

d. Land under any creek, river, brook, stream, pond or lake;

Note that Riverfront Area and Bordering and Isolated Land Subject To Flooding do not have a Buffer Zone.

3. Presumptions of Significance:

Where a proposed activity involves the removing, filling, dredging, or altering of a Buffer Zone, the Commission shall presume that protection of the Buffer Zone as a resource area as identified in Section I.C.5. of these Regulations is significant to the interests specified in Section 24.1 of the Ordinance. This presumption may be overcome upon a showing of clear and convincing evidence demonstrating that the Buffer Zone does not play a role in the protection of said interests. In the event that the Commission determines that the presumption has been overcome, it shall make a written determination to this effect, setting forth its grounds.

4. Performance Standards:

The following standards apply to the Buffer Zone of all the resource areas identified in Section III C.2. a, b, c and d. of these Regulations:

a. **25-Foot No-Disturbance Zone:** Except as otherwise provided in these Regulations, no activity is permitted within 25 feet of the delineated edge of the above-mentioned wetland resource areas. Prohibited activities include, but are not limited to, grading, landscaping, vegetation clearing, cutting, filling, excavating, road construction, and driveway construction. The Commission has adopted this standard because the alteration of land immediately adjacent to a wetland is likely to result in the alteration of the wetland itself. Alterations typically result from extension of lawns, depositing/dumping of yard waste, over-grading, siltation, deposition of construction debris, unregulated filling, and clearing of vegetation, all of which is prohibited.

b. **No-Disturbance Zone Demarcation:** To maintain the perpetual integrity of the No-Disturbance Zone and to ensure that there will be no encroachments into this Zone by the applicant or future owners of the subject property, the Commission may require the No-Disturbance Zone to be marked on the ground, at the applicant's expense, with permanent markers. These markers shall be made of weather resistant material (i.e. granite, or concrete), and the Commission shall determine their number, size and location. The Commission may require one or more of these markers to bear, on their upland side, writing (i.e. permanent plaque or engraving) that shall read "No Disturbance Beyond This Point By Order Of The Beverly Conservation Commission

SECTION IV STORMWATER MANAGEMENT

The Commission has adopted as part of these regulations the nine (9) standards set forth in the Department of Environmental Protection and Office of Coastal Zone Management March 1997 Stormwater Management Policy. The Stormwater Management Standards apply to industrial, commercial, institutional, residential subdivision, and roadway projects, including, but not limited to, site preparation, construction, redevelopment, and on-going operation of facilities. For projects of any size, direct discharge of untreated stormwater to wetland resource areas is prohibited and erosion and sedimentation control must be provided during construction.

The Stormwater Management Standards are:

1. No new stormwater conveyances may discharge untreated stormwater directly or indirectly to or cause erosion in wetlands or waters of the City of Beverly.

2. Stormwater management systems must be designed so that post-development peak discharge rates do not exceed pre-development peak discharge rates.

3. Loss of annual recharge to groundwater should be minimized through the use of infiltration measures to the maximum extent practicable. The annual recharge from the post-development site should approximate the annual pre-development or existing site conditions, based on soil types.

4. For new development, stormwater management systems must be designed to remove 80% of the average annual load (post-development conditions) of Total Suspended Solids (TSS). It is presumed that this standard is met when: (a) Suitable nonstructural practices for source control and pollution are implemented; (b) Stormwater management best management practices (BMP's) are sized to capture the prescribed runoff volume; and (c) Stormwater BMP's are maintained as designed.

5. Stormwater discharges from areas with higher potential pollutant loads require the use of specific stormwater BMP. The use of infiltration practices without pretreatment is prohibited.

6. Stormwater discharges to critical areas must utilize certain stormwater management BMP's approved for critical areas. Critical areas are Outstanding Water Resources (OWR's), shellfish beds, swimming beaches, cold water fisheries and recharge areas for public water supplies.

7. Redevelopment of a previously developed site must meet the Stormwater Management Standards to the maximum extent practicable. However, if it is not practicable to meet all the Standards, new (retrofitted or expanded) stormwater management systems must be designed to improve existing conditions.

8. Erosion and sediment controls must be implemented to prevent impacts during construction or land disturbance activities.

9. All stormwater management systems must have an operation and maintenance plan to ensure that systems function as designed.

SECTION V – WAIVERS AND MITIGATION

A. Preamble

The performance standards for wetland resource areas have been created to ensure that the interests of the Act and the Ordinance are adequately protected. The Commission recognizes that, in certain situations, a waiver of certain performance standards may be appropriate for a particular project when the waiver is consistent with the intent and purpose of the Ordinance and these Regulations.

The applicant shall have the burden of proof demonstrating that the granting of the waiver is consistent with the intent and purpose of the Ordinance and these Regulations. The Commission shall act on the request for a waiver and shall provide to the applicant, either by certified mail or hand delivery, its written decision. The following section describes the waivers and associated mitigation measures.

B. 100-Foot No-Disturbance Zone For Vernal Pools

1. Waiver(s):

The Commission may grant a partial waiver from this performance standard for the alteration of the 100-foot No-Disturbance Zone in situations where there are no practicable alternatives that provide for less impacts to the resource area values. The applicant is responsible for conducting an alternatives analysis to show that there are no feasible alternatives. The Commission may grant a partial waiver of the 100-foot No-Disturbance Zone performance standard and impose such additional or substituted mitigation requirements as it determines necessary, upon a clear and convincing showing by the applicant that:

a) There are no practicable alternatives that would allow the project to proceed in full compliance with this regulation; and

b) The project, or its natural and consequential effects, will have no adverse effects on any of the interests protected by the Ordinance. It shall be the responsibility of the applicant to provide the Commission with any information that the Commission requests in order for it to determine that no adverse effects will occur. The failure of the applicant to furnish information so requested shall result in the denial of a request for a waiver pursuant to this subsection; and

c) The project will improve the natural capacity of a resource area to protect the interests identified in the Ordinance, provided any adverse effects on any such interests are minimized by carefully considered and environmentally sensitive project design.

2. Mitigation:

In the case where any waiver in any part of the 100-foot No-Disturbance Zone is granted, the Commission shall require such mitigation measures as it determines necessary to offset impacts to the wetland resource areas.

C. 25-Foot No-Disturbance Zone

1. Waiver(s):

The Commission may grant a partial waiver from this performance standard for the alteration of a part of the 25-Foot No-Disturbance Zone in situations where there are no feasible alternatives that provide for fewer impacts to the resource area values. The applicant is responsible for conducting an alternatives analysis to show that there are no feasible alternatives. The Commission may grant a waiver of the 25-Foot No-Disturbance Zone performance standard and impose such additional or substituted mitigation requirements as it determines are necessary, upon a clear and convincing showing by the applicant that:

a) There are no practicable alternatives that would allow the project to proceed in full compliance with these regulations; and

b) The project, or its natural and consequential effects, will have no adverse effects on any of the interests protected by the Ordinance. It shall be the responsibility of the applicant to provide the Commission with any information that the Commission requests in order for it to determine that no adverse effects will occur. The failure of the applicant to furnish information that has been so requested shall result in the denial of a request for a waiver pursuant to this subsection; and

c) The project will improve the natural capacity of a resource area to protect the interests identified in the Ordinance, provided any adverse effects on any such interests are minimized by carefully considered and environmentally sensitive project design.

2. Mitigation:

In the case where a waiver in the 25-Foot No-Disturbance Zone is granted, the Commission shall require mitigation measures it determines are necessary to offset impacts to the wetland resource areas.

D. Wetland Resource Alteration

1. Waiver(s):

The Commission may grant a partial waiver from these regulations for alteration of a wetland resource area in situations where there are no feasible alternatives that provide fewer impacts to the resource area values. The applicant is responsible for conducting an alternatives analysis to show that there are no feasible alternatives. The Commission may, after considering the alternatives analysis, allow the alteration or temporary surface disturbance of up to a cumulative total no greater than 5,000 square feet of wetland resource area.

2. Mitigation

The Commission strongly discourages any plan that requires resource replication as scientific reviews conclude that for the most part replications fail to reproduce the range of values – in

quantity and quality – of the wetlands they ostensibly replace. Alteration may be allowed when said areas are replaced or restored according to the following criteria are met:

a) Wetlands replacement must be at least a 2:1 ratio (replicated wetland to altered wetland).

b) Replicated wetlands shall be made contiguous to existing wetlands unless the applicant is able to demonstrate that another location (adjacent to other resource areas) would have a greater ability to protect the interests of the Act and the Ordinance.

c) Replicated areas must be constructed prior to other construction activity on site. The applicant shall have the burden of proving where this requirement may not be appropriate to the interests of the Act and the Ordinance in certain instances.

d) Wetland soils from the altered wetland shall be excavated and kept intact to the greatest extent possible and used for the replicated wetland when these soils are suitable for such purpose.

e) A combination of natural re-seeding, transplanting, and new plantings shall be used to re-establish a vegetational community and structural diversity similar to the disturbed area.

f) At least 75% of the surface area of the replicated area must be established with native wetland plant species within two (2) growing seasons. If this condition is not met, the applicant must propose and implement corrective steps to be approved by the Commission.

g) Colonization of invasive species must be documented and controlled. Evidence of the spread of invasive species within a replication area shall require the development and implementation of a management/control plan.

h) A qualified wetland scientist chosen by the Commission, and hired at the applicant's expense shall monitor replicated wetlands on a bi-yearly basis and written reports shall be submitted to the Commission at least twice a year (May and October unless otherwise required by the Commission).

i) An "Interim As-Built Plan" complete with one foot contours, spot elevations, surface area and cross sections of the replication area shall be prepared by a Registered Professional Land Surveyor and submitted to the Commission within 30 days of completion of final grading of the replication area.

j) Any replication or restoration work that creates a resource area on abutting properties shall require an easement from the abutting property owner covering the full extension of the resource area on that property prior to commencement of the work.

E. <u>Additional Waiver Standards</u>

1. Roadways

The Commission may grant a waiver from these regulations for the construction and maintenance of a new roadway or driveway of minimum legal and practical width consistent with the Planning Board dimensional requirements to provide a single means of access from an existing public or private way to an upland area of the same owner, where no such means of access would otherwise be available or would have been available across other land formerly held in common ownership with such upland area. The applicant is still bound by the maximum alteration limit of 5,000 square feet as described in section V D.1. above. Replication of altered wetland resource areas shall be required by the Commission to minimize adverse impacts and to protect the interests defined in the Ordinance.

2. Prohibited Wetland Alterations

Wetland alterations intended to make lands buildable, as by fulfilling septic system setback requirements, flood elevation requirements, or other minimum construction setback requirements, or to achieve minimum lot area requirements, are prohibited. Wetland alterations required to access upland parcels will not be allowed if that landowner, or a preceding owner, landlocked the parcel by selling upland access. The Commission may require the filing of a request for a waiver of certain Planning Board requirements in order to minimize wetland impacts.

3. Wildlife Habitat Evaluation

Where alterations exceed the maximum allowable thresholds described in the State Regulations 310 CMR 10.00 for bank, land under a water body, bordering land subject to flooding or riverfront area, or where the alteration of a habitat of rare species is involved, or where vernal pool or vernal pool habitat would be altered, a wildlife habitat evaluation shall be performed in accordance with 310 CMR 10.60. The Commission may also require a wildlife habitat evaluation to be conducted when the applicant proposes alterations to any wetland resource area that the Commission determines to be of exceptional value to the wildlife habitat interests of the Ordinance.

4. Upland Habitat

Upland habitat shall, to the fullest extent possible, not be used to locate wetland replication areas.

SECTION VI– FILING PROCEDURES AND SUBMITTAL REQUIREMENTS

A. Request for Determination of Applicability

Any person or persons who desire a Determination as to whether the Act or this Ordinance applies to an area, or work to be performed in an area, shall submit a written Request for Determination of Applicability to the Commission in accordance with Section I.4 of the Ordinance.

1. General Filing Requirements

Nine (9) copies (1 original and 8 copies) of a Request for Determination of Applicability and accompanying plans, along with a check for the appropriate filing fee, shall be received 8 (eight) business days prior to the anticipated hearing date by certified mail, or hand delivery to the Conservation Commission at 3rd Floor, Planning Department, City Hall, 191 Cabot Street, Beverly, MA 01915.

Upon receipt of an application, the Commission or Conservation Administrator will determine, within two (2) business days, if the application meets the minimum submittal requirements identified in Section VI, A, 2. below. Those applications that do not meet the minimum submittal requirements will be rejected until the necessary information is provided.

2. General Plan Requirements

In addition to and in conformance with the requirements of 310 CMR 10.00, the following shall be submitted:

a) An 8 ½" x 11" copy of the USGS quadrangle map, or other locus map, with the area circled showing the location of the project.

b) A plan of sufficient size and scale that completely and accurately depicts the existing conditions on the site, the proposed project, and all of the resource areas and associated buffer zones located on the site.

c) When the Request for Determination of Applicability is for the verification of the delineation of a wetland resource are(s), the Request shall be prepared by a professional wetland scientist accompanied by a field surveyed plan depicting the existing conditions, the delineated boundary of the resource area(s) with flag numbers and elevations extending off the project site.

3. Public Meeting:

The Commission shall hold a public meeting to consider the Request for Determination of Applicability and shall issue a written Determination within twenty-one (21) days upon receipt of such Request. Prior to making a Determination, the Commission may require the submission of additional information deemed pertinent to the Determination.

The Commission may continue the public meeting in the following instances:

a) With the consent of the applicant, to an agreed-upon date which shall be announced at the meeting; or

b) Without the consent of the applicant, to a specified date for the reasons stated at the meeting, including but not limited to additional information from the applicant or others.

B. <u>Notice of Intent or Abbreviated Notice of Intent</u>

Any person who desires review of a Notice of Intent (NOI) or Abbreviated Notice of Intent (ANOI) shall file with the Commission plans and specifications as required under MGL Chapter 131, Section 40 and as further defined below. In order to demonstrate full compliance with this Ordinance and these Regulations, the applicant has the burden of proof to completely describe the site, the work, and its effect on resource areas and the interests they protect. The applicant is obligated to demonstrate that the work subject to regulation under this Ordinance and these Regulations can be carried out in a manner that meets all applicable performance standards and results in no impact to the wetland resource areas in question.

Applicants are urged to retain the services of a qualified, experienced, professional consultant when filing a Notice of Intent or Abbreviated Notice of Intent. Submission of incomplete or inadequate information or a failure to meet the burden of proof may result in delays and continuations in the review and approval procedure. Failure to provide adequate and credible documentation describing the impact of the project on resource areas may result in the issuance of a denial prohibiting the work.

1. General Filing Requirements

Nine (9) copies (1 original and 8 copies) of the Notice of Intent or Abbreviated Notice of Intent, and accompanying plans, as well as any pertinent data, along with a check for the appropriate filing fee, payable to the City of Beverly, shall be received 8 (eight) business days prior to the anticipated hearing date by certified mail, or hand delivery to the Conservation Commission at 3rd Floor, Planning Department, City Hall, 191 Cabot Street, Beverly, MA 01915.

Upon receipt of the application the Commission or Conservation Administrator will determine, within two (2) business days, if the application meets the minimum submittal requirements identified on the Notice of Intent Checklist found in Appendix B of these Regulations. Those applications that do not meet minimum submittal requirements of the application checklist will be rejected until the necessary information is provided.

2. Abutter Notification Requirements

The applicant shall provide notification to abutters within 300 feet of the property line where the work is proposed. The notification shall include sufficient explanation of the proposed work and all information pertinent to the date, time and location of the public hearing, and shall be sent by certified mail. The applicant shall notify abutters simultaneously to filing a Notice of Intent or Abbreviated Notice of Intent with the Commission, in order to provide abutters sufficient time to review the application and accompanying plans.

3. Plan Requirements

All applications shall include nine (9) copies of detailed plans. Technical data should be submitted to support the plans and shall be in narrative form with calculations submitted as necessary to substantiate the designs proposed. The applicant, upon submission of a Notice of Intent, shall comply with the requirements of Sections 24.4 and 24.5 of the Ordinance and incorporate the following:

a) All drawings shall be drawn with the title designating the name of the project, location and the names of the persons(s) preparing the drawings, and the date prepared, including the latest revision date. Drawings shall be stamped and signed by a duly qualified Registered Professional Civil Engineer and Registered Professional Land Surveyor of the Commonwealth of Massachusetts. For certain projects, including but not limited to additions to existing structures, the Commission may accept plans not drawn by a surveyor or civil engineer when these plans utilize a stamped plan as a "base map". In this case, the "base map" shall also be submitted or referenced.

b) Plans depicting proposed drainage systems and/or a subsurface sewage disposal system must be stamped by a Registered Professional Civil Engineer of the Commonwealth.

c) An 8 ½ " X 11" photocopy of the USGS topographic quadrangle indicating the location of the proposed activity and the outline of the area in which the activity is located.

d) Technical reports on both the engineering aspects of the project as well as the wetland resources of the project site shall accompany the Notice of Intent application.

e) Source material for any plan submitted must be referenced on the new plan.

f) If the applicant has submitted or anticipates submitting plans for the subject property to any other City Board, he/she shall submit those plans to the Commission for its review.

4. Existing Conditions Site Plan(s):

The following standards and design specifications are intended to provide the Commission with the minimum amount of data necessary to determine the impact of a proposed project on wetland resource areas and/or the ability of said resource area to provide documented functions and values. The Commission may from time to time adopt and publish additional guidelines and minimum technical standards for plans, calculations, and environmental impact reports submitted with an application for a permit. The Commission may find it necessary to request additional site-specific information to adequately determine the effect of the work on resource areas.
Existing conditions site plans shall incorporate the following information, as applicable:

a) Property boundaries and abutters from the most recent information on record at the Assessor's Office.

b) Watershed Protection Overlay District boundaries from the most recent Zoning Map.

c) Existing and proposed contours at two-foot intervals throughout the entire plan and the source for any datum used to establish these contours.

d) All existing natural and man-made features including tree lines, rock outcrops, stonewalls, fence lines, cart roads, foot paths, overhead and underground utilities, and drainage structures.

e) The location of all surface water supplies, wells, and septic systems on the property, and on abutting properties, within 100' of proposed work.

f) Elevations of all natural and man-made drainage structures, waterways, and wetlands (as defined by the Act and Ordinance).

g) All wetland resource areas including the 100-foot Buffer Zone, 25-foot No-Disturbance Zone and the 100-foot No-Disturbance Zone for Vernal Pools.

h) Flag numbers of all field delineated wetland resource areas.

i) 100 year flood elevations of all natural and man-made waterways and water bodies as determined from the FEMA Flood Insurance Rate Maps and Flood Boundary and Floodway Maps. Where the floodplain of wetlands and water bodies have not been mapped by FEMA, hydrologic and calculations may be required, prepared by a registered professional engineer to determine the boundary of the 10 and 100-year floodplain.

j) Hydrologic calculations showing the full-flow capacity and velocity of all water courses, open and only sometimes closed channels, and storm drains flowing into, on and out of the property.

k) Site plans shall be submitted at a scale of 1"=10', 1"=20', or 1" = 40'. Additional plans with greater or lesser detail may also be required if such plans would provide valuable information to the Commission in it's review. The Commission may request a plan at a different scale for large properties or unique circumstances.

F. Wetland Replacement or Restoration Plans

A complete wetland replacement or restoration plan shall be submitted with the permit application. Such a plan will meet all state and local performance standards and take all site specific and Commission-directed issues into consideration. The plan shall be prepared by an individual with demonstrated experience in wetland science and will include a description of the qualifications of the individual(s) who prepared the plan. In addition, this plan and report shall include the following information:

a) Proposed and existing species list using both common and genus/species identification, describing densities at each vegetative layer and discussion of vigor.

b) Depth to seasonal high groundwater.

c) Proposed contour elevations for the wetland resource replacement areas (at 1" = 40') and cross section profiles showing relationship to existing elevations. Discussion should be provided as to how the replacement area will provide similar and adequate conditions to support the proposed replacement vegetative community.

d) Current wetland resource area functions (including wildlife habitat) shall be identified with a description of how the replacement area will provide these functions. The proposal shall identify if the replacement is intended to be "in-kind" or "out-of-kind" (with a clear discussion of the particular appropriateness of that selected to this site) and if any of the existing vegetation in the replacement area can be retained for replanting.

e) A plan of how the proposed topography for the replacement area will meet the necessary hydrological conditions. Including a diagram of a planting scheme and a cross section of the pre and post replacement area.

f) The name and address of the firm and/or qualified individual experienced in wetland replication that will oversee the replication area construction and provide detailed monitoring reports to the Commission.

g) If additional soils or vegetation are required for augmentation, sources must be identified.

C. Public Hearing

The Commission shall hold a public hearing to consider the Notice of Intent and shall issue a written decision within twenty-one days after the close of the public hearing. Prior to the close of a public hearing all data deemed pertinent to the decision must be submitted and reviewed by the Commission. The Commission may continue or adjourn a public hearing in the following situations:

a) With the consent of the applicant, to an agreed-upon date which shall be announced at the hearing; or

b) Without the consent of the applicant, to a specific date for the reasons stated at the hearing, including but not limited to receipt of additional information from the applicant or others.

SECTION VII - PUBLIC HEARINGS & PUBLIC MEETINGS

Public hearings and public meetings on applications filed pursuant to the Ordinance and Regulations may be conducted simultaneously with public hearings and public meetings held pursuant to the Massachusetts Wetland Protection Act (MGL Chapter 131, Section 40) as amended. Permit applications filed with the Commission shall include both the Act and Ordinance under one cover. The decisions rendered by the Commission shall also include both the Act and Ordinance under one cover.

SECTION VIII - PERMITS AND DECISIONS

A. Decisions

As part of a permit issued pursuant to this Ordinance, the Commission shall impose such conditions as are necessary to protect the values of wetland resource areas under their jurisdiction. If the Commission deems that the interests stated in the Ordinance are not adequately protected under the terms of the applicant's proposal, the Commission may refuse to issue a permit. When the Commission votes to deny a permit, it shall issue a written decision supported by facts and findings explaining why the project may not be properly conditioned to meet the interests of the Act and this Ordinance.

B. Extension Permit(s)

The Commission may issue an Extension Permit for a period of one year provided that a written request for an extension is filed at least thirty (30) days prior to the expiration date of the Order of Conditions. The Commission may grant only two (2) Extension Permits for an individual Order of Conditions. Extension Permit requests must also meet all of the following conditions at the time of the written request:

a) No request for an Extension Permit will be granted unless the wetland is either reflagged by a qualified wetland biologist or the original approved flagging is re- established in the field by survey. The wetland delineation shall be verified by the Commission and/or their designated agent. The Commission may require a new filing, or the reopening of the public hearing, if the wetland delineation has changed from the original submittal.

b) No request for an Extension Permit will be reviewed until the necessary filing fee is received by the Commission.

c) No request for an Extension Permit will be granted for an expired Order of Conditions.

d) At the time of the request for an Extension Permit the project must be in compliance with the Order of Conditions and other permit requirements.

C. Modifications, Amendments And Revocation

1. Modification(s):

The Commission may modify, upon its own initiative or petition from the applicant, an Order of Conditions issued under this Ordinance and these Regulations. The Commission considers a Modification to be a "minor or insignificant project change" when said change will not result in an adverse impact to wetland resource area(s) and/or the interests protected under the Act and this Ordinance. No public hearing is required for a Modification to an Order of Conditions but the applicant must submit a written request fully explaining the proposed change. In the event that the Commission initiates a Modification at their own doing, written notification shall be provided to the applicant by certified mail or hand delivery.

A request for a Modification will not be reviewed or considered under the following instances:

a) If the appropriate filing fee is not submitted with the request to the Commission.

b) If the Order of Conditions has expired.

c) If the wetland resource area has not been re-flagged and/or the originally approved flagging is not re-established in the field. NOTE: The Commission may require a new filing or the reopening of the public hearing if the wetland delineation has changed from the original submittal.

2. Amendment(s):

The Commission may, on its own initiative or petition by the applicant, amend an Order of Conditions when a change in a permitted project is proposed that the Commission deems of "sufficient magnitude that will require the imposition of additional conditions to ensure adequate protection of wetland resource areas and/or the interests covered under this Ordinance and these Regulations". The Commission shall have the discretion to decide if a public hearing is warranted. The decision to hold a public hearing shall be based on the potential impact of the proposed work and its effect on the ability of the identified wetland resource areas to provide those interests as defined under the Act and Ordinance. In the event that the Commission initiates an amendment, written notification shall be provided to the applicant by certified mail or hand delivery. No request for an amendment will be reviewed until the necessary filing fee is submitted to the Commission.

A request for an Amendment will not be reviewed or considered under the following instances:

a) If the appropriate filing fee is not submitted with the request to the Commission.

b) If the Order of Conditions has expired.

c) If the wetland resource area has not been re-flagged and/or the originally approved flagging is not re-established in the field. NOTE: The Commission may require a new filing or the reopening of the public hearing if the wetland delineation has changed from the original submittal.

If the scope or purpose of the proposed project changed substantially, or the wetland interests identified in the Act and Ordinance are not protected, the Commission shall require the applicant to file a new Notice of Intent

3. Revocation(s):

The Commission may revoke an Order of Conditions issued under this Ordinance and these Regulations if any of the following circumstances occur:

a) The applicant and/or his/her successor's fail to comply with the terms of the Order; or

b) New information relating to the project is obtained which indicates that previous information presented to Commission was inaccurate; or

c) The project changes substantially after the completion of the Commission's review.

In considering a revocation of an Order of Conditions the Commission shall officially notify the interested parties through certified mail or hand delivery and hold a public hearing within 21 days of the notification date.

D. Certificate Of Compliance

Upon completion of the project, the applicant shall request in writing from the Commission a Certificate of Compliance. As-Built plans may also be required as noted in the Order of Conditions issued on the project. All as-built plans must be at the same scale as the plans submitted with the Notice of Intent. The applicant or his/her representative shall attend the scheduled meeting to answer any questions the Commission may have. If the Commission determines that the requirements of the Order have not been met the request for a Certificate of Compliance will be denied. The reasons for the denial shall be forwarded to the applicant within 21 days of the receipt of the request. The Commission may specify on the Certificate of Compliance that certain conditions of the Order of Conditions are imposed perpetually and do not expire with the issuance of the Certificate of Compliance. The person to whom the Certificate is issued shall forthwith record it in the Southern Essex Registry of Deeds or Land Court in the chain of title of the affected property and shall notify the Commission, in writing, that said recording has occurred, by sending a copy of the stamped recorded instrument to the Commission.

The following additional requirements must be satisfied in order to receive a Certificate of Compliance:

a) A Certificate of Compliance can be granted for an expired Order of Conditions.

b) When granted, a Certificate of Compliance will be issued to either the original applicant or the current landowner.

c) The following information must be submitted to the Commission in writing, in addition to the requirements of the Order of Conditions, when requesting a Certificate of Compliance:

- The name and address of the current landowner.
- The name and address of the individual/trust or corporation to whom the Certificate is to be granted.
- The street address and lot number for the project.
- The DEP file number.
- A statement certifying compliance with the Order of Conditions and the approved plan.

d) The person certifying Compliance with the Order of Conditions must have inspected the site, read the Order of Conditions and all referenced documents, and reviewed the contents of the Commission's files on the project. Depending on the scope and complexity of the project, the Commission may require a certified professional engineer or land surveyor to certify Compliance.

The Commission may withhold the issuance of a Certificate of Compliance if the project in question is part of (or related to) another project, which is not currently in compliance.

SECTION IX - PERFORMANCE GUARANTEES

A. Security

The Commission may require the applicant to furnish a performance guarantee in the form of a deposit of money in an amount determined by the Commission to be sufficient to cover the cost of all or any part of the site alterations specified in the Permit and/or shown on the plans approved by the Commission. This security shall be deposited in the name of the City of Beverly. The standard agreement is included on the "Performance Guarantee Form" which can be obtained from the Conservation Office. Security amounts will be set so that funds will be adequate to comply with the Order of Conditions, repair damage to wetlands and to permanently stabilize the work site and all soils. Security shall be determined on a site-by-site basis using these general guidelines:

Project	Range of Security
Single Family Home	$3,000 to $10,000/dwelling
Commercial/Industrial Facility	$10,000 to $15 000/building
Subdivision Roadway	$10 000 or more
Wetland Replacement	$3 / square foot

B. Covenant

The Commission may require the applicant to secure the performance and observance of conditions imposed on the project, by a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the City whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

C. Reduction of Security

The penal sum of any required performance guarantee, or the amount of any deposit held hereunder may, from time to time, be reduced by the Commission and the obligations of their parties thereto released by the Commission in whole or in part. The release schedule(s) for the security may be proposed by the applicant, and if acceptable, approved by the Commission.

D. Release of Performance Guarantee

Upon completion of site alterations required in the permit, security for the performance of which was given by security, deposit or covenant, or upon the complete performance of the covenants with respect to the site, the applicant may request and agree on the terms of release with the Commission.

If the Commission determines that said alterations have been completed in compliance with the conditions of the permits, it shall release the interest of the City in such security and return the deposit to the person who furnished same, or release the covenant, if appropriate. If the Commission determines that said alterations have not been completed in compliance with the permit, it shall, within 45 days, specify to the applicant, in writing, the details wherein said alterations fail to comply with the permit.

If the Applicant fails to complete the work secured by this agreement by the above stated or extended deadline, the deposit of money may be applied in whole, or in part, by and upon a vote of the Conservation Commission for the benefit of the City of Beverly to the extent of the reasonable cost to the City of completing such construction or installation as specified in this agreement. Any unused money and the interest accrued on the deposit of money, unless said interest is used to complete such construction or installation, shall be returned to the Applicant upon completion of such construction or installation by the City upon a vote of the Conservation Commission.

SECTION X - AVAILABILITY OF REGULATIONS

Copies of these Regulations and the Ordinance shall be made available for purchase from the Beverly Conservation Commission, for the price of $15.00 in the form of a check payable to the City of Beverly.

SECTION XI – AMENDMENTS

These Regulations may be amended from time to time by a majority vote of the Conservation Commission. Prior to taking a vote on an amendment, the Conservation Commission shall have held a public hearing on the proposed change(s).

SECTION XII – POLICIES

The Commission may issue policy statements that further support these Regulations. These Policies will be made available to any individual upon request. Persons seeking permits under this Ordinance and these Regulations should review the Policy Statements available in the Conservation Office.

SECTION XIII - EFFECTIVE DATE

An advertised public hearing was held on these Regulations on June 17, 2003. The Commission voted to adopt these Regulations on June 17, 2003, effective immediately. All other amendments shall be effective upon their adoption by the Commission following a public hearing and filing with the City Clerk.

SECTION XIV – SEVERABILITY

If any provision of these Regulations or the application thereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or the application of any part of these Regulations not specifically held invalid, nor shall it invalidate any order, permit, or Determination which previously had been issued, and to this end the provisions of these Regulations are declared to be severable.

SECTION XV – ENFORCEMENT

The Commission may enforce these Regulations, or an Order, permit, or Determination issued hereunder, in any manner consistent with Section I.9 of the Ordinance and all other laws. Enforcement Orders (Stop Work Orders) may be issued under the guise of the Ordinance and the Act (310 CMR 10.08) for the following:

a) Alteration of or activity or work within a wetland resource area or associated buffer zone without a valid Order of Conditions; or

b) Violation of the terms of any Order of Conditions, Determination, or permit; or

c) Failure to complete a project if it has resulted in an adverse impact to a wetland resource area.

APPENDIX A

BEVERLY WETLANDS PROTECTION ORDINANCE FEE CALCULATION SHEET

1.) **Request for Determination of Applicability:** $ _____

2.) **Modification/Amendment:** $ _____

3.) **Certificate of Compliance:** $ _____

4.) **Extension Permit:** $ _____

5.) **Emergency Certification:** $ _____

6.) **Abbreviated Notice of Resource Area Delineation:**

Feet of Resource Area _____x $25.00 per 100 feet: $ _____ (<$1,000.00)

7.) **Type and number of activities for Notice of Intent or Abbreviated Notice of Intent:**

Type of activity:_____ Number of activities:___ x Ordinance Activity Fee:_____Subtotal: $_____

Type of activity:_____ Number of activities:___ x Ordinance Activity Fee:_____Subtotal: $_____

Type of activity:_____ Number of activities:___ x Ordinance Activity Fee:_____ Subtotal: $_____

Type of activity:_____ Number of activities:___ x Ordinance Activity Fee:_____Subtotal: $_____

8.) **City Share from State Wetland Fee Transmittal Form Appendix B:** $_____

9.) **<u>Total City Share</u>:** $_____

APPENDIX B

NOTICE OF INTENT CHECKLIST

___ 10 copies of the Notice of Intent or Abbreviated Notice of Intent (1 original and 8 copies for Commission, 1 for DEP)

___ 10 copies of locus map attached to Notice of Intent (an 8.5" x 11" copy of the USGS Quad map with the site circled and labeled "locus") (9 for Commission, 1 for DEP)

___ 10 copies of plan of proposed work (9 for Commission, 1 for DEP)

___ 2 copies of Notice To Abutters (abutters within 300'of property lines must be notified by certified mail or hand delivery) (1 for Commission, 1 for DEP)

___ 2 copies of Abutters List (1 for Commission, 1 for DEP)

___ 3 copies of Notice of Intent Wetland Fee Transmittal Form (1 original for DEP P.O. Box 4062, 1 for DEP, 1 for Commission)

___ check payable to Commonwealth of Massachusetts (for DEP P.O. Box 4062)

___ 2 copies of check payable to the Commonwealth of Massachusetts (1 for Commission, 1 for DEP)

___ check payable to City of Beverly (also make 1 copy of this check for DEP)

The applicant must send DEP one set of the above checklist items by certified mail or hand delivery to the following address:

DEP
NERO – Wetlands Division – 5th Floor
One Winter Street
Boston, MA 02108

The applicant must also send the original Wetland Fee Transmittal Form and the check payable to the Commonwealth of Massachusetts by certified mail to the following address:

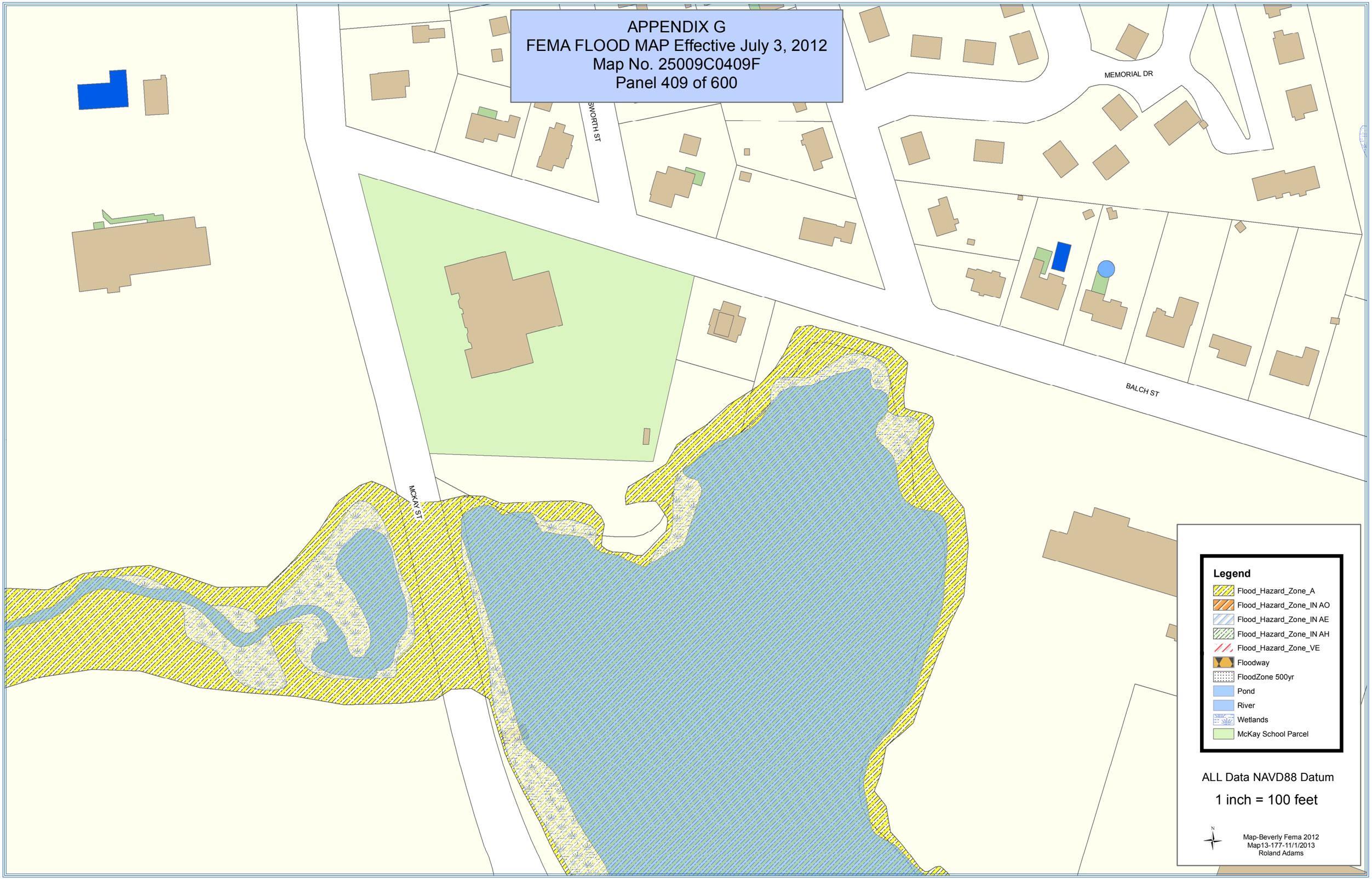
DEP
Box 4062
Boston, MA 02211

* Please Note: The applicant is responsible for the cost of the legal advertisement, which will be prepared and submitted to the Salem News by the Commission.

APPENDIX G

FEMA FLOOD ZONE INFORMATION

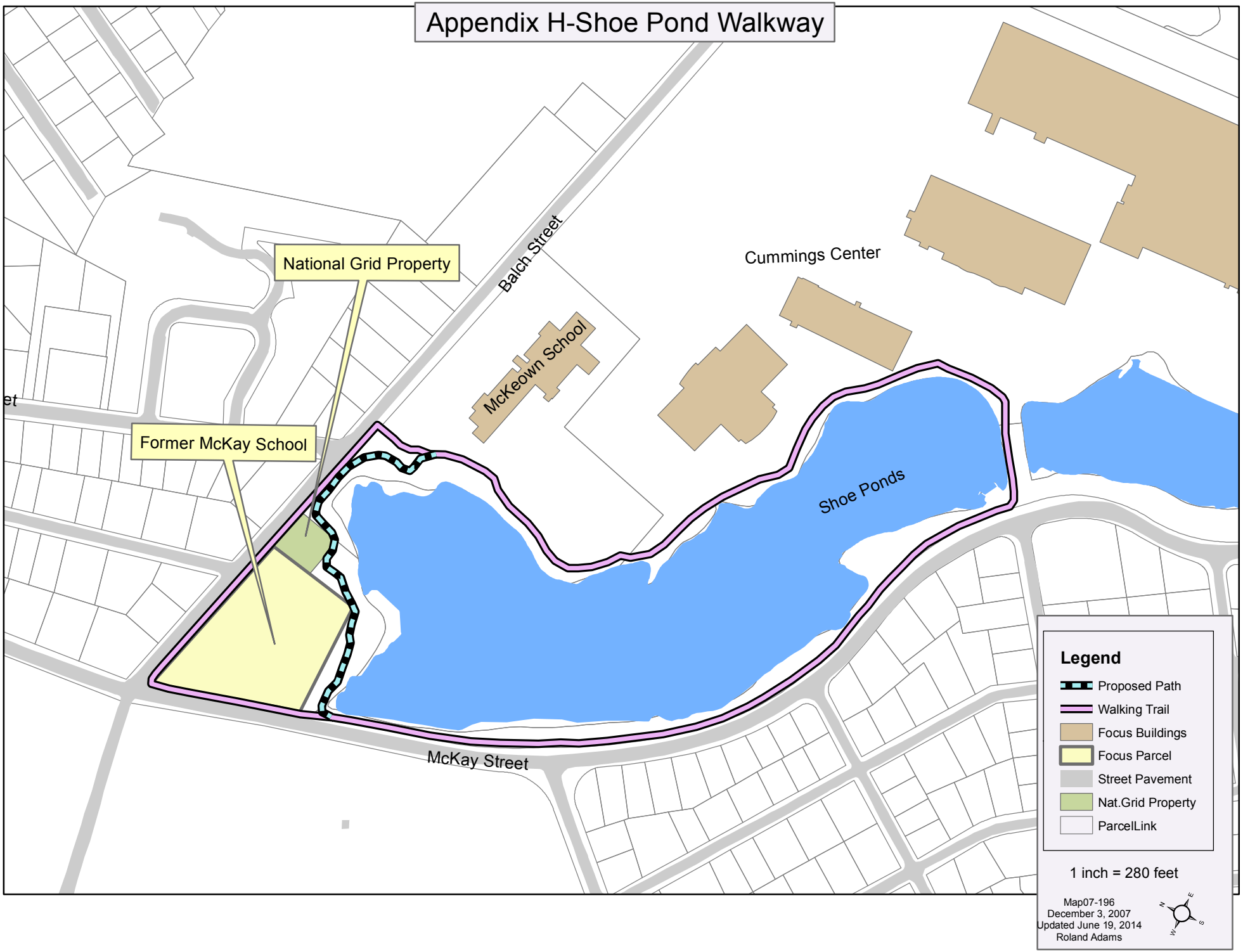
APPENDIX G
FEMA FLOOD MAP Effective July 3, 2012
Map No. 25009C0409F
Panel 409 of 600



APPENDIX H

MAP OF PUBLIC WALKWAYS NEAR RFP PARCEL

Appendix H-Shoe Pond Walkway



APPENDIX I

SUMMARY OF PRICE PROPOSAL FORM

APPENDIX I

SUMMARY OF PRICE PROPOSAL FORM
THIS FORM IS NOT SUBMITTED SEPARATELY

Name of Respondent: _____

This RFP response proposes to purchase the property advertised in the RFP issued by the City of Beverly entitled "Request for Proposals #14-017 Sale of Former McKay Elementary School" and published in DATE 2014.

PROPOSED PURCHASE PRICE

$ _____

_____

Written in Words

Signature of Respondent: _____

Date: _____

In the event there is a discrepancy in the numeral amount and written amount, the higher amount shall prevail.

APPENDIX J

DISCLOSURE OF BENEFICIAL INTEREST IN REAL ESTATE PROPERTY TRANSACTION STATEMENT

DISCLOSURE STATEMENT
ACQUISITION OR DISPOSITION OF REAL PROPERTY

For Acquisition or disposition of Real Property by _____the undersigned does hereby state, for the purpose of disclosure pursuant to Massachusetts General Laws, Chapter 7, section 40J, of a transaction relating to real property as follows:

(1) REAL PROPERTY DESCRIPTION:

(2) TYPE OF TRANSACTION:

(3) SELLER or LESSOR:

(4) BUYER or LESSEE:

(5) Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above:

NAME: RESIDENCE:

(6) None of the above mentioned persons is an employee of the Division of Capital Asset Management or an official elected to public office in the Commonwealth except as listed below.

(7) This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named above. If this form is signed on behalf of a corporation or other legal entity, it must be signed by a duly authorized officer of that corporation or legal entity. The undersigned acknowledges that any changes or additions to items 3 and or 4 of this form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Asset Management and Maintenance within (30) days following the change of addition.

The undersigned swears under the pains and penalties of perjury that this form is complete and accurate in all respects.

Signature:_____

Printed Name: _____

Title: _____

Date: _____

APPENDIX K

NON-COLLUSION / TAX CERTIFICATION / BID CERTIFICATION FORM

BID CERTIFICATION

Complete this page by signing in the space below and return with completed pricing pages.

As required under Chapter 233 and 701 of the Mass. Acts and Resolves of 1983 and Chapter 30B of Massachusetts General Laws, when returning the City's solicitation documents, certification must be made to the following by signing in the space indicated below.

Failure to offer such signature will result in rejection of the bid.

1. *"The undersigned certifies under the penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word person shall mean any natural person, business, partnership, corporation, union, committee, club or their organization, entity, or group or individuals" and,*

2. *"Pursuant to M.G.L. c.62C, §49A, I hereby certify, under penalties of perjury that to my best knowledge and belief the undersigned bidder has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support."*

This bid is submitted by:

_____

(Complete name of firm to be given here)

Signature: _____

Contact Person: _____

Business Address: _____

Telephone: _____ Employer I.D. #: _____

APPENDIX I

REQUIRED SUBMISSION CHECKLIST FORM

.REQUIRED SUBMISSION CHECKLIST

4.1.1 Letter of Transmittal ☐ YES ☐ NO

The proposal shall include a one-page letter of transmittal signed by the principal(s) of the proposer and addressed to the City's Purchasing Department.

4.1.2 Summary of Price Proposal Form ☐ YES ☐ NO

The form included in Appendix I must be included in your proposal section of each submitted response as noted in Section 4.3.

4.1.3 Description of Development Proposal ☐ YES ☐ NO

The proposal must include a detailed description of the proposed development concept including (but not limited to) the proposed use of the property, and all associated improvements arising from the development including the benefits and impacts of the development on the City, all as set forth below:

- ☐ A description of the proposed use(s) and estimated square footage of floor space by use. Include any proposed construction, renovation, or demolition of structures, additions, outbuildings, parking lots, landscaped areas, driveways and other modifications to the site in at least a conceptual format;
- ☐ A description and quantification of the populace the development is expected and intended to serve including the expected number of units and occupants;
- ☐ A description of the benefits of the project to both the City in general and the neighborhood surrounding the project site;
- ☐ A description of how the proposer plans to renovate the building and property, including a list of all permits that would be needed to construct the proposed development and a timeline for obtaining permits, completing improvements and making capital investments, if any;
- ☐ A discussion of municipal services required to service the new development, including traffic impacts, water consumption, and drainage;
- ☐ An analysis of the ways in which the proposal satisfies the evaluation criteria in Section 6.0; and
- ☐ Adherence to the requirements of this RFP.

4.1.4 Design Drawings ☐ YES ☐ NO

Proposals must include 11"x17" copies of the plans listed below sufficient to adequately describe the development concept. Color illustrations are preferred and additional plans are welcome.

- Site plan, schematic elevations, and renderings
- Typical floor plan(s)
- Landscaping and parking plan indicating open spaces, planting areas, and parking lot(s).

The plans shall include approximate dimensions and heights of proposed building(s) and other structures and site features, setback distances from property lines, parking calculations and total square footage estimates for all floors and structures.

4.4.5. Permitting, Construction, and Initial Investment Details and Timeline ☐ YES ☐ NO

Proposers shall provide a narrative description of the proposed project's permitting and construction phases, including permitting and construction milestones. Proposers must also provide a detailed breakdown of the investment expected to be made during the first twenty four (24) month period following execution of the Purchase and Sales Agreement.

4.4.6 Development Team Information ☐ YES ☐ NO

The proposal should include a description of the development team or ownership entity, the individuals and firms to be involved in the redevelopment project and their experience. Individuals and/or firms may be part of more than one team submitting proposals. The description of the development team must include the name, address, and telephone number of the proposer, the name of any representative authorized to act on the proposer's behalf, the name and address of the contact person to whom all correspondence should be addressed, and the names and primary responsibilities of each member of the development team.

The RFP must include:

- A description of the organizational structure of the development team or ownership entity.
- A summary of the team's/entity's experience, collectively and individually, with similar projects. Demonstrated ability to perform as proposed and to complete the project in a competent and timely manner including, without limitation, the ability to pursue and carry out design, permitting, financing, marketing (if applicable), construction, and operation (if applicable).
- If the proposer is not an individual doing business under his/her name, a description of the firm/organization and its organizational status (whether a for-profit, not-for-profit, or charitable institution, a general or limited partnership, a corporation, LLC, LLP, business association, or joint venture) and the jurisdiction(s) in which it is registered to conduct business.
- The legal entity owning any land other than the City land included in this RFP that may be included as part of the development proposal.

4.4.7 Project Financing and Financial Analysis ☐ YES ☐ NO

The proposer must submit a financial analysis sufficient to demonstrate the financial feasibility of the proposal. At a minimum, the proposal must include:

- A plan for financing the development, including a "sources and uses" of funds statement, evidence that the proposer has the financial capability to obtain the necessary funding, and if the financing sources are not recognized lending institutions, background information evidencing the soundness of such financing sources; and
- A development budget for the project, including hard and soft construction costs, and a five-year operating pro-forma (if applicable) or five-year investment rate and schedule.

4.4.8 Projection of Municipal Revenue ☐ YES ☐ NO

The proposal shall contain a statement of the real estate, personal property, excise and other tax revenue anticipated to be generated as a result of the development over the next ten years, with underlying calculations. If the proposer is a tax-exempt organization, the proposal shall instead set forth a schedule and list of proposed Payments In Lieu of Taxes (PILOT) to be paid to the City of Beverly and an explanation of how the figure was determined. The schedule and list must clearly

specify the intended duration of PILOT payments in years and must include a proposed legal mechanism to obligate payment.

4.4.9 References ☐ YES ☐ NO

The proposal shall include descriptions of comparable projects and references for those projects with names and telephone numbers. At least three (3) letters of references shall be provided. The reference letters shall include at least one (1) banking or other financial reference and one (1) client reference.

4.4.10 Disclosure of Beneficial Interest in Real Estate Property Transaction Statement and Non-Collusion/

Tax Certification ☐ YES ☐ NO

The proposal must include an executed Disclosure of Beneficial Interest in Real Estate Property Transaction Statement as well as an executed Non-Collusion/Tax Certification on forms included in Appendices J and K.

4.4.11 Minority and Women Owned Business Enterprises ☐ YES ☐ NO

The City encourages, to the extent allowed under the law, the active and meaningful equity participation of Minority-Owned Business Enterprises (MBE's) and Women-Owned Business Enterprises (WBE's) as certified by the State Office of Minority and Women Owned Business Assistance (SOMWBA). Proposals shall state whether the development team or the proposed end user includes any MBE's or WBE's and shall state the commitment to MBE's or WBE's to be made during construction.

4.4.12 Proposed Terms ☐ YES ☐ NO

Proposals shall specify the proposed terms of the sale and any non-monetary considerations, insurance, any easements or cross-easements needed for the development, mortgage financing contingencies, if any, and rights of mortgagees.

Bid Deposit ☐ YES ☐ NO

A deposit of Five Thousand Dollars ($5,000.00) (cash, treasurers' check, cashiers check, certified check or money order) is being submitted as part of the proposal package. **NO COMPANY OR PERSONAL CHECKS.**

Proposal Format and Deadline ☐ YES ☐ NO

Respondents must submit twelve (12) copies of their proposal containing complete information as requested and required by the terms of this RFP. Proposals must be submitted in a sealed envelope marked "McKay School RFP" on the outside of the envelope. **Please take note that there is NOT a separate price proposal**. Proposals must be completed in ink or typewritten and delivered to: