

**CITY OF BEVERLY  
WETLANDS PROTECTION  
REGULATIONS  
EFFECTIVE 06-17-2003**

AMENDMENTS THROUGH November 22, 2005

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## **SECTION I – GENERAL PROVISIONS**

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### **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: 1<sup>st</sup> modification/amendment = \$50.00, 2<sup>nd</sup> = \$75.00, 3<sup>rd</sup> = \$100.00, 4<sup>th</sup> = \$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

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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 I(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 15<sup>th</sup> to October 15<sup>th</sup>.
- 11.) Isolated Land Subject to Flooding means an isolated depression or a closed basin which serves as a 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

fect, 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**

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#### **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. Isolated Vegetated Wetland

### 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-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”.

### **C. Buffer Zone**

#### **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**

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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**

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### **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. Additional Waiver Standards**

### **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 3<sup>rd</sup> 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. Notice of Intent or Abbreviated Notice of Intent**

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 3<sup>rd</sup> 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**

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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**

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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**

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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**

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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**

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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**

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The Commission may enforce these Regulations, or an Order, permit, or Determination issued hereunder, in any manner consistent with Section 1.9 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.) **Total City Share:** \$ \_\_\_\_\_

## 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 - 5<sup>th</sup> 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.