

Chapter 178

WETLANDS PROTECTION ORDINANCE

§ 178-1. Purpose, Authority and Intent

The purpose of this ordinance is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the City of Fitchburg by controlling activities deemed by the Conservation Commission (or “Commission”) likely to have a significant or cumulative effect on resource area values, including but not limited to the following: public or private water supply, groundwater supply, flood control, erosion or sedimentation control, storm damage prevention, water quality, prevention and control of pollution, fisheries, wildlife habitat, rare species habitat including rare plant and animal species, agriculture, forestry, aquaculture, and recreation values, deemed important to the community (collectively, the “resource area values protected by this ordinance”).

The Conservation Commission will achieve this by requiring review and regulation of activities likely to have a significant or cumulative effect on these resource areas and values important to the community, while promoting responsible development within the City. These include but are not limited to the following resource area values or interests:

- (A) public or private water supply
- (B) groundwater
- (C) flood control
- (D) erosion and sedimentation control
- (E) storm damage prevention
- (F) water quality
- (G) water pollution control
- (H) fisheries
- (I) wildlife
- (J) wildlife habitat
- (K) rare species habitat, including rare plant species
- (L) aquaculture
- (M) agriculture and forestry uses and practices
- (N) recreation
- (O) aesthetics
- (P) historical and archaeological preservation

This ordinance is enacted pursuant to the Home Rule authority of the City of Fitchburg so as to protect the resource areas under the Wetlands Protection Act (G.L.C. 131, §40; “the Act”) to a greater degree; to protect additional resource areas in addition to those recognized in the Act which are recognized by the City as significant; to protect all resource areas for their additional values in addition to those values recognized in the Act, and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and regulations thereunder (310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses, forestry uses and practices, structures of all kinds and Priority Development

Site projects under the laws of the Commonwealth and other relevant ordinances of the City of Fitchburg.

The intent of this ordinance is to provide for greater control, regulation or restriction of activities other than that provided by the act notwithstanding that the ordinance uses language and references similar to that used in the act and the regulations. Because of the intent to provide local municipal standards distinct from the standards adopted by the commonwealth of Massachusetts, the conservation commission implementing this ordinance may interpret the language of this ordinance different from the interpretations made by the Department of Environmental Protection and the courts interpreting the act so long as its interpretations are not inconsistent with this Ordinance or in conflict with state law or the constitutions of the United States and the Commonwealth of Massachusetts.

This Ordinance shall not be construed to extend the jurisdiction of the Commission to any existing commercial, industrial, or residential structure or appurtenances, in existence at the time of the adoption of this ordinance, or any existing recreational or conservation related use or facility, but shall apply to any substantial change or extension of such use or structure.

§ 178-2. Definitions & Abbreviations

(A) Definitions

As used in this Chapter, the following definitions shall apply in the interpretation and implementation of this ordinance.

ABUTTER- means the owner of any property within three hundred (300) feet radially from any lot line of the subject property and include owners of land directly opposite the subject property on any public or private street or way including any such way in another municipality. In the case of property with frontage on a pond, abutters shall include all those owners of properties with frontage on the pond. In the case of property within the Surface Water Supply Protection Zone A (as defined herein), abutters shall include the owner of the water supply affected by the zone.

ACTIVITY- means any draining, dumping, dredging, damming, discharging, excavating, filling or grading; any construction, reconstruction, or expansion of any building, structure, road or way; any alteration or changing of the physical, chemical, or biological characteristics of an area of land or water.

AGRICULTURE - means the same as the definition in G.L. c. 128, §1A.

ALTER - and other forms of this word means any material change affecting a resource, including but not limited to:

- A. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind
- B. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics

- C. Drainage, and/or other disturbance of water level or water table
- D. Dumping, discharging, or filling with any material which may degrade water quality
- E. Placing of fill, or removal of material, which would alter elevation
- F. Driving of piles, erection, expansion or repair of buildings, or structures of any kind
- G. Placing of obstructions or objects in water
- H. Destruction of plant life including cutting or trimming of trees and shrubs
- I. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters
- J. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater
- K. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this ordinance.

APPLICANT- means any person who files a Determination of Applicability or Notice of Intent or on whose behalf said forms are filed.

APPLICATION- means a Determination of Applicability or Notice of Intent filed under this ordinance.

BANK- means the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

BORDERING LAND SUBJECT TO FLOODING - means land within the 100 year flood plain, as mapped by the federal emergency management agency. This area is presumed significant for flood control and storm damage protection.

BUFFER ZONE - means the same as the definition of the word in 310 CMR 10.00 and that area of land extending one hundred (100) horizontal linear feet horizontally outward from the boundary of the resource areas listed in Section 5 of this ordinance. The term "*buffer zone*" is synonymous with the "*upland resource area*".

CHEMICAL FREE ZONE - means a zone or area in which the manufacture, bulk storage or distribution of petroleum, chemical or asphalt products or other materials hazardous to the water supply are either prohibited or regulated so that the water supply is protected from contamination by the product. The products include:

- a. hazardous materials or oil as defined in G.L.c. 21E, § 2;
- b. radioactive materials;

- c. large commercial quantities of material which has a very soluble acid or base, or are highly biodegradable, or can create a severe oxygen demand transported or stored in large commercial quantities;
- d. poisons or the active ingredients of poisons that are or were ever registered in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended 7 U S C 135 et seq.; or dangerous to mammalian or aquatic life.

CUMULATIVE ADVERSE EFFECT - means the effect on a wetland or buffer resource area that is significant considering the effect of one activity in combination with other activities that have occurred, are occurring or are reasonably likely to occur within that resource area, whether such activities have occurred or are contemplated as a separate phase of the project, or as a result of unrelated activities on adjacent land.

FORESTRY- means the science, the art and the practice of conserving and managing for human benefit the natural resources, including trees, other plants, animals, soil and water, that occur on and in association with forest lands as defined in G.L. 132 § 47.

HARDSHIP - means an unreasonable economic burden on an applicant which, after an "alternatives analysis", cannot be alleviated by imposition of reasonable conditions. In considering whether the burden is unreasonable the Conservation Commission must consider

- (a) The degree to which the economic burden on the applicant is self-imposed by prior actions and decision of the applicant.
- (b) The impact on resources and whether these impacts can be mitigated, and
- (c) Whether denial of the applicant's requested waivers would harm the public interest, as defined herein.

HISTORIC MILL BUILDING(S)- means the historic structure or structures within the "historic mill complex" defined in 310 CMR 10.04, which structures that are/were used for manufacturing within the historic mill complex at any time and which were standing in 1996 and at the time when an application is filed.

INNER RIPARIAN ZONE - means the first one-hundred (100) horizontal linear feet of the riverfront measured from the mean annual high water mark of the river to a parallel line 100 feet away.

INTERMITTENT STREAM - means what it means in 310 CMR 10:00 and include streams which meet all criteria specified in the regulations, except:

- (a) the size of the watershed is greater than .25 miles and less than 1 mile square, and
- (b) the stream flows into a resource area.

ISOLATED LAND SUBJECT TO FLOODING - means a natural area, depression or basin that holds at minimum one-eighth acre foot of water to an average depth of at least six inches once a year. This shall not include swimming pools, artificially lined ponds or pools, or constructed wastewater lagoons.

NO BUILD ZONE - means an area within which no structure, permanent or otherwise, shall be erected.

NO DISTURBANCE ZONE - means an area that shall be maintained in its naturally vegetated state, in which activity is prohibited, except for minor activity as defined by the 310 CMR 10:00.

OUTER RIPARIAN ZONE - means the outer 100 feet of the riverfront area, measured from the outer edge of the inner riparian zone to a line 100 horizontal linear feet away and running parallel to it. The outer edge of the outer riparian zone is 200 horizontal linear feet from the mean high water mark of the river.

PERSON- means any individual, group of individuals, associations, partnerships, corporations, business organizations, trust, estate, commonwealth of Massachusetts to the extent that the application of this ordinance is not in conflict with state law, any public or quasi-public corporation or body to the extent that application of this ordinance is not in conflict with state law and any other entity, including the City of Fitchburg.

POND - has the same meaning as it does in 310 CMR 10.04 except that the size threshold of 10,000 square feet shall not apply.

PUBLIC INTEREST - shall mean (1) the common well being or general welfare of the residents of the City of Fitchburg or the general public, measured by increased public access for recreational, educational and cultural activities or increased protection of public health and safety, (2) the economic well being of the City of Fitchburg.

PRACTICE OF FORESTRY OR FORESTRY USE- means any professional services requiring the application of forestry principles and techniques. Such services shall include, but not be limited to, forest inventory, forest management planning, timber appraisal, the responsibility for the direction and supervision of silvicultural activities, use and protection of forested areas, and the evaluation of the economic and biological consequences of forest management activities as defined in G.L. 132 § 47 .

PRIORITY DEVELOPMENT SITE - means a privately or publicly owned property that is:

(1) commercially or industrially zoned;

(2) eligible under applicable zoning provisions, including special permits or other discretionary permits, for the development or redevelopment of a building at least 50,000 square feet of gross floor area in new or existing buildings or structures; and

(3) designated as a priority development site by the City of Fitchburg. Several parcels or projects may be included within a single priority development site.

RARE SPECIES - means all the vertebrate and invertebrate animals and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless whether the site in which they occur has been previously identified by the Division.

RIVERFRONT AREA - means what it means in G.L. c. 131, § 40 and the DEP regulations at 310 CMR 10.04 and 10.58, but the riverfront area also includes the following:

(a) lakes and ponds through which a river flows, regardless of their riverine characteristics, where such lake or pond is less than ten acres in its natural state, as calculated based on the surface area of lands lying below the natural high water mark.

(b) certain intermittent streams as defined in this ordinance.

SEPTIC COMPONENTS ZONE - means an area in which the placement of any tank, piping, leaching field or other component of an underground sanitary sewage treatment system is prohibited.

SURFACE WATER SUPPLY PROTECTION ZONE A - means:

1. A 400' foot wide buffer strip along the edge of a public water supply reservoir. The required setback distance shall be measured from the mean high water line of the reservoir.

2. A 200' foot buffer strip along the edge of any tributary stream which discharges into a water supply reservoir. The required setback distance shall be measured in the same way as the riverfront area, pursuant to 310 CMR 10:00.

TRIBUTARY STREAM - means any perennial or intermittent stream, including any lake, pond, wetland or other body of water formed therefrom, flowing either directly or indirectly into any water supply reservoir and body of running, or intermittently running, water which moves in a definite channel, naturally or artificially created, in the ground due to a hydraulic gradient, and which ultimately discharges to a Class A water body as Class A water is defined in 314 CMR 4.05(3).

UNDERGROUND FUELS AND HAZMAT ZONE - means a zone or area in which the manufacture, bulk storage or distribution of petroleum, chemical or asphalt products or any substance or mixture having physical, chemical or infectious characteristics which pose a significant, actual or potential hazard to water supplies or other hazards to human health, if such substance or mixture was discharged to land or water in the vicinity and in which these substances are either prohibited or regulated so that the water supply is protected from contamination by the substances. These substances include toxic or hazardous materials, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as toxic or hazardous under MGL c. 2lc and c. 2le and 310.CMR 30.00. This includes solvents and thinners in quantities greater than normal household use.

UPLAND RESOURCE AREA - means the "buffer zone" as defined herein. The upland resource area has no buffer zone.

VERNAL POOL - means in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be the mean annual high-water line defining the depression. Except as otherwise provided in this ordinance or in associated regulations of the Conservation Commission, the definitions of terms and the procedures of this ordinance shall be as set forth in the Wetlands Protection Act (G.L. c. 131 §40) and regulations (310 CMR 10.00).

WETLAND DEPENDENT STRUCTURES - means any trail, dam, boat or canoe launch area, or any other structure or area associated with the customary enjoyment or use of any pond, lake, river or other waterway. It shall also include equipment associated with the generation of hydro power.

WILDLIFE- means all mammals, birds, fish, reptiles, amphibians and invertebrate animal species including, but not limited to, any state- or federally-listed endangered or threatened species, or species of special concern.

WILDLIFE HABITAT- means areas having plant community composition and structure, hydrologic regime, or other characteristics which are sufficient to provide shelter, nutrient sourcing, growing conditions, nesting or breeding sites conducive to the propagation and preservation of wildlife.

(B) Abbreviations:

- A. BVW- means bordering vegetated wetlands
- B. CMR- means the Code of Massachusetts regulations
- C. COC- means Certificate of Compliance
- D. DEP- means Department of Environmental Protection
- E. MGL or G.L.- means Massachusetts General Laws
- F. NOI- means Notice of intent
- G. OOC- means Order of Conditions
- H. RDA- means request for Determination of Applicability
- I. ANRAD- means Abbreviated Notice of Resource Area Delineation
- J. WPA OR ACT-means the Wetlands Protection Act, c. 131, § 40.

§ 178-3. Applicability and jurisdiction.

Except as permitted by the Conservation Commission no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, pollute or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, kettle holes, vernal pools, springs, banks, reservoirs, lakes, ponds of any size, beaches, and lands under water bodies; intermittent streams, brooks and creeks; lands adjoining these resource areas out to a distance of 100 feet, known as the Buffer Zone; perennial rivers, streams, brooks and creeks; lands adjoining these resource areas out to a distance of 200 feet, known as the Riverfront Area; lands subject to

flooding or inundation by groundwater or surface water; and lands subject to coastal storm flowage, or flooding (collectively the “resource areas protected by this ordinance”). These resource areas shall be protected whether or not they border surface waters.

The jurisdiction of this ordinance shall not extend to uses and structures of agriculture and forestry that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture or forestry, including work performed for normal maintenance or improvement of land in agricultural, forestry or aquacultural uses as defined by the Wetlands Protection Act regulations, found at 310 CMR 10.04..

§ 178-4. Exemptions and exceptions.

A. Agriculture and Forestry

The applications and permits required by this ordinance shall not be required for work performed for normal maintenance or improvement of land in agricultural, forestry and aquacultural use as defined by the Wetlands Protection Act regulations found at 310 CMR 10.04.

B. Public Utilities and services

The applications and permits required by this ordinance shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Conservation Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

C. Emergency projects

The applications and permits required by this ordinance shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this ordinance.

D. Existing uses

This ordinance does not apply to existing uses or structures in existence or which had a valid a building permit on the effective date of the ordinance but will apply to any substantial change or extension of such use or structure.

E. Minor activities

The ordinance does not apply to minor activities as defined in 310 CMR10.02(2)(b).

F. Historic mill buildings

Portions of historic mill complexes as defined in 310 CMR 10.04 is exempt from the application of this ordinance and not under the jurisdiction of the Conservation Commission. This exempts that portion of the mill complex within the footprint of the historic mill buildings (as defined herein). All other components of the historic mill complex, including impervious surfaces, driveways, sluiceways, out-buildings, silos, garages, storage buildings, rail spurs, roads and other appurtenances of the historic mill complex are subject to this ordinance.

G. Priority Development Site projects

This ordinance does apply to projects within Priority Development Sites (as shown on the Zoning Map), but the timeframes stipulated in this ordinance may be superseded by the provisions of G.L. c.43D to the extent that the Commission is required to act within certain timeframes for any application within a Priority Development Site (generally 180 days from application acceptance).

H. Wetland Protection Act exceptions

Other than stated in this ordinance, the exceptions provided in the Wetlands Protection Act (G.L. c. 131, §40) and regulations (310 CMR 10.00) shall not apply under this ordinance.

§ 178-5. Applications and fees.

Written application shall be filed with the Conservation Commission to perform activities affecting resource areas protected by this ordinance. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this ordinance. No activities shall commence without receiving and complying with a permit issued pursuant to this ordinance.

The Commission in an appropriate case may accept as the application and plans under this ordinance any application and plans filed under the Wetlands Protection Act (G.L. c. 131, §40) and regulations (310 CMR 10.00) but the Commission is not obliged to do so.

Any person desiring to know whether or not a proposed activity or an area is subject to this ordinance may in writing request a determination from the Commission. Such a Request for Determination of Applicability (RDA) or Abbreviated Notice of Resource Area Delineation (ANRAD) filed under the Act shall include information and plans as are deemed necessary by the Commission.

At the time of an application, the applicant shall pay a filing fee specified in the regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act and regulations.

§ 178-6. Consultant's fees.

Pursuant to and subject to the limitations of G.L. c. 44, §53G and regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purposes of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects. Such funds shall be deposited with the city treasurer, who shall create an account specifically for this purpose. Additional consultant

fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

The commission may expend such funds only in connection with carrying out its responsibilities under the law. Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission. The Commission shall provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or delivered. The applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.

The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested consultant fee within ten (10) business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and Department of Environmental Protection (DEP) of such a decision in writing. In appropriate situations, the consultant fees may include fees for the costs of monitoring a project until its completion provided that these fees are separately described and set by the commission.

The applicant may appeal the selection of an outside consultant to the City Council, which may disqualify the consultant only on the rounds that the consultant has a conflict of interest or is not properly qualified. 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. The applicant shall make an appeal in writing, which must be received within ten (10) business days of the date that request for consultant fees was made by the Commission. Such appeal shall extend the applicable time limits for action upon the application.

§ 178-7. Notice and hearings.

A. Any person filing a permit or other application or RDA or ANRAD or other request with the Conservation Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice shall include a brief description of the project or other proposal and the date of any Commission hearing or meeting date if known. The notice to abutters also shall include a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any permit application, RDA, or ANRAD with written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the municipality. The Commission shall commence the public hearing within 21 days from receipt of a completed permit application,

RDA, or ANRAD unless an extension is authorized in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials listed in §178-9.

The Commission shall issue its permit, other order or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant. The Commission in an appropriate case may combine its hearing under this ordinance with the hearing conducted under the Wetlands Protection Act (G.L. c. 131, §40) and regulations (310 CMR 10.00).

B. The conservation commission shall charge fees for any application, RDA, permit, or other relief sought from the commission. These fees shall be commensurate with the reasonable costs of the service or services provided by the commission including the reasonable costs of monitoring any permitted activity or any conditions imposed by the commission. These fees must be established by regulation duly adopted by the commission and filed on a schedule available at the office of the city clerk and such other places as the commission chooses.

§ 178-8. Coordination with other boards.

Any person filing a permit application, RDA, or ANRAD with the Conservation Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested) or hand delivery, to the planning board, board of appeals, board of health, city engineer, and building commissioner. A copy shall be provided in the same manner to the Commission of the adjoining municipality, if the application or RDA pertains to property within 300 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the above boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to Final Action. For applications within a Priority Development Site, the applicant shall also submit a copy of the application to the primary municipal liaison, who will coordinate the reviews of all applications submitted for the project according to the Priority Development Site procedures.

§ 178.9. Permits and conditions.

If the Conservation Commission, after a public hearing, determines that the activities which are subject to the permit application, or the land and water uses which will result therefrom, are likely to have a significant individual or cumulative effect on the resource area values protected by this ordinance, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect. The Commission also shall take into account any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities.

If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect said resource area values, and all activities shall be conducted in accordance with those conditions. Where no conditions are adequate to protect said resource area values, the Commission is empowered to deny a permit for failure to meet the requirements of this ordinance. It may also deny a permit: for failure to submit necessary information and plans requested by the Commission; for failure to comply with the procedures, design specifications, performance standards, and other requirements in regulations of the Commission; or for failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values protected by this ordinance.

§ 178.10. Waivers

Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. On written application, the Commission may waive specifically identified or requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, when, in the judgment of the Commission, such action is in the public interest or to avoid a decision that so restricts the property as to constitute and unconstitutional taking without compensation, as long as it is consistent with the predominant intent and purposes of this Ordinance. The Conservation Commission reserves the right to require the applicant to show evidence that reasonable alternatives cannot be achieved prior to approval of the waiver.

§ 178.11. Buffer Zones.

In reviewing activities within the Buffer Zone, the Commission shall presume the Buffer Zone is important to the protection of other resource areas because activities undertaken in close proximity have a high likelihood of adverse impact, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission may establish, in its regulations, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of such lands, including without limitation strips of continuous, undisturbed vegetative cover, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the ordinance.

§ 178.11. Riverfront Area.

In reviewing activities within the Riverfront Area, the Commission shall presume the Riverfront Area is important to all the resource area values unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this ordinance, has proved by a preponderance of the evidence that (1) there is no practical alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this ordinance. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential,

institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.

§ 178.12. Resource area loss prevention.

In the event that the Commission shall allow an applicant to alter a resource area, the Commission shall require the applicant to provide full mitigation to minimize such alteration. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication. The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless the type of resource area or the amount or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60).

§ 178-13. Vernal Pool presumption and evaluation.

The Commission shall presume that all areas meeting the definition of "vernal pools" under §178-2 of this ordinance, including the adjacent area, perform essential habitat functions. The presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act regulations.

§ 178.14. Expiration dates, revocation and amendment.

A permit, Determination of the Applicability (DOA), or Order of Resource Area Delineation (ORAD) shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one-year period, provided that a request for a renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all present and future owners of the land.

For good cause the Commission may revoke any permit, DOA, or ORAD or any other order, determination or other decision issued under this ordinance after notice to the holder, the public, abutters, and city boards, pursuant to §178-7 and §178-8, and after a public hearing.

Amendments to permits, DOAs or ORADs shall be handled in the manner set out in the Wetlands Protection Act regulations and policies thereunder.

§ 178-15. Combined decisions.

The Commission in an appropriate case may combine the decision issued under this ordinance with the permit, DOA, ORAD, or Certificate of Compliance (COC) issued under the Wetlands Protection Act and regulations.

§ 178-16. Recording of permits.

No work proposed in any application shall be undertaken until the permit, or ORAD issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and the holder of the permit shall certify in writing to the Commission that the document has been recorded. If the applicant fails to perform such recording, the Commission may record the documents itself and require the Applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a COC.

§ 178-17. Regulations.

After public notice and public hearing, the Conservation Commission shall promulgate rules and regulations to effectuate the purposes of this ordinance, effective when voted and filed with the City Clerk. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this ordinance. At a minimum these regulations shall reiterate the terms defined in this ordinance, define additional terms not inconsistent with the ordinance, and impose filing and consultant fees. Any change to this ordinance that would suspend or invalidate any section of the promulgated regulations shall be approved by the Conservation Commission by majority vote prior to any petition of the City Council.

§ 178.18. Security.

As part of a permit issued under this ordinance, in addition to any security required by any other municipal or state board, agency, or official, the Conservation Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or both of the methods described below:

- A. By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a COC for work performed pursuant to the permit.
- B. By accepting 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 this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

§ 178-19. Enforcement.

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this ordinance, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this ordinance. The following enforcement procedures shall apply:

- A. The Conservation Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this ordinance and may make or cause to be made such examination, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.
- B. The Commission shall have authority to enforce this ordinance, its regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, non-criminal citations under G.L. c. 40 §21D, and civil and criminal court actions. Any person who violates provisions of this ordinance may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.
- C. Upon request of the Commission, the City Solicitor shall take legal action for enforcement under civil law. Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law.
- D. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

§ 178.20. Fines, non-criminal disposition.

Any person, who violates any provision of this ordinance, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than \$300 per calendar day. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the ordinance, regulations, permits, or administrative orders violated shall constitute a separate offense.

As an alternative to criminal prosecution in a specific case, the Commission may issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in G.L. c. 40, §21D.

§ 178.21. Burden of Proof.

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative effect upon the resource area values protected by this ordinance. Failure to provide adequate evidence to the Conservation Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

§ 178.22. Appeals.

A decision of the Conservation Commission shall be reviewable in the superior court in accordance with G.L. c. 249, §4.

§ 178.23. Relation to the Wetlands Protection Act.

This ordinance is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (G.L. c. 131, §40) and regulations (310 CMR 10.00) thereunder. It is the intention of this ordinance that its purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Wetlands Protection Act and regulations.

§ 178.24. Severability.

The invalidity of any section or provision of this ordinance shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, approval or determination which previously has been issued.