



Wetlands Protection Ordinance Rules and Regulations

Amended March 27, 2012

SECTION 1 GENERAL PROVISIONS

1.1 AUTHORITY

These rules and regulations are promulgated by the City of Fitchburg Conservation Commission under the authority of Chapter 178 of the City of Fitchburg code, the Wetlands Protection Ordinance, and the Home Rule Amendment, G.L. c. 128, §1A, of the Constitution of the Commonwealth of Massachusetts, and shall have the force of law upon the effective date.

1.2 PURPOSE

The purpose of these regulations is to aid in the consistent and effective implementation of the City of Fitchburg Wetlands Protection Ordinance (“the Ordinance”) by way of further definition, explanation and specification, and illustration and example of the Ordinance’s provisions. These rules and regulations set uniform standards and procedures for activities and work conducted in wetland and buffer zone resource areas and for the filing and review of applications under the Ordinance.

Wetlands and wetland buffer zones contribute to a number of public interests and values and are therefore protected by this Ordinance. These interests and values include, but are not limited to, the following: public and/or private water supply, groundwater protection, surface water protection, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, fisheries, freshwater shellfish, protection of endangered and/or threatened species, and wildlife and wildlife habitat.

1.3 JURISDICTION

In accordance with the above Purpose, no person shall remove, fill, dredge, discharge into, or otherwise alter any wetland resource area or buffer zone resource area of the City of Fitchburg as defined herein without an Order of Conditions or a Determination of Applicability from the City of Fitchburg Conservation Commission as provided by the Ordinance and these regulations.

Wetland and buffer zone resource areas protected by this Ordinance include but are not limited to:

- (1) Any vegetated wetland (marsh, swamp, wet meadow, bog, etc.)
- (2) Any river or stream (intermittent or perennial)
- (3) Any lake or pond
- (4) Any bank of the resource areas identified in 1.3(2) and (3)
- (5) Any vernal pool or pool of water having vernal pool properties or characteristics registered with the Department of Environmental Protection or unregistered.
- (6) All lands within 100 feet of the wetland resource areas identified in 1.3(1) through (5) (buffer zone resource areas)
- (7) Any land subject to flooding or isolated land subject to flooding
- (8) All lands within 200 feet of a perennial river or stream
- (9) Land under any of the resource areas identified in 1.3(1) through (8)

1.4 DEFINITIONS

The following definitions are definitions not specifically defined with in the ordinance.

ACT- means the Wetlands Protection Act, Chapter 131, s. 40, as amended.

BUSINESS DAY- means Monday through Friday. *Revised 3/27/12*

CONDITIONS- means an ORDER OF CONDITIONS.

CREEK- means any small stream or any intermittent tributary to any brook, river or stream.

DATE OF RECEIPT- means the date of delivery to an office, City Clerk, or usual place of business by certified mail or hand delivery.

DREDGE- means to clean, deepen, widen or excavate, either temporarily or permanently.

FILL- means either of the following, whichever is applicable:

- (a) to deposit or place any material so as to raise in elevation, either temporarily or permanently;
- (b) anything that fills or is used to fill - especially earth or gravel used for filling a hole, depression or low area.

FLOOD CONTROL- means the prevention or reduction of flooding and/or flood damage.

FLOODING- shall be defined as a local and temporary inundation of water or a rise in the surface of a body of water such that it covers land not usually underwater.

FLOOD PLAIN- means the floodplain as shown on FEMA Flood Insurance Maps.

GROUNDWATER- means water below the earth's surface in the zone of saturation.

LAKE- means any open body of fresh water with a surface area of 10 acres or more, and shall include great ponds.

LIKE ACTIVITY- means any activity similar in nature, purpose and extent as that activity currently occurring on the site of the proposed work.

LIKE STRUCTURE- means any structure similar in design or use currently located on the site of the proposed work.

MAJORITY- shall mean more than half of the members of the Conservation Commission present and/or available to hear an application.

MARSH- See definition in the Act Chapter 131, Section 40, as amended.

NOTICE OF INTENT- shall be a written notice filed by any person intending to alter, or in any way change, the physical or chemical properties of land subject to protection under the Ordinance.

OPEN SPACE- Land that is left generally in its natural state or has been returned to its natural state for the sake of conservation and public interest.

ORDER- means an ORDER of CONDITIONS.

ORDINANCE- means the City of Fitchburg Wetland Protection Ordinance.

PLANS- means such data, maps, engineering drawings, calculations, specifications, schedules and other materials deemed necessary by the Commission to describe the site and/or the work, to determine the

applicability of the Ordinance or to determine the impact of the proposed work upon the interests of the Ordinance.

PRIVATE WATER SUPPLY- means any source or volume of surface or groundwater demonstrated to be in any private use or demonstrated to have a potential for private use.

PUBLIC WATER SUPPLY- means any source or volume of surface or groundwater demonstrated to be in public use or approved for water supply pursuant to M.G.L. Chapter 111, Section 160 by the Division of Water Supply of the Department of Environmental Protection or shown to have a potential for public use.

QUORUM- A quorum is defined by a simple majority of the acting members. *Revised 3/27/12*

REMOVE- means the act or process of taking away or moving any type of materials thereby changing the land elevation or topography, either temporarily or permanently.

REPLACEMENT- means to put back in proper place, or to provide an equivalent to the satisfaction of the Commission.

RESOURCE AREA- The term “resource area” shall mean any area subject to protection under this Ordinance and include any bank, wetland, vernal pool, buffer zone, lands subject to flooding or riverfront area.

RIVER- means a natural stream of water that empties into any lake, pond or other river or stream, and has a continuous or intermittent flow.

SIGNIFICANT- means to play a role. A resource area is significant to an interest identified in the Ordinance when it plays a role in the provision or protection, as appropriate, of that interest.

STORM DAMAGE PREVENTION- means the prevention of damage caused by water from storms including, but not limited to: erosion and sedimentation; damage to vegetation, property or buildings; or damage caused by flooding, waterborne debris or waterborne ice.

STREAM- means a body of running water including brooks and creeks, whether continuous or intermittent, moving in a definite channel in the ground.

SWAMP- See definition in the Act, M.G.L. Chapter 131, Section 40, as amended.

WAIVER- means an authorization from the Conservation Commission to an applicant for a deviation from the terms of the Ordinance as described in Section 1.5 of these Rules and Regulations.

WORK- means the same as **ACTIVITY**.

1.5 WAIVERS FROM RULES AND REGULATIONS

Strict compliance with these Rules and Regulations may be waived when, in the judgment of the Commission, such action is in the public interest, and is consistent with the intent and purpose of the Ordinance. Any request for a Waiver must be submitted to the Commission in writing. The Waiver(s) shall be presented at the time of filing. (The Commission shall require the Applicant to submit a written justification stating why a Waiver is desired or needed, is in the public benefit, and is consistent with the intent and purpose of the Ordinance.)

1.6 ADVICE FROM CITY STAFF

Any advice, opinion, or information given to an Applicant by a Commission member, or by any agency, officer, or employee of the City, shall be considered advisory only, and not binding on the Commission.

SECTION 2

FILING REQUIREMENTS

2.1 TIME PERIODS

All time periods of ten days or less specified in the Ordinance or in these Rules and Regulations shall be considered business days only. Time periods of more than ten days shall be considered calendar days, unless the last day falls on a Saturday, Sunday or legal holiday, in which case the last day shall be the next business day to follow.

(1) Timeframes for Submission of Documentation

In order to insure adequate and proper review by the Commission, staff and the public, all permit application documentation -- including forms, narrative descriptions, plans, maps, tables, charts, reports, etc. -- must be submitted to the Conservation Commission no later than seven business days prior to the scheduled public hearing, or its continuation. Documentation submitted by the Applicant six business days or less before the public hearing may be excluded from said hearing or held for discussion at a subsequently scheduled hearing. Submission of material by the Applicant six business days or less before the public hearing will constitute a constructive request by the Applicant for a continuation of the hearing if, in the opinion of the Commission, the Commission, staff or public has not had adequate or sufficient time to properly consider said material. The Fitchburg Conservation Agent must forward the received information on the sixth calendar day to the commission for review. Any information the Fitchburg Conservation Agent has not received at noon by the sixth calendar day prior to the scheduled meeting shall be considered late and will constitute a continuance unless prior permission is granted by the Fitchburg Conservation Commissioner chairman or person(s) delegated to act on behalf of the chairman. *Revised 3/27/12*

2.2 DETERMINATIONS OF APPLICABILITY

Any Person who is proposing to undertake an activity and desires to know what is required of them may arrange a preliminary discussion by contacting the Conservation Office and arranging a time at a Commission meeting, or may satisfy their questions during the citizens' concerns portion of any regular Commission meeting.

(1) Filing Procedures

The Request for Determination of Applicability shall include sufficient information to enable the Commission to find and view the area and to determine whether the proposed work will alter an area subject to protection under the Ordinance. The information shall include, at a minimum:

- (a) Form 1 (Wetland Protection Act, M.G.L. Chapter 131, s. 40);
- (b) Such Plans, prepared and stamped by a Registered Professional Engineer and Registered Professional Land Surveyor, as are needed to locate and inspect the area and to determine whether the proposed work may significantly alter an area subject to protection. The requirement that Plans be stamped by a registered professional

engineer and registered professional land surveyor may be waived by the Commission or its agent if it is deemed unnecessary. These Plans shall show:

- (i) All Wetlands that are within 100 feet of the edge of Activity;
 - (ii) Riverfront Areas including inner and outer riparian zones
 - (iii) Wetland Protection Setbacks (See Section 3.2)
 - (iv) The 100 foot Buffer Zone;
 - (v) Erosion and sedimentation control/prevention devices and method of maintenance;
 - (vi) The edge of disturbance, if different from the erosion control/prevention devices.
 - (vii) Location of stockpiled materials, if any.
 - (viii) existing/proposed elevations and contours
 - (ix) Any riverfront calculations
- (2) In order to clarify the review process for the Commission and/or its agent, all Wetlands within 100 feet of the edge of Activity shall be marked with numbered flagging tape which will correspond to the edge of Wetlands as shown and numbered on the Plans.
- (3) Said Request for Determination of Applicability shall be sent by certified mail or hand-delivered to the Commission. If necessary, the Commission and/or its agent may require that additional information be submitted to aid in the evaluation. If all data required by the Commission and/or its agent is not received, the filing shall not be considered complete, a public meeting shall not be scheduled and the Applicant shall be notified.

At the public meeting the Commission will determine:

Positively: that the area or Activity is subject to the jurisdiction of the Ordinance and requires the filing of a Notice of Intent; or

Negatively: that the area or Activity is not subject to the jurisdiction of the Ordinance, or that the interests protected by the Ordinance are fully protected by the project as proposed. The commission reserves the right to condition this determination and may change its determination if scope of work changes.

Revised 3/27/12

2.3 NOTICES OF INTENT

2.3 (1) FILING PROCEDURES

Written application shall be filed with the Commission to perform Activities regulated by the Ordinance affecting Resource Areas protected under the Ordinance. The Applicant shall provide the Commission with:

In order to reduce the amount of paper used for submission the Fitchburg Conservation Commission will require the following submittal materials as part of any submission.

- One copy to be filed with the Conservation Agent,
- One with the Fitchburg Conservation Chairman,
- one with the Wetland Consultant and

- one with the Department of Environmental Protection.
- One half size (11"x17") set of the plans and information provided for all sitting members and alternate members of the commission.
- One electronic copy of all information to be sent to the Conservation Agent for archival.

Revised 3/27/12

The application shall include such information and Plans as are deemed necessary by the Commission to describe proposed Activities and their effects on Areas Subject to Protection. No Activities shall commence without receiving, recording and complying with an Order of Conditions issued pursuant to the Ordinance, and receiving a file number from the Massachusetts Department of Environmental Protection.

- (A) The Commission may accept as the application and Plans under the Ordinance the Notice of Intent and Plans filed under the Act. The filing shall at a minimum include ten copies of the following:
- (i) Form 3 of the Act;
 - (ii) Such Plans and specifications as are required of an Applicant under the Act and this ordinance and regulations as specified in the regulations of the Act and this ordinance and regulations;
 - (iii) A list of Abutters from the most recent tax list of the City and certified by the City Assessors;
 - (iv) A detailed sequence of construction;
 - (v) A detailed plan of Wetland Replacement or restoration if the project proposes a Wetland Alteration;
 - (vi) Operation & maintenance plan for the stormwater system
 - (vii) Drainage calculations
 - (viii) Erosion and sediment control plans

Revised 3/27/12

- (B) In order to clarify the review process for the Commission and/or its agent, all Wetlands within 100 feet of the edge of Activity shall be marked with numbered flagging tape, which will correspond to the edge of Wetlands numerically indicated on the Plans.
- (C) When a Person filing an application is other than the owner, the applicant shall provide a written and signed authorization letter stating that the applicant may act on the owner's behalf. *Revised 3/27/12*
- (D) Any Person filing a Notice of Intent under the Ordinance shall also notify by certified mail all Abutters of the filing of such Notice of Intent. Such Notice shall clearly identify the land on which the Work is to be done and describe the general nature of the Work. Notice shall include the date, place, and time of said public hearing, and where Plans may be reviewed. A list of Persons so notified and proof of such notification shall be filed with the Commission prior to the opening of the public hearing. If proof of said notification is not presented to the Commission, the public hearing shall not be opened. Said notification of Abutters should be sent not less than eight (8) business days prior to the scheduled hearing.

SECTION 2.3 (2) EXTENSIONS

- (A) The Commission may extend an Order of Conditions once for a period of up to three years. Written requests for an Extension shall be made not less than thirty days prior to the expiration of said Order of Conditions.
- (B) The Commission may deny a request for Extension under the following circumstances:
 - (i) where no Work has begun on the project, except where such failure is due to unavoidable delay, such as appeals in obtaining other necessary permits;
 - (ii) where new information, not available at the time of original permanent filing, has become available and indicates the Order of Conditions is insufficient to protect the Areas Subject to Protection;
 - (iii) where incomplete Work is causing damage to the Areas Subject to Protection;
 - (iv) where Work has been done in violation of the Order of Conditions;
 - (v) where an Extension has previously been granted for said project.
- (C) Said Extension shall be recorded in the Registry of Deeds or Land Court.

SECTION 2.3 (3) CERTIFICATES OF COMPLIANCE

- (A) A request for a Certificate of Compliance shall be made in writing on the appropriate form to the Commission. The Commission will act on the request within 21 days of receipt of such a request.
- (B) Prior to issuance of the Certificate of Compliance, a site inspection shall be made by the Commission and/or its agent. The Applicant shall be notified prior to the inspection and may be present at the inspection if that is desired.
- (C) If the Commission determines after review and inspection that the Work has not been done in compliance with the Order, the commission shall refuse to issue said Certificate of Compliance and specifies the reasons for denial in writing to the Applicant.
- (D) If the Certificate of Compliance does not apply to all Work regulated by the Order of Conditions, the commission shall state to what portions of the Work it applies.
- (E) The Certificate of Compliance, if issued, shall be recorded by the APPLICANT in the Land Court or Registry of Deeds, whichever is applicable. A copy of the recorded document shall be forwarded to the commission within thirty (30) days of recording. *Revised 3/27/12*

2.4 FEE SCHEDULE

At the time of an application, the applicant shall pay a filing fee specified within these regulations. The fee is in addition to that required by the Wetlands Protection Act and regulations. Pursuant to G.L. Ch. 44 §53G and regulations enacted by the Commission. The Commission may impose reasonable fees upon applicants for the purpose 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.

Standard Filing Fee – NOIs and ANOIs 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 equal to the fee submitted mandated by State Regulations (310 CMR 10.03(7)) for each activity under review by the Commission as follows:

NOTES

1. The payment of any fee does not guarantee approval of a project.
2. City, County, State, Federal and legal non-profit organizations may be exempted from fees at discretion of Conservation Commission.
3. Permit filing fees shall not be refunded by the Commission even if an applicant withdraws his application or the permit request is denied. Also, application fees may be refunded, at the Commission's sole discretion, if the applicant withdraws his application prior to the first public hearing or meeting

SECTION 3

CONSTRUCTION STANDARDS AND RESTRICTIONS

3.1 SEQUENCE OF CONSTRUCTION

As required by Section 2.3(1)(A)(iv), the Applicant shall provide a detailed sequence of construction to the Commission as part of the standard filing requirements, detailing in what order the project's construction will follow. Said sequence shall be followed by the Applicant, unless amended and approved by the Commission.

3.2 WETLAND SETBACKS FOR NEW ACTIVITIES

In order to protect and preserve the public interests and values of the wetlands and waterways of the City of Fitchburg, activities in Wetland and Buffer Zone Resource Areas should be avoided to the full extent practicable. The following are the minimum distances (setbacks) of activity from the edge of Wetlands or Vernal Pools. No activity shall be allowed within these setbacks except as provided below, or as provided in Section 1.5 of these rules and regulations. These setbacks are the minimum and may be extended further if deemed necessary for the protection of the interests of the Ordinance by the Commission.

CATEGORY	RESIDENTIAL	NON-RESIDENTIAL
WETLAND DEPENDENT STRUCTURES (1)	0'	0'
"NO DISTURBANCE" ZONE (2)	20'	50'
"NO BUILD" ZONE (3)	25'	75'
CHEMICAL FREE AREA (4)	50'	50'
UNDERGROUND FUELS & HAZMAT AREA (5)	100'	100'
VERNAL POOL AREA (6)	100'	100'
SEPTIC COMPONENTS AREA (7)	50'	50'
UNPAVED WALKING/BIKING TRAILS (8)	10'	10'

1. "Wetland-dependent structures" means (drain outfalls, weirs, etc.), fences, and structures necessary for upland access where reasonable alternative access is unavailable.
2. "No-Disturbance Zone" means an area undisturbed natural vegetation.
3. "No-Build Zone" means an area free of structures and impervious surfaces.
4. "Chemical free area" means an area, within which no fertilizers, herbicides, pesticides or other chemical maintenance substances shall be used.
5. "Underground fuels & Hazmat area" means an area where storage of gasoline, oil, or other fuels along with hazardous materials is prohibited.
6. "Vernal Pool Area" means an area of undisturbed natural vegetation to the mean high water line for vernal pools. This area may be reduced to 50' if an approved migratory route is provided connecting the vernal pool to a resource area. The area of the vernal pool and the buffer shall be considered the resource area but no additional buffer will be required. *Revised 3/27/12*
7. "Septic Components area" means an area where underground septic tanks, pump chambers and leaching fields are prohibited. Sewer lines running with this setback shall be encased in concrete.
8. "Unpaved Walking/Biking Trails" means an area of unpaved walking or biking trails.

3.3 WETLAND SETBACKS FOR EXISTING STRUCTURES

Work associated with pre-existing structures or activities not presently in compliance with Section 3.2 may not increase the degree of "non-conformance" of those structures or activities. No new activity shall be commenced and no new structure shall be located closer to the edge of a Wetland Resource Area than existing non-conforming like Activities or structures, but the Commission may permit new like Activity or structures as close to the Wetland Resource Area as the existing like Activity or structure if it finds such Activity or structure will not affect the interests provided for in the Ordinance more adversely than the existing Activity or structure.

3.4 EROSION PREVENTION

The purpose of installing a silt prevention barrier between the proposed limit of disturbance and the edge of Wetlands is to intercept sediment-laden runoff by reducing runoff velocity and allowing suspended sediments to "settle out" before entering the Wetlands Resource Area. Such sediments shall be removed and sediment barriers monitored and replaced when deemed necessary by the Commission or its agent. A Stormwater Pollution Prevention Plan (SWPPP) filed under the National Pollutant Discharge Elimination Program (NPDES) General permit or a SWPPP in accordance with NPDES standards shall be submitted for all projects subject to the ordinance.

3.5 EROSION PREVENTION INSTALLATION

Proposed location of the silt prevention devices, silt fence and/or haybales, shall be shown on the Plan submitted in the Wetland filing furnished by the Applicant for Commission review and approval. Erosion prevention devices shall be installed prior to the commencement of Activities on the site. The Commission requires erosion prevention installation standards as defined in the Fitchburg Erosion Control Ordinance.

3.6 STORAGE OF FILL

If any Fill is to be stored on site, it shall be stored outside of the Buffer Zone and/or it shall be surrounded by haybales to prevent erosion. The location of said Fill shall appear on any Plans submitted to the Commission pursuant to Notice of Intent requirements. If the Commission determines that the proposed location of Fill threatens the Areas Subject to Protection it may require the Applicant to store said Fill in a different location or to remove it completely from the site.

3.7 CONSTRUCTION DEBRIS

There shall be no disposal or burial of construction debris (i.e. scrap lumber, metals, concrete, asphalt, piping, logs, stumps, etc.) within 100' of a Wetland unless approved by the Commission under the filing. Illegal disposal of said debris shall result in a stop work order, fine, required removal of said debris, or all of the above. The Commission may allow the creation of a spoils area, which would be required to be designated on the project PLANS, if it is proven that it will not harm Areas Subject to Protection.

3.8 INVASIVE PLANTS

No plants listed on the latest Massachusetts Department of Agricultural Resources Prohibited Plant List (see list below) may be brought onto or planted anywhere on the property. The applicant shall refer to Massachusetts Prohibited Plant List to review currently prohibited species. This ordinance does not make any warranty on the accuracy of said list and the applicant will be responsible for attaining the Prohibited list at time of design.

http://www.mass.gov/agr/farmproducts/proposed_prohibited_plant_list_v12-12-05.htm

3.9 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 shall be provided to the applicant by the commission at the applicant/owners expense. *Revised 3/27/12*

3.10 MINOR PROJECTS

For minor projects such as free-standing sheds or above-ground pools a minimum of 25 feet (25') from the wetland area, the applicant may proceed with the project at his/her own risk subject to the filing of a Request for Determination of Applicability and the approval of the Conservation Agent. *Revised 3/27/12*

3.11 OPEN SPACE

As described in Zoning Ordinance Chapter 181, the act, the ordinance or these regulations. When said open space lies within the jurisdiction of the Conservation Commission under the act or the Wetlands Protection Ordinance, fifty percent (50%) of the required space shall be undisturbed natural land.

3.12 STORMWATER REGULATIONS

All projects within jurisdiction of this ordinance are subject to the Massachusetts Department of Environmental Protection Stormwater Management Regulations.

SECTION 4

WETLANDS REPLACEMENT

SECTION 4.1 WETLANDS REPLACEMENT

Wetlands that are proposed to be Altered will in all instances require, at a minimum, equal Wetlands Replacement, preferably hydrologically connected to the Wetlands proposed to be Altered. Replacement shall mean to put back in proper place, or to provide an equivalent to the satisfaction of the Commission.

SECTION 4.2 REQUIREMENTS

Projects involving Wetlands Filling and/or permanent Alterations shall meet the requirements of 310 CMR, 10:60(3) and 10.55(4) and the following Requirements of the Commission:

- (A) The proposed Replacement area design must be submitted to the Commission for approval as part of the submittal of the project Notice of Intent. Applicants are advised to appear before the Commission for preliminary discussion, comments and review prior to submittal of the Replacement Plan with the Notice of Intent.
- (B) The Replacement area must be shown to sufficiently duplicate the functions of the Wetland proposed to be altered;
- (C). The Replacement area shall be constructed, to the extent possible, immediately after Alteration of the existing Wetland and during the same growing season;
- (D) The proposed Replacement area must be clearly flagged for Commission site inspection before the Notice of Intent filing shall be considered complete, and said flagging shall be numerically coded and correspondingly shown on the Plans, according to Section 2.3(1)(B).
- (E) The Notice of Intent submittal for a Replacement area shall include a detailed of Replacement showing:
 - (i) cross-section with indication of Groundwater level, soil profile and thickness of organic soil in the existing and proposed Wetlands;
 - (ii) plant species detail, including species found in the area to be Altered, and number, types and locations of species to be introduced into the Replacement area;
 - (iii) detail of stabilization Plans for Replacement area Banks;
 - (iv) Wildlife Habitat diversity plan.
- (F) Construction of the Replacement area shall follow all requirements as set forth in general Construction Standards and Restrictions, Section 3.
- (G) If, after three growing seasons, the Commission determines that the Replacement area has not satisfactorily developed into a Wetland the Applicant or owner may be required to submit new Plans to successfully replace said Wetland. No Certificate of Compliance shall be issued until the Commission has determined that a satisfactory Replacement area has been completed at the end of the three year period.

SECTION 5

POLICY

SECTION 5.1 TREE REPLACEMENT POLICY

Trees serve a host of environmental functions. Their root systems aid in the prevention of soil erosion. Flood control is performed by the trees ability to absorb large amounts of rain and ground water. Their upper story leaf system is responsible for the exchange of carbon dioxide to oxygen through the process of photosynthesis. As well, the leaf canopy absorbs the energy from rainfall that may cause soil erosion. It reduces the temperature of both soil and water and the surrounding air temperature. Wind is dissipated by tree cover, reducing soil erosion further and providing a wind break to nearby structures. Wildlife habitat is enhanced by the presence of trees as shelter, nesting sites, and food in the form of fruit, nuts, berries, bark, leaves and twigs. Also the aesthetic value of a tree should not go without notice.

Therefore, the Fitchburg Conservation Commission, in an effort to establish the replacement value of a tree that is removed in violation of the Massachusetts Wetlands Protection Act and the City of Fitchburg Wetlands Protection Ordinance adopt the following policy.

Any person or persons, corporation, partnership or agency who removes any tree or multiple of trees from land within the jurisdiction of the Fitchburg Conservation Commission, and where it is determined that the violation requires replacement or financial compensation, the rate shall be at \$100 per caliper inch of lost tree(s). Any financial settlement is intended to be used for the replacement of a tree or trees, within the City, to mitigate the effect of the lost tree(s).

The Commission recognizes that a mature tree and its environmental function cannot be replaced, in our lifetime, with the planting of available nursery stock. The Commission hopes to promote public awareness and maintain environmental integrity.

The replacement value was derived from the current retail cost of nursery stock at \$250 for a 2-2.5 inch shade tree. The \$100 caliper inch value shall be adjusted as the cost of nursery stock changes. A change in cost/caliper inch shall not be determined while an enforcement action is in process.

SECTION 5.2 FINES AND NON-CRIMINAL DISPOSITION POLICY

As described in section 178.20 of the ordinance persons considered to be in violation of the Act, Ordinance and regulations are subject to the following course of action:

- a. A ticket in the sum of no more than \$300 per offense and subsequent tickets of no more than \$300 for each calendar day that the violation is not remedied. *Revised 3/27/12*
- b. If in the Conservation commissions discretion the violation is not remedied in a timely manner or tickets are not paid within the time stated on said ticket, the Commission reserves the right to seek damages from one of the following courts of law:
 1. Housing Court
 2. Superior Court

Approved and adopted at a public meeting, by a majority vote of the Conservation Commission on this date:

September 30, 2008

Amended March 27, 2012
