

## **WETLANDS PROTECTION REGULATIONS**

### **Introduction:**

Pursuant to the provisions of the Lawrence Wetland Ordinance, [need citation] (“The Ordinance”), the Lawrence Conservation Commission (“The Commission”) is promulgating regulations to codify and update the provisions of The Ordinance as authorized by the amendments approved by the Lawrence City Council on [need date of amendment]. The purpose, scope, jurisdiction, definitions, performance standards, procedures and fees specified in the ordinance are incorporated herein and updated as follows:

#### **1. Purpose**

The purpose of these regulations is to protect the wetlands, water resources, and adjoining land areas in the City of Lawrence by controlling activities deemed by the Lawrence Conservation Commission (hereinafter "Commission") likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, fisheries, wildlife habitat, rare species habitat including rare plant species, agriculture, recreation values deemed important to the community, and riverfront area values [new]

These regulations may be amended by majority vote of the Commission after publication of proposed changes and a public hearing.

#### **2. Jurisdiction**

Except as permitted by the Commission or as provided by this ordinance, no person shall commence to remove fill, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands; marshes; wet meadows; bogs; swamps; lakes; ponds; rivers; streams; creeks; banks; beaches; large isolated wetlands; lands within 100 feet of any of the aforesaid resource areas; lands under water bodies; lands subject to flooding or inundation by groundwater or surface waters; ~~land within 100 feet of said land subject to flooding or inundation~~ [NEW-Deleted]; ~~land within 750 feet of vernal pools;~~ [new] land within 200 feet of any river or stream, (collectively, the "resource areas protected by this ordinance"). Said resource areas shall be protected whether or not they border surface waters.

#### **2.1 Exceptions**

The permit and application 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 the structure or facility is not substantially changed or enlarged, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

The permit and application required by this ordinance shall not apply to emergency projects necessary for the protection of the health or 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 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 in the ordinance. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

Other than stated in this section, the exceptions provided in the Wetlands Protection Act MGL Chapter 131, Section 40, and Regulations, 310 CMR 10.00, as they may be amended, shall not apply under this ordinance.

## **2.2 Definitions**

The following definitions shall apply in the interpretation and implementation of this ordinance:

**Abutter** means the owner of any property any portion of which lies within 300 feet radially from any lot line of the subject property including owners of land directly opposite on any public or private street or way including any in another municipality or across a body of water. In the case of property that has frontage on a river or pond, abutters shall include those properties within 300 feet of a lot line of the subject property, all properties with frontage on the pond, or members of any pond association in existence.

The term **"alter** shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this ordinance:

- (a) Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind;
- (b) Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- (c) Drainage 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 or repair of buildings, or structures of any kind;
- (g) Placing of obstructions or objects (including docks and piers) in water;
- (h) Destruction of plant life including the cutting of trees;
- (i) Changing water temperature, biochemical oxygen demand, or other physical, biological or chemical characteristics of water;
- (j) Any activities, changes, or work that may cause or tend to contribute to pollution of any body of water or groundwater;
- (k) Incremental activities that have, or may have a cumulative adverse impact on the resource areas protected by this ordinance;
- (l) Application of pesticides or herbicides.
- (m) Removing, altering or failing to maintain any structure that provides habitat for migratory or endangered species. [NEW]

Banks are the land area which normally abuts and confines a water body; 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.

Beach means a natural or man-made unvegetated bank which normally abuts and confines a water body. It may also include sand bodies exposed within the channel above mean low water.

Bogs are areas where standing or slowly running water is near or at the surface during a normal growing season and where a vegetational community has a significant portion of the ground or water surface covered with Sphagnum moss (Sphagnum) and where the vegetational community is made up of a significant portion of one or more of, but not limited to nor necessarily including all, of the following plants or groups of plants; aster (Aster nemoralis), azaleas (Rhododendron canadense and R. viscosum), black spruce (Picea mariana), bog cotton (Eriophorum), cranberry (Vaccinium macrocarpon), high-bush blueberry (Vaccinium corymbosum), larch (Larix laricina), laurels (Kalmia angustifolia and K. polifolia), leatherleaf (Chamaedaphne calyculata), orchids (Arethusa, Calopogon, Pogonia), pitcher plants (Sarracenia purpurea), sedges (Cyperaceae), sundews (Droseraceae), sweet gale (Myrica gale), white cedar (Chamaecyparis thyoides).

Bordering Vegetated Wetlands are freshwater wetlands that border on creeks, streams, rivers, ponds and lakes. Bordering Vegetated Wetlands are areas where the soils are saturated, near saturation and/or inundated such that they support a predominance (50% or greater) of wetland indicator plants.

Bordering Land Subject to Flooding is an area with low, flat topography adjacent to and inundated by floodwaters rising from creeks, streams, rivers, ponds or lakes. **The boundary of Bordering Land Subject to Flooding is the 500-year flood plain. [NEW]** It extends from the outer edge of a bank or Bordering Vegetated Wetland.

Buffer Zone means that area of land extending one hundred (100) feet horizontally outward from the boundary of the following resource areas: Freshwater Wetlands, Marshes, Wet Meadows, Bogs, Swamps, Lakes, Ponds, Rivers, Streams, Creeks, Banks, Beaches, large isolated wetlands, lands under water bodies, lands subject to flooding or inundation by groundwater or surface water as specified in 310 CMR 10.02 (1), or **750 feet of any Vernal Pool**[NEW].

Creek means the same as a stream.

Dredge means to deepen, widen, or excavate, either temporarily or permanently.

Freshwater Wetlands are Wet Meadows, Marshes, Swamps and Bogs.

Historic Mill Complex As defined in 310 CMR 10.04; An historic mill complex means the mill complexes in but not limited to Holyoke, Taunton, Fitchburg, Haverhill, Methuen, and Medford in existence prior to 1946 and situated landward of the waterside façade of a retaining wall, building, sluiceway or other structure existing on August 7, 1996. An historic mill complex also means any historic mill listed in the Massachusetts Registry of Historic Places. An historic mill complex includes only the foot print of the area that is or was occupied by interrelated buildings (manufacturing buildings, housing, utilities, parking areas and driveways) constructed before and existing after 1946, used for any type of manufacturing and mechanical processing, and including associated structures to provide water for processing, to generate water power, or for water transportation.

Isolated Land Subject to Flooding is any isolated depression without an inlet or outlet which at least once a year confines standing water to a volume of at least one quarter acre-foot of water with an average depth of at least six inches. The boundary is the perimeter of the largest observed or recorded volume of water confined in the basin.

Lake means any open body of fresh water with a surface area of ten (10) acres or more, and shall include great ponds.

Isolated Wetlands means isolated wetlands non-contiguous with a river or pond, 1,000 square feet or larger.

Mashes are areas where a plant community exists in standing or running water during the growing season and where a significant part of the vegetational community is composed of, but not limited to nor necessarily including all, of the following plants or groups of plants: arums (Araceae), bladder worts (Utricularia), burr reeds (Sparganiaceae), button bush (Cephalanthus occidentalis), cattails (Typha), duck weeds (Lemnaceae), eelgrass (Vallisneria), frog bits (Hydrocharitaceae), horsetails (Equisetaceae), hydrophilic grasses (Gramineae), leatherleaf (Chamaedaphne calyculata), pickerel weeds (Pontederiaceae), pipeworts (Eriocaulon), pond weeds (Potamogeton), rushes (Juncaceae), sedges (Cyperaceae), smartweeds (Polygonum), sweet gale (Myrica gale), water milfoil (Haloragaceae), water lilies (Nymphaeaceae), water starworts (Callitrichaceae), water willow (Decodon verticillatus). (1997)

Mean Annual High-Water Line shall be as defined in Wetlands Protection Act Regulations 310 CMR 10.58 (2), as they may be amended.

No Build Buffer Zone Beginning at the outer limit of the No Disturbance Zone and extending outward a minimum of 25 feet measured horizontally.

No Disturbance Buffer Zone Beginning at the wetland resource area boundary and extending outward a minimum of 25 feet measured horizontally from the border of the resource area.

Person The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to City ordinance, administration agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

Ponds shall include any substantially open body of fresh water with a surface area observed or recorded within ten years prior to the date of application as defined in 310 CMR 10.04 except that the size threshold of 10,000 square feet shall not apply. Ponds may be either naturally occurring or man-made by impoundment, excavation, or otherwise. Ponds shall contain standing water except for periods of extended drought. For purposes of this definition, extended drought shall mean any period of four or more months during which the average rainfall for each month is 50% or less of the ten year average for that same month.

Notwithstanding the above, the following man-made bodies of open water shall not be considered ponds: swimming pools or other impervious man-made basins; and individual gravel pits or quarries excavated from upland areas unless inactive for five or more consecutive years.

Rare species The term "rare species" shall include, without limitation, all vertebrate and invertebrate animal and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

Resource areas The term "resource areas" shall include any freshwater wetlands; marshes; wet meadows; bogs; swamps; lakes; ponds; rivers; streams; creeks; banks; beaches; vernal pools; large isolated wetlands; land under water in each resource area; riverfront area; land subject to flooding or inundation by groundwater or surface waters; and Buffer Zone as defined in this ordinance.

Resource Area Values shall include but are not limited to the following; public or private water supply, ground water, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, fisheries, wildlife habitat, rare species habitat including rare plant species, agriculture, riverfront area values, and recreation values deemed important to the community.

River means a natural flowing body of water of any size that empties to any ocean, lake or other river and which flows throughout the year.

Riverfront Area is defined in Wetlands Protection Act Regulations 310 CMR 10.58 (2) (a)(3): is the area of land between a river's mean annual high-water line measured horizontally outward from the river and a parallel line located 200 feet away or as modified for Lawrence. (See Riverfront Area and Table 1) In areas where there riverbank has been altered or constricted by the presence of manmade structures or improvements, ie the GLSD sewer interceptor, or placement of rip rap or other armoring of the riverbank, the riverfront area shall be measured from top of bank, not mean high-water. [NEW]

Stream is a body of running water, and the land under the water, including brooks, creeks, and man-made water courses, which moves in a definite channel in the ground due to hydraulic gradient. A portion of a stream may flow through a culvert, or beneath a bridge or beneath the surface of the ground. A stream may be intermittent (i.e. does not flow throughout the year) except for that portion up gradient of all resource areas.

Swamps are areas where ground water is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface, and where a significant part of the vegetational community is made up of, but not limited to nor necessarily include all of the following plants or groups of plants: alders (*Alnus*), ashes (*Fraxinus*), azaleas (*Rhododendron canadense* and *R. viscosum*), black alder (*Ilex verticillata*), black spruce (*Picea mariana*), buttonbush (*Cephalanthus occidentalis*), American or white elm (*Ulmus americana*), white Hellebore (*Veratrum viride*), hemlock (*Tsuga canadensis*), highbush blueberry (*Vaccinium corymbosum*), larch (*Larix laricina*), cowslip (*Caltha palustris*), poison sumac (*Toxicodendron vernix*), red maple (*Acer rubrum*), skunk cabbage (*Symplocarpus foetidus*), sphagnum mosses (*Sphagnum*), spice bush (*Lindera benzoin*), black gum tupelo (*Nyssa sylvatica*), sweet pepper bush (*Clethra alnifolia*), white cedar (*Chamaecyparis thyoides*), willow (*Salicaceae*), common reed (*Phragmites communis*), jewelweed (*Impatiens capensis*).

Vernal Pool shall include a confined basin depression of any size which, at least in most years, holds water for a minimum of two continuous months during March through August, which is free of naturally occurring fish populations and which contains evidence of breeding by obligate vernal pool species as recognized by Massachusetts Natural Heritage and Endangered Species Program.

Wetland Resource Area is any resource area other than the Buffer Zone.

Wet Meadows are areas where ground water is at the surface for the significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges, and rushes, made up of, but not limited to nor necessarily including all of the following plants or groups of plants: blue flag (*Iris*), vervain (*Verbena*), thoroughwort (*Eupatorium*), dock (*Rumex*), false loosestrife (*Ludwigia*), hydrophilic grasses (*Gramineae*), loosestrife (*Lythrum*), marsh fern (*Dryopteris thelypteris*), rushes (*Juncaceae*), sedges (*Cyperaceae*), sensitive fern (*Onoclea sensibilis*), smartweed (*Polygonum*).

Wildlife Habitat is any structure or feature, whether naturally occurring or human made, or vegetative feature, or landscape features that provides for nesting, breeding, or feeding of animal species. [NEW]

Except as otherwise provided in this ordinance or in regulations of the Commission, the definitions of terms in this ordinance shall be as set forth in the Wetlands Protection Act MGL Chapter 131, Section 40 and Regulations, 310 CMR 10.00, as they may be amended.

## **2.3 Wetlands Identification**

Wetland Resource Areas and their boundaries shall be identified and delineated as specified in this Ordinance and/or promulgating Regulations. Bordering Vegetated Wetland shall be further delineated as specified in Wetlands Protection Act Regulations 310 CMR 10.55 (2), as they may be amended.

## **3.0 Conditions**

Lands within 200 feet of the bank of rivers(or as determined in Table 7-1), 750 feet of vernal pools (regardless of their certification status)[NEW], and lands within 100 feet of ponds or lakes other wetland resource areas are presumed under this ordinance important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resource, 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 therefore establish performance standards for protection of such lands as listed below, including without limitation: strips of continuous undisturbed vegetative cover; or other forms of work limitations; or setback to buildings, roads, landscaping and other features, 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.

For all proposed work, 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 purpose), logistics, existing technology, costs of the alternatives and overall project costs.

To prevent wetlands loss the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration and where alteration is unavoidable, and shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

To ensure that stormwater management structures are sufficient to meet likely future demands caused by climate change, the commission shall require the most current rainfall data available be used in all storm water calculations. The Cornell University Rainfall Atlas for New York and New England and NOAA Atlas 14 are currently the only approved rainfall data sources for use in submissions to the Commission. [NEW]

### **3.1 Bordering Vegetated Wetlands and Isolated Wetlands**

Bordering Vegetated Wetlands and Isolated Wetlands (310 CMR 10.55) and other resource areas shall receive the protection of a Buffer Zone which shall extend 100 feet horizontally beyond the wetland line. The Buffer Zone will include a setback from the wetlands line of a 25 foot vegetative No Disturbance Buffer Zone and an additional 25 foot No Build Buffer Zone. There shall be no buildings placed within 50 feet of any bank, bordering vegetated wetland, isolated vegetated wetland, marsh, wet meadow, bog, swamp, vernal pool, reservoir, pond, creek, river or stream or any land under said waters except as permitted with an Order of Conditions of Determination of Applicability for a water dependent structure or if no practical alternative is determined to be available after completion of alternatives analysis. The No Build Buffer Zone will allow gravel driveways and temporary structures, infiltration ponds but not permanent buildings or permanent impervious roadways. Restoration activities will be allowed in the No Disturbance Zone.

A property with a No Disturbance Buffer Zone will have the No Disturbance Buffer Zone attach to the deed upon issuance of an order of conditions for the property. This will be the responsibility of the applicant for the Notice of Intent and the final order shall not be approved until suitable proof of compliance is submitted to the Commission.

### **3.2 Land Subject to Flooding**

Land Subject to Flooding 310 CMR 10.57) including all lands within the 100 year flood plain shall receive the protection of a 100 foot Buffer Zone extending outward from the limit of the 100 year flood plain [NEW-deleted]. Compensatory storage shall be provided, *in situ*, on a 1:1 basis for any loss of flood storage within the 500 year flood zone. Lands within the 500 year flood plain may be subject to the Bordering vegetated wetlands, Isolated

wetlands and or the Riverfront requirements. [NEW] Additionally a 100-foot buffer zone shall extend beyond the wetlands line.

### **3.3 Intermittent Streams**

Intermittent Streams: Determinations of the intermittent character of a stream made between June and September and in years of less than average rainfall shall be subject to review by this board and must meet the criteria of an average year and an average monthly rainfall as determined by NOAA or the DEP. Because a Stream Channel represents the interception of the channel bottom with the water table, both intermittent and perennial streams with enough contact with the ground water table to sustain aquatic, wetland or wetland facultative vegetation within the historic banks shall receive the protection of the by-law during periods of below average rainfall as determined by the Department of Environmental Protection.

### **3.4 Riverfront Areas**

Within a Riverfront Area as defined in 310 CMR 10:58, the work, including proposed mitigation measures, must have no significant adverse impact on the Riverfront area to protect the interests of MGL.C131- 134. In addition, regulations for bordering vegetative wetlands 310 CMR 10.55, and Lands Subject to Flooding 310 CMR 10.57 may also apply. Restoration and redevelopment projects shall emphasize the use of native plant species and habitat restoration.

Man made canals do not have riverfront areas. 10 CMR 10:58:2(a)(1)(d)

Lawrence has three rivers, each with unique characteristics, development densities and uses. The Shawsheen River Riverfront is predominantly undeveloped woods and wooded wetlands. The Merrimack River Riverfront is relatively undeveloped above the falls and is dominated by Historic Mill Complexes, largely Zoned I-2. The Spicket River Riverfront is dominated by high-density residential and commercial structures, R-4, B-3 and I-2 Zoning districts. 310 CMR 10.58(2)(a)(3) designates a 25 foot Riverfront to the entire city. This is not sufficient to protect the interests of the act. Therefore 4 types of riverfront areas will be assigned to the City's three rivers 200 foot, 100 foot, 50 foot and 25 foot. In addition, perennial streams including all tertiary tributaries, are protected with a 50 ' riverfront area. The locations of those riverfront areas is outlined in the table below and the restrictions of each riverfront area are outlined in the sections which follow:

**Table 1**

<b>River</b>	<b>From</b>	<b>To</b>	<b>Riverfront Area</b>
Merrimack North Shore	The geographic boundary with the City of Methuen	Easterly point of the intersection with Doyle St.	200 ft.
	Easterly point of the intersection with Doyle St.	Easterly point of the intersection with Baystate Rd.	100 ft.
	Easterly point of the intersection with Baystate Rd.	Westerly point of the intersection with Broadway	25 ft.
	Entranceway to the North Canal	Terminus of North Canal at the Merrimack River Channel	100 ft.
	Westerly point of the intersection with Broadway	175 ft. East of O'Leary Bridge	100 ft.
	175 ft East of O'Leary	Casey Bridge	200 ft.
	Casey Bridge	500 ft. West of West bank Spickett River	25 ft.
	500 ft. West of West bank Spickett River	Westerly point of intersection with the O'Reilly Bridge	100 ft.

	Westerly point of intersection with the O'Reilly Bridge	The geographic boundary with the City of Methuen	200 ft
Merrimack South Shore	The geographic boundary with the City of Methuen	Easterly point of the intersection with Burke St.	200 ft.
	Easterly point of the intersection with Burke St.	Easterly point of the intersection with Newton St.	100 ft.
	Easterly point of the intersection with Newton St.	Easterly point of the intersection with Broadway.	200 ft.
	Easterly point of the intersection with Broadway.	300 ft east of Casey Bridge	25 ft.
	300 ft. east of Casey Bridge	Easterly point of the intersection with the Casey Bridge	50 ft.
	Easterly point of the intersection with the Casey Bridge	300 ft. West of O'Reilly Bridge	25 ft.
	300 ft. west of O'Reilly Bridge	Easterly point of the intersection with the O'Reilly Bridge	100 ft.
	Easterly point of the intersection with the O'Reilly Bridge	The geographic boundary with the Town of North Andover	200 ft.
Shawsheen River	The geographic boundary with the Town of Andover	Merrimack St.	200 ft.
Spicket River	The geographic boundary with the City of Methuen line	West shore of Stevens Pond	
Spicket River Both Banks	West Shore of Stevens Pond	southerly point of the intersection with Broadway	25 ft.
Spicket River North Bank	southerly point of the intersection with Broadway	easterly point of the intersection with Wells Street	200 ft
Spicket River North Bank	easterly point of the intersection with Wells St.	easterly point of the intersection with Hampshire St.	25 ft.
Spicket River North Bank	easterly point of the intersection with Hampshire St.	easterly point of the intersection with Bunkerhill St.	50 ft.
Hayden Schofield Playground	easterly point of the intersection with Bunkerhill	easterly point of the intersection with Lawrence St.	200 ft.
Spicket River North Bank	easterly point of the intersection with Lawrence St.	easterly point of the intersection with Jackson St.	50 ft.
Spicket River North Bank	easterly point of the intersection with Jackson St.	easterly point of the intersection with East Haverhill St.	25 ft.
Spicket River North Bank	easterly point of the intersection with East Haverhill St.	200.33 feet north of the northerly point of the intersection with Fulton Street	50 ft.
Spicket River North Bank	200.33 feet north of the northerly point of the intersection with Fulton Street	232.97 feet north of the northerly point of the intersection with Haverhill Street	25 ft.
Spicket River North Bank	232.97 feet north of the northerly point of the intersection with Haverhill Street	150 ft. north of General St.	50 ft.
Spicket River North Bank	150 ft. north of General St	Easterly point of the intersection with General St.	25 ft.

Spicket River North Bank	Easterly point of the intersection with General St.	northerly point of the intersection with Canal St.	30 ft.
Spicket River North Bank	northerly point of the intersection with Canal St.	Confluence with the Merrimack River	50 ft.
Spicket River South Bank	southerly point of the intersection with Broadway	easterly point of the intersection with Holly	25 ft.
Spicket River South Bank	easterly point of the intersection with Holly	easterly point of the intersection with Hampshire St.	50 ft.
Spicket River South Bank	easterly point of the intersection with Hampshire St.	easterly point of the intersection with Lawrence St.	50 ft.
Spicket River South Bank	easterly point of the intersection with Lawrence St.	easterly point of the intersection with Jackson St.	100 ft.
Spicket River South Bank	easterly point of the intersection with Jackson Street	easterly point of the intersection with East Haverhill St.	50 ft.
Spicket River South Bank	easterly point of the intersection with East Haverhill St.	southerly point of the intersection with Brook St.	200 ft.
Spicket River South Bank	southerly point of the intersection with Brook St.	easterly point of the intersection with Haverhill St.	50 ft.
Spicket River South Bank	easterly point of the intersection with Haverhill St.	easterly point of the intersection with General St.	50 ft.
Spicket River South Bank	easterly point of the intersection with General St	easterly point of the intersection with the Old Rail Road Bridge	25 ft.
	easterly point of the intersection with the Old Rail Road Bridge	northerly point of the intersection with Canal St.	50 ft.
Spicket River South Bank	northerly point of the intersection with Canal St.	Confluence with the Merrimack River	100 ft.

In accordance with 310 CMR 10.58(4) The Commission is directed to consider project alternatives (4) c, however the proposed work must have no significant adverse impact (4) d.

The purpose of evaluating project alternatives is to locate activities so that impacts to the Riverfront area are avoided to the maximum extent practicable. Projects within the scope of alternatives must be evaluated to determine whether any are practicable. As much of a project as feasible shall be sited outside the riverfront area. If siting of a project entirely outside the riverfront area is not practicable, the alternatives shall be evaluated to locate the project as far as possible from the river.

The Conservation Commission shall not require alternatives which result in greater or substantially equivalent adverse impacts. If an alternative would result in no identifiable difference in impact, the issuing authority shall eliminate the alternative. If there would be no fewer adverse effects on the interests identified in M.G.L. c. 131, § 40, the proposed project rather than a practicable alternative shall be allowed, but the criteria in 310 CMR 10.58(4)(d) for determining no significant adverse impact must still be met. If there is a practicable and substantially equivalent economic alternative with fewer adverse effects, the proposed work shall be denied and the applicant may either withdraw the Notice of Intent or receive an Order of Conditions for the alternative, provided the applicant submitted sufficient information on the alternative in the Notice of Intent.

**No Significant Adverse Impact.** The work, including proposed mitigation measures, must have no significant adverse impact on the riverfront area to protect the interests identified in M.G.L. c. 131, § 40.

**1.** Within 200-foot riverfront areas, the Commission may allow the alteration of up to 5000 square feet or 10% of the riverfront area within the lot, whichever is greater, on a lot recorded on or before October 6, 1997 or lots recorded after October 6, 1997 subject to the restrictions of 310 CMR 10.58(4)(c)(2)(b)(vi), or up to 10% of the riverfront area within a lot recorded after October 6, 1997, provided that:

- a.** At a minimum, a 100-foot wide area of undisturbed vegetation is provided. This area shall extend from mean annual high-water along the river unless another location would better protect the interests identified in M.G.L. c. 131 § 40. If there is not a 100 foot wide area of undisturbed vegetation within the riverfront area, existing vegetative cover shall be preserved or extended to the maximum extent feasible to approximate a 100 foot wide corridor of natural vegetation. Replication and compensatory storage required to meet other resource area performance standards are allowed within this area; structural storm water management measures may be allowed only when there is no practicable alternative. Temporary impacts, where necessary for installation of linear site-related utilities, are allowed, provided the area is restored to its natural conditions
- b.** Storm water is managed according to standards established by the Department of Environmental Protection.
- c.** Proposed work does not impair the capacity of the riverfront area to provide important wildlife habitat functions. Work shall not result in an impairment of the capacity to provide vernal pool habitat identified by evidence from a competent source, but not yet certified. For work within an undeveloped riverfront area which exceeds 5,000 square feet, the Commission may require a wildlife habitat evaluation study under 310 CMR 10.60.
- d.** Proposed work shall not impair groundwater or surface water quality by incorporating erosion and sedimentation controls and other measures to attenuate nonpoint source pollution, pursuant to 310 CMR 10.58(4)(d)(1)(d).

**2.** Within 100 foot riverfront areas, the Commission may allow the alteration of up to 2500 square feet or 10% of the riverfront area within the lot, whichever is greater, on a lot recorded on or before October 6, 1997 or lots recorded after October 6, 1997 subject to the restrictions of 310 CMR 10.58(4)(c)(2)(b)(vi), or up to 10% of the riverfront area within a lot recorded after October 6, 1997, provided that:

- a.** At a minimum, a 50-foot wide area of undisturbed vegetation is provided. This area shall extend from mean annual high-water along the river unless another location would better protect the interests identified in M.G.L. c. 131 § 40. If there is not a 50 foot wide area of undisturbed vegetation within the riverfront area, existing vegetative cover shall be preserved or extended to the maximum extent feasible to approximate a 50 foot wide corridor of natural vegetation. Replication and compensatory storage required to meet other resource area performance standards are allowed within this area; structural storm water management measures may be allowed only when there is no practicable alternative. Temporary impacts where necessary for installation of linear site-related utilities are allowed, provided the area is restored to its natural conditions. Proposed work which does not meet the requirement of 310 CMR 10.58(4)(d)(1)(a) may be allowed only if an applicant demonstrates by a preponderance of evidence from a competent source that an area of undisturbed vegetation with an overall average width of 50 feet will provide equivalent protection of the riverfront area, or that a partial rebuttal of the presumptions of significance is sufficient to justify a lesser area of undisturbed vegetation;
- b.** Storm water is managed according to standards established by the Department of Environmental Protection.
- c.** Proposed work does not impair the capacity of the riverfront area to provide important wildlife habitat functions. Work shall not result in an impairment of the capacity to provide vernal pool habitat identified by evidence from a competent source, but not yet certified. For work within an

undeveloped riverfront area which exceeds 5,000 square feet, the issuing Commission may require a wildlife habitat evaluation study under 310 CMR 10.60.

**d.** Proposed work shall not impair groundwater or surface water quality by incorporating erosion and sedimentation controls and other measures to attenuate non point source pollution: pursuant to 310 CMR 10.58 (4)(d)(1)(d).

**3.** Within 50 foot riverfront areas, any proposed work shall cause no significant adverse impact by:

**a.** Limiting alteration to the maximum extent feasible, and at a minimum, preserving and/or establishing a corridor of undisturbed vegetation of a maximum feasible width. The Commission may allow the alteration of up to 10% of the riverfront area. At a minimum, a 25 foot wide area of undisturbed vegetation is provided. This area shall extend from mean annual high-water along the river unless another location would better protect the interests identified in M.G.L. c. 131 § 40. If there is not a 25 foot wide area of undisturbed vegetation within the riverfront area, existing vegetative cover shall be preserved or extended to the maximum extent feasible to approximate a 25 foot wide corridor of natural vegetation. Replication and compensatory storage required to meet other resource area performance standards are allowed within this area; structural stormwater management measures shall be allowed only when there is no practicable alternative;

**4.** Within 25 foot riverfront areas, any proposed work shall cause no significant adverse impact by:

**a.** Limiting alteration to the maximum extent feasible, and at a minimum, preserving and/or establishing a corridor of undisturbed vegetation of a maximum feasible width. Replication and compensatory storage required to meet other resource area performance standards are allowed within this area; structural storm water management measures shall be allowed only when there is no practicable alternative;

For both 25 and 50 foot Riverfront Areas the following Storm water, Habitat, and groundwater requirements apply:

**b.** Providing storm water management according to standards established by the Department of Environmental Protection.

**c.** Preserving the capacity of the riverfront area to provide important wildlife habitat functions. Work shall not result in an impairment of the capacity to provide vernal pool habitat when identified by evidence from a competent source but not yet certified; and

**d.** Proposed work shall not impair groundwater or surface water quality by incorporating erosion and sedimentation controls and other measures to attenuate non point source pollution.

### **3.5 Historic Mill Complexes**

In Historic Mill Complexes where functioning retaining walls, building penstocks and raceways buildings or other structures existing in August 7, 1996, the 25-foot Riverfront areas Altered open areas (including parking paved after 1946 and filled and unfilled foundations of structures demolished as of August 7, 1996) are requested to be reserved to enhance and /or preserve the values protected in this ordinance. The reserve may extend outside the limits of the riverfront area in order to reasonably accommodate planned redevelopment. A minimum of 25 % of these open areas for Industrial I-2 lots is requested to be reserved to enhance the values protected in this Ordinance.

### **3.6 Fill Slopes**

Fill Slopes, when placed abutting the no work zone or within the no-build zone shall be laid back at a stable angle (presumed for the purposes of this by-law to be an angle of no more than 45 degrees for sands and less than 35 degrees for silts and clay fills). The foot of stone Gabions or permeable stone or concrete retaining structures used in place of soils for the stabilization and support of the edge of fills, driveways, roadways, and structures shall be set back an additional distance from the no build and/or no disturbance zone equal to  $\frac{1}{2}$  the height of the proposed fill. In addition, the toe of all soil fill slopes shall be setback 3 feet from the hay bale line corresponding to the resource area delineation.

For all proposed work, 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 purpose), logistics, existing technology, costs of the alternatives and overall project costs.

To prevent wetlands loss the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration and where alteration is unavoidable, and shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

### **3.7 Wildlife Habitat**

The Commission may require a wildlife habitat study by a consultant, chosen or approved by the Commission, of the project area to be paid for by the applicant whenever it deems appropriate, regardless of the type of resource area or the amount of type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of wildlife "corridors" in the area, or possible presence of rare 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).

### **3.8 Vernal Pools**

The commission shall presume that all areas meeting the definition of vernal pools under section 18.08.010 of this ordinance, including the adjacent area, perform essential habitat functions. Any formal evaluation should be performed by an individual meeting the qualifications set out in the wildlife habitat section of the Wetlands Protection Act Regulations (310 CMR 10.60). No disturbance shall be allowed within 100 feet of the delineated border of a vernal pool. Any activity within 750 feet of the edge of a vernal pool shall be subject to conditions determined necessary by the Commission to protect the habitat functions of the vernal pool. [NEW]

## **4.0 Application for Permits and Requests for Determination of Applicability and Fees**

Written application shall be filed with the Commission to perform activities affecting resource areas protected by this ordinance. The application, formally known as the Notice of Intent or Request for Determination of Applicability, shall include such written information, reports, and or field notes and data, and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this ordinance. This commission will not review a notice of intent received without substantiating information. No activities shall commence without receiving and complying with a permit, formally known as an Order of Conditions or Conditions imposed on a Negative Determination of Applicability, issued pursuant to this ordinance.

The Commission, in an appropriate case, may accept as the permit application and plans under this ordinance the Notice of Intent and plans filed under the Wetlands Protection Act, MGL Chapter 131, Section 40 and Regulations, 310 CMR 10.00, as they may be amended.

At the time of a permit application (Notice of Intent, Request for Determination of Applicability, application for an Amendment to the Order of Conditions, application for Certificate of Compliance, application for Partial Certificate of Compliance, or request for Extension Permit), the applicant shall pay a filing fee specified in the Regulations of the Commission. The fee is in addition to that required, if any, by the Wetlands Protection Act, MGL Chapter 131, Section 40, and Regulations 310 CMR 10.00, as they may be amended.

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. Determinations of Nonapplicability must be unanimous by the members present otherwise a notice of intent must be filed. Such a Request for Determination of Applicability shall contain data and plans as the Commission specifies, unless said request is only for an informal opinion as stipulated in Section 5 of this ordinance.

In an appropriate case, a person may request in writing that the Commission review a minor activity proposed within a wetland resource area or buffer zone for a Determination of Nonapplicability. The Commission shall review the request at a public meeting within 21 days from receipt of the request, unless the applicant authorizes an extension in writing. In order to approve the request, the Commission must find that the proposed activity will have negligible or no impact on the wetland resource area or buffer zone. A request for a Determination of Nonapplicability is decided upon at the sole discretion of the Commission, can be denied for good cause, including failure to submit information requested by the Commission, and can only be approved by a two-thirds majority vote of the Commission members present. A letter shall be sent informing the applicant of the Commission's decision within 21 days of the decision, unless the applicant authorizes an extension in writing.

At the time of 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. The fee shall remain in the domain of the Conservation Commission.

#### **4.1 Administrative Fees**

Each application filed with the Lawrence Conservation Commission pursuant to The City of Lawrence Wetland Protection Ordinance shall be accompanied by a filing fee in the amount specified below.

Request for Determination of Applicability. \$125.00

A Notice of Intent shall be accompanied by a filing fee, consisting of one or more or the categories defined below. The fee for work proposed under a single Notice of Intent that involves more than one activity shall be determined by adding the fees for each proposed activity.

#### **Group A (\$40 per activity):**

- 1) Work on a single family lot: addition, pool etc.:
- 2) Site work without a house:
- 3) Control vegetation;
- 4) Resource improvement:
- 5) Work on septic system separated from a house, or work on a driveway requiring a permit.
- 6) Monitoring well activities except roadways:
- 7) New agricultural or Aquaculture projects.

#### **Group B (\$200 per activity):**

- 1) Construction of a single family house;
- 2) Parking lot:
- 3) Site grading

- 4) Roadway preparation
- 5) Electrical generating facility activities;
- 6) Inland limited projects, except road crossings and agriculture;
- 7) Each crossing of a driveway
- 8) Each point source (storm drain) discharge;
- 9) Control vegetation in development,
- 10) Water level variation,
- 11) Any other activity not in Group 1,3,4,5 or 6:
- 12) Water supply exploration.
- 13) Filling

**Group C (\$400 per activity):**

- 1) Site preparation (for development) beyond NOI scope:
- 2) Each building (for development) including site;
- 3) Road construction not crossing or drive way;
- 4) Hazardous cleanup;
- 5) Water supply development.

**Group D (\$600 per activity):**

- 1) Each crossing for development or commercial road;
- 2) Dam, sluiceway, tide gate (safety) work;
- 3) Landfills operation/ closures;
- 4) Sand and gravel operation
- 5) Railroad line construction
- 6) Bridge
- 7) Hazardous waste alteration to resource area:
- 8) Dredging;
- 9) Package treatment plant and discharge;
- 10) Airport tree clearing;
- 11) Oil/and or hazardous material release response actions.

**Group E:**

(\$1.50 per linear foot for wetlands resource areas. Minimum \$50.00. Maximum \$1,000.00)

- 1) Work on docks, piers, revetments, walls, dikes, etc. (coastal or inland)

**Group F:**

Boundary delineations for Wetland Resource Areas.

The filing fee for the ANO Resource Area Delineation equals \$1 per linear foot of delineated Bordering Vegetated Wetland, with a maximum of \$100 for a single -family house and a maximum of \$1000 for any other activity. There is no additional fee for delineations of other resource areas. The City share of the fee is the first \$25 plus half of the remaining total fee. The state share is half the total fee in excess of \$25. Review of the ANORAD cannot begin until the fee is received.

Each site visit performed by a Conservation Commissioner in order to follow-up on a construction violation , including but not limited to the improper installation of erosion controls or erosion control fabric, or the sloughing of slopes will require a separate fee of \$25.

#### **4.2 Consultant Fees**

(A) The Commission is authorized to require the applicant to pay reasonable costs and expenses for expert consultation deemed necessary by the Commission for specific expert engineering, and other consultant services deemed necessary by the Commission, to come to a final decision on the Notice of Intent (NOI), Request for Determination of Applicability (RDA) or resource delineation. This fee is called the “consultant fee.” The Conservation Commission will select the consultant at its sole discretion. The specific consultant services may include but are not limited to, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values including wildlife habitat evaluations, hydrogeologic and drainage analysis; and researching environmental or land use law. The applicant shall incur no such costs or expenses if the application or request is withdrawn within five days of the date of the public hearing wherein the Commission declared its intention to seek expert consultation.

(B) Said costs and expenses shall be billed to the applicant as due and payable when the hearing on the application is closed. The Commission shall make proper provision to continue the hearing until all information is received, but in no case shall this procedure be used so as to cause unreasonable delay to the applicant.

(C) Failure by the applicant to pay such costs or expenses within 21 days after the close of the hearing shall be cause for the Commission to deny the issuance of a determination, refuse any current or subsequent application or request by the same applicant, and/or deny the issuance of a permit or suspend or revoke one if issued.

(D) If a municipal revolving fund has been established, pursuant to G. L. Ch. 44 Section 53E, or a special act for deposit and Commission use of filing and/or consultant fees described above, then such filing and/or consultant fees shall be deposited therein, for uses set out in the vote establishing the fund. This account shall be kept separate from the account established for filing fees paid under the state Wetlands Protection Act.

(E) The exercise of discretion by the commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information available only through outside consultants is necessary for the making of an objective decision. Any applicant aggrieved by the imposition of, or size of the consultant fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws.

(F) The Commission may waive the filing fee, consultant fee, and costs and expenses for a permit or other application or RFD filed by a government agency.

(G) The minimum consultant fee charged to reimburse the Commission for reasonable costs and expenses shall be according to the following schedule:

<b><u>Project Costs (\$)</u></b>	<b><u>Maximum Fee (\$)</u></b>
<b>Up to</b>	<b>\$100,000</b>
<b>\$100,001</b>	<b>\$500,000</b>
<b>\$500,001</b>	<b>\$1,000,000</b>
<b>\$1,000,001</b>	<b>\$1,500,000</b>
<b>\$1,500,001</b>	<b>\$2,000,000</b>
	<b>\$500-2500</b>
	<b>\$2,500</b>
	<b>\$5,000</b>
	<b>\$7,500</b>
	<b>\$10,000</b>

Each additional \$500,000 project cost increment (over \$2,000,000) may be charged a minimum of an additional \$2,500 maximum fee per increment.

(H) The project cost means the estimated, entire cost of the project, including but not limited to resource area delineation, building design and construction, site preparation, landscaping and all site improvements. The consultant fee shall be paid pro-rata for that portion of the projects cost applicable to those activities within resource areas protected by this ordinance. The project shall not be segmented to avoid the consultant fee. The applicant shall submit estimated project costs at the Commission's request, but the lack of such estimated projects cost shall not impact payment of the consultant fee.

## **5.0 Public Notice and Hearings**

### **GENERAL PROVISIONS:**

(1) Any person filing a permit application (Notice of Intent), Request for Determination of Applicability, Request for Amendment to Order of Conditions, or any other application for consideration by the Commission (hereinafter referenced as "the application") shall submit all documents and items required by this ordinance or as may be required by any other applicable State or Municipal regulation that pertain to the subject matter of the application submitted.

(2) The applicant shall contact the Commission or the Commission Administrator to select and secure a date for hearing before the Commission prior to submitting any application, documents, or other items for consideration by the Commission. Upon securing a date for hearing, the Commission or Commission Administrator shall schedule the hearing date and forward written confirmation of the hearing date scheduled to the applicant or the applicant's representative which shall contain the following information: (1) the date of hearing; (2) the form of relief sought [ie: Notice of Intent, Request For Determination of Applicability, etc], (3) the date upon which all application forms, supporting documents, and filing fees must be received by the Commission, and (4) any other information deemed necessary and appropriate by the Commission or Commission Administrator.

(3) The Commission shall conduct a public hearing or meeting on any application or Request for Determination of Applicability, with written notice of hearing in accord with the notice and service provisions of this ordinance. In addition to any notice and/or service requirements of this ordinance, the applicant shall be responsible for the payment of all costs of publication incurred by the Commission or Commission Administrator for any notice required that may pertain to the application filed. In order to provide for notice of the hearing or meeting by publication, the applicant shall provide the Commission or the Commission Administrator with the payment of the estimated publication costs which shall be paid to the Commission or Commission Administrator on the date the application is to due to be filed. Said payment of publication costs shall be in the form of a bank check, certified check, money order, or postal order. Any payment of costs or fees provided to the Commission or any of its agents in the form of cash or personal check will not be accepted or received at any time. The Commission or the Commission Administrator shall cause a notice of hearing or meeting to be published in a newspaper of general circulation in the municipality, chosen at the discretion of the Commission or the Commission Administrator.

(4) The Commission shall commence the public hearing within 21 days from receipt of a completed permit application or Request for Determination of Applicability unless the applicant authorizes an extension in writing.

(5) The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon unless the applicant authorizes an extension in writing.

### **NOTICE OF HEARING REQUIREMENTS:**

After a hearing date is assigned by the Commission or Commission Administrator, the applicant shall be responsible to complete the following notice provision requirements:

(1) The applicant shall prepare a type written document on paper no less than 8 ½ inches by 11 inches which shall be entitled "NOTICE OF HEARING" with all letters being capitalized, no less than 14 point pica, located no

more than 2 inches from the top of the page, and centered at the top of the page. Said notice shall provide a statement referencing the date of hearing, the time of hearing, the address and/or location of hearing. Said notice shall further provide notice of the form of application [ie: Request for Determination, Notice of Intent] to be presented to the Commission at the hearing and a written summary of the subject matter providing information concerning the requested relief sought and the intended result of the application to be presented before the Commission at the hearing.

(2) Any “NOTICE OF HEARING” sent by the applicant pursuant to the provisions of this ordinance shall be postmarked or otherwise provide confirmation of service upon any individual, person, or entity required to receive notice of hearing which shall be dated no later than two weeks prior to the date set for hearing.

(3) The applicant shall give written notice of the hearing to all abutters within a 300 foot radius of the property line subject of the application as they appear on the most recent applicable tax list, notwithstanding that the abutter is located in another City or Town, including owners of land directly opposite on any public or private street or way including any property owners of any other City or Town across a body of water, if applicable. Applications that concern property with pond frontage shall provide notice to all property locations and owners with frontage on the pond or members of any pond association that may be in existence. The applicant shall also give notice of hearing to any other person, entity, or agency as may be directed by the Commission or the Commission Administrator. Said notice to abutters and any other person, entity, or agency shall be sent by regular mail and certified mail/return receipt requested, postage prepaid or by in-hand delivery.

(3) The applicant shall provide the Commission or the Commission Administrator with a copy of the list of abutters which shall be filed with the application. Each abutter listed on the list of abutters shall be certified by the assessor of the City or Town where the abutters’ property may be located.

(4) The applicant shall confirm delivery of all notices of hearing sent by mail or delivered in-hand to any individual, person, or entity by filing a document entitled “Certificate of Service” which shall contain the following information: (1) The name and address of each individual, person, or entity served; (2) The manner of service [ie: regular mail/postage prepaid, certified mail/return receipt requested/postage prepaid, in-hand delivery; (3) The date said notice of hearing was mailed or served in-hand and, (4) a signed statement which shall include substantially the following language: “I, the undersigned, hereby certify that I have caused the above notices of hearing to be served upon the individuals and entities named, in the manner stated, and upon the date(s) provided. Signed this \_\_\_\_\_ day of \_\_\_\_\_, [year]”, [signature][date]. This statement shall be filed with the application filed with the Commission or the Commission Administrator no later than the date set for filing of applications.

(6) The applicant shall provide the Commission or the Commission Administrator with the original or a copy of the original return receipt forms/cards for all certified mail/return receipt sent, any and all unclaimed certified return receipt mailings, all undeliverable or returned regular mail envelopes, and any other document evidencing service of the notice of hearing sent pursuant to the provisions of this ordinance. Said documents shall be deposited with the Commission or the Commission Administrator no later than the day set for hearing. Any and all documents submitted in compliance with this paragraph shall become the property of the Commission and become part of the Commission record.

### **C. MINIMUM APPLICATION REQUIREMENTS:**

In addition to the required filings or documents to be included with the application as may be provided in any section, part, or paragraph of this ordinance, the applicant shall comply with the following application requirements:

(1) The applicant shall prepare and file the following documents, items, and information with the application:

- (a) One (1) original and **five (5) copies****[new]** of the application form which shall include any and all plans, depictions, surveys, photographs, studies, and any other document or information for consideration by the Commission at the hearing.
- (b) Documented evidence concerning the current ownership of the property or site subject to the application or matter for consideration by the Commission. Such evidence may include, without limitation, a title deed to the property or land subject to the application.
- (c) Any applicant who intends to allow any other person or entity represent them at the hearing shall file written authorization of representation with the application submitted. Said authorization shall provide (1) the name of the applicant, (2) the applicant's signature, (3) the name, address of all authorized representatives, (4) the business firm or title of the authorized representative, (5) the signature of each authorized representative [or the signature of an authorized executive of the firm if representation is provided by a firm], and (6) the date for each signature provided.
- (d) If the application concerns property or real estate held in trust, the applicant shall file a "Trustee Certificate" which shall state the name and address of the authorized or representative named to act on behalf of the trust in addition to the requirements stated in section (c) herein.
- (e) If representation is to be provided by a lawful fiduciary, the applicant shall file a certified copy of any appointment of the fiduciary by a court of competent jurisdiction in addition to the requirements provided in section (c) herein.
- (f) If a document or item is necessary to the determination of any matter presented in the application and said document and/or item cannot be obtained or provided for any reason, the applicant shall provide a statement of reasons for failing to provide such document(s) or item(s) [ie: voluminous materials, historically archived document, unavailable document, item cannot be obtained or moved]. The applicant shall provide a summary the contents of any such document(s) and/or description of any such item(s) along with a statement of its purported relevance to the application submitted for consideration by the Commission. The statement shall also provide the name or title of each document omitted, the name or title of each item omitted, the name and address of the owner of such document or item [if known], the location of each document or item by address, and any dates and times that each document or item may be viewed or examined.

(2) The applicant shall additionally file one (1) copy of the application and notice of hearing as provided herein to the Mayor, City Council, Planning Board, Zoning Board of Appeals, Board of Health, City Engineer and Building Commissioner. A copy shall be provided in the same manner to the Conservation Commission of the adjoining municipalities, if the application or Request for Determination pertains to property within 300ft of those municipalities. Any notice to any individual, agency, or entity required by this paragraph shall be sent no later than 14 days prior to the date set for hearing. All notices provided by this paragraph shall be delivered by certified mail/return receipt requested (postage prepaid), or by in-hand delivery. The applicant shall confirm delivery of all documents sent by mail or delivered in-hand to any individual as required by this paragraph by filing with the application a document entitled "Certificate of Service" which shall contain the following information: (1) The name and address of agency or entity served; (2) The manner of service [ie: regular mail/postage prepaid, certified mail/return receipt requested/postage prepaid, in-hand delivery; (3) The date said notice of hearing was mailed or served in-hand; and, (4) a signed statement which shall include substantially the following language: "I, the undersigned, hereby certify that I have caused a complete copy of the application and notice of hearing have been forwarded to each of the agencies and entities named, in the manner stated, and upon the date provided. Signed this the \_\_\_\_\_ day of \_\_\_\_\_, [year]", [signature][date]. This statement shall be filed with the application filed with the Commission or the Commission Administrator no later than the date set for filing of applications.

(3) **City Departments, Municipal Agency, Board, or Commission** shall have 10 days from receipt of notice, or such additional time as the Commission may allow, to file written comments and recommendations with the

Commission, which the Commission shall consider but which shall not be binding on the Commission. Any City Department, Municipal Agency, Board or Commission may alternatively send a representative to attend the hearing and provide comment or opinion on behalf of the Department, Municipal Agency, Board, or Commission regarding the subject matter presented to the Commission. The Commission may consider any and all information provided by any City Department, Municipal Agency, Board or Commission on their behalf which shall be advisory and not binding upon the Commission in its determination of any matter presented.

#### **D. REQUESTS FOR DETERMINATION OF APPLICABILITY:**

- (1) The Commission may waive any part, all, or none of the application or notice requirements provided herein if the applicant seeks a “Request for Determination of Applicability” and only seeks to obtain an informal opinion or a letter of determination concerning the applicability of any provision of this ordinance from the Commission.
- (2) The applicant filing a Request for Determination of Applicability shall prepare and file one (1) original and seven (7) copies of the Request for Determination form which shall include any and all plans, depictions, surveys, photographs, studies, and any other document or information for consideration by the Commission at the hearing.

#### **E. MISCELLANEOUS:**

- (1) **Consolidation of Hearing:** The Commission in an appropriate case may combine its hearing under this ordinance with the hearing conducted under the Wetlands Protection Act, MGL Chapter 131, Section 40, and Regulations, 310 CMR 10.00, as they may be amended.
- (2) **Continuances:** The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include, without limitation, receipt of additional information offered by the applicant or others, additional information and/or plans required of the applicant as deemed necessary by the Commission, or based upon comments and recommendations of other boards and officials. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available. Any continuance or postponement of the hearing shall require approval by a majority of the Commissioners then present.
- (3) **Quorum Defined:** A quorum is defined as a majority of the members of the Commission. The Commission is made up of 5 members; three makes a Quorum.

Any person filing a permit application or Request For Determination with the Conservation Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested), or hand delivery, to the City Council, Mayor, Planning Board, Zoning Board of Appeals, Board of Health, City Engineer and Building Commissioner. A copy shall be provided in the same manner to the Conservation Commission of the adjoining municipalities, if the application or RFD pertains to property within 300ft of those municipalities. An affidavit of the person providing notice with a copy of the notice mailed or delivered, shall be filed with the Commission. City Departments have 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.

#### **6.0 Burden of Proof**

The applicant for a permit shall have the burden of proving by a preponderance of the credible, written, physical photographic and/or graphical evidence that the work proposed in the permit application will not have adverse significant or cumulative effect upon the resource area values protected by this ordinance.

#### **6.1 Permits, and Determinations**

(A) A permit 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 twice for an additional one-year period, provided that a request for a renewal is received in writing, by the Commission prior to the date of expiration of the permit. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.

(B) For good cause, the Commission may revoke or modify a permit, other order, determination or other decision issued under this ordinance after notice to the holder of the permit, the public, abutters, and city boards, pursuant to Sections 5 and 6, and after a public hearing. Amendments to permits or determinations shall be handled in the manner set out in the Wetlands Protection Act Regulations and policies thereunder.

(C) The Commission in an appropriate case may combine the permit or determination (other action on an application) issued under this ordinance with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act, MGL Chapter 131, Section 40 and Regulations, 310 CMR 10.00, as they may be amended.

(D) No work proposed in any permit application shall be undertaken until the permit 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 until the holder of the permit provides a written statement to the Commission certifying that the permit has been recorded. Said certification shall be submitted to the Commission or the Commission Administrator on a document entitled "Certification of Recorded Decision" which shall substantially include the following language: "I, the undersigned, hereby certify that I have caused the decision of the Conservation Commission to be recorded with the Essex North Registry of Deeds [Recorded Land Division if applicable] on the \_\_\_\_\_ day of \_\_\_\_\_, [year] in Book: \_\_\_\_\_; Page: \_\_\_\_\_ . [signature][date].

(E) All actions taken by the Commission pursuant to this section shall require the approval of a quorum of the members of the Commission present at the meeting wherein the vote is taken.

(F) If the Commission, after a public hearing, determines that the activities that are the subject of the application are likely to have a significant or cumulative effect upon 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. If it issues a permit, the Commission shall impose conditions that the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

(G) The Commission is empowered to deny a permit for failure to meet the requirements of this ordinance; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in the regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this ordinance; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial as presented at the public hearing.

## **6.2 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 Commission may require that the performance and observance of the conditions imposed there under, (including conditions requiring mitigation work), be secured by one of the following methods:

(A) By a proper bond or deposit of money or negotiable securities 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 Certificate of Compliance 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 the City of Lawrence whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall only be used with consent of the applicant.

### **6.3 Enforcement and Penalties**

(A) 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 pursuant to this ordinance.

(B) The Commission is hereby authorized to enforce or take all lawful measures available to enforce any regulation, action, decision, condition, or requirement approved or adopted by the Commission. The Commission is further authorized to enforce or take all lawful measures available to enforce any provision of this ordinance. Said lawful measures taken by the Commission may include, without limitation, the use of criminal process, civil process, or any other means permitted by law.

(C) Upon request of majority of the Commission present at the public meeting, the City Attorney, Building Commissioner, Police Chief, Fire Chief, or any other Municipal Agent or Agency authorized or responsible for the enforcement of any provision of this ordinance, or any regulation, action, decision, condition, or requirement lawfully approved or adopted by the Commission, may institute civil process, criminal process, or any other lawfully permissible process or action as the Commission and/or enforcement agent or agencies may deem appropriate and necessary.

(D) Any Municipal board, any agent of any such Municipal Board, any Police Officer, or any officer or official granted police powers maintaining lawful jurisdiction to exercise such police powers, shall have authority to assist the Commission in the enforcement of this ordinance or any regulation, action, decision, condition, or requirement lawfully approved or adopted by the Commission.

(E) Any person who violates any provision of this ordinance or regulations thereunder, or any permits, Enforcement Order or Violation Notice of the Commission or of the Conservation Administrator issued there under, shall be punished by a fine of not more than \$300 each day per violation. 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, permit, Enforcement Order or Violation Notice violated shall constitute a separate offense.

(F) In the alternative to the pursuit of criminal recourse and penalties for any violation of this ordinance, the prosecuting authority may determine to pursue civil recourse and penalties for any violation in accord with the provision of G.L. c. 40, sec. 21D. Nothing herein shall be construed to require civil recourse and penalties be pursued in lieu of criminal recourse and penalties which shall remain the sole and exclusive determination of the authority charged with the responsibility of prosecuting any claim or cause of action unless otherwise required by law.

### **6.4 Appeals**

A decision of the Conservation Commission shall be reviewable in the superior court in accordance with G.L. Ch.249 sec.4 et seq.

## **6.5 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 or determination that previously has been issued.