

**CITY OF WESTFIELD  
WETLAND PROTECTION ORDINANCE RULES & REGULATIONS**

**SECTION 1: GENERAL PROVISIONS**

**§1.1 Authority**

These Regulations are promulgated by the City of Westfield Conservation Commission pursuant to the authority granted to it under Section 13-179 of the City of Westfield Wetlands Protection Ordinance (hereinafter the “Ordinance”), as may be amended from time to time.

**§1.2 Purpose**

These Rules and Regulations are promulgated to create uniformity of a process and to help clarify the provisions of the Ordinance and establish guidelines for the administration of activities within Resource Areas Subject to Protection Under the Ordinance. These Rules and Regulations are intended to minimize delay in the permitting process by providing applicants and their consultants with information, definitions, design specifications, and performance standards to assist in compliance with the Ordinance. The Ordinance sets forth a public review and decision-making process to regulate and control activities deemed likely to have significant or cumulative impact on resource area Values Protected by the Ordinance, including:

1. Protection of public and private water supply
2. Protection of groundwater
3. Flood control
4. Storm damage prevention
5. Prevention of pollution
6. Protection of water quality
7. Protection of fisheries
8. Protection of wildlife habitat
9. Protection of rare species and their habitat
10. Erosion and sediment control
11. Protection of agriculture
12. Protection of aquaculture
13. Protection of open land and public recreation values

**§1.3 Areas Subject to Protection under the Ordinance**

The following wetland resource areas are subject to protection under the Ordinance whether or not they border or fall within range of another Resource Area:

- a) any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, ephemeral pools, springs, banks, reservoirs, lakes, ponds of any size, beaches, isolated wetlands, and land under water bodies regardless of size;
- b) any rivers, streams, brooks and creeks whether perennial or intermittent;
- c) any lands subject to flooding or inundation by groundwater or surface water;
- d) any lands adjoining the resource areas mentioned in section §1.3(a), out to a distance of one hundred (100) feet, known as the Buffer Zone; and

- e) any lands adjoining these resource areas mentioned in section §1.3(b), out to a distance of two hundred (200) feet.

#### **§1.4 Definitions**

Except as otherwise specified below, the definitions of terms in these Rules and Regulations shall be set forth in the Massachusetts Wetlands Protection Act (M.G.L. Ch.131 §40; the Act) and its Regulations (310 CMR 10.00).

**Abutter:** as defined in 310 CMR 10.00

**Alter:** To change the condition of any area subject to protection under the Ordinance. The term “alter” shall include without limitation, the following activities when undertaken to, upon, within, or affecting the Wetland Resource Areas Protected by the Ordinance:

- a) Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
- b) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- c) Drainage, 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 in water with the exception of temporary recreational items such as boats;
- h) Destruction of plant life including, but not limited to, cutting of trees;
- i) Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
- j) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas Protected by the Ordinance.

**Amendment:** a minor deviation to a project approved by an Order of Conditions that has an unchanged or less impact on the values identified in §1.2 of these Rules and Regulations. These changes may include but are not limited to a wrong file number, typographical error, removal or addition of conditions, or a decrease in the limit of work.

**Commission:** Means the City of Westfield Conservation Commission; as defined in 310 CMR 10.00.

**Compensatory Storage:** A volume not previously used for flood storage and shall be incrementally equal to the theoretical volume of flood water at each elevation up to and including the 100-year flood elevation, which would be displaced by the proposed project, has an unrestricted hydraulic connection to the same waterway or waterbody as the project, and is within the same reach of the waterway or waterbody as the project location.

**Conditions:** Those requirements set forth in a written Permit or Order of Conditions issued by the Conservation Commission for the purpose of permitting, regulating, or prohibiting any activity that alters an Area Subject to Protection under this Ordinance.

**Contiguous Lands:** Land which adjoins or shares a boundary line with a resource area.

**Cumulative:** An increase in quantity, degree, or force by successive events or additions.

**Deemed Necessary:** A judgement passed by the Commission given the submittal of evidence that is required to comply with the Ordinance.

**Delineation:** The process of determining the boundary line of a resource area based upon hydrology, soils, and vegetation.

**Drought Period:** A period of extended drought occurs where the Massachusetts Drought Management Task Force has determined that the drought level is “Advisory” or higher in Westfield.

**Determination of Applicability:** As defined in 310 CMR 10.00

**Emergency Certification:** As defined in 310 CMR 10.00

**Enforcement Order:** means a document issued by the Commission to memorialize violations of the Act and/or Ordinance and necessary actions required by the Commission to rectify the situation including but not limited to “cease and desist” and to appear before the Commission during a regularly scheduled meeting.

**Ephemeral Pool:** Natural basins that collect runoff or groundwater, which only last for a short time before drying up or changing, often seasonally. Also referred to as a Seasonal Wetland.

**Erosion Control:** The prevention of the detachment or movement of soil, rock fragments, or vegetation by water, wind, ice, and/or gravity, through use of devices such as straw bales or wattles and silt fencing.

**Forestry:** The practice of planting, managing, and caring for forests using the application of science, economic and social principles.

**Freshwater Wetlands:** As defined in M.G.L. c. 131, § 7, para. 7.

**Geographic Information System (GIS):** A digital spatial system that creates, manages, analyzes, and maps all types of data to a map, integrating location with descriptive information. Westfield GIS allows a Person to view potential resource areas on their property, however accuracy is not 100% and not all resource areas are shown.

**Hearing:** A formal proceeding held during an open public meeting in order to receive testimony from all interested and involved parties on a proposed issue, action, or project.

**Hydric Soils:** Soil which is saturated, ponded, or flooded long enough during the growing season to cause anaerobic conditions in the upper layers. Hydric soils shall be determined using the most recent version of the text *Delineating Bordering Vegetated Wetlands Under the Massachusetts Wetlands Protection Act* published by Massachusetts Department of Environmental Protection.

**Intermittent Stream:** A stream or river in which surface water does not flow all year long. Further definition of an intermittent stream can be found in 310 CMR 10.58(2)(a)1.

**Isolated Vegetated Wetland (IVW):** A freshwater wetland which is geographically isolated from other resource areas, with no surficial inlet or outlet. IVWs are areas where the soils are saturated and/or inundated so that they support a predominance (>50%) of wetland indicator plants.

**Local Wetlands Permit:** A document issued by the Commission containing conditions which regulate or prohibit an activity or work that impacts Resource Areas and Values Protected by the Ordinance.

**Local Wetlands Permit Application:** A written notice filed by any Person intending to alter an Area Subject to Protection under the Ordinance only. In appropriate cases, a Local Wetlands Permit Application may be submitted concurrently with a Notice of Intent application on *WPA Form 3: Notice of Intent*.

**Massachusetts Department of Environmental Protection:** Department, MassDEP; The regulating body responsible for state wetland protection; shall include the Commissioner and any other person employed by the Department.

**Massachusetts Wetlands Protection Act (WPA, Act):** Massachusetts General Laws (M.G.L.) Chapter 131, Section 40; As Defined in 310 CMR 10.01(2).

**Meeting:** A deliberation by a public body, in this case a quorum of the Conservation Commission, with respect to any matter within the body's jurisdiction, in this case those Resource Areas and Values Protected by the Act and Ordinance.

**Mitigation:** As defined in 310 CMR 10.00.

**New Alteration:** Any work, activity, or alteration proposed within a Resource Area Protected by the Ordinance after the adoption of the original Westfield Wetlands Protection Ordinance #944, dated May 8, 1987, shall be considered new alteration. All alterations proposed hereafter shall comply with the Regulations set forth within and any amendments thereafter.

**Notice of Intent:** As defined in 310 CMR 10.00

**Open Land:** Land that is not developed for any use and can be privately or publicly owned. Open Space includes but is not limited to forests, agricultural fields, parks, playgrounds, and graveyards.

**Ordinance:** Shall refer to the City of Westfield Wetlands Protection Ordinance.

**Order of Conditions:** As defined in 310 CMR 10.00

**Passive Recreation/Passive Use:** Enjoyment of the natural environment through non-intensive activities that are docile in nature and cause minimal impact on the natural features and functions of an area.

**Person:** 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, administrative agencies, public or quasi-public corporations or bodies, this municipality, and any other legal entity, its legal representatives, agencies, or assignees.

**Plans:** Documentation required to describe proposed activities that may alter wetlands or other resource areas, ensuring a careful review for potential environmental impacts. Such documentation may include, but not be limited to, site plans and/or drawings and calculations prepared and stamped by a professional engineer (PE) registered in the Commonwealth of Massachusetts, or other qualified environmental professional.

**Pre-existing:** An alteration within a Resource Area which predates the adoption of the original Westfield Wetlands Protection Ordinance #944, adopted May 8, 1987. Those alterations which occurred prior to the specified date need not comply with the Ordinance or Regulations here in unless or until a new alteration is proposed.

**Professional Consultant:** A licensed engineer, registered land surveyor, or registered landscape architect licensed by the Commonwealth of Massachusetts, a Professional Wetland Scientist, or other qualified environmental professional.

**Public Participation:** The public is permitted to attend meetings of the Commission. A member of the public may address the Commission with permission of the chair. Public participation is within the chair's discretion and must be relevant to the Commission's purview under the Act and Ordinance, but the Attorney General encourages public bodies to allow as much public participation as time permits.

**Replication Area:** the creation of new resource areas to replace areas impacted due to alteration which is designed to recreate at wetland's physical, chemical, and biological characteristics. A replication area must meet the performance standards of the Resource Area being replicated and must be created adjacent to the impacted Resource Area where applicable.

**Resource Area Subject to Protection:** Those areas identified in §1.3 of the Ordinance and 310 CMR 10.02(1). It is used synonymously with Resource Area, Jurisdictional Area, or Area.

**Restoration:** The process of improving a Resource Area that has been previously degraded or destroyed by natural or human causes to pre-existing conditions or beyond.

**Rivers:** As defined in 310 CMR 10.00.

**Stream:** As defined in 310 CMR 10.00

**Structure:** A combination of materials assembled at a fixed location to give support or shelter including but not limited to, a building, house, barn, garage, or shed. The word "structure" shall be construed, where the context requires, as though followed by the words "or part or parts thereof."

**Upland:** The area of land lying above elevation where a Resource Area occurs and exhibits no evidence of hydric soils, wetland vegetation, or hydrology which would indicate presence of a vegetated wetland.

**Violation Letter:** A written document bearing the seal of the City of Westfield informing the responsible party that work has occurred within a Resource Area subject to protection under the Act and/or Ordinance without permission from the Commission and details steps to take in order to correct the violation(s).

**Watershed:** An area of land that channels surface and groundwater runoff into a common body of water.

**Wetland Plant Species:** Species which are native to and occur within bogs, marshes, swamps, or wet meadows including all species listed as obligate wetland, facultative wetland, and facultative in the most recent edition of the *National List of Plant Species that Occur in Wetlands* published by the United States Fish and Wildlife Service, listed in the Act, and/or exhibiting morphological and/or physiological adaptations to saturated conditions.

**Wetlands Protection Zone:** A minimum of fifty (50) feet of undisturbed vegetation directly abutting or adjoining Areas Subject to Protection Under the Ordinance.

### **§1.5 Revisions**

These Rules and Regulations may be revised from time to time by a majority vote of a quorum of the Conservation Commission provided that after public notice, a Public Hearing has been held in accordance with §13-179 of the Ordinance.

## **SECTION 2: FEES**

### **§2.1 Filing Fee Schedule**

At the time of filing of a Local Wetlands Permit Application (LWP), Notice of Intent (NOI), or Request for Determination of Applicability (RDA) under the Ordinance, the applicant shall pay a filing fee in accordance with the posted schedule found in Appendix A. These fees do not include any additional costs or expenses which may be necessary under §13-179 of the Ordinance and do not include costs of placing a legal notice in the local newspaper. Fees do not apply to municipal projects.

### **§2.2 Legal Notice Expense**

The Conservation Department shall prepare and submit the legal advertisement to a newspaper of general circulation, at the expense of the applicant. The applicant's contact information will be shared with the newspaper for the purpose of direct billing. The legal advertisement shall be placed in the newspaper not less than five (5) business days prior to the date of the public Hearing or meeting for the Commission to hold said public Hearing or meeting.

### **§2.3 Consultant Fee**

As provided by M.G.L. Ch.44 §53G, the Commission may impose reasonable fees for the employment of outside professional consultants, engaged by the Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application

submitted under the Act, Ordinance, and associated Regulations, or any other municipal or state statute, Ordinance, or regulation, as they may be amended or enacted from time to time.

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

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

The Commission shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five (5) days of the notice given. The consultant fee must be received in its entirety prior to the initiation of consulting services.

The Commission may request additional consultant fees, if necessary, review requires larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to determine the application is administratively incomplete (except in the case of an appeal). The Commission shall state such in a letter to the applicant, copied to Department. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee. Failure by the applicant to pay the consultant fee specified by the Commission within five (5) business days of the request for payment shall be cause for the Commission to deny the permit application under the Ordinance.

### **SECTION 3: APPLICATION PROCEDURES**

#### **§3.1 Application Forms**

Applicants filing a Request for Determination of Applicability (RDA) for determination if the work or area is subject to protection under the Ordinance shall use the current *WPA Form 1: Request for Determination of Applicability* produced by MassDEP. Applications shall be submitted in general accord with the instructions included in Appendix A of the Regulations.

Applicants looking to perform work only within an area subject to protection under the Ordinance or effects those values protected under the Ordinance and the accompanying Regulations shall use the current *Local Wetlands Permit Application (LWPA)* form produced by the Conservation Commission.

Applicants looking to perform work which falls within both an area subject to protection under the Ordinance and the Act or effects values of either the Ordinance and Act and accompanying Regulations to each shall file a Notice of Intent using the current *WPA Form 3: Notice of Intent* (NOI) produced by the Department.

For both LWPAs and NOIs, applications shall be submitted in general accord with the instructions included in Appendix B.

Local Wetland Permits (LWP) issued under the Ordinance will expire three (3) years from the date of issuance unless the permit expressly sets forth a longer term. Request for a renewal of an LWP or an Extension Permit for an Order of Conditions shall be submitted in compliance with the procedures and timelines found in §13-184 of the Ordinance and 310 CRM 10.05(8). A Local Wetlands Permit may be renewed for an additional period of up to three (3) years, provided that a request for renewal is received in writing by the Commission at least thirty (30) days prior to the expiration of the permit, in accordance with 310 CMR 10.00 and that financial guarantees and other securities required by the Commission are also reviewed and renewed.

Requests for a Certificate of Compliance (COC) shall be submitted in writing using the current *WPA Form 8A: Request for Certificate of Compliance* produced by MassDEP or a Request for Local Compliance Certificate (LCC) on the form provided by the Commission where jurisdiction was held under the local Ordinance only. Where professional plans are used, a COC or LCC request shall be accompanied by as-built plans signed and stamped by a registered professional consultant and a written statement from such professional certifying substantial compliance with the Plans and describing what deviation, if any, exists from the Plans approved in the Order. The as-built plan shall include at a minimum the resource area boundaries and setbacks, location, and elevation of stormwater management structures, if any, distances from structures to the resource area, the limit of work, and replication area, if any. If a project involved stormwater structures that require routine maintenance, the applicant or current property owner shall submit a signed agreement between themselves and a company who has been contracted to clean and maintain the stormwater structures.

The requirements for the use of a Professional Consultant will be reviewed on a case-by-case basis and may be waived for small projects where professional design may not be warranted.

Application forms and instructions may be obtained from the Conservation Department at Westfield City Hall, 59 Court Street, Westfield, Massachusetts, 01085 or on the Conservation Department website at [www.cityofwestfield.org/Conservation](http://www.cityofwestfield.org/Conservation).

### **§3.2 Timing Requirements**

Unless otherwise noted, all time periods of ten days or less shall be computed using business days only.

The date of filing of the application shall be the date when all required forms, fees, plans, and supporting information have been received and deemed administratively complete by the Commission or its Agent. All time periods set forth under §135-182 of the Ordinance and this section shall commence from this date. Supplemental information must be submitted at least

three (3) business days prior to the public Hearing to be considered. Failure to submit supplemental information within this timeframe may be grounds for the Commission to continue a public Hearing or meeting.

Within 21 days of receipt of a Request for Determination of Applicability, the Commission shall issue a Determination of Applicability on WPA Form 2.

Within 21 days of receipt of the minimum requirements for submittal of a Notice of Intent or Local Wetlands Permit Application, the Commission shall hold a public Hearing. Within 21 days of the close of a public Hearing, the Commission shall make a determination that the work is not significant to the resource area on *WPA Form 6 Order of Non-significance*, that the work will alter an area and issue a *WPA Form 5: Order of Conditions*, or issue a *Local Wetlands Permit* where work only occurs within an area subject to protection under the Ordinance.

### **§3.3 Plans and Information Requirements**

A detailed checklist of information that is required by the Commission to deem a filing complete is provided in Appendix A and Appendix B. The following provides a general guideline of the minimum information necessary to present a proposal to the Commission. Plans and information shall be submitted which completely and accurately describe the proposed activity and its effect on the Resource Areas Protected by the Ordinance.

Plans must be clearly drawn at a scale of no less than 1" = 30' and shall depict sufficient details to clearly describe the proposed project. Plans should include at a minimum: property lines; existing and proposed grades with at least two-foot contours; the boundary of resource areas denoted with consecutively numbered flags; the boundary of the one hundred (100) foot Buffer Zone; the boundary of the fifty (50) foot WPZ; all proposed structures within the Buffer Zone and Resource Areas; limit of work; all proposed structures and limit of work from Resource Areas; and the Assessor's plat and lot number, street number, and subdivision lot number, where applicable. The Commission requires that plans be stamped by a duly licensed Professional Consultant as defined in these Regulations. The requirements of plans may be waived by the Commission for small projects where professional design is not warranted. If a septic system is proposed in an area subject to protection, plans must show compliance with Title 5 of the Massachusetts Sanitary Code at the time of application. In addition to the site plan, a locus plan consisting of an 8.5"x11" portion of the United States Geological Survey topographic quadrangle map clearly identifying the location of proposed work is required.

In addition, the calculation of the extent of proposed disturbance shall make adequate provision for the physical construction of all work or activities. The impacted area(s) must be clearly shown on the proposed site development plans. Total calculated impacted area shall be divided into two sections of permanent disturbance and temporary disturbance. Sufficient workspace shall be considered as part of the altered area as temporary disturbance when calculating the amount of resource area impact and will vary on a case-by-case basis.

Additional plans and information which may be required by the Commission, or their Agent may include but is not limited to:

- a) A copy of the Federal Emergency Management Agency, Flood Insurance Rate Map clearly identifying the location of proposed work.
- b) A copy of the Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP) Estimated Habitats of Rare Wildlife and Vernal Pools map depicting the property subject to the proposed development where the property is located within an Estimated Habitat of Rare Wildlife or contains a certified vernal pool(s).
- c) Quantitative documentation (e.g., MassDEP Field Data Forms) to support the delineation of a vegetated wetland, with certification from the wetland biologist responsible for the delineation, stating the basis for the delineation, the date on which it was performed, and stating that the delineation as shown on the plans appears to be correct.
- d) Erosion and sedimentation control plan.
- e) A wetlands replication plan detailing the methods of construction for any wetland replication area proposed as mitigation for alterations, pursuant to the MassDEP Massachusetts Inland Wetland Replication Guidelines, September 2022, as amended from time to time.
- f) Alternative analysis (see §3.6): When work is being proposed within Wetland Resource Areas, including the WPZ, an Alternative Analysis may be required by the Commission. The Alternative Analysis should describe the costs and benefits of the project alternatives including alternative economic uses of the land as well as alternate layouts or sizes of the existing project proposal and discusses the impact of these alternatives on the resource areas.
- g) A plan or narrative detailing justification, mitigation, and enhancement for alterations to Areas Subject to Protection Under the Ordinance.
- h) A Wildlife Habitat assessment (see §\_\_\_) where alteration of the Resource Area(s) are proposed
- i) Stormwater Report Checklist which includes the appropriate calculations for projects which require conformance with MassDEP's Stormwater Management Standards, as amended from time to time, Westfield's Stormwater Ordinance as amended from time to time, and was prepared by a Professional Engineer.

### **§3.4 Notice to Abutters**

Any application for any wetland permit (NOI, LWPA, RDA, and/or ANRAD) shall be accompanied by a list of abutters. The list shall be from the most recent applicable tax list from the municipal accessor and include the name and mailing addresses of all abutters within 100 feet of the property line of the Project Locus. Written notification of the filing of any of the aforementioned applications shall be delivered by the applicant to abutters via USPS certified mail (return receipt requested) or hand delivery or by USPS certificates of mailing. Abutters include any property located directly opposite on any public or private street or way or across any body of water. The cost of notification shall be at the applicant's expense.

The notification shall provide the time, place, and subject matter of the Public Meeting at which the application will be heard. Evidence of notification shall be provided to the Commission at the time of submittal. An application will be considered incomplete without evidence of abutter

notification at least seven (7) calendar days prior to the requested public meeting date. In the case of hand delivery of a notice to abutters, the abutter must sign for receipt. A template abutter notification form can be found in Appendix C.

### **§3.5 Process for Amendments**

Following the issuance of a Final Order of Conditions, Determination of Applicability, or Local Wetlands Permit, unforeseen circumstances may arise, requiring minor deviation from the approved project plans. Where the Commission determines that a change is minor in nature or reduces impact to the Resource Area, the Commission, at its discretion, may allow an applicant to amend a permit, subject to the discussion and procedure set forth in Wetlands Program Policy 85-4: Amendments, found in Appendix D.

An Amended Order of Conditions, Determination of Applicability, or Local Wetlands Permit shall be recorded in the Registry of Deeds or if the land affected is registered land, in the Registry Section of the Land Court for the County wherein the land lies. Work shall not commence or continue until such proof of recording has been submitted to the Commission.

### **§3.6 Alternative Analysis**

The Ordinance in §13-177 states that “Except as permitted by the Commission or as provided in the Ordinance, no Person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter” any Areas Subject to Protection by the Ordinance. As such, projects and associated disturbances shall be located outside all Resource Areas identified in §13-177 and the Wetlands Protection Zone. Practical alternatives to locating the project outside the areas must be investigated and should one or more prove feasible, development plans must be amended to relocate activities accordingly. The Commission shall consider as practical alternatives options that were available to the applicant but appear to be precluded due to self-imposed hardships and constraints such as, but not limited to, the lot, roadways and drainage layouts engineering without prior regard to the impact on the Resource Areas.

All projects shall be located outside Resource Areas unless the applicant convinces the Commission that the area or part of it may be altered without harm to the values protected by the Ordinance. In accordance with §13-184 of the Ordinance, the Commission shall require applicants to avoid and minimize wetland alterations and require mitigation where alterations are proven to be unavoidable so there are no significant impacts to the Resource Areas. If the Commission determines that a project may have a significant impact on Resource Areas, then there is good cause to deny the project.

The applicant shall carry the burden of proof for demonstrating to the Commission’s satisfaction as described in these Regulations, that the proposed work or activities within Resource Areas are necessary and that reasonable alternatives do not exist, including but not limited to reducing the scale and scope of the project. The Commission shall consider the specific characteristics of the work proposed for immediate and cumulative impact on the Resource Area and values protected by the Ordinance.

The Commission may make recommendations or offer suggestions for modification of plans and proposals to reduce impact on Resource Areas and values protected by the Ordinance and

improve the Resource Area to make it acceptable to the standards set forth in Section 4 of these Regulations. However, the Commission is not obligated to do so and shall not be bound in its decision making by any prior suggestions or recommendations offered to the applicant.

### **§3.7 Self Imposed Hardships**

During the evaluation of a project which proposes impacts to Resource Areas, the Commission will view any adjacent properties located nearby when determining cumulative resource area impacts pursuant to §13-184 of the Ordinance. The applicant or property owner is advised to prevent situations where they have created their own hardship through design by not carefully considering all likely impacts to areas subject to protection to the Act or the Ordinance. In the case of Limited Project proposals under the Act, proposed roadways or driveways shall be designed to provide access to all areas of the proposed site without relying upon a future wetland crossing. The Commission shall consider any future impacts proposed to be self-imposed and will not grant further alterations in subsequent filings on a lot-by-lot basis for any project.

### **§3.8 Wildlife Habitat Evaluations**

## **SECTION 4: PERFORMANCE STANDARDS**

### **§4.1 Introduction**

Each application shall be reviewed by the Commission on a case-by-case basis. The Commission shall require that applicants avoid alterations to Wetland Resource Areas wherever feasible. If it is determined a project will have a significant impact on the Wetland Resource Area or does not follow the performance standards, the project shall be denied.

The introduction, purpose, and performance standards set forth in 310 CMR 10.51 through 10.60 shall apply to the Areas Subject to Protection by the Ordinance and are hereby incorporated by reference as if set forth fully herein, except if stated otherwise within the Ordinance.

### **§4.2 Discretionary Waiver**

The Commission may (but shall not be required to) waive strict compliance with the Ordinance and these Regulations if the Commission finds that the proposed work, including proposed mitigation, will have no significant adverse impact on interest protected by the Ordinance.

### **§4.3 Limited Projects**

Under the Ordinance, the “Limited Project” status granted pursuant to 310 CMR 10.53(3) is not recognized. As such, the Commission is not bound to grant wetland resource area alterations for activities proposed as Limited Projects under the Act. The Commission will review applications and evaluate resource area alterations associated with proposed Limited Projects, in accordance with the performance standards and procedures included in these Regulations on a case-by-case basis. Where a project applies for Limited Project status under the Act, but cannot meet the performance standards set forth in these Regulations, the Commission may require additional mitigation measures and for the performance standards to be followed to the best of the ability of the applicant.

#### **§4.4 Conditional Exceptions**

The Ordinance and these Rules and Regulations, which may be amended from time to time, are applicable to those who seek to develop property or conduct an activity requiring the approval of the Commission. The Ordinance includes several exceptions (§13-180 – Exceptions) whereby the application and permit procedures required by the Ordinance would not apply. These exceptions include:

1. The maintenance, repair, or replacement, but not the substantial changing or enlarging of an existing and lawfully located structure or facility in service to the public.
2. Emergency projects necessary for the protection of the health and safety of the public.
3. Forestry practices in accordance with M.G.L. Ch.131 §40-46.
4. Normal maintenance or improvement of land which is lawfully in agricultural use.
5. Minor activities within the Buffer Zone and Riverfront Area as specified in Section 13-180 – Exceptions (E).

The Ordinance does require that work performed under the above exemptions conform to performance standards and design specifications as written in these Regulations and only exempts the work from the application and permit processes.

The term “existing” as used above refers to structures and appurtenance constructed prior to May 8, 1987, the date of the original Ordinance. Proof of existence prior to this date must be submitted to the Commission when claiming this exception. Therefore, application and permit required by the Ordinance shall be required to do work associated with entirely new structures (those not replacing an old one in a 1:1 ratio) constructed after May 8, 1987, whether or not they would be considered appurtenant.

The exception for emergency projects allows agencies to avoid the application and permit process as written in the Ordinance provided that advanced notice is given to the Commission prior to the advancement of work or within 24 hours after commencement. Any Person requesting an emergency certification must specify why the project qualifies as an emergency and what agency is to perform the work or ordered it to be performed. All requests for emergency certification must be written. A majority of the Commission must certify the work as an emergency project to be performed only for the time and place certified by the Commission for the limited purpose of abating the emergency.

#### **§4.5 General Performance Standards for Freshwater Wetlands**

1. Preamble. Freshwater Wetlands include Isolated Vegetated Wetlands as defined in §4.6, Seasonal Wetlands as defined in §4.9, and Bordering Vegetated Wetlands as defined in 310 CMR 10.55 and incorporated into these Regulations under §4.1. Freshwater wetlands are likely significant to public or private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, protection of water quality, protection of agriculture and aquaculture, and protection of fisheries, wildlife habitat, and rare species, and protection of open space and passive recreation.

- a. Freshwater Wetlands contain plant communities, soils, and topography which remove or detain sediments, nutrients, and toxic substances that may be found in runoff and floodwaters.
  - b. Some nutrients and toxins may be detained for years within plant root systems found in Freshwater Wetlands or held by these systems during the growing season and released in fall or winter when the plant decays, causing less impact to water quality.
  - c. Freshwater Wetlands are areas where groundwater discharges to the surface and were sometimes surface water discharges to groundwater. Vegetation and topography within Freshwater Wetlands slow down and reduce the passage of flood waters during peak flow periods by providing temporary water storage and facilitating natural evaporation and transpiration. These processes reduce downstream damage to private and public lands and recreational spaces.
  - d. During dry periods, the water retained in Freshwater Wetlands is essential to the maintenance of base flow levels in rivers and streams, an essential function for protection of water quality and supply.
  - e. Wetland vegetation provides shade which moderates water temperatures that support wildlife. Freshwater Wetlands flooded by adjacent water bodies and waterways provide food, habitat, and cover for fish, insects, reptiles, amphibians, mammals, and birds.
2. Definitions, critical characteristics, and boundary. Freshwater Wetlands are defined in these Regulations as any area where the topography may be low and flat, where soils are saturated as demonstrated by hydric soils, or where the vegetation community is composed primarily of species adapted to or characteristic of saturated areas.
    - a. Freshwater Wetlands may or may not be bordering or within reach of other Resource Areas
    - b. The presence of hydric soils or wetland vegetation can be used to identify an area.
    - c. Hydric soils are those soils that are saturated, ponded, or flooded long enough during the growing season to cause anaerobic conditions in the upper layers. For the purpose of these Regulations “upper layers” shall mean the first six (6) inches of soils which are Somewhat Poorly Drained. Poorly and Poorly Drained soils are presumed to be hydric, unless artificially drained or altered. In certain situations, the “upper layer” may be considered as within 12 inches of the soil surface.
    - d. Hydric soils are not necessary to identify a Freshwater Wetland if there is a predominance of wetland vegetation or other forms of indicators present as included or identified in generally accepted scientific or technical publications.
    - e. In situations where the natural vegetative community of a Freshwater Wetland has been destroyed, the Commission may determine an area to be a Freshwater Wetland on the basis of hydric soils alone or, if requested by the applicant or landowner, may defer the determination until the natural vegetation has regrown.
    - f. In situations where the Commission determines that the natural vegetative community has been destroyed in violation of the Ordinance, the Commission itself may elect to defer any determination of the presence, absence, or boundaries

of a freshwater wetland until the natural vegetation regrows and/or hydrologic patterns return and until that time may determine the area to be a freshwater wetland on the basis of hydric soils alone.

3. Presumptions. Where a proposed activity involves the removing, filling, dredging, or alteration of a freshwater wetland, the Commission shall presume that such an area is significant to the interest as specified in the Preamble above §4.5(1). This presumption is rebuttable and may be overcome upon a clear showing that the Freshwater Wetland does not play a role in the protection of said interest. In the event that the Presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.
4. Performance Standards. Where the presumption set forth above is not overcome, any proposed work on a Freshwater Wetland shall not destroy or otherwise impair any portion of said area.
  - a. Replacement and Replication. Notwithstanding this, the Commission may issue a Permit allowing work that results in the loss of up to 5,000 square feet of a Bordering Vegetated Wetland or 25% of an Isolated Vegetated Wetland or Seasonal Wetland excepting Certified and Potential Vernal Pools and/or areas of vernal pool habitat when said area is replaced in accordance with the following general conditions, as well as any additional conditions the Commission deems necessary to ensure that the replacement area will function in a manner similar to the area being lost:
    - i. The surface of the replacement area being created shall be double that of the lost area (2:1).
    - ii. The groundwater and surface water elevation of the replacement area shall be equal to that of the lost area.
    - iii. The overall horizontal configuration and location of the replacement area with respect to the bank shall be similar to that of the lost area.
    - iv. The replacement area shall have an unrestricted hydraulic connection to the same water body or waterway as the lost area.
    - v. The replacement area shall be located within the same general area of the water body or waterway as the lost area.
    - vi. At least 75% of the surface of the replacement area shall be established with indigenous wetland plant species within two growing seasons and prior to said vegetative establishment, any exposed soil in the replacement area shall be stabilized to prevent erosion in accordance with U.S. Soil Conservation Service methods.
    - vii. The replacement area shall be provided in a manner that is consistent with all other general performance standards for each resource area described in these Regulations.
    - viii. Replacement and replication shall follow the procedures set forth in the most current version of MassDEP *Massachusetts Inland Wetland Replacement Guidelines*

- ix. The replacement or replication area shall be completed prior to work commencing on the remainder of the project permitted.
- b. Any delineation of a Freshwater Wetland will only be accepted if completed and reviewed by the Commission during the Growing Season, identified by the Department. In addition, the technique for determining wetland boundaries shall follow the most recent edition of the *Massachusetts Handbook for Delineation of Bordering Vegetated Wetlands*.
- c. The Commission may, at its discretion, issue a Permit if the wetland in question has a surface area of less than 400 square feet; takes the form of a narrow, linear finger-like wetland extending into an adjacent upland; or if in the judgement of the Commission it is not reasonable to scale down, redesign, or otherwise change the proposed work so that it could be completed without loss of said wetland.
- d. If the Commission determines that it is unfeasible to create a replacement wetland on site, it may require the applicant to contribute financially to the construction of an off-site replacement area in wetlands under the control of the Commission, the contribution not to exceed the cost of the wetland replacement.
- e. Notwithstanding the provisions above, no project may be permitted which will have any adverse effect on sites specified as being habitat of rare plants, vertebrate, or invertebrate species as identified on the most recent Natural Heritage and Endangered Species Estimated Habitats of Rare Wildlife map and identified under Section 10.59 (Rare Species) of the Regulations which accompany the Wetlands Protection Act (310 CMR 10.59).
- f. These provisions shall not apply to maintenance of stormwater detention, retention, or infiltration basins, sedimentation ponds, or to maintenance of stormwater emergency dissipating structures that have been constructed and maintained in accordance with a valid Order of Conditions.

#### **§4.6 Isolated Vegetated Wetlands (IVW)**

- 1. Preamble: Isolated Vegetated Wetlands are Freshwater Wetlands that do not border on creeks, rivers, streams, ponds, and lakes. IVWs are likely significant to public or private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, protection of water quality, protection of agriculture and aquaculture, and protection of fisheries, wildlife habitat, and rare species habitat.
  - a. Isolated Vegetated Wetlands may be found either in areas with low, flat topography or below sidehill seeps. These areas provide temporary storage of water resulting from runoff, rising groundwater, or where groundwater breaks out of the slope forming a sidehill seep, thereby providing flood control and preventing flood damage. Alteration of IVWs can result in displacement of retained water into adjacent properties, resulting in modified drainage patterns and potential property damage.
  - b. Isolated Vegetated Wetlands are areas where groundwater may discharge to the surface either by a rising water table or from a sidehill seep. In some circumstances, surface water may discharge into the storage area, particularly where they are underlain by pervious materials. IVWs may be impacted by

contaminates introduced to the areas, which will find easy access to groundwater and may pollute private or public water supplies.

- c. Where such areas are underlain by pervious material covered by a mat of organic peat or muck, they are likely to be significant to prevention of pollution.
  - d. Isolated Vegetated Wetlands may provide important habitat for wildlife by providing seasonal wetland habitats essential for breeding sites for certain amphibians which require isolated areas which generally flood in the spring or summer and are free of fish or other predators. Reptiles, birds, and mammals depend on IVWs as a source of food and water.
2. Definitions, critical characteristics, and boundary. Isolated Vegetated Wetlands are defined in these Regulations as Freshwater Wetlands which are geographically isolated from other Resource Areas, with no surficial inlet or outlet. IVWs may occur in depressions or closed basins in otherwise flat topography. In these areas, water may only pool during certain times of the year or remain within the upper 18 inches of the soil profile. Additionally, some IVWs occur downslope of sidehill seeps, based upon topography, soils, and the water table.
- a. IVWs are areas where the soils are saturated and/or inundated such that they support a predominance (>50%) of obligate or facultative wetland plant species as included or identified in generally accepted scientific or technical publications; and
  - b. IVWs must cover an area that is 400 square feet or greater.
3. Presumption. Where a proposed activity involves filling, dredging, or alteration of an Isolated Vegetated Wetland, the Commission shall presume that such an area is significant to the interests identified in these Regulations. This presumption is rebuttable and may be overcome only by a clear showing that said land does not play a role in said interest. In the event that a presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.
4. Performance standards. Where the presumption set forth above is not overcome, any proposed work in an Isolated Vegetated Wetland shall not destroy or otherwise impair any portion of said area.
- a. Work which will result in alteration of an Isolated Vegetated Wetland shall not result in the following:
    - i. Flood damage due to filling, causing displacement of water that would otherwise be confined within said IVW.
    - ii. An adverse effect on public and private water supply or groundwater supply.
    - iii. An adverse effect on the capacity of said area to prevent pollution of the groundwater, where the area is underlain by pervious material which in turn is covered by a mat of organic matter.
    - iv. An impairment of its capacity to provide wildlife habitat.
  - b. Notwithstanding this, the Commission may issue a Permit allowing work that results in the loss of up to 25% of an Isolated Vegetated Wetland when said area is replaced in accordance with the following general conditions, as well as any

additional conditions the Commission deems necessary to ensure that the replacement area will function in a manner similar to the area being lost:

- i. Replacement standards for Isolated Wetlands will follow those Regulations set forth in §4.5(4)(a)-(e).
- c. Notwithstanding the provisions above, no project may be permitted which will have any adverse effect on sites specified as being habitat of rare plants, vertebrate, or invertebrate species as identified on the most recent Natural Heritage and Endangered Species Estimated Habitats of Rare Wildlife map and identified under Section 10.59 (Rare Species) of the Regulations which accompany the Wetlands Protection Act (310 CMR 10.59).

#### **§4.7 Lands Subject to Flooding (LSF)**

1. Preamble. Lands Subject to Flooding (LSF) include both isolated lands subject to flooding (ILSF) and bordering lands subject to flooding (BLSF) as described in 310 CMR 10.57 and incorporated into these Regulations under §4.1. LSF are likely to be significant to protection of public and private water supply, protection of ground water, flood control, storm damage prevention, prevention of pollution, protection of water quality, protection of fisheries and wildlife habitat, and protection of agriculture and aquaculture.
2. Definitions, Critical Characteristics, and Boundaries. The Ordinance protects Isolated Lands Subject to Flooding or Inundation which may not otherwise meet the definitions, critical characteristics, and boundaries as listed in 310 CMR 10.57(2). These areas include isolated shallow or special flood hazard areas, or closed basins, which at least once per year confine standing water characterized by ponding or sheet flow to an average depth of at least three (3) inches and a surface area of at least two thousand (2,000) square feet or an equivalent volume of 500 cubic feet.
3. Presumption. Where a proposed activity involves the removing, filling, dredging, or alteration of a Freshwater Wetland, the Commission shall presume that such an area is significant to the interests as specified in the Preamble above, §4.7(1). This presumption is rebuttable and may be overcome upon a clear showing that the LSF does not play a role in the protection of said interests. In the event that the Presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.
  - a. The boundary of LSF as determined within the most recent Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), Flood Insurance Rate Maps shall be presumed accurate. This presumption may be overcome only by submittal to the Commission of a determination document issued by FEMA NFIP for flood zone designation.
4. Performance Standards. Where the presumption set forth above is not overcome, any proposed work upon or within LSF shall not destroy or otherwise impair any portion of said area.
  - a. Work which will result in alteration of LSF shall not result in the following:
    - i. Flood damage due to fill causing lateral displacement of water that would otherwise be confined.

- ii. An adverse effect on public or private water supply or groundwater supply.
  - iii. An adverse effect on the capacity of said area to prevent pollution of groundwater.
  - iv. An impairment of the area's capacity to provide wildlife or rare species habitat.
- b. Where a project produces excess compensatory flood storage, this compensatory storage shall not be "banked" for future use and excess compensatory storage shall be lost.

Notwithstanding the provisions above, no project may be permitted which will have any adverse effect on sites specified as being habitat of rare plants, vertebrate, or invertebrate species as identified on the most recent Natural Heritage and Endangered Species Estimated Habitats of Rare Wildlife map and identified under Section 10.59 (Rare Species) of the Regulations which accompany the Wetlands Protection Act (310 CMR 10.59).

#### **§4.8 Rivers and Streams**

1. Preamble Rivers and Streams are likely to be significant to the protection of public and private water supply, protection of ground water, flood control, storm damage prevention, prevention of pollution, protection of water quality, protection of fisheries and wildlife habitat, protection of rare species and their habitat, protection of aquaculture and agriculture, and protection of open lands and public recreation values.
  2. Definition, Characteristics, Critical Boundaries. Streams are defined as a body of running water, including brooks and creeks, which move in a definite channel in the ground due to a hydraulic gradient, and which flows within, into, or out of an Area Subject to Protection Under the Act and Ordinance.
- A. Rivers and Perennial Streams. A river is any natural flowing body of water that empties into any ocean, lake, pond, wetland, other perennial stream or river and which flows throughout the year
1. Perennial streams are regulated the same as Rivers and therefore have Riverfront Area.
  2. A river or perennial stream is characterized by horizontal zonation, demonstrating flow.
  3. A river or stream shown as perennial (a solid blue line) on the current USGS topographic quadrangle map or more recent map provided by the department is perennial, and thus a river.
  4. A river or stream shown as intermittent or not shown on the current USGS map or more recent map provided by the Department, that has a watershed size greater than or equal to one square mile, is perennial.
- B. Intermittent Streams. A body of running water, including brooks and creeks, which moves in a definitive channel, in the ground due to a hydraulic gradient, and which flows within, into, or out of an Area Subject to Protection Under the Ordinance, but does not flow throughout the year.

1. A stream shown as intermittent or not shown on the current USGS map or more recent map provided by the Department, that has a watershed of less than one (1) square mile is intermittent unless:
    - i. Said stream has a watershed size of at least 0.05 square mile and has a flow rate of 0.01 cubic feet per second at the 99<sup>th</sup> percentile flow duration using the USGS StreamStats method. The Commission shall find such streams to be perennial.
    - ii. When the USGS StreamStats method cannot be used because the stream does not have a mapped and digitized centerline, and the stream has a watershed size of at least ½ square mile and the surficial geology contains 75% or more of stratified drift, the Commission shall find such streams to be perennial.
  2. Notwithstanding §4.8.2.A(3) and (4) above, the Commission shall find that any stream is intermittent based upon a documented field observation that the stream is not flowing. A documented field observation shall be made by a competent source and shall be based upon an observation made at least once per day, over four days in any consecutive 12 month period, during a non-drought period on a stream not significantly affected by drawdown from withdrawals of water supply wells, direct withdrawals, impoundments, or other man-made flow reductions or diversions. Field observation shall be documented by field notes and by dated photographs or video. All field observations shall be submitted to the Conservation Commission with a statement signed under the penalties of perjury attesting to the authenticity and veracity of the filed notes, photographs or video and other credible evidence. Department staff, Conservation Commissioners and Conservation Commission staff are competent sources; a Conservation Commission may consider evidence from other sources that are determined to be competent.
- C. The Conservation Commission recognizes the functions and values associated with both perennial and intermittent streams. Accordingly, the Ordinance protects the adjacent upland to the resource area within 200 feet of the following streams (known as the Riverfront Area) whether the segment of stream is intermittent or perennial. This list is not all inclusive and may be changed given environmental factors, sustainability, and risk analysis:
1. Arm Brook
  2. Ashley Brook
  3. Brickyard Brook
  4. Cooley Brook
  5. Jacks Brook
  6. Jims Brook
  7. Little Stream
  8. Moose Brook
  9. Powdermill Brook
  10. Simmons Creek
  11. Walker Brook

D. Channels which are fed purely by stormwater structures (i.e. do not flow from a Resource Area) are not subject to jurisdiction as an Intermittent Stream until said channel intersects with or combines into another Resource Area.

1. In a case where an above ground drainage swale or ditch is unmaintained, the Commission may consider it a River or Stream if they exhibit features and characteristics as defined in sections (A) and (B) above and contribute significantly to the interests defined in the Preamble.

3. Presumption. Where a proposed activity involves work within Rivers and Streams, the Commission shall presume that the Area is significant to protection of the interest specified in §4.8.1. This presumption is rebuttable and may be overcome by a clear showing by the Applicant that the River or Stream does not play a role in the protection of a majority of these interests.

In the event that the presumption is deemed to have been overcome as to the protection of all the interests, the issuing authority shall make a written determination to this effect, setting forth its grounds. Where the applicant provides information that the River or Stream at the site of the activity does not play a role in the protection of a majority of said interest, the issuing authority may determine that the presumption for that interest has been rebutted and the presumption of significance is partially overcome.

4. Performance Standards. Where the presumption set forth in §4.8.3 is not overcome, any proposed work or activity within or adjacent to Rivers and Streams shall not impair the ability of the Area to protect the interests specified in §4.8.1.

- A. The Commission shall assess work within or upon River and Streams through application of the performance standards of Bank (310 CMR 10.55) and Land Under Water Bodies and Waterways (310 CMR 10.56).
- B. All Intermittent Streams protected by this ordinance are granted protection of a 100ft Buffer Zone. As such, the Commission shall apply the performance standards of Buffer Zone (§4.10.3) in assessing a proposed project that would alter the adjacent upland to a River or Stream.
- C. Notwithstanding (C) above, the adjacent upland to those Rivers and Streams listed in §4.8.2.C, are granted protection of a 200-foot riparian zone, known as the Riverfront Area. As such, the Commission shall apply the performance standards of Riverfront Area (310 CMR 10.58) in assessing a proposed project that would alter the adjacent upland to these specific Rivers and Streams.
- D. Notwithstanding the provisions in §4.8.4(A) through (C), no project may be permitted which will have any adverse effect on sites specified as being habitat of rare plants or species as identified on the most recent Natural Heritage and Endangered Species Estimated Habitats of Rare Plants Map as well as rare wildlife, identified under Section 10.59 (Rare Species) of the Regulations which accompany the Wetlands Protection Act (310 CMR 10.59)

#### **§4.9 Seasonal Wetlands (Ephemeral and Vernal Pools).**

1. Preamble. Seasonal Wetlands, for the purpose of the Ordinance, include both ephemeral and vernal pools. Seasonal Wetlands are significant to flood control, storm damage prevention, private and public water supply, and groundwater supply, protection of water quality, protection of fisheries and wildlife habitat, protection of agriculture and aquaculture and protection of open space and passive recreation.
2. Definitions, Critical Characteristics and Boundaries. Seasonal wetlands are isolated depressions or closed basins, typically found within Lands Subject to Flooding, Riverfront Area, Intermittent Stream Frontage, and in saddles at the base of slopes. They temporarily confine water during periods of high-water tables, spring runoff, snowmelt, or heavy precipitation. Water may pool to the surface at least once a year or be contained within the upper 24 inches of soil. Such wetlands will hold water for an extended period of time over the course of the year but are too small to be considered a pond or lake as defined in 310 CMR 10.04.
  - a. Seasonal Wetlands are essential breeding sites for amphibians which require isolated areas that are flooded for at least 2 months and free from fish predators. Most of these species will use the wetland for non-breeding habitat functions for the remainder of their lifecycle. Such wetlands also provide food for many reptiles, birds, and mammals.
  - b. Ephemeral Pools are Seasonal Wetlands that may temporarily confine water during any season or time of year.
  - c. Vernal pools are Seasonal Wetlands that may temporarily confine water for a minimum of two continuous months during the spring season, often drying up by summer. By definition, Vernal Pools are Ephemeral Pools.
  - d. There is no minimum threshold size for Seasonal Wetlands and a given wetland can vary in size from year to year depending on the amount of rainfall or snowmelt.
  - e. Seasonal Wetlands typically produce a well-developed layer of organic matter, primarily through trapping airborne leaves in the fall. The presence of water-stained leaves in a dry depression is a good indicator that the area temporarily confines water.
  - f. The vegetation and soil of a Seasonal Wetland may be like that of a Freshwater Wetland or may lack any wetland vegetation or hydric soils if the presence of water is short in duration.
  - g. The boundary of a Seasonal Wetland shall be determined based upon one of the following factors (depending upon available information) with the measuring method containing the largest area being adopted:
    - i. An area consisting of at least 50% of the natural vegetative community of obligate and facilitative wetland species.
    - ii. The broadest extent of pooling observed or recorded in said area.
    - iii. The extent of the presence of water-stained leaves.
    - iv. The extent of the presence of caddis fly cases and or fingernail or pea clams or other bioindicators.

- v. The area calculated to be inundated by runoff from the 100-year storm.
    - vi. The area of hydric soil present.
  - h. In the case of identification of a potential Vernal Pool, the guidelines for vernal pool certification criteria established by the Massachusetts Division of Fisheries and Wildlife shall be followed.
  - i. In areas where there is disagreement between the Commission and the applicant as to the presence or extent of a Seasonal Wetland, the burden of proof falls on the applicant.
  - j. The Commission may postpone the determination of the extent of a Seasonal Wetland to an appropriate time of year or non-drought year.
  - k. The Ordinance extends and expands upon protection of the Act and presumes Vernal Pool habitat exists physical characteristics of a Seasonal Wetland conform to the definition of a “vernal pool” set forth in §4.9(2)(c) and includes the area within one hundred (100) feet around the mean annual boundary of a vernal pool depression as part of the Resource Area.
- 3. Presumptions. Where a proposed activity involves filling, dredging, or alteration of a Seasonal Wetland, the Commission shall presume that such an area is significant to the interests identified in these Regulations as listed under §4.9(1). This presumption is rebuttable and may be overcome only by a clear showing that said land does not play a role in said interests. In the event that a presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.
- 4. Performance Standards. Where the presumption set forth above in §4.8(3) is not overcome, any proposed work upon or within a Seasonal Wetland shall not destroy or otherwise impair any portion of said area. Work on Seasonal Wetlands or within 100ft of Seasonal Wetlands shall not result in the following:
  - a. Any impairment of the capacity of the Seasonal Wetland to provide wildlife habitat.
  - b. Flood damage due to filling that causes lateral displacement of water which would otherwise be confined within the Seasonal Wetland.
  - c. An adverse effect of public and private water supply or groundwater supply
  - d. An adverse effect on the capacity of said area to prevent pollution of groundwater.
  - e. Notwithstanding the provisions above, no project may be permitted which will have any adverse effect on sites specified as being habitat of rare plants, vertebrate, or invertebrate species as identified on the most recent Natural Heritage and Endangered Species Estimated Habitats of Rare Wildlife map and identified under Section 10.59 (Rare Species) of the Regulations which accompany the Wetlands Protection Act (310 CMR 10.59).

#### **§4.10 Buffer Zone**

1. Preamble. Naturally vegetated Buffer Zones play a role in protecting the functions and ecosystem services provided by adjacent Resource Areas by filtering and removing pollutants, providing groundwater recharge, moderating water temperature, providing core habitat, reducing erosion and siltation into wetlands, providing flood storage

capacity, prevent pollution and protect water quality. Buffer Zones temper the impacts of stressors on wetlands which enhances the capacity for resource areas to adapt and respond with resilience. Activities undertaken within the Buffer Zone have a high likelihood of altering the adjacent Resource Area either immediately or over time. Buffer Zones are significant to the values listed in §1.2(1)-(13).

- a. Accordingly, these Regulations require that any Persons intending to perform work or activities within 100 feet of a Resource Area(s) submit to the Commission either a Request for Determination of Applicability (RDA), Local Wetlands Permit Application (LWPA) or Notice of Intent application (NOI).
  - i. Requiring the filing of a RDA, LWP, or NOI application allows the Commission the opportunity to review proposed projects on a case-by-case basis to determine whether any alteration of a neighboring resource area will occur and whether any resulting alteration is in compliance with other applicable performance standards.
  - ii. If, in response to an RDA, the Commission finds that work within the Buffer Zone will not alter the resource area, it may issue a Negative Determination of Applicability (DOA), with or without conditions.
2. Definition, Critical Characteristics, and Boundaries
  - a. The Buffer Zone is that area of land extending 100 feet horizontally outward from the boundary of any Resource Area as specified in §1.3(a).
  - b. Vegetative cover and soil within the Buffer Zone filter runoff, protecting water quality within the adjacent Resource Area. Vegetation and soils may also slow surface runoff or groundwater seepage, permitting infiltration of precipitation, maintaining the hydrologic regime to which the Resource Area is adapted whether or not the drainage is directed towards a Resource Area.
  - c. Vegetation is often used as wildlife for important functions such as nesting, feeding, and protective cover.
  - d. Recommend widths of Buffer Zones that contribute to protection of the Values of the Ordinance vary based on site specific conditions and goals. Buffers of 100 feet or more are scientifically proven to be most effective for removing pollutants and sediments more effectively.
  - e. Existing condition, soils, sensitivity, vegetation, hydrology, and wildlife habitat of the Resource Area are all critical characteristics when considering potential impacts from Buffer Zone Activities.
  - f. Vegetation, surface, existing condition, water source, flow, slope, soil, groundwater regime and depth, location in relation to flow, width, size, nutrients, and upland conditions relating to the Buffer Zone are all critical characteristics when considering potential impacts to the Resource Area from Buffer Zone Activities.
3. Presumptions. Where a proposed activity involves alteration of the 100-foot Buffer Zone, the Commission shall presume that such an area is significant to the interest identified in these Regulations as listed under §1.2(1)-(13). This presumption is rebuttable and may be overcome only by a clear showing that said land does not play a role in said interest. In

the event that a presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

4. Performance Standards. Where the presumption set forth above in §4.10(3) is not overcome, any proposed work upon or within the 100-foot Buffer Zone shall not destroy or otherwise impair any portion of said area or adjacent Resource Area.
  - a. Any work within the 100-foot Buffer Zone shall not result in alteration of the adjacent Resource Area or in alteration permitted by the Commission that complies with the applicable performance standards for the Resource Area and any other conditions the Commission may require to enforce those performance standards(s)
  - b. Point discharge of surface runoff within or through the 100-foot Buffer Zone shall be controlled to minimize increase peak flow in the watercourse downstream of the discharge point for the runoff as determined for the 2-year, 10-year, and 100-year storms and cause no increase in flooding outside the project site. Additionally, any drainage outlet in the 100-foot Buffer Zone shall be shown to be nonerosive and shall demonstrate that there is no significant change in off-site runoff from the proposed work.
  - c. The Massachusetts Stormwater Management Standards, as may be amended from time to time, apply for all large-scale projects within the 100-foot Buffer Zone.
  - d. To the maximum extent practicable, the 100-foot Buffer Zone shall be retained in a naturally vegetated condition. Where disturbance is permitted, revegetation with native species may be required.
  - e. Unless specified in the Permit, at minimum a continuous fifty (50) foot buffer strip of native vegetation shall remain untouched or in its natural state, between the development activities within the 100-foot Buffer Zone and the Resource Area to be protected. This shall be known as the Wetland Protection Zone as described in §4.11.
  - f. All work within the Buffer Zone shall be located as far as possible from the Resource Area.
  - g. Work in the Buffer Zone shall not impair wildlife habitat or vernal pool habitat.
  - h. Work in the Buffer Zone shall not substantially alter the hydrology of the site, including runoff rates, volume, flow paths, flood storage capacity, and water quality. Buffer Zone
  - i. Any drainage outlet in the Buffer Zone shall be armored and shall demonstrate that there is no significant change in off-site runoff from the proposed work.
  - j. The Massachusetts Stormwater Management Standards, and/or Westfield Stormwater Ordinance, as may be amended from time to time, apply for all projects greater than 40,000sf (1 acre) which have a discharge point within the 100-foot Buffer Zone.
  - k. The use of herbicides, pesticides, fungicides, fertilizers, or other chemical treatment constitutes an alteration under these Rules and Regulations and is prohibited unless administrative approval is granted.

- l. In a proposal where the Buffer Zone is undeveloped, no work shall be allowed within 50ft of the adjacent Resource Area (WPZ) with the exception of work intended to support the values and interest of the Ordinance.
- m. In a proposal where the Buffer Zone has been previously developed (i.e. altered before the adoption of the Ordinance), new development shall be located landward of the existing development, unless the work will result in a new improvement to the capacity of the Buffer Zone to protect wetland Values Protected by the Ordinance.
- n. Notwithstanding paragraphs (j) and (k) above, the Commission may permit limited work which is absolutely unavoidable for access to the project site as long as all work within the Buffer Zone is minimized to the furthest extent possible.

#### **§4.11 Wetlands Protection Zone**

1. Preamble. The area located within fifty (50) feet of a Resource Area as specified in §1.3(a) of these Regulations is also a protected Resource Area pursuant to §13-177 and §13-184 of the Ordinance. This area shall be known as the Wetlands Protection Zone (“WPZ”). As stated in section 13-184 of the Ordinance, “activities undertaken in close proximity to such [resource] areas have a high likelihood of adverse impact upon the resource area either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities proposed.” The WPZ is significant to protecting Areas Subject to Protection Under the Ordinance. Therefore, the Commission shall require that an applicant maintain a strip of continuous, undisturbed vegetative cover at a minimum of fifty (50) feet or up to the full extent of the WPZ and set other conditions on this area as deemed necessary.
2. Definitions, Critical Characteristics, Boundaries. The Wetlands Protection Zone is identified in these Regulations as the first fifty (50) feet directly abutting or adjoining Areas Subject to Protection under the Ordinance.
  - a. The WPZ shall be at a minimum of fifty (50) feet measured from and parallel to the resource area, and in some instances, may be up to the full extent of the Riverfront Area, Intermittent Stream Frontage, or Buffer Zone.
  - b. The WPZ provides Areas Subject to Protection Under the Ordinance with shade; filters stormwater runoff; reduces noises and wind; reduces the inflow of pollutants such as salts, pesticides, herbicides, and fertilizers; provides wildlife habitat, food, and migratory areas; provides traversable recreation areas; and allows for wetland growth and expansion.
  - c. The Ordinance gives the Commission broad discretion to permit, condition, and prohibit work within the WPZ on a case-by-case basis. Therefore, the Commission shall consider proposals for work in the WPZ in terms of four broad forms of disturbances to allow flexibility for property use while maintaining adequate levels of Resource Area protection.
    - i. No Disturbance: Where the Commission finds that characteristics of the WPZ on a site are so important to the Resource Area values that virtually no activities or work, other than passive passage, will be permitted. The WPZ shall remain unchanged from its pre-development state.
    - ii. Temporary Disturbance: Where the Commission finds that characteristics of the WPZ on a site are such that a temporary disturbance for a limited

period of time may be permitted, such as for regrading or travel by construction machinery. Once the activity is completed, the area shall be allowed to return to natural vegetation and pre-disturbance functions. In these instances, the Commission shall establish time frames and conditions for allowing temporary disturbances as well as criteria for assessing the successful return of the natural functions of the WPZ which may include additional restoration or mitigation.

- iii. Limited Disturbance: Where the Commission finds that characteristics of the WPZ on a site are such that a limited set of activities or work may be permitted in perpetuity. Activities which may be considered limited disturbance include but are not limited to the clearing of understory, harvesting of wood, composting of brush, and storing of firewood, given certain conditions and requirements as deemed necessary by the Commission.
  - iv. Permanent Disturbance: Where the Commission finds that characteristics of the WPZ on a site are such that permanent disturbances are permitted. Types of permanent disturbances include but are not limited to dwellings, structures, parking lots, driveways, decks, conversion to lawn, and landscaping. Within the context of permanent disturbance of the WPZ, the Commission shall set specific conditions prohibiting or restricting work or activities deemed potentially harmful to Resource Area values. Examples of prohibited activities include but are not limited to the use of herbicides and pesticides, interceptor drains, swimming pool discharge, filter backwash systems, and road salts.
3. Presumptions. Where a proposed activity involves alteration of the Wetlands Protection Zone, the Commission shall presume the WPZ as important to the protection of the Resource Areas so described in Section 13-177 of the Ordinance because activities undertaken in close proximity to Resource Areas have a high likelihood of adverse impacts upon the area, values, or adjacent lands, either immediately as a consequence of construction, or overtime, as a consequence of daily operation or existence of the activities. This presumption is rebuttable and may be overcome only by a clear showing that said land does not play a role in said interest. In the event that a presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.
  4. Performance Standards. Where the presumption set forth above in §4.11(3) is not overcome, any proposed work upon or within the Wetlands Protection Zone shall not destroy or otherwise impair any portion of said area or adjacent Resource Area.
    - a. The impact of activities or alterations within the WPZ must be reduced to the smallest extent possible either by minimizing disturbance or removing as much of the activity from the WPZ as possible.
    - b. In order for limited or permanent disturbance to occur within the WPZ, the applicant must provide restoration or mitigation on site, double that of the total area disturbed (1:2).

- i. In an instance of temporary disturbance, it is assumed that the WPZ will be naturally restored to its pre-disturbed status and if not naturally restored, the applicant will provide additional aid in restoration.
- c. If the Commission determines that it is unfeasible to restore or mitigate on site, it may require the applicant to contribute financially to the construction of an offsite replacement area in wetlands under control of the Commission, the contribution not to exceed the actual cost of the restoration or mitigation required.
  - i. Enhancements to the WPZ such as invasive species removal and/or the planting of native species may be considered by the Commission as compensation for limited or permanent disturbance of the WPZ.
- d. The Commission may, at its discretion, require the installation of permanent immovable barrier(s) along the WPZ boundary or the line within the WPZ where the limit of work or disturbance is approved in order to provide a visual reference and avoid further encroachment by future homeowners/property owners who may not be made aware of or familiar with the Resource Areas on site. Barriers may consist of, but are not limited to, boulders, fencing, stonewalls, shrubs, FENO boundary marks, signs, and monuments.

## **SECTION 5: VIOLATIONS AND ENFORCEMENT ORDERS**

### **§5.1 Introduction**

The following section presents what acts the Commission may consider a violator of the Act or Ordinance and their respective Regulations. It outlines the actions the Commission and its Agent(s) may employ in response to violations or apparent violations. Each enforcement situation will be reviewed on a case-by-case basis as each situation presents its own combination of characteristics such as the nature of the violation; availability and reliability of evidence; severity and immediacy of the threat posed to wetland values; ability to identify and contact responsible parties; and the applicability of the State laws and City Ordinance.

### **§5.2 Powers of the Conservation Agent**

The Conservation Agent is duly authorized to act on behalf of the Commission to the extent allowed by the Act, Ordinance, and their respective Regulations, to enforce the provisions of these laws and all Permits and Orders issued by the Commission.

### **§5.3 Types of Violations**

Each day a violation exists constitutes a separate violation. Violations may include but are not limited to:

1. Refusal or failure to obtain a valid Permit prior to conducting an activity subject to regulation under the Ordinance or Act;
2. Refusal or failure to comply with a Permit, such as failure to observe a particular condition or time period specified in the Permit;
3. Refusal or failure to complete work described in a Permit, when such failure causes damage to the values identified in the Ordinance; or

4. Refusal or failure to comply with the requirements stated in an issued Enforcement Order to correct the violation and reach compliance with the Act or Ordinance.

#### **§5.4 Enforcement Process**

When the Commission determines that an activity is in violation of the Act and/or Ordinance or a permit issued pursuant to either, the Commission may:

1. Issue a Violation Notice; and/or
2. Issue an Enforcement Order; and/or
3. Hold an Administrative Hearing to consider whether the violator should be fined for the violation.

Where it is uncertain if a violation has occurred, the Commission may first issue a violation notice and citation to inform the homeowner or landowner of the possibility of a violation occurring on the property. The violation notice may require the violator cease and desist all work, contact the Conservation Department within 10 days of receipt of the letter, schedule a site visit with the Commission or Agent, begin the remediation processes as defined by the Commission or Agent, and attend the next meeting of the Commission.

Upon failure of the violator to follow the requests detailed in the violation letter, the Commission may issue an Enforcement Order requiring the aforementioned items to be completed, attached thereto a fine by use of M.G.L. Ch. 40 §21D. See §5.5 Fines for additional information on fines.

Upon failure of the violator to respond to the Enforcement Order, the Commission may issue a second Enforcement Order, restating the requirements, additional violation(s) for failure to respond to the prior issued Enforcement Order, and warn that further failure to respond may result in a Civil Complaint filed in Superior Court, seeking fines of \$100 per violation per day, to the start date of the initial Enforcement Order.

Upon Failure of the violator to respond to the requirements of the second Enforcement Order, the Commission may file a Civil Complaint in Superior Court seeking the Enforcement Order to be complied with and fines to be paid, retro dated to the initial Enforcement Order.

In lieu of a violation notice, the Commission may issue an Enforcement Order where a violation of the Act or Ordinance is clearly evident. An Enforcement Order shall be signed by a majority of the Commission to be considered a valid order. Should a situation require immediate action, an Enforcement Order may be signed by a single member of the Commission or by the Agent. In such a case, the Order shall be ratified by a majority of members at the next scheduled meeting of the Commission. Any Commissioner or the Agent shall be the sole determining authority whether such violations require immediate attention.

#### **§5.5 Fines**

As an alternative to criminal fines and prosecution, the Commission may elect to utilize the non-criminal disposition procedure set forth in M.G.L. Ch.40 §21D. A violator of the Ordinance may be issued a non-criminal citation and assessed a fine up to one hundred dollars (\$100.00) per violation. Each day that a violation exists constitutes a separate violation. A separate citation may be issued for each violation.

If the Commission contemplates a fine or an adjustment of a fine for a violation, the Commission shall, at its next public Hearing, discuss the violation and give the violator or their representative an opportunity to respond to the evidence and circumstances. Consistent with due process, the violator shall have the opportunity to present evidence on their behalf at such a Hearing. The violator shall be given at least forty-eight (48) hours' notice in writing of the date, time, and place of the public Hearing, by certified mail or hand delivery. The Commission reserves the right to adjust a fine in response to new information or circumstances at a Public Hearing to which the violator will be given notice as herein outlined. The Act carries its own provision for fines, which will be enforced by the Department where appropriate.

If a majority of the Commission present at the Hearing finds a preponderance of the evidence that a violation has occurred, the owner shall be fined not more than \$100.00 per violation in accordance with the Ordinance. The amount of fine per violation will be determined by the Commission at the Hearing using the following calculation method:

1. Each day that a violation exists constitutes a separate violation.
2. Fines are retroactive to the first date on which the violation was recorded.
3. A fine may be issued in conjunction with or in lieu of any other enforcement issued under this section.
4. The Commission may levy a fine of one hundred dollars (\$100.00) for any action which alters, removes, fills, dredges, builds upon, degrades, discharges into, or otherwise alters a Resource Area as identified in Section 13-177 of the Ordinance.

The Commission shall send in writing to the responsible party by certified mail or hand delivery a Notice of Fine or fines which includes an explanation thereof and the date of the violation from which daily violations are counted. Payment of the fine does not circumvent the requirements listed in the Enforcement Order.

The Commission may, in its discretion, withhold issuance of a fine for a specified time when the responsible party submits a written plan with a timetable for full compliance to be reached or seeks to gain compliance with the requirements under the order. However, if compliance is not reached within a timely manner, the fines shall be retroactive to the start of the violation.

**If the citation is not paid in full within twenty-one (21) days of its issuance, the Agent may make an application for a criminal complaint in the District Court.**  
**SECTION 6:  
SECURITY**

As part of a permit issued under the 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 be secured wholly or in part by one or more of the methods described below. No work approved in any permit issued by the Commission shall be undertaken until the form of security specified has been filed with the Commission.

### **§6.1 Cash bond or check**

The amount of said bond shall be determined by the Commission to be sufficient and payable to the City of Westfield. Bonding companies are not involved in the process.

Projects which are privately financed shall be required to provide a cash bond (check acceptable) payable to the City of Westfield in an amount determined by the Commission as stated in the Final Order or LWP and approved in a Public Hearing or meeting.

Projects which are publicly funded by the Commonwealth or any City of the Commonwealth, where other methods of security are provided, may not be required to submit a cash bond.

If the permitted work causes damage to the Resource Area Protected by the Ordinance, upon written notice to the Applicant from the City, the Commission may seek an order from Superior Court, granting the release of funds secured by the bond to the City, acting by and through the Conservation Commission, permitting the City and its agents the authority to enter the property to complete restoration, mitigation, or replication as necessary, and the Applicant shall release and hold the City harmless with respect thereto.

Where a Final Order or LWP is never closed out, but a bond remains on file with the City of Westfield Treasurer, it may be remitted as unclaimed or abandoned property with the Commonwealth, pursuant to those steps described in M.G.L Ann. Ch. 200A.

Where a property is conveyed and there is an on-going and active Final Order or LWP, the bond money filed by the applicant, or their assignee shall be returned upon the filing of a new bond by the new property owner or their assignee.

### **§6.2 Conservation Restriction or Easement**

Such restriction would be enforceable in a court of law, run with the land, executed, and properly recorded at the Registry of Deeds (or registered, in the case of registered lands) whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

### **§6.3 Declaration of Restrictions**

A Declaration of Restrictions shall be recorded to the title of the property where work is to be performed indicating that a portion or entirety of the property is located within a Resource Area Subject to Protection Under the Ordinance and requires approval of the Commission to perform any work within these Areas. The purpose of this declaration is to ensure current and future property owners are aware of Jurisdictional Areas on the property in question.

## **SECTION 7: SEVERABILITY**

The invalidity of any section or provision of these Rules and Regulations shall not invalidate any other section or portion thereof, nor shall it invalidate any permit or determination the has previously been issued.

**SECTION 8: EFFECTIVE DATE**

These Regulations shall be effective upon adoption by the Commission and the provisions of these Regulations shall apply to all work performed after that date.

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