

**CITY OF HOLYOKE, MASSACHUSETTS
WETLANDS PROTECTION ORDINANCE
REGULATIONS
EFFECTIVE DATE OCTOBER 25, 2001**

Revised on 2/9/12, 2/7/13

I. General Provisions.....3

A. Introduction.....3

B. Purpose.....3

C. Statement of Jurisdiction.....3

D. Exception, Emergencies and Variances.....4

E. Burden of Proof.....8

F. Burden of Proof Going Forward.....8

II. Definitions.....8

III. Procedures

A. Time Periods.....11

B. Action by the Conservation Commission.....11

C. Receipt.....11

D. Determinations of Applicability.....11

E. Notice of Intent Application for Permit.....12

IV. Application Requirements – Plans, Requirements, Forms and Filing Fees

A. Forms.....15

B. Fees.....15

C. Submission Requirements.....17

1. Requirements for All Applications.....17

2. Requirements for Notices of Intent.....18

3. Notice of Intent Procedure.....22

V. Violations, Enforcement, Fines and Administrative Action.....29

A. Enforcement.....29

B. Civil Action.....29

C. Criminal Action.....29

D. Other Boards.....29

E. Violations.....29

F. Commission Response.....30

G. Administrative Orders.....30

H. Administrative Hearing.....30

38	I. Fines and Notice of Fines.....	32
39	J. Corrective Action Notice.....	33
40	K. Coordination with 310 CMR 10.00.....	33
41	VI. Standards for Inland Wetlands.....	33
42	A. Banks.....	33
43	B. Freshwater Wetlands.....	35
44	C. Isolated Wetlands.....	38
45	D. Land Under Water Bodies.....	40
46	E. Land Subject to Flooding.....	42
47	F. Seasonal Wetlands.....	43
48	G. Riverfront Resource Area.....	47
49	VII. Buffer Zone.....	47
50	A. Performance Standards.....	47

51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87

I. General Provisions

A. Introduction These Regulations are promulgated by the Holyoke Conservation Commission pursuant to the authority granted to the Commission under Section 2-2 of the City of Holyoke Wetlands Protection Ordinance. These rules and Regulations complement the Ordinance and shall have the force of law upon their effective date.

B. Purpose

1. **Interests** The Holyoke Wetlands Protection Ordinance sets forth a public review and decision-making process by which activities affecting areas subject to protection under the Ordinance are to be regulated in order to contribute to the following interests:

(collectively, the "interests protected by this Ordinance"):

- a) Protection of public and private water supply
- b) Protection of groundwater
- c) Flood control
- d) Erosion and sedimentation control
- e) Storm damage prevention
- f) Water pollution prevention
- g) Protection of wildlife and wildlife habitat
- h) Protection of endangered species and endangered species habitat
- i) Protection of fisheries
- j) Protection of Ecological Integrity
- k) Protection of Ecosystem Services

2. These Regulations serve to implement the Holyoke Wetlands Protection Ordinance by establishing standard definitions, uniform procedures, and performance standards by which the Conservation Commission may carry out its responsibilities under the Ordinance.

C. Statement of Jurisdiction

1. **Areas Subject to Protection under the Ordinance**

- a) Any freshwater wetland including marsh, wet meadow, bog, swamp, bank, isolated wetland, vernal pool, or seasonal wetland;
- b) Any land within 100' of any seasonal wetland and/or any of the areas set forth in I(C)(1)(a, c and/or f);

- 88 c) Any lake, pond, river, or stream whether intermittent or perennial, natural
89 or manmade;
90 d) Any land subject to flooding or inundation by groundwater, surface water or
91 storm flowage;
92 e) Any seasonal wetland; and
93 f) Any land within 200' of the mean annual high water mark of a perennial
94 stream or river as defined by the Massachusetts Rivers Protection Act and
95 promulgated by 310 CMR 10.00.

96 **2. Activities Subject to Regulation under the Ordinance**

- 97 a) Any activity proposed or undertaken which constitutes removing, filling,
98 dredging, building upon, or altering any area specified in I(C)(1) is subject to
99 these Regulations under the Ordinance and requires the filing of an Application
100 for Permit.
101 b) Any person who wishes to know whether a proposed activity or area is
102 subject to the Ordinance may in writing request a determination from the
103 Conservation Commission. Such a Request for Determination of Applicability
104 shall be submitted pursuant to Section III (D) of these Regulations.
105

106 **D. Exception, Emergencies and Variances**

107 **1. Exceptions**

108 a) **Minor Activities**

- 109 (1) All activities identified in Section 10.02.2.b of the most recent
110 edition of the Massachusetts Wetlands Protection Act Regulations may
111 be excepted from these Regulations, subject to review of the
112 Conservation Commission.
113 (2) Except for the work described below in section I.D.1a.2.a-d,
114 written notification must be submitted to the Commission at least 10
115 business days before work can be started. The Commission may require
116 a Notice of Intent or Request for Determination of Applicability. If the
117 Commission determines that the proposed work requires formal review
118 pursuant to a Notice of Intent or Request for Determination, it shall
119 notify the applicant in writing within 5 business days of receiving the
120 written notification. These minor activities include:
121 ~~(a)~~ Exploratory borings, test wells, and soil tests if conducted
122 within the Buffer Zone using a hand or motorized drill. Test
123 pits excavated using a backhoe or similar equipment are not
124 exempted from the requirement to obtain a Negative

125 Determination of Applicability or Order of Conditions
126 (Permit)-
127 (b) Planting native species of trees, shrubs, or herbaceous
128 species within the Buffer Zone or Riverfront Resource Area,
129 provided that existing vegetation (except lawn and ornamental
130 gardens) is not removed or otherwise disturbed, and that no
131 planting occurs within 25 feet of the edge of a wetland or
132 bank. Planting a lawn is not exempted from the requirement to
133 obtain a Negative Determination of Applicability or Order of
134 Conditions (Permit).

135
136 **b) Utilities**

137 (1) The Permit or Application required by this Ordinance shall not be
138 required for maintaining, repairing or replacing but not substantially
139 changing or enlarging, an existing or lawfully located structure or
140 facility used in the service of the public to provide electric, gas, water,
141 telephone, sanitary sewers, telegraphs or other telecommunication
142 services, provided that

143 (a) The structure or facility is not substantially changed or
144 enlarged;

145 (b) Written notice is given to the Commission at least
146 fourteen (14) days prior to the commencement of the work;
147 and

148 (c) The work conforms to performance standards and design
149 specifications acceptable to the Commission.

150 **c) Agriculture**

151 (1) The Application and Permit required by this Ordinance shall not be
152 required for work performed for the normal maintenance or
153 improvement of agricultural lands.

154 d) In the case of all exceptions under this Ordinance, the Commission shall
155 determine the applicability of Section D(1) to a particular project or activity.

156 **2. Emergencies**

157 **a) Procedure**

158 (1) The Application and Permit required by this Ordinance shall not
159 apply to emergency projects necessary for the protection of the health
160 or safety of the public, provided that the work is to be performed by or

161 has been ordered by an agency of the Commonwealth or political
162 subdivision thereof, provided that

- 163 (a) Advance notice, either oral or written, has been provided
- 164 to the Commission prior to the commencement of work or
- 165 within twenty four (24) hours of commencement of work;
- 166 (b) The Commission or its agent certifies the work as an
- 167 emergency project;
- 168 (c) The work is performed only for the time and place
- 169 certified by the Commission for the limited purposes
- 170 necessary to abate the emergency;
- 171 (d) The Commission shall conduct a site visit;
- 172 (e) The work permitted by the emergency certification shall
- 173 be completed within thirty (30) days of the date of issuance of
- 174 the emergency certification; and
- 175 (f) Within twenty-one (21) days of commencement of an
- 176 emergency project a permit application shall be filed with this
- 177 the Commission for review as provided for in this Ordinance.

178 (2) Failure to meet the requirements of Section D(2)(a)(1), the
179 Commission may after notice and hearing, revoke or modify an
180 emergency project approval and order restoration or mitigation
181 measures.

182 **3. Variances**

183 a) The Commission shall have the power, after the filing of an Application for
184 Permit, and the conduct of a public hearing in accordance with Section
185 IV(C)(3)(a), to grant with respect to a particular project a variance from the
186 terms of the Ordinance. The Commission shall specifically find, based on clear
187 and convincing evidence adduced by the Application, that owing to
188 circumstances relating to:

- 189 (1) Soil conditions; Hydrological conditions; shape or Topography of
- 190 such land; and
- 191 (2) Affecting such land but not affecting generally the wetlands of the
- 192 City that a literal enforcement of the provisions of this Ordinance
- 193 would involve substantial hardship, financial or otherwise, to the
- 194 applicant, and that desirable relief may be granted without material
- 195 detriment from the intent or purpose of the Ordinance.

196 b) In addition to the criteria established in I.D.1.a.3.a.1-2, no variance shall be
197 granted unless the Commission determines that:

- 198 (1) There are no practicable alternatives to the proposed action;
199 (2) Alteration of the resource area has been minimized to the greatest
200 extent practicable; and
201 (3) That compensatory or mitigating measures are taken to protect the
202 public interest in the Protected Resource.
- 203
- 204 c) Such variances are intended to be granted only in rare or unusual
205 circumstances.
- 206 d) It shall be the responsibility of the Applicant to provide the Commission
207 with any and all information which the Commission may request in order to
208 enable the Commission to ascertain any such material detriment to the interests
209 of the Ordinance. Failure of the applicant to provide any of the requested
210 information shall result in a denial of a request for a variance pursuant to this
211 Section.
- 212 e) The Commission may impose conditions, safeguards and limitations in a
213 variance to protect further the interests protected by this Ordinance or the intent
214 or the purpose of this Ordinance.
- 215 f) A variance shall expire on the date specified by the Commission, not later
216 than three years, and may be re-established only after a notice and a new hearing
217 pursuant to this Section.

218

219 **E. Burden of Proof** Except as specifically provided elsewhere in these Regulations, the
220 applicant shall have the burden of proving by a preponderance of the credible evidence that the
221 activities proposed in the Application will not have a significant or cumulative effect on the
222 interests protected by the Ordinance. Failure to meet the burden of proof shall be cause for the
223 Commission to deny the Application for Permit along with any work or activity proposed herein.

224

225 **F. Burden of Going Forward** The Applicant shall have the burden of going forward by
226 providing credible evidence from a competent source in support of all matters asserted by the
227 applicant in accordance with the burden of proof pursuant to Section I (F).

228

229 **II. Definitions**

230 **A. Act** means the Wetlands Protection Act, M.G.L. ch. 131, s. 40 and its Regulations 310 CMR
231 10.00 et al., as amended.

232 **B. Aesthetics** means the natural scenery and appearance of any resource area as it is visually
233 accessible to the public.

234 **C. Alter** means without limitation the following actions when under taken upon or affecting any
235 of the areas subject to protection under the Ordinance and listed in Section I(C)(1) of these
236 Regulations:

- 237 1. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any
238 kind;
- 239 2. Changing the preexisting drainage characteristics, flushing characteristics,
240 sedimentation patterns, flow patterns, or flood retention characteristics;
- 241 3. Drainage or other disturbance of water level or water table;
- 242 4. Dumping, discharging or filling with any material that may degrade water quality;
- 243 5. Placing of fill or removal of material that would otherwise alter elevation;
- 244 6. Driving of piles or erection of buildings or structures of any kind;
- 245 7. Placing of obstructions or objects in the water;
- 246 8. Destruction of or significant injury to wetlands vegetation as described and listed in
247 the National Wetlands Inventory;
- 248 9. Changing water temperatures, biochemical oxygen demand, or other physical or
249 chemical characteristics of water;
- 250 10. Any activities, changes or work that may pollute any body of water or ground water.

251 **D. Application for Permit** means all documentation required by the Conservation Commission
252 for complete and adequate review of a proposed activity, including all data, fees and minimum
253 number of required copies, as defined in these Regulations.

254 **E. Applicant** means a person giving a notice of intention by filing an application for permit to
255 remove, fill, dredge, build upon, confirm boundaries of resource areas, or alter a resource area, or
256 a person on whose behalf an Application is filed.

257 **F. Areas Subject to Protection** means any area specified in Section I(C)(1) of these Regulations
258 and is synonymous with Resource Areas.

259 **G. Bank** is defined in Section VI.A.2 of these Regulations.

260 **H. Commission** means the Conservation Commission.

261 **I. Certificate of Compliance** Certificate of Compliance means a written determination by the
262 Conservation Commission that the proposed work or a portion thereof has been completed in
263 accordance with a pertinent Permit.

264 **J. Date of Issuance** means the date a Permit, Determination, or Certificate of Compliance is
265 mailed, as evidenced by a postmark or the date it is hand delivered as defined in the Massachusetts
266 Wetlands Protection Act.

267 **K. Date of Receipt** means the date of delivery to an office, home, or usual place of business by
268 mail or hand delivery, as defined in the Massachusetts Wetlands Protection Act;

269 **L. Determination (of Applicability)** means a written finding by the Commission of whether an
270 area or an activity is subject to the jurisdiction of this Ordinance and / or as to whether or not an
271 activity will alter an area subject to the jurisdiction of this Ordinance.

272 **M. Ecological Integrity** is the ability of an ecological system to support and maintain a
273 community of organisms that has a species composition, diversity, and functional organization
274 comparable to those of natural habitats within a region. An ecological system has integrity when
275 its dominant ecological characteristics (e.g., elements of composition, structure, function, and
276 ecological processes) occur within their natural ranges of variation and can withstand and recover
277 from most perturbations imposed by natural environmental dynamics or human disruptions.

278 **N. Ecosystem Services:** are resources and processes that benefit humans and are supplied by
279 natural ecosystems. Ecosystem Services are commonly grouped into four broad categories:
280 Provisioning- such as the production of food and water; Regulating- such as the control of climate
281 and disease; Supporting- such as nutrient cycles and crop pollination; and Cultural- such as
282 spiritual and recreational benefits.

283 **O. Erosion Control** means the prevention or reduction or the detachment or movement of soil or
284 rock fragments by water, wind, ice or gravity.

285 **P. Fill** means to deposit any material so as to raise an elevation, either temporarily or
286 permanently.

287 **Q. Freshwater Wetlands** are defined in Section VI.B.2 of these regulations.

288 **R. Impermeable** means having a hydraulic conductivity of less than .0002m/day.

289 **S. Impervious** means a surface which does not allow water or other liquids to infiltrate into soil
290 or groundwater

291 **T. Interest** means the wetland interests (collectively, the interests protected by this Ordinance),
292 specified in Section I(B)(1) of these Regulations.

293 **U. Invasive Species** means non-native species that have spread into native or minimally
294 managed ecosystems and that cause economic or environmental harm or harm to human health.
295 These species often cause harm by significantly disrupting an area's ecology, thereby threatening
296 the diversity or abundance of the area's ecological integrity.

297 **V. Isolated Wetlands** are defined in Section VI.C.2 of these Regulations.

298 **W. Issuing authority** means the Conservation Commission.

299 **X. Land in Agriculture** means land within resource areas or the Buffer Zone presently and
300 primarily used in producing or raising one or more of the following agricultural commodities for
301 commercial purposes, as defined in the Massachusetts Wetlands Protection Act and its
302 Regulations as amended.

303 **Y. Land under Water** is defined in Section VI.D.2 of these Regulations.

304 **Z. Land Subject to Flooding** is defined in Section VI.E.2 of these Regulations.

305 **AA. Non-transient macro-organisms** means wetland plants and/or animals visible to the naked
306 eye, including but not limited to Eubrachiopods, Isopods, Amphipods, Pisidiid clams.
307 **BB. Non-Native Species** means a species surviving and reproducing outside where the evolved or
308 spread naturally, which has arrived there by human activity, either deliberate or accidental. In
309 these Regulations, non-invasive is synonymous with “exotic,” “non-indigenous,” and “alien”.
310 **CC. Obstructions or Objects in Water** mean, but are not limited to, dams, weirs, sluice gates,
311 breakwaters, piers, docks, bulkheads, pilings, slips, and floats.
312 **DD. Ordinance** means the Holyoke Wetlands Protection Ordinance.
313 **EE. Parties of Interest** means the petitioner and all abutters within two-hundred feet of the
314 property line of the land where the activity is proposed, at the mailing addresses shown on the
315 most recent applicable tax list of the assessors, including, but not limited to, owners of land
316 directly opposite said proposed activity on any public or private street or way, and in another
317 municipality or across a body of water.
318 **FF. Permit** means the document issued by the Commission containing conditions which regulate
319 or prohibit an activity under the City of Holyoke Wetlands Protection Ordinance. The
320 Commission, in an appropriate case, may combine the Permit or other action on an Application
321 issued under the Ordinance with the Order of Conditions issued under the Act.
322 **GG. Permeable** means having a hydraulic conductivity of .0002 m/day or more.
323 **HH. Pervious** means a surface which allows water or other liquids to infiltrate into the soil or
324 groundwater.
325 **II. Pests** are destructive insects that attack crops, food, livestock, structures, or infrastructure
326 with such ferocity or frequency that they result in damage to humans or human concerns.
327 **JJ. Pond** means any open body of fresh water with a surface area observed or recorded within the
328 past ten (10) years of at least 10,000 square feet, either naturally occurring or man made which has
329 standing water due to natural causes at least once each year. Basins or lagoons which are part of
330 waste water treatment plants shall not be considered pond, nor shall swimming pools, or other man
331 made impervious retention or detention basins.
332 **KK. Protection of Fisheries** means protection of the capacity of an
333 Area Subject to Protection under the Ordinance to:
334 1. Prevent or reduce contamination or damage to fish; and
335 2. Serve as their habitat and nutrient source.
336 **LL. Resource Area** is synonymous with Area Subject to Protection under the Ordinance each of
337 which is enumerated d in Section I(C)(1) of this Ordinance.
338 **MM. River** shall have the same definition as that found in the Massachusetts Rivers Protection
339 Act.

340 **NN. Regulations** shall mean all rules promulgated by the Holyoke Conservation Commission and
341 codified within the City of Holyoke, Massachusetts Wetlands Protection Ordinance Regulations,
342 as approved and amended.

343 **OO. Riverfront Resource Area** is defined in Section 310 CMR 10.58(2) of the Massachusetts
344 Wetlands Protection Act Regulations.

345 **PP. Seasonal Wetlands**-are defined in Section VI.f.a-q of these Regulations..

346 **QQ. Sedimentation Control** means the prevention or reduction of the collection or concentration
347 of sand, soil, or rock fragments by the action of water, wind, ice, or gravity.

348 **RR. Select species of amphibians** means species of amphibians which depend on seasonal
349 wetlands for breeding habitat including: mole salamanders (*Ambystoma maculatum*, *A.*
350 *jeffersonianum*, *A. laterale*, and *A. opacum*); four-toed salamanders (*Hemidactylium scutatum*);
351 eastern spadefoot toads (*Scaphiopus holbrookii*); American and Fowler’s toads (*Bufo a.*
352 *americanus* and *B. woodhousii fowleri*); spring peepers (*Pseudacris crucifer*); gray tree frogs
353 (*Hyla versicolor*); and wood frogs (*Rana sylvatica*).

354 **SS. Stream** is body of running water with a hydraulic gradient flowing within, into, or out of a
355 resource area defined in this ordinance. A stream is generally smaller than a river and may be
356 perennial or intermittent, excepting those portions that serve only to carry the immediate surface
357 runoff from stormwater or snowmelt. Any portion of a stream may flow through a culvert or a
358 bridge.

359 **TT. Temporarily Confined Bodies of Water** means bodies of water with little or no flow that
360 periodically become dry to such extent that they cannot support fish populations.

361 **UU. Vegetated Wetland** means areas which are wet meadows, marshes, swamps, isolated
362 wetlands, or bogs.

363 **VV. Vernal Pool** means a confined basin or depression which, at least in most years, holds water
364 for a minimum of two (2) continuous months during the spring or summer. See Seasonal
365 Wetland.

366 **WW. Watercourse** means a stream wholly or partially man-made.

367 **XX. Wildlife** means any non-domesticated native mammal, bird, reptile, amphibian, fish, mollusk,
368 arthropod, or other invertebrate other than a pest defined in **GG**.

369

370 **III. Procedures**

371 **A. Time Periods** Time periods shall be the same as under the Act.

372 **B. Action by the Conservation Commission** Where the Ordinance states that a particular
373 action is to be taken by the Commission that action is to be taken by a quorum as defined in the
374 Act. Where the Ordinance states that the Commission is to receive a Request or Application,
375 Commission means an individual designated by the Commission to receive such Request or
376 Application.

377 **C. Receipt** The date and time of receipt of a Request or Application shall be stamped or noted
378 upon such document by the Commission or its designee.

379 **D. Determinations of Applicability**

380 **1. Request for Determination of Applicability**

381 a) With the exception of those activities identified in Section I.D.a of these
382 Regulations, Any person who desires a Determination on whether the Ordinance
383 applies to an area or activity shall submit to the Commission by certified mail or
384 hand delivery ten (10) copies of a Request for Determination of Applicability.

385 The Commission shall accept the Request on Wetlands Protection Form 1. The
386 Request for Determination of Applicability shall include such data and plans as
387 may be required by the Commission in addition to those listed in Section IV.

388 b) Any person filing a Request for Determination of Applicability with the
389 Commission at the same time shall give written notice thereof by hand delivery,
390 certificates of mailing, or certified mail to the Department of Environmental
391 Protection, Western Region Office. The notice shall enclose a copy of the
392 Request with plans or shall state where copies may be examined and obtained
393 free of charge. Any person filing a Request for Determination of Applicability
394 shall also comply with the notice requirements of Section IV(C)(3)(b).

395 c) When a person requesting a Determination is other than the property owner,
396 the name and address of the property owner must be provided. The Request for
397 Determination of Applicability, the notice of the meeting, and the Determination
398 of Applicability shall be sent by the person making the request to the owner.
399 Proof of owner's receipt of these documents shall be provided to the
400 Commission.

401 d) Within twenty-one (21) days after the date of receipt of a completed
402 Request for Determination of Applicability, the Commission shall hold a public
403 meeting on the Request. Notice of the time and place of the public meeting at
404 which the Determination will be made shall be given by the Commission at the
405 expense of the person making the Request not less than five (5) days prior to
406 such meeting, by publication in a newspaper of general circulation in the City.
407 The person making the Request shall send by certified mail, return receipt
408 requested, certificates of mailing, or delivery by hand notice of the time and
409 place of the public meeting to the owner.

410 e) At the public meeting the Commission will determine:

411 (1) Positively: that the area or activity is subject to the jurisdiction of
412 the Ordinance; or

413 (2) Negatively: that the area or activity is not subject to the jurisdiction
414 of the Ordinance.

415 f) The Determination shall be signed by a majority of the Commission and
416 shall be sent by the Commission to the person making the Request within
417 twenty-one (21) days of the close of the public meeting or any continuance
418 thereof.

419 g) A Determination shall be valid for three years from date of issuance and
420 may not be renewed or extended.

421 h) In the event of a positive Determination, an Application for Permit shall be
422 filed for any activity subject to jurisdiction of the Ordinance, and all of the
423 procedures set forth in Section III (E) relative to such Applications shall apply.

424 i) A posted sign shall be placed at the edge of the property that is the subject
425 of the Application, as per Section III.E.8.

426

427 **E. Notice of Intent Application for Permit**

428 1. Any person proposing to do work that will remove, alter any Area Subject to
429 Protection Under the Ordinance shall submit an Application for Permit, and other
430 application materials in accordance with the submittal requirements set forth in Section of
431 these Regulations.

432 2. If the Commission determines that an application is incomplete or improper, it shall
433 notify the applicant within twenty-one (21) days of the date of receipt. The Commission
434 may:

435 a) Return the application in which case all required time period for application
436 processing will be terminated.

437 b) Require additional information and materials to be submitted within a
438 specified period of time which shall be no later than the date of the scheduled
439 public hearing.

440 c) Continue the public hearing at the applicant's expense for a period to be
441 determined by the Commission.

442 3. The Commission will accept as the Application form under this Ordinance WPA
443 Form 3 Notice of Intent file under the Act, with the addition of information required in
444 Section IV of these Regulations.

445 4. The person making the Application for Permit shall send to the following: by
446 certified mail return receipt requested, by certificates of mailing, or by hand delivery
447 notice of the time and place of the public hearing to the owner of and all Parties of
448 Interest the land where the activity is proposed at least five (5) days prior to the hearing

449 date. The notice shall state where copies of the Application may be examined and
450 obtained.

451 5. Any person who purchases, inherits, or otherwise acquires real estate upon which
452 work has been done after May 15, 1990, the enactment date of the Ordinance, in violation
453 of the provisions of the Ordinance or in violation of any permit issued pursuant to the
454 Ordinance shall forthwith comply with any order to restore said land to its condition prior
455 to said violation.

456 6. When a person filing an Application for Permit is other than the owner, the
457 Application, the notice of the hearing, and the findings themselves shall be sent by the
458 Commission to the owner as well as the person filing the Application, and the Applicant
459 shall supply the Commission with the name and valid address of the owner.

460 7. Upon receipt of the application materials referred to in Section III (E)(1) above, the
461 Commission shall issue a file number. The file number may be the same as that issued by
462 the Department of Environmental Protection. The designation of a file number shall not
463 imply that the plans and supporting documents have been adjudged adequate for the
464 issuance of a Permit but only that the minimum submittal requirements have been filed.

465 8. After an application or request has been received, the Applicant shall place a public
466 notice sign, provided by the Conservation Commission, at the edge of the property upon
467 which the permit request has been made. Such a sign shall face the public right-of-way
468 and be visible from the right-of-way. Said sign shall notify the public that an
469 Application, or request, is pending on the property. Said sign shall be posted at least five
470 (5) business days prior to the first public hearing, or meeting, for the Application, or
471 Request. The Applicant shall also submit a written statement, with photographic proof,
472 to verify that the required sign was posted in compliance with these Regulations.

473 9. In the event that only a portion of a proposed activity lies within an Area Subject to
474 Protection under the Ordinance, all aspects of the activity shall be described in detail.
475 The description shall include, but not be limited to, a description and calculation of peak
476 flow and estimated water quality characteristics of any drainage discharge from a point
477 source, whether closed or open channel, outside an Area Subject to Protection under the
478 Ordinance to the subject area.

479 10. Notwithstanding the foregoing, if the Commission determines that an activity outside
480 of an Area Subject to Protection under the Ordinance has in fact altered an Area Subject
481 to Protection Under the Ordinance, it may require an application including such plans,
482 supporting calculations, and other documentation as are necessary to describe the entire
483 activity.

486 **IV. Application Requirements- Plans, Requirements, Forms and Filing Fees**

487 **A. Forms** The forms required under the Act for the Notice of Intent and Request for
488 Determination of Applicability shall be used for filings under these Regulations. The Commission
489 may supply supplemental forms to applicants when it deems it necessary.

490 **B. Fees**

491 1. **Filing** Any person filing an Application for Permit or Request for Determination
492 pursuant to the Ordinance shall at the same time, pay a filing fee in accordance with the
493 Filing Fee Schedule contained in this Regulation, except that any application filed by the
494 City of Holyoke, state or federal project will be exempt from this requirement.

495 a) **Fees for Request of Determination of Applicability**

496 (1) Less than fifteen Acres

497 (a) \$0

498 (2) Applications which affect land that is more than 15 acres but less
499 than one hundred acres in size.

500 (a) \$100

501 (3) For each additional one hundred acres or part thereof beyond the
502 first one hundred acres.

503 (a) \$50

504 (4) Work requiring a variance in accordance with Section I.D.3 of
505 these Regulations, except for reconstruction of an existing building on
506 the same footprint. The cost shall be the greater of either:

507 (a) A minimum of \$250; or

508 (b) An amount equal to two times the standard permitting fee

509 (5) Applications filed by non-profits

510 (a) Non-profit organizations shall be required to submit RDA
511 filing fees under the Holyoke Wetlands Protection Ordinance.

512 (6) Applications filed by the City of Holyoke

513 (a) The City of Holyoke shall not be required to submit RDA
514 filing fees under the Holyoke Wetlands Protection Ordinance.

515

516 b) Fees for Notices of Intent

517 (1) Notices of Intent and Abbreviated Notices of Intent submitted
518 under the Act and the Ordinance shall have the same categorization
519 schedule and shall be subject to the filing fees mandated by State
520 Regulations (310 CMR 10.03(7)) as well as an additional fee for each
521 activity under review by the Commission as follows. Please see the
522 most current WPA Form 3 for Category Definitions.

- 523 (a) Category 1 - \$150 for each activity
524 (b) Category 2 - \$200 for each activity
525 (c) Category 3 - \$250 for each activity
526 (d) Category 4 - \$300 for each activity
527 (e) Category 5 - \$1.00/linear foot, not less than \$50 or more
528 than \$1,000
529 (f) Category 6 - \$1.00/linear foot, no more than \$100 for
530 Single Family Homes or \$1,000 for all other activities
- 531 (2) Note that for the purposes of fee determination, work to remove
532 debris and hazardous materials from wetlands, invasive control work,
533 and wetland restoration projects, and similar projects for improving that
534 natural capacity of a wetland resource to protect or enhance wetland
535 values shall be considered a Category 1 project.
- 536 (3) For work requiring a variance in accordance with Section I.D.3 of
537 these Regulations, except for reconstruction of an existing building on
538 the same footprint, costs shall be the greater of either
- 539 (a) Equal to \$150 for Category 1, Category 2, and Category
540 3 projects; or
541 (b) Equal to \$300 for Category 4, Category 5, and Category 6
542 projects
- 543 (4) Each wetland replication required or permitted shall be required to
544 cover municipal costs for monitoring replication or mitigation areas
545 when the monitoring extends beyond the normal two (2) years required
546 for monitoring of such areas. This fee shall be assessed in the amount
547 of:
- 548 (a) \$100 per year
- 549 (5) Fees for abbreviated Notice of Resource Area Delineation
- 550 (a) \$1.00 per linear foot of delineated Bordering Vegetated
551 Wetland, or any other resource area identified in the Wetlands
552 Protection Act, with a maximum of \$100 for a single-family
553 home and a maximum of \$1,000 for any other activity defined
554 in these Regulations.
- 555 (6) Fees levied against Non-Profit Organizations:
- 556 (a) Non-Profit Organizations shall be required to submit
557 Notice of Intent filing fees under the Holyoke Wetlands
558 Protection Ordinance.
- 559 (7) Applications filed by the City of Holyoke

560 (a) The City of Holyoke shall not be required to submit
561 Notice of Intent filing fees under the Holyoke Wetlands
562 Protection Ordinance.
563

564 2. **Consultant/Expert Fees** If the project is other than an addition to or alteration to
565 either a one family or two family dwelling (owner occupied) or related parking structures,
566 the person shall agree, in writing, to pay the fees, costs, and expenses of any expert
567 consultant deemed necessary by the Conservation Commission to review the Application
568 for Permit or Request for Determination.

569 **C. Submission Requirements**

570 1. **Requirements for All Applications**

- 571 a) All filings must be on white paper.
- 572 b) All filings shall include a completed project information form supplied by
573 the Commission.
- 574 c) The applicant shall submit an original application plus nine copies of the
575 application to the Commission and in accordance with Section IV(C)(3)(b) of
576 these Regulations (other boards).
- 577 d) The Application for Permit or the Request of Determination of
578 Applicability shall be fully completed.
- 579 e) An 8.5 x 11 inch reproduction of the U.S.G.S. quadrangle sheet showing
580 the project locus shall be included. In the case where the project requires two
581 (2) or more topographic sheets to show the locus, an 8.5 x 11 sheet clearly
582 identifying the proposed work and site shall be included.
- 583 f) Detailed topography of the site such that the Commission may gain an
584 understanding of the local topography shall be submitted. (An enlarged U.S.G.S.
585 topographic sheet may satisfy this requirement.)
- 586 g) Fees in accordance with Section IV (B)(1) of these Regulations shall be
587 submitted by personal/business check, bank check, or money order.
- 588 h) **Site inspections**
 - 589 (1) Site inspections are made for all Applications for Permit and
590 Requests for Determinations. The Applicant or a representative shall
591 be present at the site inspection. A qualified professional who is
592 familiar with the wetland delineation onsite should be present.
 - 593 (2) The Commission may waive the requirements of this Section if
594 conditions such as deep snow or extreme high water exist at the site. A
595 subsequent site visit which meets the requirements of this Section must
596 be held prior to the onset of work on site.

- 597 (3) Before site inspections can be made by the Conservation
598 Commission or Commission's agent, the following conditions must be
599 met:
- 600 (a) Stakes indicating the corners of the proposed structures or
601 other proposed alterations nearest the wetland resource areas
602 shall be in place;
 - 603 (b) Stakes indicating the limit of proposed work must be in
604 place;
 - 605 (c) Lot number or house number must be posted at the site
606 location;
 - 607 (d) Edges of all resource areas shall be clearly delineated
608 with numbered flags or stakes; and
 - 609 (e) Directions shall be made available to the Commission to
610 locate the property.
- 611 (4) Failure to have the lot properly staked may result in non-review
612 and thus costly delays of the project.
- 613 (5) Upon completion of the staking, the Commission must be notified;
614 a site inspection shall be arranged prior to the public hearing or public
615 meeting.
- 616 (6) The Applicant shall be required to make an accurate record of the
617 site visit, including but not limited to, significant responses to
618 questions, and proposed changes in design and plans, and submit this
619 record to the Commission within five (5) days of the visit. The record
620 of the visit shall be submitted into the record of the Applicant. The
621 Commission reserves the right to amend the report as it deems
622 necessary to accurately reflect the site visit.

623
624 **2. Requirements for Notices of Intent**

- 625 a) All applications for Permits shall describe the proposed activity adequately
626 to fully describe its effect on the Interests set forth in Section I.A.B.1 and all
627 jurisdictional resources. A written description of the project shall address all
628 natural features such as large trees, water courses, water bodies, historic
629 features, wildlife and wildlife habitat, endangered species, erosion and
630 sedimentation control, and similar community assets.
- 631 b) Certification from the wetlands scientist responsible for the wetland
632 delineation must be provided, stating the basis for the wetland delineation; the
633 date on which the delineation was performed; and stating that the flagging as

634 indicated on the plans appears to be correct. When applicable, such certification
635 must include DEP Bordering Vegetated Wetland Delineation Field Data Forms
636 for transects along the boundary of each distinct Bordering Vegetated Wetland.
637 c) The following items are set out as a minimum standard. An Application
638 which does not contain all of the items listed in Section IV(C)(1) above and
639 additional requirements listed below, and meeting the specifications of these
640 Regulations, unless waived by the Commission, shall be considered incomplete.
641 The Applicant may submit, or be required to submit any further information
642 which will assist the review and which is deemed necessary to determine the
643 proposed effect on the interests protected by this Ordinance.
644 d) The names and addresses of the property owner(s), the applicant(s) and of
645 all abutters, as determined by the most recent assessor's records unless the
646 Applicant or Commission have more recent knowledge of such abutters shall be
647 submitted with the Application.
648 e) All filings shall include detailed color images of the proposed project area
649 that accurately identify significant, man-made historical or ecological features
650 extant within the proposed limit of work. The location from which these images
651 were taken, the identity of the person taking these images, and the orientation of
652 the images shall be indicated on an image key.
653 f) Where the Commission deems it applicable, the following shall be
654 submitted:
655 (1) A description of any alteration to flood storage capacity on the site
656 including calculations and watershed maps. If a change of flood
657 storage capacity is proposed, compensation storage at every elevation
658 in the floodplain must be shown or demonstrated.
659 (2) Maximum and minimum ground water elevations. The calendar
660 dates of measurements, samples, and percolation tests shall be
661 included, regardless of planned sewer connections.
662 (3) Soil characteristic and types in representative portions of the site.
663 A photocopy of the Hampden County soils map for the project site.
664 (4) A runoff plan and calculations using TR-55, TR-20 or the
665 Modified Soil Cover Complex Method (for areas greater than 20 acres)
666 and based on the 10 year, 50 year, and 100 year flood frequency event
667 period. Calculations shall show existing and proposed runoff
668 conditions for comparative purposes. The Commission at its discretion
669 based on site-specific requirements will consider other methods of
670 calculations.

- 671 (5) DEP Stormwater Management Form and evidence documenting
672 compliance DEP Stormwater Standards;
- 673 (6) Proof of submission of an Application to the Holyoke Stormwater
674 Authority for a Stormwater Permit, or a written opinion from the City
675 Engineer verifying that a Stormwater Permit is not necessary for the
676 proposed activity.
- 677 (7) Methods to be used to stabilize and maintain any embankments
678 facing any wetland or a showing of slope on plans as less than or equal
679 to 3:1;
- 680 (8) A siltation and erosion control plan to be implemented during and
681 after the work;
- 682 (9) Methods for avoiding the use of pesticides, herbicides, fertilizers,
683 and de-icing chemicals shall be explored and incorporated into the
684 plans for the proposed work;
- 685 (10) A description of the onsite non-native invasive species and a plan
686 to control and eradicate non-native invasive species on the site;
- 687 (11) A quantitative functional assessment of wildlife and wildlife
688 habitat, conducted by a wildlife biologist shall be prepared. The best
689 available measures shall be employed to avoid adverse impacts to the
690 wildlife;
- 691 (12) Plant plot information by layer for the entire site. Plots must be
692 taken in representative sites throughout the project area. The plant plot
693 information must be compiled and assessed by a qualified wetland
694 biologist who is proficient in plant plot data gathering and
695 interpretation; and
- 696 (13) In the case of freshwater wetlands, the DEP delineation format
697 must be used unless the applicant can rebut its appropriateness or
698 usefulness in this case.
- 699 (14) Environmentally Sensitive Site Design and Low Impact
700 Development principles and techniques shall be implemented to the
701 maximum extent practicable.

702 g) Plans

- 703 (1) Two sets of plans must be submitted to the Commission. Plans do
704 not have to be provided to other City departments unless specifically
705 requested by the department or the Commission.
- 706 (2) All drawings shall be drawn (1"=50' max) with the title
707 designating the name of the project locations, the name(s) of the

708 person(s) preparing the drawings, and the date prepared, including all
709 revision dates and explanation of the revisions. Drawings, whenever,
710 applicable, shall be stamped and signed by a registered Professional
711 Engineer or a registered Land Surveyor of the Commonwealth of
712 Massachusetts. Pencil notations will not be accepted. A graphical
713 scale, north arrow, and legend identifying all symbols used on the plan
714 must be included.

715 (3) Drawings must include numbered delineation of all wetland
716 resource areas, which have been identified by a wetland scientist, of
717 both seasonal and permanent wetlands, whether natural or man-made,
718 and should be clearly delineated as indicated below regardless of
719 whether the Applicant believes the work is subject to the Act or the
720 Holyoke Wetlands Protection Ordinance:

- 721 (a) Open or flowing water: light blue
- 722 (b) Banks: dark blue
- 723 (c) Freshwater Wetlands: Green with swamp symbols
724 superimposed
- 725 (d) Land Subject to Flooding: Dashed blue line
- 726 (e) Isolated Land Subject to Flooding: Red
- 727 (f) Seasonal Wetlands: Yellow
- 728 (g) Buffer for Areas Subject to Protection under this
729 Ordinance: Dashed Green
- 730 (h) Limit of Work: Purple

731 (4) Drawings must include delineations of all alterations proposed in
732 or adjacent to wetlands and floodplains as indicated below:

- 733 (a) Areas to be dredged or filled: Outline in red
- 734 (b) Areas to be altered in any other way, other than dredging
735 or filling: Outline in black.

736 (5) Plans must include the following:

- 737 (a) Calendar dates of measurements, samplings, contours, etc.
738 Datum should be in NGVD base. The contour interval shall
739 be no greater than two feet.
- 740 (b) Existing and final contours and contour interval used
741 including pond bottom and stream invert contours.
- 742 (c) Soil characteristics in representative parts of the property
743 including depth of peat and soil types in wetlands. Test boring
744 logs shall be submitted.

- 745 (d) Locations, sizes, and slopes of existing and proposed
746 culverts and pipes.
- 747 (e) Cross-sections of all wetlands, showing slopes, banks and
748 bottom treatments.
- 749 (f) Existing and proposed water storage capacity of the
750 property, including calculations and data on which the
751 capacity is based. If filling is proposed, the effect of the
752 resultant loss of storage on downstream resources shall be
753 documented and submitted.
- 754 (g) Location and elevation of benchmark used for survey.
- 755 (h) The locations, coordinates, and numbers of all wetland
756 flagging.
- 757 (i) Existing trees, stone walls, fences, buildings, historic
758 sites, rock ridges, and outcroppings.
- 759 (j) Invert elevations on catch basins.
- 760 (k) Proposed on site pollution control devices such as hooded
761 catch basins, oil absorption pillows, detention or retention
762 basins, flow dissipaters, or sluiceways, swales, or vegetative
763 buffers.
- 764 (l) Locations and details of erosion control devices.
- 765 (m) Locations of any areas to be revegetated following
766 construction. A landscaping plan detailing the locations of
767 plantings and a planting plan detailing the species to be
768 planted shall be submitted. Native plant species shall be used
769 in all plantings to the maximum extent possible.
- 770 (n) Assessor's Map and Lot number(s).

771

772 **3. Notice of Intent Procedure**

773 a) Public hearing

774 (1) A public hearing shall be held by the Commission within twenty-
775 one (21) days of receipt of the minimum submittal requirements.

776 (2) Minimum submittal requirements set forth in Section IV(C) unless
777 the Applicant agrees to an extension or delay and shall be advertised at
778 the expense of the Applicant five (5) working days prior to the hearing
779 in a newspaper of general circulation in the City and in accordance with
780 the requirements of the Open Meeting Law, M.G.L. ch. 39, sec. 23(B)
781 and the Act. Notice of the hearing shall be provided by the

782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818

Commission to the Applicant and to the owner if other than the Applicant.

(3) The Commission in an appropriate case may combine its hearing under the Ordinance with the hearing conducted under the Act.

(4) Public hearings may be continued as follows:

- (a) Without the consent of the Applicant to a date certain for reasons stated at the hearing, which may include obtaining missing documentation such as: receipt of additional information offered by the Applicant or others, information and plans required of the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of other local or state boards and officials;
- (b) With the consent of the Applicant to an agreed-upon date which shall be announced at the hearing; or
- (c) With the consent of the Applicant for a period not to exceed twenty-one (21) days after the submission of a specified piece of information or the occurrence of a specified action. The date, time and place of said continued hearing shall be publicized in accordance with the Ordinance, and notice shall be sent to any person at the hearing who so requests in writing.

b) Coordination with other Boards

(1) Any person filing an Application for Permit or a Request for Determination of Applicability with the Commission shall provide one (1) copy each of all materials except colored plans at the same time by certified mail, certificates of mailing, or hand delivery to the Offices of the Planning Board, and the Building Inspector.

(2) In the case of proposed on-site wastewater work (such as septic system or leach field) or private well work, a copy shall also be provided to the Board of Health.

~~(3)~~ The Commission shall not take final action until such boards and officials have had fourteen (14) days from date of receipt of notice to file written comments and recommendations with the Commission which the Commission shall take into account but which shall not be binding on the Commission. Any such written comments and recommendations, except of the specific location of rare and endangered species, will be provided to the applicant and owner when

819 they are filed with the Commission. The Applicant and any other
820 interested party shall have the right to receive any such comments and
821 recommendations and respond to them, prior to final action.

822 c) Permits regulating the work

823 (1) Within twenty-one (21) days of the close of the public hearing the
824 Commission shall issue or deny the Permit, or issue a Notice of Non-
825 Significance, if the Commission determines that the area on which the
826 proposed work is to be done is not significant to any interest identified
827 in the Ordinance.

828 (2) If the Permit is issued, it shall impose such conditions as are
829 necessary for the protection of one or more of the interests identified in
830 the Ordinance. The Permit shall prohibit any activity or portion thereof
831 that cannot be conditioned to protect said interests.

832 (3) The Permit shall impose conditions upon an activity or the portion
833 thereof that will in the judgment of the Commission, result in the
834 alteration of an area subject to protection under the Ordinance. The
835 Permit shall impose conditions setting limits on the quantity and quality
836 of discharge from any point source (whether closed or open channel)
837 when said limits are appropriate to protect the interests identified in the
838 Ordinance.

839 (4) If the Permit is denied, it shall be for one or more of the following
840 reasons:

- 841 (a) for failure to meet the requirements of the Ordinance;
- 842 (b) for failure to submit necessary information or plans
843 requested by the Commission;
- 844 (c) for failure to meet design specifications, performance
845 standards or other requirements in these Regulations;
- 846 (d) for failure to avoid or prevent unacceptable or cumulative
847 effects upon the wetland interests protected by the Ordinance;
- 848 or
- 849 (e) where no conditions are adequate to safeguard the
850 interests protected by the Ordinance.

851 (5) A permit shall be valid for the time specified by the Commission,
852 not longer than three years from date of issuance.

853 (6) The Permit shall be signed by a quorum of the Commission and
854 shall be mailed or hand delivered to the Applicant, his agent or the
855 owner of record.

856 (7) A copy of the application, plans and supporting documents
857 describing the work and the Permit shall be kept on file by the
858 Commission and shall be available to the public at reasonable hours.
859 (8) Prior to the commencement of any work permitted or required by
860 the Permit, the Permit shall be recorded by the applicant in the Registry
861 of Deeds and/or the Land Court for the district in which the land is
862 located within the chain of title of the affected property. In the case of
863 recorded land, the Permit shall also be noted in the Registry's Grantor
864 Index under the name of the owner of the land upon which the
865 proposed work is to be done. Certification of recording shall be sent to
866 the issuing authority. If work is undertaken without the applicant first
867 recording the Permit, the issuing authority may issue an Enforcement
868 Order or may itself record the Permit.
869 (9) For good cause the Commission may revoke or modify a Permit
870 issued under this Ordinance after public notice and public hearing, and
871 notice to the holder of the Permit.
872 (10) The Commission in an appropriate case may combine the Permit
873 or other action on an application issued under the Ordinance with the
874 Order of Conditions issued under the Act.

875
876 d) **Conditions Regulating Work** At a minimum, the Commission shall
877 impose the following conditions:
878 (1) No activity may proceed until the Applicant has received all other
879 permits required by law, including but not limited to any permit
880 required by the Holyoke Board of Health, the Holyoke Planning Board,
881 the Holyoke Zoning Board of Appeals, the Department of
882 Environmental Protection, and the Army Corps of Engineers.
883 (2) This permit is granted under the provisions of the Holyoke
884 Wetlands Ordinance subject to the conditions imposed herein.
885 Requests for an extension of this Permit must be submitted, in writing,
886 no less than thirty (30) days prior to the expiration date of this Permit.
887 (3) Any substantial change made or intended to be made in the plans
888 shall require the applicant to file a new Application for Permit or to
889 inquire of the Commission, in writing, by certified mail, or by
890 certificates of mailing, whether the change is so substantial as to
891 require the filing of a new Application for Permit.

- 892 (4) The Conservation Commission shall receive forty eight (48) hours
893 advance notice, in writing, before the commencement of any activity
894 within the resource areas, including site preparation and construction.
- 895 (5) All structures, facilities and equipment as parts of this project shall
896 be continually operated and maintained so as to comply with this
897 Permit. This provision applies specifically to all heavy equipment used
898 on this project. Any leakage of oil, hydraulic fluid, gasoline or any
899 other pollutant must be cleaned up prior to the continuance of any other
900 work on the site immediately and the defective equipment responsible
901 for said leaking shall be immediately repaired or taken off-site.
- 902 (6) A copy of this Permit for Work shall be kept on-site at all times
903 during construction. All contractors and subcontractors engaged during
904 construction shall be provided with a copy of this Permit for Work, and
905 should be prepared to produce said Permit for Work upon the request of
906 the Conservation Commission or its agent.
- 907 (7) Violation of any of these conditions shall be subject to a daily fine
908 pursuant to the City of Holyoke Wetlands Ordinance until said
909 violations have been corrected, to the satisfaction of the Holyoke
910 Conservation Commission.
- 911 (8) Work shall proceed in strict accordance to referenced plan(s) in
912 this Permit.
- 913 (9) A sedimentation and erosion control plan shall be provided and
914 approved by the agent for the Conservation Commission. Such
915 controls shall remain in place and be maintained until all disturbed
916 areas have been stabilized to the satisfaction of the Conservation
917 Commission.
- 918 (10) All work shall be completed in such a manner as to prevent the
919 spread of invasive species, eutrophication or sedimentation in wetlands,
920 water bodies or public and private water supplies.
- 921 (11) A Certificate of Compliance shall be requested from the Holyoke
922 Conservation Commission upon completion of the proposed work. A
923 written statement shall accompany said request from the professional
924 who prepared the plan certifying compliance with plans.

925
926 e) Limited Projects

- 927 (1) Notwithstanding the provisions of these Regulations, the
928 Commission may issue a Permit and impose such conditions as will

929 contribute to the interests identified in the Ordinance permitting the
930 limited projects as identified in the Wetlands Protection Act.

931

932 f) Natural Heritage

933 (1) Applicants shall file their Application for Permit with the
934 Massachusetts Natural Heritage and Endangered Species Program if the
935 most current Massachusetts Natural Heritage and Endangered Species
936 program map, on file with the Commission, indicates that the
937 geographic area of the activity or project is within Estimated Habitat of
938 Rare Wetlands Wildlife.

939

4. Security

940 a) As part of a permit or variance issued under this ordinance, in addition to
941 any security required by any other town or state board, agency or official, the
942 Commission may require that the performance and observance of the conditions
943 imposed hereunder be secured wholly or in part by one or more of the methods
944 described below:

945 (1) By a proper bond or deposit of money or negotiable securities or
946 other undertaking of financial responsibility sufficient in the opinion of
947 the Commission. Such bond or surety, if required to be filed or
948 deposited, shall be approved, as to form and manner of execution by
949 the City Solicitor and as to sureties by the City Treasurer, and shall be
950 contingent upon the satisfaction of such conditions within the time
951 frame of the permit and extension. Such bonds shall be approved and
952 filed with the Commission prior to the close of the public hearing.

953 (2) By a conservation restriction, easement or other covenant
954 enforceable in a court of law, executed and duly recorded by the owner
955 of record, running with the land to the benefit of the City of Holyoke,
956 whereby the permit conditions shall be performed and observed before
957 any lot may be conveyed other than by mortgage deed.

958

D. Extension of Permit

959 1. Procedure: The Commission may extend a Permit once for an additional one-year
960 period. Requests for extension shall be made to the Commission in writing at least thirty
961 (30) days prior to the expiration of the Permit. Wetlands Protection Form 7 shall be
962 submitted as the request for extension.

963 2. Denials: The issuing authority may deny the request for an extension and require
964 the filing of a new Application for Permit for the remaining work in the following
965 circumstances:

- 966 a) Where no work has begun on the project, except where such failure is due
967 to an unavoidable delay, such as appeals, in the obtaining of other necessary
968 permits;
- 969 b) Where new information not available at the time the Permit was issued has
970 become available and indicates that the Permit is not adequate to protect the
971 interests identified in the Ordinance;
- 972 c) Where work is causing damage to the interests identified in the Ordinance;
973 or
- 974 d) Where work has been done in violation of the Permit or these Regulations.
- 975 3. When issued by the Conservation Commission, the Extension Permit shall be signed
976 by a quorum of the Commission.
- 977 4. The Extension Permit shall be recorded in the Land Court and/or the Registry of
978 Deeds, which ever is appropriate, by the Applicant. Certification of recording shall be
979 sent to the issuing authority on the form provided. If work is undertaken without the
980 recording the Extension Permit, the Commission may issue an Enforcement Order or it
981 may itself record the Extension Permit.

982

983 **E. Certificate of Compliance**

- 984 1. Upon written request by the applicant on Wetlands Protection Act Form 8A, a
985 Certificate of Compliance shall be issued by the Commission within twenty-one (21)
986 days of receipt thereof, and shall certify that the activity or portions thereof described in
987 the Application for Permit and plans has been completed in compliance with the Permit.
988 If issued by the Commission, the Certificate of Compliance shall be signed by a quorum
989 of the Commission.
- 990 2. Prior to the issuance of a Certificate of Compliance, a site inspection shall be made
991 by the Commission or its agent. The Commission may require the presence of the
992 applicant or the applicant's agent.
- 993 3. If the Commission determines, after review and inspection, that the work has not
994 been done in compliance with the Permit, or if the applicant or its agent fails to
995 participate in a site inspection when required to by the Commission, it may refuse to issue
996 a Certificate of Compliance. Such refusal shall be issued within twenty-one (21) days of
997 receipt of a request for a Certificate of Compliance, shall be in writing, and shall specify
998 the reasons for denial.
- 999 4. If a project has been completed in accordance with plans stamped by a registered
1000 professional engineer, architect, landscape architect or land surveyor, a written statement
1001 by such a professional person certifying substantial compliance with the plans and setting

1002 forth what deviation, if any, exists from the plans approved in the Permit shall
1003 accompany the request for a Certificate of Compliance.
1004 5. If the Commission has not received all fees incurred in the application process
1005 according to the fee schedule, it may refuse to issue a Certificate of Compliance until
1006 such fees are paid.
1007 6. If the Permit contains conditions which continue past the completion of work, such
1008 as maintenance or monitoring, the Certificate of Compliance shall specify which, if any,
1009 of such conditions shall continue. The Certificate shall also specify to what portions of
1010 the work such conditions apply if they do not apply to all the work regulated by the
1011 Permit.
1012 7. The Certificate of Compliance shall be recorded by the applicant in the Land Court
1013 and/or Registry of Deeds, whichever is appropriate. Certificate of recording shall be sent
1014 to the issuing authority on the form provided. Upon failure of the applicant to so record,
1015 the issuing authority may do so.
1016
1017

1018 **V. Violations, Enforcement, Fines, and Administrative Action**

1019 **A. Enforcement** The Commission shall have authority to enforce this Ordinance, its
1020 Regulations, and permits and variances issued thereunder by violation notices, enforcement orders
1021 (Wetlands Protection Act Form 9A), corrective action notices and civil and criminal court actions.

1022 **B. Civil Action** Upon request of the Commission, the City Solicitor shall take legal action for
1023 the enforcement under the civil law. As an alternative to criminal prosecution the Commission
1024 may elect to utilize the non-criminal disposition procedure set forth in M.G.L. ch. 40, s. 21(D).

1025 **C. Criminal Action** Upon request of the Commission, the Chief of Police shall take legal action
1026 for enforcement under criminal law.

1027 **D. Other Boards** Municipal boards and officers, including any police officer or other officer
1028 having police powers, shall have authority to assist the Commission in enforcement.

1029 **E. Violations** Violations include, but are not limited to:

- 1030 a) failure to comply with a Permit, such as failure to observe a particular
- 1031 condition or time period specified in the Permit;
- 1032 b) failure to complete work described in a Permit, when such failure causes
- 1033 damage to the interests identified in the Ordinance; or
- 1034 c) failure to obtain a valid Permit prior to conducting an activity subject to
- 1035 regulation under the Ordinance.

1036 **F. Commission Response** When the Conservation Commission determines that an activity is in
1037 violation of the Ordinance or a Permit or Variance issued under the Ordinance or Regulations, the
1038 Commission may:

- 1039 1. issue an Administrative Order, and/or ;
1040 2. hold an Administrative Hearing to consider whether the landowner should be fined
1041 for the violation and/or;
1042 3. issue a corrective action notice in the case of a violation of a valid Order of
1043 Conditions.

1044 **G. Administrative Orders**

- 1045 1. Administrative Orders shall be issued by the Commission to provide notification of
1046 violation of an Ordinance, Regulation, existing Administrative Order or valid Order of
1047 Conditions. Administrative Orders may direct a landowner or other party to immediately
1048 cease and desist from activities that may be impacting areas subject to the jurisdiction of
1049 these Regulations or affecting the interests identified in these Regulations.
1050 2. In the appropriate case, the Commission may issue an Enforcement Order under the
1051 Act in lieu of or in addition to an Administrative Order.
1052 3. An Administrative Order issued by the Conservation Commission shall be signed by
1053 a majority of the Commission. In a situation requiring immediate action, a single
1054 member or agent of the Commission may sign an Administrative Order, if said Order is
1055 ratified by a majority of the members at the next scheduled meeting of the Commission.
1056 4. The Administrative Order, a Violation Notice or an Enforcement Order issued under
1057 the Act will constitute a warning that an Administrative Hearing and possible fines may
1058 result.

1059 **H. Administrative Hearing**

- 1060 1. **Purpose** The purpose of the Administrative Hearing is to discuss the violation
1061 and to give the landowner or the landowner's representative an opportunity to respond to
1062 the evidence and circumstances of the Administrative Order or Enforcement Order prior
1063 to the issuance of an Administrative Order for Restitution and/or Notice of Fines. At the
1064 Administrative Hearing, the Commission shall determine the appropriate course of action
1065 pursuant to the following standards:
- 1066 (1) In the case where restitution is possible, the Commission may
1067 accept a written plan with a timetable for full restitution of the violation
1068 including a timetable for submittal of permits pursuant to the
1069 Regulations. If requested by the Commission, a Restitution Plan must
1070 be submitted within ten business days of the date of receipt of such a
1071 request. The Restitution Plan shall be approved by a majority of the
1072 Commission at the Administrative Hearing and incorporated into an
1073 Administrative Order. The Restitution Plan and Administrative Order
1074 shall be hand delivered or certified mail to the responsible party.

1075 (2) In the case where restitution is ordered and the party in receipt of
1076 an Administrative Order has failed to respond with the required
1077 corrective action, each day or portion thereof during which a violation
1078 continues or is repeated shall constitute a separate offense, and each
1079 provision of the Ordinance or Permit violated shall constitute a separate
1080 offense for the purposes of calculating a fine.

1081 (3) In the case where restitution is impossible or inadvisable, the
1082 Commission will decide what procedural or legal remedies to take
1083 including issuance of a Notice of Fines.

1084 (4) In the case of destruction of vegetation, the Commission may
1085 continue the Administrative Hearing to a reasonable date such as the
1086 subsequent growing season for any part of that site until the vegetation
1087 has reemerged, grown, or otherwise reestablished itself to the
1088 Commission's satisfaction. In the meantime, no work may take place
1089 without a valid Permit and the Commission shall monitor the site on a
1090 regular basis.

1091 2. **Notice** The landowner and the party allegedly responsible for the violation, if not
1092 the landowner, must be given at least forty eight (48) hours notice in writing of the date,
1093 time, and place of an Administrative Hearing, by certified mail or hand delivery.

1094 3. **Continuance of Administrative Hearing** A landowner or party served with notice
1095 of an Administrative Hearing can apply in writing to the Commission for a continuance
1096 of the Administrative Hearing stating in full the reason for the request. The Commission
1097 may grant a continuance for compelling and/or environmentally sound reasons.

1098 Continuances shall not be granted where such issuance allows an on-going pollution
1099 event to continue unabated or where there is risk of alteration to resource areas.

1100 4. **Standard of Proof** If a majority of the Commission present at the Hearing finds
1101 by a preponderance of the evidence that a violation has occurred, the landowner shall be
1102 punished by a fine of not more than that allowed for the violation of municipal
1103 ordinances as specified by Section 1-10 of Chapter 1, General Provisions of the Code of
1104 Ordinances for the City of Holyoke and/or be issued an Administrative Order for
1105 Restitution. The Commission at the Administrative Hearing will determine the amount
1106 of the fine per violation.

1107

1108 **I. Fines and Notice of Fines**

1109 1. **Hearing Required** If a fine or an adjustment of fine for a violation is
1110 contemplated, the Commission shall hold an Administrative Hearing pursuant to these
1111 Regulations.

1112 2. **Calculation of Fines** For the purposes of calculating fines, each day or portion
1113 thereof during which a violation continues shall constitute a separate offense, and each
1114 provision of the Ordinance, Regulations, Permit or Variance violated shall constitute a
1115 separate offense.

1116 3. **Fine Schedule** The Commission shall determine the appropriate amount of fines
1117 using the following schedule:

1118 (a) failure to obtain a valid Permit prior to conducting an
1119 activity subject to regulation under the Ordinance shall be
1120 subject to a \$50.00 fine for the first offense, \$100 for the
1121 second offense, and \$300 for the third offense.

1122 (b) failure to comply with a Permit shall be subject to a
1123 \$50.00 fine for the first offense, \$100 for the second offense,
1124 and \$300 for the third offense.

1125 (c) failure to complete work described in a permit shall be
1126 subject to a \$100.00 fine for the first offense, \$200 for the
1127 second offense, and \$300 for the third offense.

1128 (d) failure to maintain erosion control shall be subject to a
1129 \$100.00 fine for the first offense, \$200 for the second offense,
1130 and \$300 for the third offense.

1131 (e) dumping yard waste in an area subject to protection shall
1132 be subject to a \$50.00 fine for the first offense, \$200 for the
1133 second offense, and \$300 for the third offense.

1134 (f) Dumping materials not identified as yard waste in an area
1135 subject to protection shall be subject to a \$300.00 fine

1136 (g) failure to comply with an Administrative Order
1137 Restitution Plan or Enforcement Order shall be subject to a
1138 \$300.00 fine.

1139

1140 4. **Notice of Fines** The Notice of Fines shall include an explanation thereof,
1141 including the date or approximate date of the violation from which daily violations are
1142 counted, and will be sent in writing to the responsible landowner(s) by certified mail or
1143 hand delivery.

1144 5. The fine or fines are payable to The City of Holyoke within twenty-one (21) days of
1145 the date of issuance of the notice.

1146 6. **Liens for Non-payment of Fines**

1147 a) The City Collector may record in the Registry of Deeds a conservation lien
1148 for non-payment of accumulated fines. The lien shall be against all property in

1149 the City of Holyoke held by the landowner at the time of the violation which is
1150 contiguous to the area of the violation.

1151 b) The Commission shall hold an Administrative Hearing, to which the
1152 landowner is given written notice as described above, in order to decide the
1153 amount of the lien which may not exceed the amount of accumulated fines to
1154 date.

1155 **J. Corrective Action Notice** The Commission may at its discretion issue a Corrective
1156 Action Notice to a holder of a valid Order of Conditions or owner of land subject to a valid Order
1157 of Conditions. The Corrective Action Notice shall be used to provide notice of a minor violation
1158 of the Order of Conditions or other matter on site in need of immediate attention. The goal of the
1159 Corrective Action Notice is to quickly rectify a minor situation that if left unaddressed may result
1160 in alteration to the areas subject to the jurisdiction of these Regulations. Such matters may
1161 include, but are not limited to, installation of additional erosion control, removal of debris and
1162 trash from a construction site, sweeping of pavement or posting of a DEP file number sign. No
1163 Administrative Hearing is required for issuance of the Corrective Action Notice. The Corrective
1164 Action Notice may be issued verbally or in writing and may be issued by a single member or agent
1165 of the Commission. Where a Corrective Action Notice is issued verbally, such notice shall be
1166 followed by a written Corrective Action Notice to the landowner or holder of a valid Order of
1167 Conditions and shall include the date, time and person name to whom the verbal notice was given.
1168 Failure to comply with a Corrective Action Notice within the specified time period may result in
1169 issuance of an Administrative Order, Enforcement Order or fines.

1170

1171 **K. 310 CMR 10.00** Unless otherwise stated in the Ordinance or in the rules and
1172 Regulations promulgated under the Ordinance, the definitions, procedures, and performance
1173 standards of the Act and associated Regulations, 310 CMR 10.00 as amended, shall apply.

1174

1175

1176 **VI. Standards for Inland Wetlands**

1177 **A. Banks**

1178 1. The Preamble shall be the same as in the Act with the following addition: Land
1179 within 100 feet of a bank (See Section VII) is likely to be significant to the protection and
1180 maintenance of the bank, and therefore to the protection of the interests which banks
1181 serve to protect.

1182 2. Definition A bank is the portion of land surface which normally abuts and confines
1183 a water body. It occurs between a water body and a vegetated bordering wetland and
1184 adjacent flood plain, or, in the absence of these, it occurs between a water body and
1185 upland. A bank may be partially or totally vegetated, or it may be comprised of exposed
1186 soil, gravel, stone or sand. The physical characteristics of a bank, as well as its location

1187 are critical to the protection of the interests specified herein. The upper boundary of a
1188 bank is the first observable break in the slope above the mean annual flood level, or
1189 whichever is higher. The lower boundary of a bank is the mean annual low flow level.

1190 3. Presumption

1191 a) Where a proposed activity involves the removing, filling, building on,
1192 dredging or altering of a bank, or the area within 100 feet of the boundaries of
1193 the bank, the issuing authority shall presume that the area is significant to the
1194 interests specified in Section I (B)(1).

1195 b) This presumption is rebuttable and may be overcome by clear and
1196 convincing evidence that the bank does not play a role in the protection of these
1197 interests. In the event that the presumption is deemed to have been overcome,
1198 the issuing authority shall make a written determination to this effect in the
1199 Permit or Order of Conditions, setting forth its grounds.

1200 4. Performance Standards

1201 a) No activity, other than the maintenance of an already existing structure,
1202 which will result in the building within or upon, removing, filling, or altering of
1203 a bank, or of land within 100 feet of any bank, shall be permitted by the
1204 Conservation Commission, except for activity which is allowed under a Permit
1205 or variance from these Regulations granted pursuant to Section I(D)(3).

1206 b) No structure of any kind shall be permitted on an eroding bank whose
1207 purpose is to protect any building or other structure built pursuant to a Permit
1208 granted after the effective date of these Regulations without receipt of a
1209 subsequent permit or Order of Conditions.

1210 c) Any proposed work, permitted by the Commission, on a bank or within 100
1211 feet of the upper boundary of a bank, shall not impair the following:

- 1212 (1) the physical stability of the bank;
- 1213 (2) the water carrying capacity of the existing channel within the bank;
- 1214 (3) ground or surface water quality;
- 1215 (4) the capacity of the bank to provide breeding habitat, escape cover
1216 or food for fisheries;
- 1217 (5) the capacity of the bank to provide wildlife habitat functions

1218 (a) No project may be permitted which will have any adverse
1219 effect on specified habitat sites of rare vertebrate or
1220 invertebrate species as identified on the Massachusetts Natural
1221 Heritage and Endangered Species Estimated Habitat Maps on
1222 file with the Commission.

1223 (6) the capacity of the bank to help prevent erosion and sedimentation.

1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260

B. Freshwater Wetlands

1. The Preamble shall be the same as in the Wetlands Protection Act for Bordering Vegetated Wetlands, with the following addition: Freshwater wetlands, together with Land within 100 feet of a Freshwater wetland (See Section VII), serve to moderate and alleviate thermal shock and pollution resulting from runoff from impervious surfaces which may be detrimental to wildlife and fisheries. Land within 100 feet of a Freshwater wetland is likely to be significant to the protection and maintenance of Freshwater wetlands and therefore to the protection of the interests which these resource areas serve to protect.

2. Definition: The types of freshwater wetlands include riverine wetlands, marshes, wet meadows, bogs, isolated wetlands, and swamps that meet either of the following requirements:

- a) Fifty percent or more of the natural vegetative community consists of obligate or facultative wetland plant species as included or identified in generally accepted scientific or technical publications (as, for example, the Wetland Plant List (Northeast Region) for the National Wetlands Inventory, U.S. Fish and Wildlife Service (1988, as amended); or
- b) The soils are hydric soils. Hydric soils are those soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part (12").

(1) For purposes of these Regulations the following shall be used to determine if a soil is hydric:

- (a) Histosols (organic soils) -- soils with at least sixteen (16) inches of organic material measured from the soil surface.
- (b) Histic epipedons -- soils with eight (8) to sixteen (16) inches of organic material measured from the soil surface.
- (c) Sulfidic material -- a strong "rotten egg" smell generally is noticed immediately after the soil test hole is dug.
- (d) Gleyed soils -- soils that are predominantly neutral gray, or occasionally greenish or bluish gray in color within twelve (12) inches from the bottom of the O-horizon. (The Munsell Soil Color Charts have special pages for gleyed soils).
- (e) Soils with a matrix chroma of 0 or 1 and values of 4 or higher within twelve (12) inches from the bottom of the O-horizon.

1261 (f) Within twelve (12) inches from the bottom of the O-
1262 horizon, soils with a chroma of 2 or less and values of 4 or
1263 higher in the matrix, and mottles with a chroma of 3 or higher.
1264 (g) Within twelve (12) inches from the bottom of the O-
1265 horizon, soils with a matrix chroma of 3 and values of 4 or
1266 higher, with 10 percent or more low-chroma mottles, as well
1267 as indicators of saturation (i.e., mottles, oxidized rhizospheres,
1268 concretions, nodules) within six (6) inches of the soil surface.

1269 (2) All colors listed above are moist colors as determined by
1270 comparison with the most recent Munsell Color Book. Definitions for
1271 diagnostic horizons may be found in Keys to Soil Taxonomy, A.I.D.,
1272 U.S.D.A. publication.

1273 (3) The soil surface is the top of the mineral soil, or for soils with an
1274 O-horizon, the soil surface is measured from the top of the O-horizon.

1275 (4) Fresh leaf or needle fall that has not undergone observable
1276 decomposition (the litter layer) is excluded from soil and may be
1277 separately described.

1278 c) Isolated Wetlands and Seasonal Wetlands are defined elsewhere in these
1279 Regulations and need not necessarily meet the above requirements.

1280 d) In situations where the natural vegetative community may have been
1281 destroyed, as for example by lawn or agricultural use, the Commission may
1282 determine the area to be Freshwater Wetland on the basis of annual hydric soil
1283 saturation alone (as defined above) or, at the request of the applicant or land
1284 owner, may defer the determination until the natural vegetation has regrown.

1285 e) In situations where the Commission determines that the natural vegetative
1286 community has been destroyed in violation of the Ordinance, the Commission
1287 may itself elect to defer any determination of the presence or absence of, or the
1288 boundaries of, a Freshwater Wetland until the natural vegetation has regrown,
1289 and until that time may determine the area to be Freshwater Wetland on the
1290 basis of annual soil saturation hydric soils alone.

1291 3. Presumption

1292 a) Where a proposed activity involves the removing, filling, building upon,
1293 dredging or altering of a Freshwater Wetland, the Commission shall presume
1294 that such area is significant to the interests specified in Section I(B)(1). This
1295 presumption is rebuttable and may be overcome by clear and convincing
1296 evidence that the Freshwater Wetland, or land within 100 feet of the boundaries
1297 of the Freshwater Wetland, does not play a role in the protection of said

1298 interests. In the event that the presumption is deemed to have been overcome,
1299 the Commission shall make a written determination to this effect in the permit or
1300 Order of Conditions, setting forth its grounds.

1301 4. Performance Standards

1302 a) No activity, other than the maintenance of an already existing structure,
1303 which will result in the building within or upon, removing, filling, or altering of
1304 a freshwater wetland, or of land within 100 feet of any freshwater wetland, shall
1305 be permitted by the Conservation Commission, except for activity which is
1306 allowed under a Permit or a variance from these Regulations granted pursuant to
1307 Section I(D)(3).

1308 b) Where the presumption is not overcome, any proposed work in a
1309 Freshwater Wetland shall not destroy or otherwise impair any portion of the
1310 wetland resource.

1311 c) Notwithstanding Section 4(a) above, the Commission may issue a Permit
1312 allowing work which results in the loss of up to 5,000 square feet of Freshwater
1313 Wetlands when it is replaced in accordance with the following general
1314 conditions and any additional, specific conditions the Commission deems
1315 necessary to ensure that the replacement area will function in a manner similar
1316 to the area that will be lost:

1317 (1) the surface of the replacement area to be created (the
1318 "replacement/replicated area") shall normally be double that of the area
1319 that will be lost (the "lost area");

1320 (2) the ground water and surface water elevation of the
1321 replacement/replicated area shall be approximately equal to that of the
1322 lost area;

1323 (3) the overall horizontal configuration and location of the
1324 replacement/replicated area with respect to the bank shall be similar to
1325 that of the lost area;

1326 (4) if the resource is bordering a waterbody or waterway, the
1327 replacement/replicated area shall have an unrestricted hydraulic
1328 connection to the same water body or waterway associated with the lost
1329 area;

1330 (5) the replacement/replicated area shall be located within the same
1331 general area of the water body or reach of the waterway as the lost area;

1332 (6) at least seventy-five (75) percent of the surface of the
1333 replacement/replicated area shall be reestablished with indigenous,
1334 native wetland plant species within two growing seasons, and prior to

1335 said vegetative establishment any exposed soil in the replacement area
1336 shall be temporarily stabilized to prevent erosion in accordance with
1337 U.S. N.R.C.S. methods; and
1338 (7) the replacement/replicated area shall be provided in a manner
1339 which is consistent with all other Performance Standards for each
1340 resource area described in these Regulations.
1341 d) Notwithstanding the provisions of Sections 4(a) and 4(b) above, the
1342 Commission may issue a Permit allowing work which results in the loss of a
1343 portion of Freshwater Wetland when:
1344 (1) said portion has a surface area of less than five hundred (500)
1345 square feet;
1346 (2) said portion extends in a distinct linear configuration
1347 ("finger-like") into adjacent uplands; and
1348 (3) in the judgement of the Commission it is not reasonable to scale
1349 down, redesign or otherwise change the proposed work so that it could
1350 be completed without loss of said wetland.
1351 e) Notwithstanding the provisions of Sections 4(a), (b), and (c) above, no
1352 project may be permitted which will have any adverse effect on habitat sites of
1353 rare vertebrate or invertebrate species as identified on the most current
1354 Massachusetts Natural Heritage and Endangered Species Estimated Habitat
1355 Maps on file with the Commission.

1356
1357 **C. Isolated Wetlands**

1358 1. Preamble Isolated Wetlands are Freshwater Wetlands that do not border on creeks,
1359 rivers, streams, ponds, lakes, or other water bodies. Isolated Wetlands are likely to be
1360 significant to the interests identified in Section I(B)(1). Isolated Wetlands may be found
1361 either in areas with low flat topography or below sidehill seeps. These areas provide for
1362 the temporary storage of water which results from runoff, rising ground water, or where
1363 ground water breaks out of a slope forming a sidehill seep. In this way they provide for
1364 flood control and prevention of flood damage. Alteration can result in the lateral
1365 displacement of retained water which may result in damage. Isolated Wetlands are areas
1366 where ground water discharges to the surface either by a rising water table or from a
1367 sidehill seep. Under some circumstances, surface water discharges to the ground water in
1368 these areas, particularly where they are underlain by pervious material. Contaminants
1369 introduced into such areas, such as septic system discharges, road salts, pesticides or
1370 herbicides, find easy access into the ground water. Where such areas are underlain by
1371 pervious material or covered by a mat of organic peat or muck, they are likely to be

1372 significant to the prevention of pollution. Isolated Wetlands providing Seasonal Wetland
1373 habitats are essential breeding sites for certain amphibians which require isolated areas
1374 that generally flood in the spring and/or summer, and are free of fish predators. Many
1375 reptiles, birds, and mammals also depend upon such Isolated Wetlands as a source of
1376 food.

1377 2. Definition, Critical Characteristics and Boundary

1378 a) Isolated Wetlands are wetlands that do not border on creeks, rivers, streams,
1379 ponds, lakes, or other water bodies. Some isolated depressions which hold
1380 standing water for extended periods of time, perhaps continuously, such as
1381 certain kettle holes too small to be called ponds or lakes, may be Isolated
1382 Wetlands.

1383 b) Isolated Wetlands may occur in a depression or closed basin in otherwise
1384 flat topography. In these areas, water may pool above the surface at least once a
1385 year or may be contained in the top twenty-four (24) inches of soil. In addition,
1386 some Isolated Wetlands occur down slope of sidehill seeps, depending on the
1387 topography, soils and water regime.

1388 c) In most cases, the vegetative community in Isolated Wetlands conforms to
1389 that specified in this Ordinance for Freshwater Wetlands.

1390 d) The soils are annually saturated hydric soils as specified for Freshwater
1391 Wetlands.

1392 e) The boundary of an Isolated Wetland shall be determined by one or more
1393 of the following, depending on the availability of information. Where more than
1394 one method is possible, that method leading to the largest area shall be used. The
1395 boundary of the Isolated Wetland shall be:

1396 (1) the line enclosing that area having a vegetative cover consisting of

1397 50% or more of freshwater species, as defined in the Ordinance, or

1398 (2) the line enclosing the largest observed or recorded area of water
1399 confined in said area, or

1400 (3) the area calculated to be inundated by runoff from the 100-year
1401 storm or;

1402 (4) the area of hydric soils.

1403 3. Presumption Where a proposed activity involves removing, filling, dredging,
1404 building on, or altering an Isolated Wetland, or within 100 feet of the boundaries of the
1405 Isolated Wetland, the Commission shall presume that such an area is significant to the
1406 interests specified in Section I(B)(1). This presumption is rebuttable and may be
1407 overcome by clear and convincing evidence that said land does not play a role in said

1408 interests. In the event that the presumption is deemed to have been overcome, the
1409 Commission shall make a written determination to this effect, setting forth its grounds.

1410 4. Performance Standards

1411 a) No activity, other than the maintenance of an already existing structures,
1412 which will result in the building within or upon, removing, filling, dredging or
1413 altering of an Isolated Wetland or of land within 100 feet of an Isolated Wetland
1414 (See Section VII) shall be permitted by the Conservation Commission, except
1415 for activity which is allowed under a Permit or variance from these Regulations
1416 granted pursuant to Section I(D).

1417 b) A proposed project which may result in alteration of an Isolated Wetland
1418 shall not result in the following:

1419 (1) Flood damage due to filling which causes lateral displacement of
1420 water that would otherwise be confined within said area.

1421 (2) An adverse effect on public and private water supply or ground
1422 water supply.

1423 (3) An adverse effect on the capacity of said area to prevent pollution
1424 of the ground water.

1425 (4) An impairment of its capacity to provide wildlife habitat.

1426 (a) No project may be permitted which will have any adverse
1427 effect on specified habitat sites of rare vertebrate or
1428 invertebrate species as identified on the Massachusetts Natural
1429 Heritage and Endangered Species Estimated Habitat Maps on
1430 file with the Commission.

1431 (5) An adverse effect on erosion or sedimentation control.

1432

1433 **D. Land Under Water Bodies**

1434 1. The Preamble shall be the same as in the Act for Land Under Water Bodies and
1435 Waterways with the following addition:

1436 a) Land under Seasonal Wetlands are crucial to providing habitat to amphibian
1437 species. Areas immediately surrounding seasonal wetlands generally serve all
1438 of the non-breeding habitat functions of amphibians which require Seasonal
1439 Wetlands for breeding.

1440 b) Land within one hundred feet (100') of a Land Under Water Body is likely
1441 to be significant to the protection and maintenance of Land Under Water Body
1442 and therefore to the protection of the interests which these water bodies serve to
1443 protect. (See Section VII)

1444 2. Definition

- 1445 a) Land Under Water Bodies is the land beneath any river, stream, pond,
1446 seasonal wetland, or lake. Said land may be composed of organic muck or peat,
1447 fine sediments, gravel, rock or bedrock.
- 1448 b) The physical characteristics and location of Land Under Water Bodies
1449 specified herein are critical to the protection of the interests of Section I(B)(1).
- 1450 c) The upper boundary of Land Under Water Bodies is the mean annual low
1451 water level except in the case of intermittent streams where the boundary shall
1452 be the area under the stream when flowing at its annual mean flow.
- 1453 3. Presumption:
- 1454 a) Where a proposed activity involves removing, filling, building upon,
1455 dredging or altering of a Land Under Water Body or within 100' of the
1456 boundaries of the Land Under Water Body, the Commission shall presume that
1457 such area is significant to the interests specified in Section I(B)(1). This
1458 presumption is rebuttable and may be overcome by clear and compelling
1459 evidence showing that the Land Under Water Body does not play a role in the
1460 protection of said interests. In the event that the presumption is deemed to have
1461 been overcome, the Commission shall make a written determination to this
1462 effect setting forth its grounds.
- 1463 4. Performance Standards
- 1464 a) No activity, other than the maintenance of an already existing structure,
1465 which will result in the building within or upon, removing, filling, dredging or
1466 altering of land under a water body, or of land within 100 feet of land under a
1467 water body shall be permitted by the Conservation Commission, except for
1468 activity which is allowed under a Permit or a variance from these Regulations
1469 granted pursuant to Section I(D)(3).
- 1470 b) Any proposed work, permitted by the Commission, on Land Under a Water
1471 Body or within 100 feet of Land Under a Water Body shall not impair the
1472 following:
- 1473 (1) The water carrying capacity within the defined channel, which is
1474 provided by said land in conjunction with the banks;
- 1475 (2) Ground or surface water quality;
- 1476 (3) The capacity of the land to provide breeding habitat, escape cover
1477 and food for fisheries; or
- 1478 (4) The capacity of the land to provide wildlife habitat function.
- 1479 (a) No project may be permitted which will have any adverse
1480 effect on specified habitat sites of rare vertebrate or
1481 invertebrate species as identified on the most current

1482 Massachusetts Natural Heritage and Endangered Species
1483 Estimated Habitat Maps on file with the Commission.
1484 (5) The capacity of the land to provide endangered species habitat
1485 function.
1486 (6) The capacity of the land to prevent erosion and sedimentation.
1487 (7) The capacity of the land to provide aesthetic amenities.

1488 **E. Land Subject to Flooding**

1490 1. Preamble

1491 a) The Preamble shall be the same as in the Wetlands Protection Act with the
1492 following addition:

1493 (1) Land within one hundred feet (100') of the Land Subject to
1494 Flooding is likely to be significant to the protection and maintenance of
1495 the area and therefore to the protection of the interests which Land
1496 Subject to Flooding serves to protect.

1497 2. Definition

1498 a) Land subject to flooding is an area with low, flat topography adjacent to and
1499 inundated by flood waters rising from creeks, rivers, streams, ponds, lakes or
1500 water courses. It extends from the banks of these waterways and water bodies;
1501 where a Freshwater wetland occurs, it extends from said wetland.

1502 b) The topography and location of land subject to flooding are critical to the
1503 protection of the interests specified in Section I(B)(1).

1504 c) The boundary of land subject to flooding is the estimated maximum lateral
1505 extent of flood water which will theoretically result from the statistical 100-year
1506 frequency storm. Said boundary shall be that determined by reference to the
1507 most recently available flood profile data prepared for the community within
1508 which the work is proposed under the National Flood Insurance Program (NFIP,
1509 currently administered by the Federal Emergency Management Agency,
1510 successor to the U.S. Department of Housing and Urban Development). Said
1511 boundary, so determined, shall be presumed accurate. This presumption may be
1512 overcome only by credible evidence from a registered professional engineer or
1513 other professional competent in such matters.

1514 d) Where NFIP Profile data is unavailable, the boundary of land subject to
1515 flooding shall be the maximum lateral extent of flood water which has been
1516 calculated, observed or recorded.

1517 3. Presumption Where a proposed activity involves removing, filling, dredging,
1518 building on, or altering Land Subject to Flooding, or within 100 feet of the boundaries of
1519 the Land Subject to Flooding, the Commission shall presume that such an area is

1520 significant to the interests specified in Section I(B)(1). This presumption is rebuttable
1521 and may be overcome by clear and convincing evidence that said land does not play a
1522 role in said interests. In the event that the presumption is deemed to have been overcome,
1523 the Commission shall make a written determination to this effect, setting forth its
1524 grounds.

1525 4. Performance Standards

1526 a) No activity, other than the maintenance of an already existing structure,
1527 which will result in the building within or upon, removing, filling, dredging or
1528 altering of land subject to flooding, or of land within 100 feet of land subject to
1529 flooding (See Section VII) shall be permitted by the Conservation Commission,
1530 except for activity which is allowed under a Permit or a variance from these
1531 Regulations granted pursuant to Section I(D)(3).

1532 b) A proposed project which may result in alteration of Land Subject to
1533 Flooding shall not result in the following:

1534 (1) Flood damage due to filling which causes lateral displacement of
1535 water that would otherwise be confined within said area.

1536 (2) An adverse effect on public and private water supply or ground
1537 water supply.

1538 (3) An adverse effect on the capacity of said area to prevent pollution
1539 of the ground water.

1540 (4) An impairment of its capacity to provide wildlife habitat.

1541 (a) No project may be permitted which will have any adverse
1542 effect on specified habitat sites of rare vertebrate or
1543 invertebrate species as identified on the Massachusetts Natural
1544 Heritage and Endangered Species Estimated Habitat Maps on
1545 file with the Commission.

1546 (5) An adverse effect on erosion or sedimentation control.

1547

1548 **F. Seasonal Wetlands**

1549 1. Preamble

1550 a) Seasonal Wetlands are usually isolated depressions or closed basins that
1551 serve, in most years, as ponded areas for runoff or high ground water that has
1552 risen to the surface. Seasonal Wetlands may be found in flood plains or in
1553 saddles at the base of slopes. It should be noted that the above characteristics
1554 may be shared with Isolated Wetlands. Seasonal Wetlands are distinguished
1555 from Isolated Wetlands in that they frequently serve as temporarily-flooded

1556 amphibian breeding habitat, as well as habitat for other wildlife, and, as such,
1557 are likely to be significant to the protection of wildlife habitats.

1558 b) In addition, such areas may be locally significant for flood control, storm
1559 damage prevention, and ground water and public and private water supply.
1560 Where such areas are underlain by permeable material covered by a mat of
1561 organic peat or other organic accumulation, they may be significant to the
1562 prevention of pollution.

1563 c) In addition to the characteristics provided herein, Seasonal Wetlands have
1564 long been recognized for their importance to amphibians. Existing field data
1565 show that Seasonal Wetlands provide critical habitat for a number of amphibian
1566 species, some of which are listed below. Amphibians requiring Seasonal
1567 Wetlands for breeding: *Ambystoma jeffersonianum* (Jefferson salamander)
1568 *Ambystoma laterale* (blue-spotted salamander) *Ambystoma opacum* (marbled
1569 salamander) *Mbystoma maculatum* (spotted salamander) *Rana sylvatica* (wood
1570 frog) Amphibians using Seasonal Wetlands, occasionally breeding/feeding in
1571 them: *Hyla versicolor* (gray tree frog) *Psuedacris crucifer* (spring peeper) *Bufo a.*
1572 *americanus* (american toad) *Hemidactylum scutatum* (four-toed salamander).

1573 d) The established presence of certain species of vertebrate predators, such as
1574 adult fish populations, can be used as "negative information" or indicators that
1575 certain pools are clearly not temporary. It should be noted that the very reason
1576 that so many amphibians use Seasonal Wetlands for breeding, in contrast to
1577 permanent ponds, is because they and their offspring are far less likely to
1578 become prey in these pools than they are in the shallows of a pond or lake where
1579 fish and other predators are present. The presence of a sustaining population of
1580 any species of fish at a site in question would rule it out as a Seasonal Wetland.

1581 e) A few species of reptiles are known to be occasional users of Seasonal
1582 Wetlands. These include the spotted turtle, snapping turtle, and painted turtle.

1583 f) Malacologists have long recognized Seasonal Wetlands as habitat for
1584 members of the fingernail and pea clam family (*sphaeriidae*). Other
1585 invertebrates are also known to inhabit Seasonal Wetlands.

1586 g) Waterfowl are known to frequent many of these pools, albeit sporadically.
1587 Wood ducks, mallards, black ducks, and occasionally great blue herons will
1588 stop, especially at those Seasonal Wetlands with growths of vegetation such as
1589 duckweed or abundant populations of mollusks. Thus, the presence of mollusks,
1590 duckweed residues, or other indicators of temporary pooling of water such as
1591 caddis fly cases, are indicative of the presence of a Seasonal Wetland.

1592 h) With regard to floral characteristics, the typical plant communities usually
1593 associated with wetlands cannot reliably be used for Seasonal Wetlands. The
1594 presence of certain species of submergent or emergent vegetation generally
1595 indicates a wet condition that may go beyond the definition of a Seasonal
1596 Wetland. Vegetation more usually associated with a wet meadow may indicate
1597 the pooling of water for a time insufficient for a Seasonal Wetland. These
1598 conditions may indicate the presence of an Isolated Wetland or an area that
1599 holds standing water for a major part of the year.

1600 i) Seasonal Wetlands are isolated depressions or closed basins which
1601 temporarily confine water during periods of high water table and high input
1602 from spring runoff or snow melt or heavy precipitation, and support populations
1603 of non-transient macro-organisms or serve as breeding habitat for select species
1604 of amphibians.

1605 j) In the absence of those habitat functions, the areas should be considered as
1606 Isolated Wetlands. Seasonal Wetlands predictably fill up during the spring rains
1607 and snow melt, dry up during the summer, and may fill again during the fall
1608 rains. With few exceptions, a Seasonal Wetland is not considered temporary if
1609 the standing water does not disappear. The hydrological cycle may occasionally
1610 miss a year. In order to be considered a Seasonal Wetland the basin depression,
1611 in most years, will hold water for a minimum of two (2) continuous months
1612 during the spring and/or summer.

1613 k) **Shape:** Seasonal Wetlands occupy shallow, cup-shaped depressions in areas
1614 where flooding from nearby waterways or water bodies, where rising ground
1615 water or sidehill seeps may serve to fill them temporarily.

1616 l) **Size:** Seasonal Wetlands are characteristically small; however, a given pool
1617 can vary in size from year to year depending on the amount of rainfall or snow
1618 melt. No minimum threshold size is indicated.

1619 m) **Substratum:** Most Seasonal Wetlands are underlain with a relatively
1620 impermeable substratum or hardpan, frequently underlain with pervious soils.

1621 n) **Organic Accumulation:** The presence of a well-developed organic layer is
1622 a feature of Seasonal Wetlands. Generally these pools have persisted since the
1623 end of the glacial period and will probably continue in their semi-open condition
1624 for many more thousands of years unless artificially altered. These pools act as
1625 traps for organic matter, especially during the autumn when they trap quantities
1626 of airborne leaves. The presence of water-stained leaves in a depression which
1627 is otherwise dry is a good indicator that the area temporarily serves to pool
1628 water.

1629 o) **Topographical Orientation:** Seasonal Wetlands occupy saddles or level
1630 ground and, with the exception of pools associated with flood plains, are often
1631 adjacent to steep slopes.

1632 p) **Wildlife:** A Seasonal Wetland must be free of adult fish populations.

1633 q) **Boundary:** Because Seasonal Wetlands are dry much of the year, it may be
1634 necessary to determine their boundaries using indicators other than pooled
1635 water. Further, because the area inundated varies so widely from year to year,
1636 pooled water is not a good indicator of extent. A Seasonal Wetland boundary
1637 shall be determined using a combination of pooled water, if present, and by the
1638 presence of a depression covered by water-soaked leaves. Other indicators of
1639 the temporary pooling of water, such as the presence of caddis fly cases or
1640 fingernail or pea clams, or hydric soils can also be used.

1641 2. **Presumption** Where a proposed activity involves the removing, filling, dredging,
1642 building in, or altering of a Seasonal Wetland, the Conservation Commission shall
1643 presume that such an area, as well as the area within 100 feet of the boundaries of said
1644 Seasonal Wetland, is significant to the interests specified in Section I(B)(1). This
1645 presumption is rebuttable by clear and convincing evidence that the Seasonal Wetland
1646 does not play a role in the protection of wildlife habitat. In the event that the presumption
1647 is deemed to have been overcome, the Commission shall make a written determination to
1648 this effect, setting forth its grounds.

1649 3. **Performance Standards**

1650 a) A proposed project in a Seasonal Wetland shall not result in the following:

1651 (1) Any impairment of the capacity of the Seasonal Wetland, as well
1652 as the area within 100 feet of the mean annual boundary of said
1653 Seasonal Wetland, to provide wildlife habitat. Alterations may be
1654 permitted if they will have no adverse effects on wildlife habitat.

1655 (2) No project may be permitted which will have any adverse effect on
1656 specified habitat sites of rare vertebrate or invertebrate species as
1657 identified on the most current Massachusetts Natural Heritage and
1658 Endangered Species Estimated Habitat Maps on file with the
1659 Commission.

1660 (3) Flood damage due to filling which causes lateral displacement of
1661 water that would otherwise be confined within said area.

1662 (4) An adverse effect on public and private water supply or ground
1663 water supply.

1664 (5) An adverse effect on the capacity of said area to prevent pollution
1665 of the ground water.

1666 (6) An adverse effect on erosion or sedimentation control.

1667

1668

G. Riverfront Resource Area

1669

1. Preamble: The preamble shall be the same as that found in the Rivers Protection Act.

1670

2. Definition: The definition shall be the same as that found in the Rivers Protection Act.

1671

1672

3. Performance Standards The performance standards shall be the same as the Rivers Protection Act.

1673

1674

1675

VII. Buffer Zone (Land within 100')

1676

A. Preamble The Buffer Zone to an area subject to protection further protects such areas by providing shade and moisture; filtering stormwater runoff; moderating temperature; providing wildlife habitat, groundwater recharge, sediment and erosion control, flood control, storm damage prevention, and preventing intrusion into the wetlands.

1677

1678

1679

1680

B. Definition

1681

1. The Buffer Zone is the area adjacent to the boundary of the area subject to protection ("resource area") as provided in Section I(C)(1) except that area adjacent to the riverfront resource area.

1682

1683

1684

2. The Buffer Zone is measured on a horizontal plane from the boundary of the area subject to protection towards the upland for a distance of one hundred (100) feet.

1685

1686

C. Performance Standards

1687

1. The Commission may allow work or disturbance in the 50'-100' buffer zone.

1688

2. A minimum of a fifty (50) foot undisturbed buffer shall be established adjacent to any vegetated wetland, bank, lake, stream or river, intermittent or continuous, natural or artificial and certified or uncertified vernal pools. No work, structure, vegetation removal or other alterations will be allowed within the fifty (50) foot buffer.

1689

1690

1691

1692

a) Section VII(C)(2) above shall not apply to projects whose primary purpose is to provide not-for-profit recreational opportunities, to control invasive species, to create access to resource areas on lots with one single family house, or similar projects.

1693

1694

1695

1696

b) Variance

1697

(1) An Applicant may request in writing for a variance to this Section.

1698

The request for a variance to this Section must include, at a minimum, the following:

1699

1700

(a) The impact of proposed project on the 50' buffer zone;

1701

(b) Alternative designs;

1702 (c) Limitations of the particular lot and project design that
1703 necessitate the variance, not to include business necessity,
1704 aesthetics, and visibility; and
1705 (d) Proposed mitigation and/or restoration on site or within
1706 the watershed (i.e. exceed the ration of replication).

1707 **VIII.** Amendments

1708 **A.** Procedure These rules and Regulations may be amended from time to time by a majority vote
1709 of the Conservation Commission.

1710 **B.** Hearing Prior to taking a vote on an amendment, the Conservation Commission shall
1711 have held a public hearing on the proposed changes.

1712
1713
1714
1715
1716

A

a Notice of Fines, 31
Action by the Conservation Commission, 11
Activities Subject to Regulation under the Ordinance, 4
Administrative Hearing, 30
 Administrative Order for Restitution, 30, 31
Administrative Orders, 29
Agriculture, 5
 Amendments, 47
 an activity outside of an Area Subject to Protection Under the Ordinance, 14
Areas Subject to Protection under the Ordinance, 3

B

Banks, 33
 Board of Health, 23, 25
 bond, 27
 Buffer Zone, 46
 Building Inspector, 23
Burden of Proof Going Forward, 7
Burden of Proof, 7

C

Calculation of Fines, 31
 Certificate of Compliance, 8, 26, 28
 chroma, 35
 City Engineer, 19
Civil Action, 29
 Conditions Regulating Work, 25
Consultant/Expert Fees, 16
Continuance of Administrative Hearing, 31
 Coordination with other Boards, 23
Corrective Action Notice, 29, 30, 32
Criminal Action, 29

D

Definitions, 7
 delineations, 21
 denied, 24
 destruction of vegetation, 30
Determinations of Applicability, 12

E

Emergencies, 4, 5
Enforcement, 29
 Estimated Habitat of Rare Wetlands Wildlife., 26
Exception, 4, 5, 11
 Extension of Permit, 27

F

failure to complete work, 29, 31
 failure to comply with a Permit, 29, 31
 failure to obtain a valid Permit, 29, 31
Fees, 14
Fees for Notices of Intent, 15
Fees for Request of Determination of Applicability, 14
 fifty (50) foot undisturbed buffer, 47
Fine Schedule, 31
 fines, 31, 32
Fines and Notice of Fines, 32
Forms, 14
Freshwater Wetlands, 32

I

Interests, 3
Isolated Wetlands, 20, 38
 Invasive Species, 20, 26, 47

L

Land Court, 24, 27, 28
Land Subject to Flooding, 41
Land Under Water Bodies, 40
 Land within 100', 46
Liens for Non-payment of Fines, 32
 Limited Projects, 26

N

Natural Heritage, 26
 Negatively, 12
Notice, 31
 notice of a fine or fines, 32
Notice of Fines, 32
Notice of Intent Application for Permit, 13
Notice of Intent Procedure, 22

O

Ordinance, 3
 Ordinance WPA Form 3, 13
Other Boards, 29

P

Permits regulating work, 24
 Planning Board, 25
 Plans, 26, 27, 28, 29
 police, 29
 procedural or legal remedies, 31
Procedures, 11
 Public hearing, 22
 purchases, inherits, or otherwise acquires real, 14
Purpose, 3

R

Receipt, 14
Registry of Deeds, 25, 28, 29, 33
Request for Determination of Applicability, 11
Requirements for All Applications, 17, 18
Requirements for Notices of Intent, 18
restitution, 30
revoke, 6, 25
Riverfront Resource Area, 47

S

Seasonal Wetlands, 43
Security, 27
sedimentation and erosion control plan, 20, 26
septic system, 39
Site inspections, 17
Standard of Proof, 31

Standards for Inland Wetlands, 33
Statement of Jurisdiction, 3
Submission Requirements, 17

T

Time Periods, 11

U

Utilities, 5

V

Variance, 6
Variances, 6
Violations, 29
Violations, Enforcement, Fines, and Administrative Action, 29