

Newburyport Code of Ordinances
Chapter 6.5: Environment
Article II: Wetlands Protection Ordinance



Table of Contents

6.5-26.	Purpose & Authority
6.5-27.	Jurisdiction & Regulated Activities
6.5-28.	Special Provisions for the Barrier Beach
6.5-29.	Exemptions & Exceptions
6.5-30.	Variances, Hardship & Mitigation
6.5-31.	Applications & Fees
6.5-32.	Notice to Abutters, Review & Public Hearing
6.5-33.	Notice to and Opportunity to Comment by Other Boards and Officials
6.5-34.	Orders & Conditions
6.5-35.	Regulations
6.5-36.	Definitions
6.5-37.	Security
6.5-38.	Enforcement, Inspections & Fines
6.5-39.	Burden of Proof
6.5-40.	Appeals
6.5-41.	Relation to the Wetlands Protection Act
6.5-42.	Severability

6.5-26. Purpose & Authority

Wetland resource areas and the land immediately adjacent to them contribute to a number of public values and interests and are therefore protected by the Ordinance. The purpose of the City of Newburyport Wetlands Protection Ordinance (the Ordinance) is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas (i.e., Buffer Zones) in the City of Newburyport by controlling activities deemed by the Newburyport Conservation Commission (the Commission) likely to have a significant or cumulative adverse effect on resource area values deemed important to the community. These include, but are not limited to the following:

- A. protection of public or private water supply;
- B. protection of groundwater supply;
- C. flood control;
- D. storm damage prevention including coastal storm flowage;
- E. prevention and control of pollution;
- F. protection of land containing shellfish;
- G. protection of fisheries;
- H. protection of wildlife and wildlife habitat;
- I. protection of water quality;

- J. erosion and sedimentation control;
- K. protection of rare species habitat including rare plant and animal species;
- L. protection of agriculture;
- M. protection of aquaculture;
- N. recreation and educational values;
- O. adaptation to climate change

Collectively these are the resource area values and interests protected by the Ordinance.

The Ordinance is intended to utilize the Home Rule authority of this municipality so as to protect the resource areas under the Wetlands Protection Act (M.G.L. Chapter 131 §40) to a greater degree, to protect additional resource areas beyond the Act which are recognized by the City as significant, to protect all resource areas for their additional values beyond those recognized in the Act, and to impose in local regulations and permits additional performance standards stricter than those of the Act and its Regulations (310 CMR 10.00).

The portions of this Ordinance (and its Regulations) requiring the payment of consultant fees are promulgated under the concurrent authority of M.G.L. Ch. 44 §53G.

This Ordinance shall not be applicable to projects for which a Determination of Applicability, Order of Conditions, Notice of Resource Area Delineation or other permit under the Massachusetts Wetlands Protection Act has been issued and is valid at the time of adoption.

6.5-27. Jurisdiction & Regulated Activities

- A. Approval Required: Except as permitted by the Conservation Commission pursuant to this Ordinance and Regulations (not inconsistent with this Ordinance) promulgated pursuant to Section 6.5-35., no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter (as further defined in Section 6.5-27.C.) the resource areas, buffer zones or riverfront areas described in Section 6.5-27.B.
- B. Areas of Jurisdiction: The areas subject to protection under the Ordinance differ from those protected solely by the Massachusetts Wetlands Protection Act (WPA) in that additional wetland resource areas and uplands (Buffer Zones) are protected by the Ordinance. The areas that are subject to protection under the Ordinance and these Regulations are as follows:
 - 1. Rivers, Perennial Streams, Brooks, Creeks and lands adjoining these resource areas within two hundred (200) horizontal linear feet, known as the riverfront area;
 - 2. Vernal Pool Habitat, including Vernal Pools and lands adjoining Vernal Pools within two hundred (200) horizontal linear feet;
 - 3. Freshwater or Coastal Wetlands, Marshes, Wet Meadows, Bogs, Swamps, Rivers, Perennial Streams, Springs, Banks, Flats, Reservoirs, Lakes, Ponds of Any Size, Beaches, Dunes, Estuaries, the Ocean, and lands adjoining these resource areas within one hundred (100) horizontal linear feet, known as the Buffer Zone;
 - 4. Intermittent Streams, Brooks, Creeks and lands adjoining these resource areas within one hundred (100) horizontal linear feet, known as the Buffer Zone;
 - 5. Lands subject to flooding or inundation by groundwater or surface water and lands subject to tidal action, coastal storm flowage, or flooding;
 - 6. Lands Under Water, beneath any of the water bodies listed above.

The above named resources are collectively known as the “resource areas protected by the Ordinance” or “resource areas.” Said resource areas shall be protected whether or not they border surface waters.

C. Regulated Activities: Activities subject to regulation under the Ordinance and these Regulations include the following:

1. Any activity proposed or undertaken within a Resource Area or Buffer Zone as described above in Section 6.5-27.B.;
2. Any activity deemed by the Commission as likely to have a significant or cumulative adverse effect upon Resource Areas as defined herein;
3. Any activity, including but not limited to, any and all of the following activities when undertaken to, upon, within or affecting Resource Areas or their wetland values, as determined by the Commission, including, but not limited to:
 - A. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
 - B. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
 - C. Drainage, or other disturbance of water level or water table;
 - D. Dumping, discharging, or filling with any material which may degrade water quality;
 - E. Placing of fill, or removal of material which would alter elevation;
 - F. Driving of piles, erection, expansion or significant alteration of buildings, or structures of any kind;
 - G. Placing of obstructions or objects in water or the surface water or groundwater hydrology of any resource area;
 - H. Destruction or removal of plant life, including, but not limited to, cutting or trimming of trees and shrubs;
 - I. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
 - J. Any activities, changes, or work that may cause or tend to contribute to pollution of any body of water or groundwater; and;
 - K. Incremental activities that cause, or may cause, a cumulative adverse effect on the resource areas and the values and interests protected by the Ordinance or these Regulations.

6.5-28. Special Provisions for the Barrier Beach

- A. The Plum Island Barrier Beach received additional protection under the previous Newburyport Wetlands Ordinance (adopted October 9, 2001 and revised September 12, 2005) and therefore its provisions are included in this Ordinance. The additional protections afforded to the Plum Island Barrier Beach are for the following purposes:
1. To minimize environmental damage, loss of life, and destruction of property inevitably resulting from storms, flooding and erosion;

2. To prevent loss or diminution of the beneficial functions of storm and flood damage prevention or reduction and pollution prevention provided by wetlands, beaches, dunes, barrier beaches, and coastal banks;
3. To maintain vegetative buffers to wetlands and waterbodies so as to reduce and/or eliminate runoff and other non-point discharges of pollutants to protect public health and preserve environmental resources; and
4. To maintain vegetative cover so that the integrity and stability of coastal dunes and banks are maintained and so that the coastal dunes and banks can fulfill their functions and promote the interests identified in the Ordinance.

Notwithstanding any additional requirements or exemptions, all activities on the Plum Island Barrier Beach shall be in accordance with 6.5-28, subsection B.

B. Specific performance standards for the Barrier Beach are:

1. No development or redevelopment shall be permitted within a FEMA V-Zone or AO-Zone. Notwithstanding the foregoing, structures damaged or destroyed from fire, storm, or similar disaster may be redeveloped/repared only in accordance with current local, state and federal regulatory standards when damage to or loss of the structure is equal to or greater than 50% of the market value of the building. When damage to or loss of the structure is less than 50% of the market value of the building, redevelopment/repairs may be allowed to return the structure to pre-damaged conditions. In all instances, reconstruction, renovation or repairs to damaged structures may be authorized as stated herein, provided that there is no increase in floor area.
2. All new buildings or substantial improvements to existing buildings shall be built on open pilings and comply with FEMA National Flood Insurance Regulations and State Building Code Regulations for elevation and flood proofing. All development and redevelopment shall comply with G.L. c. 131, sec. 40, 310 CMR 10.00 and Section 744 of the Massachusetts State Building Code Design Requirements for Floodplain and Coastal High Hazard Areas.
3. For the purposes of the Ordinance, the term "substantial improvement" shall mean an improvement that increases the market value of the building by an amount equal to or greater than 50% or an improvement that increases the square footage by an amount equal to or greater than 25%.
4. All new buildings, replacements, substantial improvements or expanded footprints less than 25% in square footage shall have their first floor built at least two feet above base flood elevation or the highest existing ground elevation whichever is higher.
5. Electrical, heating, ventilation, plumbing and air conditioning and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
6. Development or redevelopment on or within 200 feet landward of the top of a coastal bank or dune shall have no adverse impact on the height, stability or function of the bank or dune to fulfill the purposes set forth in Section 6.5-28.A. above.
7. In areas where there are coastal banks or primary or frontal dunes, all new buildings and structures shall be set back from the beach dune interface at a distance equal to thirty times the average yearly historical erosion as shown by the most current CZM shoreline change map.
8. No activity shall increase the elevation or velocity of flows in a floodplain.

9. Within the FEMA V Zone, A Zone, or AO Zone or their equivalent, new or reconstructed structures or development on the barrier beach that alters vegetation, interrupts sediment supply and/or changes the form or volume of a dune or beach must comply with the specific performance standards in the Ordinance and in the regulations promulgated pursuant hereto.
10. In all other areas of the Plum Island Barrier Beach outside of the V-Zone and AO-Zone, all new Buildings shall be built on open pilings and shall comply with FEMA National Flood Insurance Regulations and State Building Code Regulations for elevation and flood proofing. All existing Buildings with Substantial Improvements, and all horizontal expansions of the existing footprint, shall be built on open pilings and shall comply with FEMA National Flood Insurance Regulations and State Building Code Regulations for elevation and flood proofing. If a Licensed Engineer certifies that an existing portion of the solid foundation will not require modifications to support the proposed building (other than new pilings exterior to the existing footprint), the existing portion of the solid foundation may remain.
11. Notwithstanding the previous sentence, the existing solid foundation of a Building shall be replaced with pilings, if, 50% or more of the exterior walls have been removed, are proposed to be removed, or will not be used as exterior walls (i.e. including but not limited to encasing an existing wall within a new exterior wall) and a new roof will be constructed, or is proposed to be constructed.
12. Construction or alteration of any coastal engineering structures shall require review and approval by the Conservation Commission.

6.5-29. Exemptions & Exceptions

The following exemptions shall apply and no application or permit is required under this Ordinance for the following activities, provided that all such work shall be in compliance with Section 6.5-28, subsection B:

A. The following activities are exempt in any resource area and Buffer Zone:

1. Routine mowing (including river meadows) and maintenance of lawns, gardens, and landscaped areas, in existence on the effective date of this Ordinance or which are created after such date in accordance with the terms of this Ordinance;
2. Work performed for normal maintenance or improvement of land in agricultural or aquacultural use as defined by the Wetlands Protection Act Regulations at 310 CMR 10.00;
3. Removal of dead and dying trees which are deemed to be a hazard to public safety, as confirmed by the Newburyport Department of Public Services Tree Warden or a certified arborist and documented to the Commission within 30 days of removal (In such instances notification shall be provided to the Commission or its agent prior to such work.);
4. Fencing around existing vegetable gardens.

B. The following activities in the 100-foot Buffer Zone (which includes the 25- foot No-Disturb Zone) or the 200-foot Riverfront Area, provided the activity is not within any other resource area; there is no regrading; no trees greater than 6 inches diameter breast height are removed;

there is no alteration to additional resource areas; and erosion and sedimentation controls are used as needed or as determined by the Commission or agent of the Commission:

1. Maintaining and repairing existing buildings and structures provided that:
 - a) The footprint remains the same;
 - b) There is no additional alteration of any resource areas; and
 - c) There is no heavy equipment or stockpiling within 50 feet of resource areas;
2. Constructing, maintaining, and repairing unpaved pedestrian walkways for private use provided there is no use of fill material;
3. Maintaining and repairing existing stonewalls;
4. Maintaining and constructing new fencing provided that:
 - a) It is greater than 50 feet from the edge of the wetland boundary or 50 feet from the mean annual high water line of a perennial stream (whichever is farther);
 - b) It does not constitute a barrier to wildlife movement (i.e., the fence is greater than 6 inches from the ground surface);
5. Stacking cordwood;
6. Conversion of lawns to uses accessory to residential structures such as decks, sheds, patios, and pools, provided the activity, including any discharge pipes, is located more than 50 feet from the mean annual high-water line within the riverfront area or from bordering vegetated wetland, whichever is farther, and erosion and sediment controls are implemented during construction. The conversion of such uses, or other impervious surfaces accessory to existing single family houses to lawn or natural vegetation is also allowed (Consistent with 310 CMR 10.02 (b)(1)(e), mowing of existing lawns is not subject to jurisdiction under this Ordinance.);
7. Activities, such as monitoring wells, exploratory borings, soil sampling, and surveying, that are temporary, have negligible impacts as determined by the Commission, and are necessary for planning and design purposes;
8. Planting native species of trees, shrubs, or groundcover (excluding turf lawns);
9. Pruning of existing vistas, provided the activity is located more than 50 feet from the mean annual high-water line within a riverfront area or from bordering vegetated wetland, whichever is farther.

C. Utilities and Roads: The applications and permits required by this Ordinance shall not be required for:

1. Maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that notice has been given to the Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.
2. Maintaining and repairing existing and lawfully located existing roads (excluding bridges and culverts) provided that
 - a) There is no increase in impervious surface;

- b) There is no additional alteration of resource areas;
- c) Written notice has been given to the Conservation Commission 14 days prior to commencement of work; and
- d) Erosion and sedimentation controls are used as necessary.

D. Stormwater Management Systems: The applications and permits required by this Ordinance shall not be required for maintenance of a stormwater control structure or system in existence at the time of adoption of this Ordinance or of one approved in accordance with the Stormwater Management Standards, as provided in the Massachusetts Stormwater Policy. This exemption shall apply provided that the work to maintain the stormwater management system is limited to maintenance and that said work utilizes best practical measures to avoid and minimize impacts to wetland resource areas outside of the footprint of the stormwater management system. Such stormwater management systems may include wetland resource areas created solely for the purpose of stormwater management and approved under an Order of Conditions.

E. Emergency Projects: The applications and permits required by the Ordinance shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by, or has been ordered to be performed by, an agency of the Commonwealth or a political subdivision thereof (including the City of Newburyport); provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by the Ordinance. Upon failure to meet these and other applicable requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval, order restoration and mitigation measures.

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

The Conservation Commission may adopt additional exemptions and exceptions within the Regulations promulgated pursuant to Section 6.5-35.

6.5-30. Variances, Hardship & Mitigation

Applicants may, in appropriate circumstances, request that the Commission grant a variance from specifically identified requirements of the Ordinance or Regulations promulgated by the Commission pursuant to Section 6.5-35.

The Conservation Commission may, in its discretion, grant variances from the specific submission requirements and performance standards of this Ordinance and Regulations adopted pursuant to Section 6.5-35. The Conservation Commission may grant such variances when an overriding public interest is demonstrated or when it is necessary to avoid so restricting the use of the property as to constitute an unconstitutional taking without compensation pursuant to Federal and State laws. The intent of this section is to ensure that reasonable use may be made of such property; however, the

extent of use shall be limited in so far as is necessary to protect the wetland values protected by this ordinance, and to ensure that there is no foreseeable danger to the public health or safety. In all cases, the burden of proof shall be on the applicant to demonstrate maximum feasible compliance with the requirements of this ordinance. In cases where a variance is granted, the Commission may require mitigation measures to be implemented to offset potential adverse impacts to the wetland resource areas.

The Commission may waive the application of any performance standard herein when it finds, after opportunity for a hearing that:

1. There are no reasonable conditions or alternatives that would allow the project to proceed in compliance with these regulations;
2. Mitigating measures are proposed that will allow the project to be conditioned so as to contribute to the protection of the wetland values protected by this ordinance; and
3. That the project is necessary to accommodate an overriding public interest or that it is necessary to avoid a decision that so restricts the use of property as to constitute an unconstitutional taking without compensation.

A request for a variance or waiver shall be made in writing and shall include, at a minimum, the following information:

- a) A description of the alternatives explored that would allow the project to proceed in compliance with the performance standards in these regulations and an explanation of why each is not feasible;
- b) A description of the mitigating measures to be used to contribute to the protection of the wetland values protected by this ordinance;
- c) Evidence that an overriding public interest is associated with the project which justifies modifying one or more performance standards in these regulations, or evidence that the decision regarding the permit application would so restrict the use of the land that it constitutes an unconstitutional taking without compensation.
- d) In the event a taking claim is being made, the following additional information shall be submitted:
 1. Documentation that the subject property is legally and/or equitably owned by the applicant, including the date of acquisition. Also, identification of all property in contiguous ownership, including contiguous properties in which the Applicant has a present, future or past fee interest or beneficial interest and documentation of the assessed value of the said contiguous property.
 2. Documentation of the assessed value of the property subject to regulation as well as documentation of acquisition costs, proceeds received to date, expected proceeds (including copies of purchase and sales agreements, expenditures, and any other financial and economic data relevant to the waiver/variance request.
 3. Documentation of the value of the loss alleged to result from compliance with the relevant performance standards from which a waiver/variance is sought.
- e) The request for waiver/variance shall be sent to the Commission by certified mail or hand delivered and a copy thereof shall at the same time be sent by certified mail or hand delivered to any other parties in interest.

- f) Within 21 days of the receipt of a request, the Commission shall hold a public hearing on the request.
- g) Within 21 days of the close of the public hearing, the Commission shall issue a decision as to whether to grant the waiver/variance request. Such decision shall set forth the findings as required herein.

6.5-31. Applications & Fees

A written application ("Permit Application") shall be submitted to the Commission to perform activities affecting resource areas protected by the Ordinance. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by the Ordinance. No activities shall commence without receiving and complying with a permit issued pursuant to this Ordinance.

Forms & Submission Requirements

Applicants submitting filings governed by this ordinance shall use the standard Wetlands Protection Act (WPA) Forms from the Department of Environmental Protection (DEP). Applicants shall include the words: "City of Newburyport - Wetlands Protection Ordinance" on all applications for projects within the City of Newburyport, subject to review under this Ordinance and Wetlands Protection Act Regulations.

Request for Determination of Applicability (RDA)

Any person desiring to know whether or not a proposed activity or area is subject to this ordinance shall submit a written Request for Determination of Applicability (RDA) to the Commission. The application materials required shall be the same as those used in filing under the *Wetlands Protection Act Regulations (310 CMR 10.00)*, *WPA Form 1: Request for Determination of Applicability*.

Notice of Intent (NOI)

A written Notice of Intent (NOI) shall be filed with the Commission for a permit to perform activities affecting resource areas and buffer zones, protected by this ordinance. Any person submitting a Notice of Intent (NOI) shall at the same time provide a copy to the City's Engineer, at the Department of Public Services, for review in accordance with the Stormwater Management Ordinance and related state and federal regulations. If during review of the application the Commission or its Agent determines that a peer review by a qualified engineer is necessary to ensure that the proposed work (including all work shown on plans, specifications and reports) will comply with federal, state and local stormwater regulations, the applicant shall (if so instructed) provide one copy of the complete application to the Commission's Consultant Engineer, pursuant to this ordinance and M.G.L. Chapter 44 §53G. A single copy shall be provided with all plans and attachments to the Conservation Commission of the adjoining municipality, if the application or determination pertains to property within 100 ft of that municipality. An Abutter Notification Affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The application materials required shall be the same as those used in filing under the *Wetlands Protection Act Regulations (310 CMR 10.00)*, *WPA Form 3: Notice of Intent*. Where appropriate, under the requirements of the *Wetlands Protection Act Regulations (310 CMR 10.00)*, the applicant may submit *WPA Form 4:*

Abbreviated Notice of Intent. No activities shall commence without receiving, and complying with, a permit (Order of Conditions) issued pursuant to this ordinance.

Other Plan & Submission Requirements

Additional plan and submission requirements may be established by the Commission through Regulations adopted pursuant to Section 6.5-35. of this Ordinance. No application ("Permit Application" such as a Notice of Intent or Request for Determination of Applicability) shall be deemed complete or timely without the payment of all required fees, the submission of application forms and the submission of plans in accordance with these Regulations. At its sole discretion the Commission may relax these requirements where such information is not necessary to make a determination on a Request for Determination of Applicability (RDA) or Notice of Intent (NOI).

Application & Review Fees

Filing Fees: At the time a Permit Application is submitted, the applicant shall pay a filing fee as specified in Regulations of the Commission adopted hereunder. These fees shall be placed in an account established pursuant to M.G.L. Chapter 44 §53E½ which may be drawn upon by the Commission as necessary to carry out the provisions of this Ordinance and its Regulations. This fee is in addition to that required by the Department of Environmental Protection (DEP), the Massachusetts Wetlands Protection Act and its Regulations.

Advertisement Fees: The applicant shall pay a fee for the cost of advertising and abutter notification for public hearings as required by the Wetlands Protection Act Regulations (310 CMR 10.00) and this Ordinance.

Consultant Review Fees: Pursuant to M.G.L. Chapter 44 §53G and Regulations promulgated by the Commission pursuant to Section 6.5-35., the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects.

The Commission is authorized, any time during the hearing process, to require the applicant to pay all the costs and expenses of any expert consultant deemed necessary by the Commission to review the Permit Application or resource area. This fee is called the "consultant fee." The specific consultant services may include, but are not limited to: performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations; hydrogeologic and drainage analysis; and researching environmental or land use law relative to the application or work proposed.

The applicant shall deposit with the City funds in an amount sufficient to cover the initial costs associated with said peer review, as determined by the Commission's Agent. Funds shall be accounted for in accordance with M.G.L. Chapter 44 §53G, and unexpended funds shall be returned to the Applicant within twenty-one (21) days of the issuance of a decision. The applicant shall provide additional funds whenever notified by the Commission or its Agent that actual remaining funds are insufficient to pay for additional consultant review which may be necessary. Failure of the applicant to replenish the Consultant Review Fund accordingly, prior to the next subsequent continuation of the applicable public hearing shall be sufficient grounds for the Commission to deny the application or continue the public hearing to allow the applicant (and consultant) additional time.

The Commission shall waive all application and consultant review fees for any Permit Application or notice filed by the City of Newburyport.

6.5-32. Notice to Abutters, Review & Public Hearing

Abutter notification requirements for all Permit Applications shall follow the Wetlands Protection Act (M.G.L. Chapter 131 §40) and Regulations (310 CMR 10.00) promulgated thereunder. Abutters under the Ordinance shall include property owners whose land abuts the subject land described in a plan subject to Commission review including those across a traveled way, across a body of water, in another municipality and any property within 100 feet of the subject parcel(s).

The Commission shall commence a public hearing (or consideration of the matter at a public meeting) within twenty-one (21) days from the receipt of a completed Permit Application (i.e. Notice of Intent or Request for Determination of Applicability) which meets the Commission's submission requirements as set forth in the Regulations unless an extension is authorized in writing by the applicant. The Commission shall have authority, in its discretion, to continue the hearing (or public meeting) to a specific date announced at the hearing or meeting, for the reasons stated at the hearing or meeting, which may include the need for additional information from the applicant or from others as deemed necessary by the Commission, or based on the comments and recommendations of the boards and officials listed in § VIII.

Where applicable, the Commission shall combine its meeting, hearing or other consideration of the matter under the Ordinance with the meeting, hearing or consideration which is conducted under the Wetlands Protection Act (G.L. Ch. 131 S40) and regulations (310 CMR 10.00) promulgated thereunder.

6.5-33. Notice to and Opportunity to Comment by Other Officials

Any person filing a Permit Application (i.e. Notice of Intent or Request for Determination of Applicability) with the Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested), certificate of mailing, or hand delivery, to the Planning Director, Building Inspector, and the Department of Public Services if instructed by the Conservation Agent. A copy shall be provided in the same manner to the Conservation Commission of the adjoining municipality, if the Permit Application (i.e. Notice of Intent or Request for Determination of Applicability) pertains to property within 100 feet of that municipality. An affidavit of the person providing notification, with a copy of the notification mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the above boards and officials have had 14 days from receipt of notification (postmark date or other evidence of delivery) to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a public hearing (or public meeting) of the Commission, prior to final action.

6.5-34. Orders & Conditions

A. Permit Conditions

If the Commission, after a public hearing (or consideration of the matter at a public meeting), determines that the activities which are the subject of the filing, or the land and water uses which will result therefrom, are likely to have a significant individual or cumulative adverse effect on the resource area values protected by the Ordinance, the Commission, shall issue or deny approval in the form of a Determination of Applicability or an Order of Conditions (permit) for the activities requested. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect. The Commission also shall take into account any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities.

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

B. Resource Areas, No Disturbance Zones, Presumption of Significance & Performance Standards

In reviewing activities within the buffer zone, the Commission shall presume that the buffer zones surrounding resource areas are important to the protection of those resource areas because activities undertaken in close proximity have a high likelihood of adverse impact, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat.

The Commission may establish, in its Regulations (consistent with this Ordinance), design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturbance areas, no-build areas, and other work limits for protection of such lands. These include without limitation strips of continuous, undisturbed vegetative cover unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the ordinance.

The Commission shall require No-Disturbance Zones as follows, unless through the variance process as described in Section 6.5-30. above, the applicant convinces the Commission by a preponderance of credible evidence that the area or part of it may be disturbed without harm to the wetland values protected by this Ordinance.

In General

The Buffer Zone contains a 25-Foot No-Disturbance Zone which is that portion of the Buffer Zone which extends twenty-five (25) feet horizontally from the edge of the following wetland resource areas:

- A. Any Freshwater or Coastal Wetlands, Marshes, Wet Meadows, Bogs, Swamps, Rivers, Streams, Springs, Banks, Flats, Reservoirs, Lakes, Ponds of Any Size, Beaches, Dunes, Estuaries, and the Ocean;
- B. Intermittent Streams, Brooks, and Creeks.

Disturbance of any kind is prohibited within this 25-Foot No-Disturbance Zone including but not limited to grading, landscaping, vegetation removal, pruning, cutting, filling, excavation, roadway construction and /or driveway construction. Within the No Disturb Zone established by the Commission, no grading, planting, site work, construction, or storage of materials is allowed. Vegetation in the No Disturb Zone shall not be cut or trimmed in any manner unless authorized by the Commission as part of regular maintenance required for man-made drainage systems (such as seasonal mowing).

Notwithstanding the above limitations, no activity which will result in the alteration of land within the presumptive No Disturbance Zone shall be permitted by the Commission with the following exceptions:

- A. Planting of native vegetation or habitat management techniques designed to enhance the wetland values protected by the Ordinance;
- B. Construction and maintenance of unpaved pedestrian access paths not more than 4' in width;
- C. Maintenance of existing structures, utilities, stormwater management structures and paved areas;
- D. Construction and maintenance of water dependent structures and uses;
- E. Vista pruning and removal of dead and diseased vegetation consistent with Conservation Commission standards;
- F. Construction of new utility lines where the proposed route is the best environmental alternative;
- G. Septic system maintenance and, if a system has failed, repair/replacement meeting state/local standards where the maximum feasible buffer is maintained;
- H. Construction of accessory structures/uses associated with lawfully existing single family houses where the Conservation Commission finds that alternatives outside the buffer area are not available; the size and impacts of the proposed structure/use have been minimized; and the structure/use is located as far from the resource as possible;
- I. Where a buffer zone is already altered such that the required buffer cannot be provided without removal of structures and/or pavement, this requirement may be modified by the Commission provided that it finds that the proposed alteration will not increase adverse impacts on that specific portion of the buffer area or associated wetland and that there is no technically demonstrated feasible construction alternative;
- J. Where a lot is located entirely within buffer area, the Commission may permit activities within the buffer area when the applicant has demonstrated that the proposed work has been designed to minimize impacts to the buffer area. As mitigation, the Commission may require the applicant to plant or maintain a naturally vegetated buffer of the maximum feasible width given the size, topography, and configuration of the lot.

Vernal Pool Habitat

The above Buffer Zone does not apply to the "Vernal Pool Habitat" resource area which is a No-Disturbance zone in its entirety. Vernal Pool Habitat shall include vernal pool depressions (for all

Vernal Pools, whether or not mapped and certified) and lands adjoining these depressions within two hundred (200) horizontal linear feet. In addition, components of subsurface sewage disposal systems shall not be permitted within one hundred (100) horizontal linear feet of the delineated edge of a Vernal Pool Habitat or the delineated edge of the encompassing wetland resource area (if present).

C. Work Proposed within Riverfront Area

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

D. Habitat Assessment, Alteration & Mitigation

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

The Commission shall presume that all areas meeting the definition of "vernal pool", including the adjacent area (together known as "Vernal Pool Habitat"), perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression or surrounding area does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act Regulations (310 CMR 10.60).

E. Term, Expiration and Renewal of Permits & Approvals

Determinations and Orders, including a Determination of Applicability (DOA), an Order of Conditions (OOC) or an Order of Resource Area Delineation (ORAD) shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a Determination or an Order expiring five years from the date of issuance for recurring or continuous maintenance work,

provided that annual notification of time and location of work is given to the Commission. Any Order or Determination may be renewed once for an additional one-year period, provided that a request for a renewal is received in writing by the Commission at least 30 days prior to expiration. Notwithstanding the above, a Determination or Order may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all present and future owners of the land.

For good cause the Commission may revoke any DOA, OOC, or ORAD or any other order, determination or decision issued under the Ordinance after notice to the holder, the public, abutters, and city boards, pursuant to §VII and §VIII, and after a public hearing. Amendments to OOCs, DOAs, or ORADs shall be handled in the manner set out in the Wetlands Protection Act Regulations and policies issued by the Department of Environmental Protection (DEP) thereunder.

Where applicable the Commission shall combine the decision issued under this Ordinance with the Determination, Order, Emergency Certification or Certificate of Compliance (COC) issued under the Wetlands Protection Act and its Regulations.

No work proposed permitted in any Order of Conditions shall be undertaken until the Order, or ORAD (if work is permitted through a simplified review by the Commission with respect to such work) has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the Order provides proof of such recording to the Commission. If the applicant fails to perform such recording, the Commission may record the documents itself and require the Applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a Certificate of Compliance (COC).

6.5-35. Regulations

After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of the Ordinance, effective when adopted by the Commission and filed with the City Clerk. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Ordinance. At a minimum these Regulations shall incorporate the terms defined in the Ordinance, define additional terms not inconsistent with the ordinance, identify more detailed performance standards for work within or adjacent to resource areas, and provide for plan and submission requirements and filing and consultant review fees for all applications.

6.5-36. Definitions

Except as otherwise provided in this Ordinance or in Regulations promulgated pursuant to Section 6.5-35., the definitions of terms and the procedures and performance standards in this Ordinance shall be as set forth in the Wetlands Protection Act (M.G.L. Ch. 131 §40) and Regulations (310 CMR 10.00).

The following definitions shall apply to the interpretation and implementation of terms used in both the Ordinance and Regulations promulgated pursuant to Section 6.5-35.:

Agent: any Conservation Commissioner or City staff who is appointed agent by a majority vote of the Conservation Commission at a regularly scheduled meeting of the Conservation Commission, and upon written approval of the Mayor. (M.G.L. Chapter 40, Section 8c)

Alter: to change the condition of any Area Subject to Protection under the Wetlands Protection Act (M.G.L. Ch. 131 §40) and further defined in its regulations (310 CMR 10.04) and any of the following activities when undertaken to, upon, within or affecting resource areas protected by the Ordinance:

- A. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
- B. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- C. Drainage, or other disturbance of water level or water table;
- D. Dumping, discharging, or filling with any material which may degrade water quality;
- E. Placing of fill, or removal of material, which would alter elevation;
- F. Driving of piles, erection, expansion or significant alteration of buildings, or structures of any kind;
- G. Placing of obstructions or objects in water or the surface water or groundwater hydrology of any resource area;
- H. Removal or destruction of plant life including cutting or trimming of trees and shrubs;
- I. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
- J. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater;
- K. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by the Ordinance.

Buffer Zone: that resource area which extends one hundred feet (100') horizontally from the edge of the following wetland resource areas:

- A. Any Freshwater or Coastal Wetlands, Marshes, Wet Meadows, Bogs, Swamps, Rivers, Streams, Springs, Banks, Flats, Reservoirs, Lakes, Ponds of Any Size, Beaches, Dunes, Estuaries, and the Ocean;
- B. Intermittent Streams, Brooks, and Creeks.

It is possible that the Buffer Zone resource area will overlap in some instances (e.g., Riverfront Area and Land Subject to Flooding).

Building: shall mean a combination of any materials, whether portable or fixed, having a roof enclosed within exterior walls or firewalls built to form a structure for the shelter of persons, animals or property. Roof shall include an awning or any similar covering, whether or not permanent in nature. The term Building includes bathhouses, sheds and garages.

Coastal Engineering Structure: a structure used to protect homes, buildings, roadways or utilities or to provide public or commercial access on or near the coast, such as seawalls, revetments, breakwaters, jetties, groins, piers, wharfs, bulkheads, stairways, access ramps, boat ramps, boardwalks and tide gates.

Development: as used in Section 6.5-28, shall include the following activities:

1. Construction of a New Building or Structure on a vacant lot including without limitation a shed, garage, coastal engineering structure, shear wall, vertical wall or fence;
2. Construction of a new septic system or the addition of flow to an existing or upgraded septic system;
3. Clearing of land, mining, extraction, beach scraping, dredging, filling, excavation or drilling;
4. Construction of new or proposed expansions of roads, driveways or parking lots, and/or paving of unpaved roads, driveways or parking lots; and
5. Conversion of pervious surfaces to impermeable surfaces and/or paving of existing unpaved roads, driveways or parking lots.

(See NOTE # 1 Below.)

Footprint: the total square feet within the outermost dimensions of a building including decks, porches and staircases without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

Intermittent Stream: a body of running water, including brooks and creeks, which moves in a definite channel in the ground due to a hydraulic gradient, and which flows part of the year within, into or out of an Area Subject to Protection under the WPA. A portion of an intermittent stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year is an intermittent stream including that portion upgradient of all bogs, swamps, vegetated wetlands, wet meadows and marshes. An Intermittent Stream does not have a Riverfront Area but does have an associated 100-foot Buffer Zone. The outer boundary of an intermittent stream is the first observable break in slope or mean annual high water, which ever is higher.

Isolated Vegetated Wetland: freshwater wetlands, of at least 1,000 square feet in area that do not border on creeks, rivers, streams, ponds or lakes. The types of Isolated Vegetated Wetlands include wet meadows, marshes, swamps and bogs. Detention or retention basins or swales created for the purpose of stormwater management are not considered Isolated Vegetated Wetlands under the ordinance and these Regulations.

In addition to the minimum size requirement, Isolated Vegetated Wetlands must also meet the definition of Bordering Vegetated Wetlands (310 CMR 10.55(2)) with the exception that these wetlands do not border any creeks, rivers, streams, ponds, lakes or other water bodies.

The boundaries of Isolated Vegetated Wetlands are the same as those for Bordering Vegetated Wetlands as defined in 310 CMR 10.55 (2)(c).

New Development: as used in Section 6.5-28, shall mean the construction of a new Structure or Building on a vacant lot.

No-Disturbance Zone: that portion of the Buffer Zone which extends twenty-five feet (25') horizontally from the edge of the following wetland resource areas:

- A. Any Freshwater or Coastal Wetlands, Marshes, Wet Meadows, Bogs, Swamps, Rivers, Streams, Springs, Banks, Flats, Reservoirs, Lakes, Ponds of Any Size, Beaches, Dunes, Estuaries, and the Ocean;
- B. Intermittent Streams, Brooks, and Creeks.

Disturbance of any kind is prohibited within this 25-Foot No-Disturbance Zone including but not limited to grading, landscaping, vegetation removal, pruning, cutting, filling, excavation, roadway construction and /or driveway construction. The Buffer Zone does not apply to the "Vernal Pool Habitat" resource area which is a No-Disturbance Zone in its entirety as defined below.

Redevelopment: as used in Section 6.5-28, shall include the following activities:

1. Any individual or cumulative increase in the footprint of a Building or Structure, including without limitation, a coastal engineering structure, a shear wall, vertical wall, a shed, a garage, and/or a solid fence, that would result in the sum of the footprints of all Buildings or Structures on the lot exceeding a 20% (individual or cumulative) increase in the footprint of the existing structure (Any such individual or cumulative increase not exceeding this 20% threshold shall continue to require Commission review and approval.)
2. Conversion of Porches, Carports and Decks to Usable Interior Space below the first dwelling floor;

(See NOTE # 1 Below.)

Resource Area: those areas subject to protection under the Wetlands Protection Act (M.G.L. Ch. 131 §40) and Regulations (310 CMR 10.00), this Ordinance and Regulations promulgated pursuant to Section 6.5-35.

Riverfront Area: that portion of land which extends two hundred feet (200') horizontally from the edge of the following wetland resource areas:

A. Rivers, Perennial Streams, Brooks, Creeks.

Structure: a combination of materials to form a configuration and includes, but is not limited to buildings, platforms, radio towers, storage bins, signs, swimming pools, septic systems, coastal engineering structures, and fences.

Substantial Improvement: as used in Section 6.5-28, shall include any reconstruction, rehabilitation, addition, or other improvement of a Structure or Building, the cost of which equals or exceeds 50 percent of the value of the Structure or Building before the "start of construction" of the improvement. This term includes Structures or Buildings which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violations of state or local health, sanitary, building or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions for the existing structure.

Vernal Pool Habitat: A vernal pool is typically a confined basin or depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species. Under this Ordinance, a vernal pool shall meet the certification criteria of the Massachusetts Natural Heritage and Endangered Species (NHESP) Program as

outlined in the NHESP Guidelines for the Certification of Vernal Pool Habitat, March 2009, or successor guidelines. The boundary of the Vernal Pool Habitat shall be two-hundred feet (200') horizontally outward from the mean annual high-water line defining the depression or basin and shall not include lawns, gardens, landscaped areas, driveways or structures in existence or proposed under a plan approved by the Commission at the time of adoption of this Ordinance.

The Vernal Pool Habitat need not be located within another wetland resource area, or be certified as a vernal pool by the Massachusetts NHESP (or any other state or local agency) to be eligible for protection under the Ordinance and these Regulations; however, vernal pools certified by the Massachusetts NHESP ~~are~~ assumed to be vernal pools and are therefore protected under the Ordinance and these Regulations.

The entire Vernal Pool Habitat as defined above is considered a No-Disturbance Zone

NOTE # 1: The terms "Development" and "Redevelopment", as used in Section 6.5-28, shall not include the following activities:

1. Bringing the electrical and/or plumbing system into compliance with current regulatory requirements;
2. Construction, repair, or replacement of unpaved elevated pedestrian walkways supported on open pilings and designed to minimize the disturbance to the vegetative cover and traditional bird-nesting habitat and the form and volume of the coastal dune, coastal beach, or coastal bank;
3. Construction, repair or replacement of sand fencing, designed to increase dune development, provided the fencing does not constitute a barrier to wildlife movement or the lateral movement of a coastal dune or coastal beach;
4. Repair or replacement of open pilings for an existing Building;
5. Modification, maintenance, or repair of existing Buildings or Structures within the limits of existing foundations, which do not result in any addition to, or modification of the foundation itself, or the footprint of Buildings or Structures, additionally, additions or enclosures added above the first dwelling floor shall be allowed pursuant to FEMA guidelines.
6. Construction, repair, or replacement of decks on open pilings, with at least two feet above grade to allow sand transport by wind or water;
7. Planting of native species that are indigenous to Plum Island and that are compatible with the natural vegetative cover excluding turf lawns;
8. Conversion of impervious to vegetated surfaces, provided that erosion and sedimentation controls are implemented, and that the impervious surface removed is disposed of off-site in accordance with all applicable federal, state, and local statutes, bylaws and regulations;
9. Relocating electrical, heating, ventilation, plumbing, air conditioning and other service facilities for an existing Building to prevent water from entering or accumulating during conditions of flooding;

10. Construction, reconstruction, operation and maintenance of underground and overhead utilities, such as electrical distribution lines, transmission lines, communication lines, sewer pipes, water lines, and gas lines, including all structures and interconnections necessary to construct, reconstruct, operate, provide, and maintain electrical, communication, water, sewer, and gas service;
11. Assessment activities that are temporary in nature, have negligible impacts and are necessary for the planning and design of otherwise permissible projects, such as the installation of monitoring wells, exploratory borings, and natural gas service;
12. Temporary storage for not more than thirty days of construction and/or demolition materials on non-vegetated portions of the barrier beach, provided that best management practices are used to minimize the adverse impacts of such storage and to protect the interests identified in this Ordinance;
13. Placing an existing Building on open pilings; repairing and/or replacing open pilings for an existing Building;
14. Elevating above flood elevation an existing Building with a structurally sound foundation. In applying this subparagraph, the Commission may require a certification from a professional engineer or architect stating that the foundation is structurally sound;
15. Replacement of an existing Building with a New Building that is placed on open pilings and that is located as far landward of the existing Building as possible given the requirements of the Plum Island Overlay District, provided that: (a) the sum of the footprints of all Buildings or Structures on the lot not exceed a 20% maximum (individual or cumulative) increase in the footprint of the existing structure; (b) the New Building complies with all applicable federal, state, and local regulations, including without limitation, the Plum Island Overlay District and the Performance Standards set forth in the Commission's Regulations;
16. For only those properties that do not have an existing parking area or parking area of lesser size, construction of two parking spaces that are no more than 9 feet by 18 feet per space provided that there is no other area for parking on the property, and provided further that the surface of the parking area is pervious and that the construction complies with all the Performance Standards set forth in the Commission's Regulations and 310 CMR 10.00;
17. Removal of stone groins, bulkheads, or other coastal engineering structures;
18. Repair, restoration, modification or relocation of existing stone groins or jetties.

6.5-37. Security

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

- A. By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a COC for work performed pursuant to the Order. The form of security shall be at the sole discretion of the Commission.
- B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

6.5-38. Enforcement, Inspections & Fines

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter Resource Areas or Buffer Zones protected by this Ordinance, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition (as authorized and directed by the Conservation Commission), or fail to comply with any permit or Enforcement Order issued pursuant to this ordinance.

The Commission and its agents shall have the responsibility, duty, and authority to enforce this Ordinance, its Regulations, and permits issued thereunder by violation notices, and administrative (enforcement) orders. Any person who violates the provisions of this ordinance may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

The Commission, its agents, officers, and employees shall have the authority to enter upon privately owned land for the purposes of performing their duties under this ordinance, including site inspections, and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary. Any Permit Application or Request for Certificate of Compliance is evidence of the landowner's permission for said parties to enter his or her private land for the purposes of conducting such inspections. An Enforcement Order issued by the Commission shall be signed by a majority vote of the Commission. In a situation requiring immediate action, an Enforcement Order may be signed by a single member or agent of the Commission, if said Order is ratified by a majority of the members at the next scheduled meeting of the Commission.

The Commission shall have authority to enforce the Ordinance, its Regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, non-criminal citations under G.L. Ch. 40 §21D, and civil and criminal court actions. Any person who violates provisions of the Ordinance may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Upon request of the Commission, the Mayor and City Solicitor shall take legal action for enforcement under civil law. Upon request of the Commission, the City Marshall shall take legal action for enforcement under criminal law.

Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of the Ordinance, or Regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than \$300. Each day or portion

thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the Ordinance, Regulations, permits, or administrative orders violated shall constitute a separate offense. This fine may be in addition to any levied under the Wetlands Protection Act, G.L. Chapter 131, Section 40.

As an alternative to criminal prosecution in a specific case, the Commission may issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in G.L. Ch. 40 §21D, which has been adopted by the City of Newburyport under its Code of Ordinances, Ch. 1 §1-15.

6.5-39. Burden of Proof

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

6.5-40. Appeals

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

6.5-41. Relation to the Wetlands Protection Act

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

6.5-42. Severability

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