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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);
c) Any lake, pond, river, or stream whether intermittent or perennial, natural or manmade;

d) Any land subject to flooding or inundation by groundwater, surface water or storm flowage;

e) Any seasonal wetland; and

f) Any land within 200’ of the mean annual high water mark of a perennial stream or river as defined by the Massachusetts Rivers Protection Act and promulgated by 310 CMR 10.00.

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

a) Any activity proposed or undertaken which constitutes removing, filling, dredging, building upon, or altering any area specified in I(C)(1) is subject to these Regulations under the Ordinance and requires the filing of an Application for Permit.

b) Any person who wishes to know whether a proposed activity or area is subject to the Ordinance may in writing request a determination from the Conservation Commission. Such a Request for Determination of Applicability shall be submitted pursuant to Section III (D) of these Regulations.

D. **Exception, Emergencies and Variances**

1. **Exceptions**

a) **Minor Activities**

   (1) All activities identified in Section 10.02.2.b of the most recent edition of the Massachusetts Wetlands Protection Act Regulations may be excepted from these Regulations, subject to review of the Conservation Commission.

   (2) Except for the work described below in section I.D.1a.2.a-d, written notification must be submitted to the Commission at least 10 business days before work can be started. The Commission may require a Notice of Intent or Request for Determination of Applicability. If the Commission determines that the proposed work requires formal review pursuant to a Notice of Intent or Request for Determination, it shall notify the applicant in writing within 5 business days of receiving the written notification. These minor activities include:

   (a) Exploratory borings, test wells, and soil tests if conducted within the Buffer Zone using a hand or motorized drill. Test pits excavated using a backhoe or similar equipment are not exempted from the requirement to obtain a Negative
Determination of Applicability or Order of Conditions

(Permit);

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

b) Utilities

(1) The Permit or Application required by this Ordinance shall not be required for maintaining, repairing or replacing but not substantially changing or enlarging, an existing or lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, sanitary sewers, telegraphs or other telecommunication services, provided that
   (a) The structure or facility is not substantially changed or enlarged;
   (b) Written notice is given to the Commission at least fourteen (14) days prior to the commencement of the work; and
   (c) The work conforms to performance standards and design specifications acceptable to the Commission.

c) Agriculture

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

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

2. Emergencies

a) Procedure

(1) The Application and Permit required by this Ordinance shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or
has been ordered by an agency of the Commonwealth or political subdivision thereof, provided that

(a) Advance notice, either oral or written, has been provided to the Commission prior to the commencement of work or within twenty four (24) hours of commencement of work;

(b) The Commission or its agent certifies the work as an emergency project;

(c) The work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency;

(d) The Commission shall conduct a site visit;

(e) The work permitted by the emergency certification shall be completed within thirty (30) days of the date of issuance of the emergency certification; and

(f) Within twenty-one (21) days of commencement of an emergency project a permit application shall be filed with this the Commission for review as provided for in this Ordinance.

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

3. Variances

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

(1) Soil conditions; Hydrological conditions; shape or Topography of such land; and

(2) Affecting such land but not affecting generally the wetlands of the City that a literal enforcement of the provisions of this Ordinance would involve substantial hardship, financial or otherwise, to the applicant, and that desirable relief may be granted without material detriment from the intent or purpose of the Ordinance.

b) In addition to the criteria established in I.D.1.a.3.a.1-2, no variance shall be granted unless the Commission determines that:
There are no practicable alternatives to the proposed action;
alteration of the resource area has been minimized to the greatest extent practicable; and
(3) That compensatory or mitigating measures are taken to protect the public interest in the Protected Resource.

Such variances are intended to be granted only in rare or unusual circumstances.

It shall be the responsibility of the Applicant to provide the Commission with any and all information which the Commission may request in order to enable the Commission to ascertain any such material detriment to the interests of the Ordinance. Failure of the applicant to provide any of the requested information shall result in a denial of a request for a variance pursuant to this Section.

The Commission may impose conditions, safeguards and limitations in a variance to protect further the interests protected by this Ordinance or the intent or the purpose of this Ordinance.

A variance shall expire on the date specified by the Commission, not later than three years, and may be re-established only after a notice and a new hearing pursuant to this Section.

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

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

II. **Definitions**

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

B. **Aesthetics** means the natural scenery and appearance of any resource area as it is visually accessible to the public.
C. **Alter** means without limitation the following actions when undertaken upon or affecting any of the areas subject to protection under the Ordinance and listed in Section I(C)(1) of these Regulations:

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

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

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

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

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

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

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

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

K. **Date of Receipt** means the date of delivery to an office, home, or usual place of business by mail or hand delivery, as defined in the Massachusetts Wetlands Protection Act;
L. **Determination (of Applicability)** means a written finding by the Commission of whether an area or an activity is subject to the jurisdiction of this Ordinance and/or as to whether or not an activity will alter an area subject to the jurisdiction of this Ordinance.

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

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

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

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

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

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

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

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

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

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

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

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

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

Z. **Land Subject to Flooding** is defined in Section VI.E.2 of these Regulations.
AA. **Non-transient macro-organisms** means wetland plants and/or animals visible to the naked eye, including but not limited to Eubrachiopods, Isopods, Amphipods, Pisidiid clams.

BB. **Non-Native Species** means a species surviving and reproducing outside where it evolved or spread naturally, which has arrived there by human activity, either deliberate or accidental. In these Regulations, non-invasive is synonymous with “exotic,” “non-indigenous,” and “alien”.

CC. **Obstructions or Objects in Water** mean, but are not limited to, dams, weirs, sluice gates, breakwaters, piers, docks, bulkheads, pilings, slips, and floats.

DD. **Ordinance** means the Holyoke Wetlands Protection Ordinance.

EE. **Parties of Interest** means the petitioner and all abutters within two-hundred feet of the property line of the land where the activity is proposed, at the mailing addresses shown on the most recent applicable tax list of the assessors, including, but not limited to, owners of land directly opposite said proposed activity on any public or private street or way, and in another municipality or across a body of water.

FF. **Permit** means the document issued by the Commission containing conditions which regulate or prohibit an activity under the City of Holyoke Wetlands Protection Ordinance. The Commission, in an appropriate case, may combine the Permit or other action on an Application issued under the Ordinance with the Order of Conditions issued under the Act.

GG. **Permeable** means having a hydraulic conductivity of .0002 m/day or more.

HH. **Pervious** means a surface which allows water or other liquids to infiltrate into the soil or groundwater.

II. **Pests** are destructive insects that attack crops, food, livestock, structures, or infrastructure with such ferocity or frequency that they result in damage to humans or human concerns.

JJ. **Pond** means any open body of fresh water with a surface area observed or recorded within the past ten (10) years of at least 10,000 square feet, either naturally occurring or man made which has standing water due to natural causes at least once each year. Basins or lagoons which are part of waste water treatment plants shall not be considered pond, nor shall swimming pools, or other man made impervious retention or detention basins.

KK. **Protection of Fisheries** means protection of the capacity of an Area Subject to Protection under the Ordinance to:

1. Prevent or reduce contamination or damage to fish; and
2. Serve as their habitat and nutrient source.

LL. **Resource Area** is synonymous with Area Subject to Protection under the Ordinance each of which is enumerated d in Section I(C)(1) of this Ordinance.

MM. **River** shall have the same definition as that found in the Massachusetts Rivers Protection Act.
NN. Regulations shall mean all rules promulgated by the Holyoke Conservation Commission and codified within the City of Holyoke, Massachusetts Wetlands Protection Ordinance Regulations, as approved and amended.

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

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

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

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

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

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

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

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

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

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

III. Procedures

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

B. Action by the Conservation Commission Where the Ordinance states that a particular action is to be taken by the Commission that action is to be taken by a quorum as defined in the Act. Where the Ordinance states that the Commission is to receive a Request or Application, Commission means an individual designated by the Commission to receive such Request or Application.
C. Receipt The date and time of receipt of a Request or Application shall be stamped or noted upon such document by the Commission or its designee.

D. Determinations of Applicability

1. Request for Determination of Applicability

   a) With the exception of those activities identified in Section I.D.a of these Regulations, any person who desires a Determination on whether the Ordinance applies to an area or activity shall submit to the Commission by certified mail or hand delivery ten (10) copies of a Request for Determination of Applicability. The Commission shall accept the Request on Wetlands Protection Form 1. The Request for Determination of Applicability shall include such data and plans as may be required by the Commission in addition to those listed in Section IV.

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

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

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

   e) At the public meeting the Commission will determine:

      (1) Positively: that the area or activity is subject to the jurisdiction of the Ordinance; or
(2) Negatively: that the area or activity is not subject to the jurisdiction of the Ordinance.

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

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

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

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

E. Notice of Intent Application for Permit

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

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

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

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

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

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

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

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

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

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

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

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

10. Notwithstanding the foregoing, if the Commission determines that an activity outside
of an Area Subject to Protection under the Ordinance has in fact altered an Area Subject
to Protection Under the Ordinance, it may require an application including such plans,
supporting calculations, and other documentation as are necessary to describe the entire
activity.
IV. Application Requirements- Plans, Requirements, Forms and Filing Fees

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

B. Fees

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

   a) Fees for Request of Determination of Applicability

      (1) Less than fifteen Acres

         (a) $0

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

         (a) $100

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

         (a) $50

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

         (a) A minimum of $250; or

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

      (5) Applications filed by non-profits

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

      (6) Applications filed by the City of Holyoke

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

   b) Fees for Notices of Intent

      (1) Notices of Intent and Abbreviated Notices of Intent submitted under the Act and the Ordinance shall have the same categorization schedule and shall be subject to the filing fees mandated by State Regulations (310 CMR 10.03(7)) as well as an additional fee for each activity under review by the Commission as follows. Please see the most current WPA Form 3 for Category Definitions.
(a) Category 1 - $150 for each activity

(b) Category 2 - $200 for each activity

(c) Category 3 – $250 for each activity

(d) Category 4 - $300 for each activity

(e) Category 5 - $1.00/linear foot, not less than $50 or more than $1,000

(f) Category 6 - $1.00/linear foot, no more than $100 for Single Family Homes or $1,000 for all other activities

(2) Note that for the purposes of fee determination, work to remove debris and hazardous materials from wetlands, invasive control work, and wetland restoration projects, and similar projects for improving that natural capacity of a wetland resource to protect or enhance wetland values shall be considered a Category 1 project.

(3) For work requiring a variance in accordance with Section I.D.3 of these Regulations, except for reconstruction of an existing building on the same footprint, costs shall be the greater of either

(a) Equal to $150 for Category 1, Category 2, and Category 3 projects; or

(b) Equal to $300 for Category 4, Category 5, and Category 6 projects

(4) Each wetland replication required or permitted shall be required to cover municipal costs for monitoring replication or mitigation areas when the monitoring extends beyond the normal two (2) years required for monitoring of such areas. This fee shall be assessed in the amount of:

(a) $100 per year

(5) Fees for abbreviated Notice of Resource Area Delineation

(a) $1.00 per linear foot of delineated Bordering Vegetated Wetland, or any other resource area identified in the Wetlands Protection Act, with a maximum of $100 for a single-family home and a maximum of $1,000 for any other activity defined in these Regulations.

(6) Fees levied against Non-Profit Organizations:

(a) Non-Profit Organizations shall be required to submit Notice of Intent filing fees under the Holyoke Wetlands Protection Ordinance.

(7) Applications filed by the City of Holyoke
(a) The City of Holyoke shall not be required to submit Notice of Intent filing fees under the Holyoke Wetlands Protection Ordinance.

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

C. **Submission Requirements**

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

(a) Stakes indicating the corners of the proposed structures or other proposed alterations nearest the wetland resource areas shall be in place;

(b) Stakes indicating the limit of proposed work must be in place;

(c) Lot number or house number must be posted at the site location;

(d) Edges of all resource areas shall be clearly delineated with numbered flags or stakes; and

(e) Directions shall be made available to the Commission to locate the property.

(4) Failure to have the lot properly staked may result in non-review and thus costly delays of the project.

(5) Upon completion of the staking, the Commission must be notified; a site inspection shall be arranged prior to the public hearing or public meeting.

(6) The Applicant shall be required to make an accurate record of the site visit, including but not limited to, significant responses to questions, and proposed changes in design and plans, and submit this record to the Commission within five (5) days of the visit. The record of the visit shall be submitted into the record of the Applicant. The Commission reserves the right to amend the report as it deems necessary to accurately reflect the site visit.

2. Requirements for Notices of Intent

a) All applications for Permits shall describe the proposed activity adequately to fully describe its effect on the Interests set forth in Section I.A.B.1 and all jurisdictional resources. A written description of the project shall address all natural features such as large trees, water courses, water bodies, historic features, wildlife and wildlife habitat, endangered species, erosion and sedimentation control, and similar community assets.

b) Certification from the wetlands scientist responsible for the wetland delineation must be provided, stating the basis for the wetland delineation; the date on which the delineation was performed; and stating that the flagging as
indicated on the plans appears to be correct. When applicable, such certification must include DEP Bordering Vegetated Wetland Delineation Field Data Forms for transects along the boundary of each distinct Bordering Vegetated Wetland.
c) The following items are set out as a minimum standard. An Application which does not contain all of the items listed in Section IV(C)(1) above and additional requirements listed below, and meeting the specifications of these Regulations, unless waived by the Commission, shall be considered incomplete. The Applicant may submit, or be required to submit any further information which will assist the review and which is deemed necessary to determine the proposed effect on the interests protected by this Ordinance.
d) The names and addresses of the property owner(s), the applicant(s) and of all abutters, as determined by the most recent assessor’s records unless the Applicant or Commission have more recent knowledge of such abutters shall be submitted with the Application.
e) All filings shall include detailed color images of the proposed project area that accurately identify significant, man-made historical or ecological features extant within the proposed limit of work. The location from which these images were taken, the identity of the person taking these images, and the orientation of the images shall be indicated on an image key.
f) Where the Commission deems it applicable, the following shall be submitted:
   (1) A description of any alteration to flood storage capacity on the site including calculations and watershed maps. If a change of flood storage capacity is proposed, compensation storage at every elevation in the floodplain must be shown or demonstrated.
   (2) Maximum and minimum ground water elevations. The calendar dates of measurements, samples, and percolation tests shall be included, regardless of planned sewer connections.
   (3) Soil characteristic and types in representative portions of the site.
   A photocopy of the Hampden County soils map for the project site.
   (4) A runoff plan and calculations using TR-55, TR-20 or the Modified Soil Cover Complex Method (for areas greater than 20 acres) and based on the 10 year, 50 year, and 100 year flood frequency event period. Calculations shall show existing and proposed runoff conditions for comparative purposes. The Commission at its discretion based on site-specific requirements will consider other methods of calculations.
(5) DEP Stormwater Management Form and evidence documenting compliance DEP Stormwater Standards;

(6) Proof of submission of an Application to the Holyoke Stormwater Authority for a Stormwater Permit, or a written opinion from the City Engineer verifying that a Stormwater Permit is not necessary for the proposed activity.

(7) Methods to be used to stabilize and maintain any embankments facing any wetland or a showing of slope on plans as less than or equal to 3:1;

(8) A siltation and erosion control plan to be implemented during and after the work;

(9) Methods for avoiding the use of pesticides, herbicides, fertilizers, and de-icing chemicals shall be explored and incorporated into the plans for the proposed work;

(10) A description of the onsite non-native invasive species and a plan to control and eradicate non-native invasive species on the site;

(11) A quantitative functional assessment of wildlife and wildlife habitat, conducted by a wildlife biologist shall be prepared. The best available measures shall be employed to avoid adverse impacts to the wildlife;

(12) Plant plot information by layer for the entire site. Plots must be taken in representative sites throughout the project area. The plant plot information must be complied and assessed by a qualified wetland biologist who is proficient in plant plot data gathering and interpretation; and

(13) In the case of freshwater wetlands, the DEP delineation format must be used unless the applicant can rebut its appropriateness or usefulness in this case.

(14) Environmentally Sensitive Site Design and Low Impact Development principles and techniques shall be implemented to the maximum extent practicable.

**g) Plans**

(1) Two sets of plans must be submitted to the Commission. Plans do not have to be provided to other City departments unless specifically requested by the department or the Commission.

(2) All drawings shall be drawn (1”=50’ max) with the title designating the name of the project locations, the name(s) of the
person(s) preparing the drawings, and the date prepared, including all
revision dates and explanation of the revisions. Drawings, whenever,
applicable, shall be stamped and signed by a registered Professional
Engineer or a registered Land Surveyor of the Commonwealth of
Massachusetts. Pencil notations will not be accepted. A graphical
scale, north arrow, and legend identifying all symbols used on the plan
must be included.

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

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

(4) Drawings must include delineations of all alterations proposed in
or adjacent to wetlands and floodplains as indicated below:
(a) Areas to be dredged or filled: Outline in red
(b) Areas to be altered in any other way, other than dredging
or filling: Outline in black.

(5) Plans must include the following:

(a) Calendar dates of measurements, samplings, contours, etc.
Datum should be in NGVD base. The contour interval shall
be no greater than two feet.
(b) Existing and final contours and contour interval used
including pond bottom and stream invert contours.
(c) Soil characteristics in representative parts of the property
including depth of peat and soil types in wetlands. Test boring
logs shall be submitted.
(d) Locations, sizes, and slopes of existing and proposed culverts and pipes.
(e) Cross-sections of all wetlands, showing slopes, banks and bottom treatments.
(f) Existing and proposed water storage capacity of the property, including calculations and data on which the capacity is based. If filling is proposed, the effect of the resultant loss of storage on downstream resources shall be documented and submitted.
(g) Location and elevation of benchmark used for survey.
(h) The locations, coordinates, and numbers of all wetland flagging.
(i) Existing trees, stone walls, fences, buildings, historic sites, rock ridges, and outcroppings.
(j) Invert elevations on catch basins.
(k) Proposed on site pollution control devices such as hooded catch basins, oil absorption pillows, detention or retention basins, flow dissipaters, or sluiceways, swales, or vegetative buffers.
(l) Locations and details of erosion control devices.
(m) Locations of any areas to be revegetated following construction. A landscaping plan detailing the locations of plantings and a planting plan detailing the species to be planted shall be submitted. Native plant species shall be used in all plantings to the maximum extent possible.
(n) Assessor’s Map and Lot number(s).

3. Notice of Intent Procedure
   a) Public hearing

   (1) A public hearing shall be held by the Commission within twenty-one (21) days of receipt of the minimum submittal requirements.
   (2) Minimum submittal requirements set forth in Section IV(C) unless the Applicant agrees to an extension or delay and shall be advertised at the expense of the Applicant five (5) working days prior to the hearing in a newspaper of general circulation in the City and in accordance with the requirements of the Open Meeting Law, M.G.L. ch. 39, sec. 23(B) and the Act. Notice of the hearing shall be provided by the
(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 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.

(4) 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
they are filed with the Commission. The Applicant and any other interested party shall have the right to receive any such comments and recommendations and respond to them, prior to final action.

c) Permits regulating the work

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

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

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

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

(a) for failure to meet the requirements of the Ordinance;
(b) for failure to submit necessary information or plans requested by the Commission;
(c) for failure to meet design specifications, performance standards or other requirements in these Regulations;
(d) for failure to avoid or prevent unacceptable or cumulative effects upon the wetland interests protected by the Ordinance;

or

(e) where no conditions are adequate to safeguard the interests protected by the Ordinance.

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

(6) The Permit shall be signed by a quorum of the Commission and shall be mailed or hand delivered to the Applicant, his agent or the owner of record.
A copy of the application, plans and supporting documents describing the work and the Permit shall be kept on file by the Commission and shall be available to the public at reasonable hours.

Prior to the commencement of any work permitted or required by the Permit, the Permit shall be recorded by the applicant in the Registry of Deeds and/or the Land Court for the district in which the land is located within the chain of title of the affected property. In the case of recorded land, the Permit shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. Certification of recording shall be sent to the issuing authority. If work is undertaken without the applicant first recording the Permit, the issuing authority may issue an Enforcement Order or may itself record the Permit.

For good cause the Commission may revoke or modify a Permit issued under this Ordinance after public notice and public hearing, and notice to the holder of the Permit.

The Commission in an appropriate case may combine the Permit or other action on an application issued under the Ordinance with the Order of Conditions issued under the Act.

d) **Conditions Regulating Work** At a minimum, the Commission shall impose the following conditions:

(1) No activity may proceed until the Applicant has received all other permits required by law, including but not limited to any permit required by the Holyoke Board of Health, the Holyoke Planning Board, the Holyoke Zoning Board of Appeals, the Department of Environmental Protection, and the Army Corps of Engineers.

(2) This permit is granted under the provisions of the Holyoke Wetlands Ordinance subject to the conditions imposed herein.

Requests for an extension of this Permit must be submitted, in writing, no less than thirty (30) days prior to the expiration date of this Permit.

(3) Any substantial change made or intended to be made in the plans shall require the applicant to file a new Application for Permit or to inquire of the Commission, in writing, by certified mail, or by certificates of mailing, whether the change is so substantial as to require the filing of a new Application for Permit.
The Conservation Commission shall receive forty eight (48) hours advance notice, in writing, before the commencement of any activity within the resource areas, including site preparation and construction.

(5) All structures, facilities and equipment as parts of this project shall be continually operated and maintained so as to comply with this Permit. This provision applies specifically to all heavy equipment used on this project. Any leakage of oil, hydraulic fluid, gasoline or any other pollutant must be cleaned up prior to the continuance of any other work on the site immediately and the defective equipment responsible for said leaking shall be immediately repaired or taken off-site.

(6) A copy of this Permit for Work shall be kept on-site at all times during construction. All contractors and subcontractors engaged during construction shall be provided with a copy of this Permit for Work, and should be prepared to produce said Permit for Work upon the request of the Conservation Commission or its agent.

(7) Violation of any of these conditions shall be subject to a daily fine pursuant to the City of Holyoke Wetlands Ordinance until said violations have been corrected, to the satisfaction of the Holyoke Conservation Commission.

(8) Work shall proceed in strict accordance to referenced plan(s) in this Permit.

(9) A sedimentation and erosion control plan shall be provided and approved by the agent for the Conservation Commission. Such controls shall remain in place and be maintained until all disturbed areas have been stabilized to the satisfaction of the Conservation Commission.

(10) All work shall be completed in such a manner as to prevent the spread of invasive species, eutrophication or sedimentation in wetlands, water bodies or public and private water supplies.

(11) A Certificate of Compliance shall be requested from the Holyoke Conservation Commission upon completion of the proposed work. A written statement shall accompany said request from the professional who prepared the plan certifying compliance with plans.

e) Limited Projects

(1) Notwithstanding the provisions of these Regulations, the Commission may issue a Permit and impose such conditions as will
contribute to the interests identified in the Ordinance permitting the limited projects as identified in the Wetlands Protection Act.

f) Natural Heritage

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

4. Security

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

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

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

D. Extension of Permit

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

2. Denials: The issuing authority may deny the request for an extension and require the filing of a new Application for Permit for the remaining work in the following circumstances:
a) Where no work has begun on the project, except where such failure is due to an unavoidable delay, such as appeals, in the obtaining of other necessary permits;

b) Where new information not available at the time the Permit was issued has become available and indicates that the Permit is not adequate to protect the interests identified in the Ordinance;

c) Where work is causing damage to the interests identified in the Ordinance; or

d) Where work has been done in violation of the Permit or these Regulations.

3. When issued by the Conservation Commission, the Extension Permit shall be signed by a quorum of the Commission.

4. The Extension Permit shall be recorded in the Land Court and/or the Registry of Deeds, which ever is appropriate, by the Applicant. Certification of recording shall be sent to the issuing authority on the form provided. If work is undertaken without the recording the Extension Permit, the Commission may issue an Enforcement Order or it may itself record the Extension Permit.

E. Certificate of Compliance

1. Upon written request by the applicant on Wetlands Protection Act Form 8A, a Certificate of Compliance shall be issued by the Commission within twenty-one (21) days of receipt thereof, and shall certify that the activity or portions thereof described in the Application for Permit and plans has been completed in compliance with the Permit. If issued by the Commission, the Certificate of Compliance shall be signed by a quorum of the Commission.

2. Prior to the issuance of a Certificate of Compliance, a site inspection shall be made by the Commission or its agent. The Commission may require the presence of the applicant or the applicant's agent.

3. If the Commission determines, after review and inspection, that the work has not been done in compliance with the Permit, or if the applicant or its agent fails to participate in a site inspection when required to by the Commission, it may refuse to issue a Certificate of Compliance. Such refusal shall be issued within twenty-one (21) days of receipt of a request for a Certificate of Compliance, shall be in writing, and shall specify the reasons for denial.

4. If a project has been completed in accordance with plans stamped by a registered professional engineer, architect, landscape architect or land surveyor, a written statement by such a professional person certifying substantial compliance with the plans and setting
forth what deviation, if any, exists from the plans approved in the Permit shall accompany the request for a Certificate of Compliance.

5. If the Commission has not received all fees incurred in the application process according to the fee schedule, it may refuse to issue a Certificate of Compliance until such fees are paid.

6. If the Permit contains conditions which continue past the completion of work, such as maintenance or monitoring, the Certificate of Compliance shall specify which, if any, of such conditions shall continue. The Certificate shall also specify to what portions of the work such conditions apply if they do not apply to all the work regulated by the Permit.

7. The Certificate of Compliance shall be recorded by the applicant in the Land Court and/or Registry of Deeds, whichever is appropriate. Certificate of recording shall be sent to the issuing authority on the form provided. Upon failure of the applicant to so record, the issuing authority may do so.

V. Violations, Enforcement, Fines, and Administrative Action

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

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

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

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

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

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

F. Commission Response When the Conservation Commission determines that an activity is in violation of the Ordinance or a Permit or Variance issued under the Ordinance or Regulations, the Commission may:
1. issue an Administrative Order, and/or;
2. hold an Administrative Hearing to consider whether the landowner should be fined for the violation and/or;
3. issue a corrective action notice in the case of a violation of a valid Order of Conditions.

G. Administrative Orders

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

H. Administrative Hearing

1. **Purpose** The purpose of the Administrative Hearing is to discuss the violation and to give the landowner or the landowner’s representative an opportunity to respond to the evidence and circumstances of the Administrative Order or Enforcement Order prior to the issuance of an Administrative Order for Restitution and/or Notice of Fines. At the Administrative Hearing, the Commission shall determine the appropriate course of action pursuant to the following standards:

   (1) In the case where restitution is possible, the Commission may accept a written plan with a timetable for full restitution of the violation including a timetable for submittal of permits pursuant to the Regulations. If requested by the Commission, a Restitution Plan must be submitted within ten business days of the date of receipt of such a request. The Restitution Plan shall be approved by a majority of the Commission at the Administrative Hearing and incorporated into an Administrative Order. The Restitution Plan and Administrative Order shall be hand delivered or certified mail to the responsible party.
In the case where restitution is ordered and the party in receipt of an Administrative Order has failed to respond with the required corrective action, each day or portion thereof during which a violation continues or is repeated shall constitute a separate offense, and each provision of the Ordinance or Permit violated shall constitute a separate offense for the purposes of calculating a fine.

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

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

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

3. **Continuance of Administrative Hearing** A landowner or party served with notice of an Administrative Hearing can apply in writing to the Commission for a continuance of the Administrative Hearing stating in full the reason for the request. The Commission may grant a continuance for compelling and/or environmentally sound reasons. Continuances shall not be granted where such issuance allows an on-going pollution event to continue unabated or where there is risk of alteration to resource areas.

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

I. **Fines and Notice of Fines**

1. **Hearing Required** If a fine or an adjustment of fine for a violation is contemplated, the Commission shall hold an Administrative Hearing pursuant to these Regulations.
2. **Calculation of Fines** For the purposes of calculating fines, each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the Ordinance, Regulations, Permit or Variance violated shall constitute a separate offense.

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

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

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

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

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

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

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

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

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

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

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

   a) The City Collector may record in the Registry of Deeds a conservation lien for non-payment of accumulated fines. The lien shall be against all property in
the City of Holyoke held by the landowner at the time of the violation which is contiguous to the area of the violation.

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

J. Corrective Action Notice

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

K. 310 CMR 10.00

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

VI. Standards for Inland Wetlands

A. Banks

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

2. Definition A bank is the portion of land surface which normally abuts and confines a water body. It occurs between a water body and a vegetated bordering wetland and adjacent flood plain, or, in the absence of these, it occurs between a water body and upland. A bank may be partially or totally vegetated, or it may be comprised of exposed soil, gravel, stone or sand. The physical characteristics of a bank, as well as its location
are critical to the protection of the interests specified herein. The upper boundary of a bank is the first observable break in the slope above the mean annual flood level, or whichever is higher. The lower boundary of a bank is the mean annual low flow level.

3. Presumption

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

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

4. Performance Standards

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

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

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

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

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

(6) the capacity of the bank to help prevent erosion and sedimentation.
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.
(f) Within twelve (12) inches from the bottom of the O-
 horizon, soils with a chroma of 2 or less and values of 4 or
higher in the matrix, and mottles with a chroma of 3 or higher.
(g) Within twelve (12) inches from the bottom of the O-
horizon, soils with a matrix chroma of 3 and values of 4 or
higher, with 10 percent or more low-chroma mottles, as well
as indicators of saturation (i.e., mottles, oxidized rhizospheres,
concretions, nodules) within six (6) inches of the soil surface.

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

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

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

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

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

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

3. Presumption

a) Where a proposed activity involves the removing, filling, building upon,
dredging or altering of a Freshwater Wetland, the Commission shall presume
that such area is significant to the interests specified in Section I(B)(1). This
presumption is rebuttable and may be overcome by clear and convincing
evidence that the Freshwater Wetland, or land within 100 feet of the boundaries
of the Freshwater Wetland, does not play a role in the protection of said
interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect in the permit or Order of Conditions, setting forth its grounds.

4. Performance Standards

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

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

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

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

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

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

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

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

   (6) at least seventy-five (75) percent of the surface of the replacement/replicated area shall be reestablished with indigenous, native wetland plant species within two growing seasons, and prior to
said vegetative establishment any exposed soil in the replacement area shall be temporarily stabilized to prevent erosion in accordance with U.S. N.R.C.S. methods; and

(7) the replacement/replicated area shall be provided in a manner which is consistent with all other Performance Standards for each resource area described in these Regulations.

d) Notwithstanding the provisions of Sections 4(a) and 4(b) above, the Commission may issue a Permit allowing work which results in the loss of a portion of Freshwater Wetland when:

(1) said portion has a surface area of less than five hundred (500) square feet;

(2) said portion extends in a distinct linear configuration ("finger-like") into adjacent uplands; and

(3) in the judgement of the Commission it is not reasonable to scale down, redesign or otherwise change the proposed work so that it could be completed without loss of said wetland.

e) Notwithstanding the provisions of Sections 4(a), (b), and (c) above, no project may be permitted which will have any adverse effect on habitat sites of rare vertebrate or invertebrate species as identified on the most current Massachusetts Natural Heritage and Endangered Species Estimated Habitat Maps on file with the Commission.

C. Isolated Wetlands

1. Preamble Isolated Wetlands are Freshwater Wetlands that do not border on creeks, rivers, streams, ponds, lakes, or other water bodies. Isolated Wetlands are likely to be significant to the interests identified in Section I(B)(1). Isolated Wetlands may be found either in areas with low flat topography or below sidehill seeps. These areas provide for the temporary storage of water which results from runoff, rising ground water, or where ground water breaks out of a slope forming a sidehill seep. In this way they provide for flood control and prevention of flood damage. Alteration can result in the lateral displacement of retained water which may result in damage. Isolated Wetlands are areas where ground water discharges to the surface either by a rising water table or from a sidehill seep. Under some circumstances, surface water discharges to the ground water in these areas, particularly where they are underlain by pervious material. Contaminants introduced into such areas, such as septic system discharges, road salts, pesticides or herbicides, find easy access into the ground water. Where such areas are underlain by pervious material or covered by a mat of organic peat or muck, they are likely to be
significant to the prevention of pollution. Isolated Wetlands providing Seasonal Wetland
habitats are essential breeding sites for certain amphibians which require isolated areas
that generally flood in the spring and/or summer, and are free of fish predators. Many
reptiles, birds, and mammals also depend upon such Isolated Wetlands as a source of
food.

2. Definition, Critical Characteristics and Boundary

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

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

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

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

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

      (1) the line enclosing that area having a vegetative cover consisting of
          50% or more of freshwater species, as defined in the Ordinance, or
      (2) the line enclosing the largest observed or recorded area of water
          confined in said area, or
      (3) the area calculated to be inundated by runoff from the 100-year
          storm or;
      (4) the area of hydric soils.

3. Presumption Where a proposed activity involves removing, filling, dredging,
   building on, or altering an Isolated Wetland, or within 100 feet of the boundaries of the
   Isolated Wetland, the Commission shall presume that such an area is significant to the
   interests specified in Section I(B)(1). This presumption is rebuttable and may be
   overcome by clear and convincing evidence that said land does not play a role in said
interests. In the event that the presumption is deemed to have been overcome, the
Commission shall make a written determination to this effect, setting forth its grounds.

4. Performance Standards

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

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

1. Flood damage due to filling which causes lateral displacement of
   water that would otherwise be confined within said area.
2. An adverse effect on public and private water supply or ground
   water supply.
3. An adverse effect on the capacity of said area to prevent pollution
   of the ground water.
4. An impairment of its capacity to provide wildlife habitat.
   (a) No project may be permitted which will have any adverse
   effect on specified habitat sites of rare vertebrate or
   invertebrate species as identified on the Massachusetts Natural
   Heritage and Endangered Species Estimated Habitat Maps on
   file with the Commission.
5. An adverse effect on erosion or sedimentation control.

D. Land Under Water Bodies

1. The Preamble shall be the same as in the Act for Land Under Water Bodies and
   Waterways with the following addition:
   a) Land under Seasonal Wetlands are crucial to providing habitat to amphibian
      species. Areas immediately surrounding seasonal wetlands generally serve all
      of the non-breeding habitat functions of amphibians which require Seasonal
      Wetlands for breeding.
   b) Land within one hundred feet (100") of a Land Under Water Body is likely
      to be significant to the protection and maintenance of Land Under Water Body
      and therefore to the protection of the interests which these water bodies serve to
      protect. (See Section VII)

2. Definition
a) Land Under Water Bodies is the land beneath any river, stream, pond, seasonal wetland, or lake. Said land may be composed of organic muck or peat, fine sediments, gravel, rock or bedrock.

b) The physical characteristics and location of Land Under Water Bodies specified herein are critical to the protection of the interests of Section I(B)(1).

c) The upper boundary of Land Under Water Bodies is the mean annual low water level except in the case of intermittent streams where the boundary shall be the area under the stream when flowing at its annual mean flow.

3. Presumption:

a) Where a proposed activity involves removing, filling, building upon, dredging or altering of a Land Under Water Body or within 100’ of the boundaries of the Land Under Water Body, the Commission shall presume that such area is significant to the interests specified in Section I(B)(1). This presumption is rebuttable and may be overcome by clear and compelling evidence showing that the Land Under Water Body does not play a role in the protection of said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect setting forth its grounds.

4. Performance Standards

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

b) Any proposed work, permitted by the Commission, on Land Under a Water Body or within 100 feet of Land Under a Water Body shall not impair the following:

(1) The water carrying capacity within the defined channel, which is provided by said land in conjunction with the banks;

(2) Ground or surface water quality;

(3) The capacity of the land to provide breeding habitat, escape cover and food for fisheries; or

(4) The capacity of the land to provide wildlife habitat function.

(a) No project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species as identified on the most current
Massachusetts Natural Heritage and Endangered Species

Estimated Habitat Maps on file with the Commission.

(5) The capacity of the land to provide endangered species habitat function.

(6) The capacity of the land to prevent erosion and sedimentation.

(7) The capacity of the land to provide aesthetic amenities.

E. Land Subject to Flooding

1. Preamble

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

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

2. Definition

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

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

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

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

3. Presumption Where a proposed activity involves removing, filling, dredging, building on, or altering Land Subject to Flooding, or within 100 feet of the boundaries of the Land Subject to Flooding, the Commission shall presume that such an area is
significant to the interests specified in Section I(B)(1). This presumption is rebuttable and may be overcome by clear and convincing evidence that said land does not play a role in said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

4. Performance Standards

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

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

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

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

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

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

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

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

F. Seasonal Wetlands

   1. Preamble

      a) Seasonal Wetlands are usually isolated depressions or closed basins that serve, in most years, as ponded areas for runoff or high ground water that has risen to the surface. Seasonal Wetlands may be found in flood plains or in saddles at the base of slopes. It should be noted that the above characteristics may be shared with Isolated Wetlands. Seasonal Wetlands are distinguished from Isolated Wetlands in that they frequently serve as temporarily-flooded
amphibian breeding habitat, as well as habitat for other wildlife, and, as such, are likely to be significant to the protection of wildlife habitats.

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

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

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

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

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

g) Waterfowl are known to frequent many of these pools, albeit sporadically. Wood ducks, mallards, black ducks, and occasionally great blue herons will stop, especially at those Seasonal Wetlands with growths of vegetation such as duckweed or abundant populations of mollusks. Thus, the presence of mollusks, duckweed residues, or other indicators of temporary pooling of water such as caddis fly cases, are indicative of the presence of a Seasonal Wetland.
h) With regard to floral characteristics, the typical plant communities usually associated with wetlands cannot reliably be used for Seasonal Wetlands. The presence of certain species of submergent or emergent vegetation generally indicates a wet condition that may go beyond the definition of a Seasonal Wetland. Vegetation more usually associated with a wet meadow may indicate the pooling of water for a time insufficient for a Seasonal Wetland. These conditions may indicate the presence of an Isolated Wetland or an area that holds standing water for a major part of the year.

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

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

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

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

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

n) Organic Accumulation: The presence of a well-developed organic layer is a feature of Seasonal Wetlands. Generally these pools have persisted since the end of the glacial period and will probably continue in their semi-open condition for many more thousands of years unless artificially altered. These pools act as traps for organic matter, especially during the autumn when they trap quantities of airborne leaves. The presence of water-stained leaves in a depression which is otherwise dry is a good indicator that the area temporarily serves to pool water.
Topographical Orientation: Seasonal Wetlands occupy saddles or level ground and, with the exception of pools associated with flood plains, are often adjacent to steep slopes.

Wildlife: A Seasonal Wetland must be free of adult fish populations.

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

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

3. Performance Standards

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

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

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

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

4. An adverse effect on public and private water supply or ground water supply.

5. An adverse effect on the capacity of said area to prevent pollution of the ground water.
(6) An adverse effect on erosion or sedimentation control.

G. Riverfront Resource Area

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

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

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

VII. Buffer Zone (Land within 100’)

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.

B. Definition

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.

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.

C. Performance Standards

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

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.

   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.

   b) Variance

      (1) An Applicant may request in writing for a variance to this Section. The request for a variance to this Section must include, at a minimum, the following:

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

      (b) Alternative designs;
(c) Limitations of the particular lot and project design that necessitate the variance, not to include business necessity, aesthetics, and visibility; and

(d) Proposed mitigation and/or restoration on site or within the watershed (i.e. exceed the ration of replication).

VIII. Amendments

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

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