

Effective date: (July 25, 2025)

**RULES AND REGULATIONS
OF THE
METHUEN CONSERVATION COMMISSION**

SECTION 1. GENERAL PROVISIONS

A. Authority

These Regulations are promulgated under the authority of Section 12-5 of the Municipal Code of Methuen, 1983 (“MCM”) and shall be effective upon fulfillment of all legal requirements for their effectiveness.

B. Purpose

These Regulations are promulgated to create a uniformity of process and to clarify and define the provisions of the City of Methuen Wetlands Protection Ordinance.

C. Waivers from Rules and Regulations

Strict compliance with these Rules and Regulations may be waived, when, in the judgment of the Methuen Conservation Commission, such action is in the public interest, and is consistent with the intent and purpose of this By-Law.

Any request for a waiver must be submitted to the Commission in writing. The Commission will act on the request within twenty-one (21) days of the date of receipt, and will notify the applicant of its decisions within this twenty-one (21) day period.

D. Statement of Floodplain Jurisdiction

The Floodplain Jurisdiction includes all special flood hazard areas within the City of Methuen designated as Zone A or AE on the Essex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Essex County FIRM that are wholly or partially within the City of Methuen are panel numbers 25009C0066G, 25009C0068G, 25009C0069G, 25009C0088G, 25009C0185G, 25009C0201G, 25009C0202G, 25009C0203G, 25009C0204G, 25009C0206G, 25009C0207G, 25009C0208G, 25009C0211G, and 25009C0226G dated July 8, 2025. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 8, 2025. The FIRM and FIS reports are incorporated herein by reference and are on file with the City Clerk, Community Development Board, Building Official, and Conservation Commission.

SECTION 2. GENERAL

A. Definitions (adopted pursuant to Section 12-7.4, MCM)

Abutter shall mean those property owners whose land abuts the subject land described in a plan subject to Commission review for a Notice of Intent. It shall also mean those property owners across a street, road, river, stream, brook, creek or other wetland from the subject land.

Act means the Wetlands Protection Act, General Laws, Chapter 131, Section 40 and any rules and regulations made there under.

Activity shall be any form of construction, reconstruction or expansion of any building, structure, road or other ways, alterations, or any changing of the physical or chemical or biological characteristics of an area of land or water.

Agriculture. Normal maintenance of land in agricultural use means the following activities:

1. All tilling and harvesting practices customarily employed to enhance existing conditions;
2. The pasturing of animals, including the construction and maintenance of such fences and protective structures as may be required;
3. The use of fertilizers, pesticides, herbicides and other such materials, subject to all state and federal laws and regulations governing their use;
4. The maintenance of field ditches, subsurface drains, grass waterways, access roads, and similar projects to prevent erosion, provide more effective use of rainfall and improve equipment operation and efficiency, all in order to improve conditions for the growing of crops;
5. The cutting and removal of trees for the purpose of selling said trees or any products derived there from, when carried out in the following manner:

I. Every reasonable effort shall be made to avoid or minimize access through areas subject to protection under the by-law;

II. Where access through areas subject to the protection of the by-law is necessary, every reasonable effort shall be made to gain said access Without constructing new access ways, including but not limited to maintaining, improving (but not substantially enlarging) existing access way, and conducting operations when the soil is frozen, dry or otherwise stable.

6. The selective cutting of trees when carried out in the following manner:

I. No more than 7500 board feet or 15 cords shall be harvested;

- II. The removal of the selectively cut trees shall occur only during those periods when the ground is sufficiently frozen, dry or otherwise stable to support the equipment used;
- III. There shall occur no filling, excavation or other change in the existing topography;
- IV. A written notice describing the proposed cutting and removal of trees shall be submitted to the Conservation Commission twenty-one (21) days prior to the commencement of operations.

Alter. As defined in Section 12-7.2 of Chapter 12, MCM.

Applicant shall mean any person who files a Determination of Applicability or a Notice of Intent, or on whose behalf said forms are filed.

Area of special flood hazard is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A1-30, AE, A99, V1-30, VE, or V.

Area subject to protection under the ordinance means an area specified in Section 12-1 of the Ordinance. The term "area" is synonymously where applicable, with resource area, each one of which is defined in greater detail in Part III (Inland Regulations) of 310 CMR 10.00 (Wetlands), promulgated April 1st, 1983, as amended.

Banks. As defined in Section 12-7.3 of Chapter 12, MCM.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Certificate of Compliance shall mean a written determination by the issuing authority that work or a portion thereof has been completed in accordance with an Order of Conditions. It shall be in the form marked "B" in the Appendix of these Regulations.

Conditions shall mean those statements and regulations set forth in a written order issued by the Conservation Commission or any other authorized agency, for the purpose of regulating or prohibiting any activity.

Conservation Commission shall mean that body of members lawfully appointed pursuant to Massachusetts General Laws, Chapter 40, Section 8C.

Creek shall mean any small stream or intermittent tributary to any brook, river or stream.

Date of Receipt shall mean the date of delivery to an office, or usual place of business by mail or hand delivery.

Determination of Applicability shall mean any review and written finding by the Conservation Commission or the courts as to whether a site or the work proposed thereon is subject to the jurisdiction of the By-Law. It shall be in the form marked “E” in the Appendix of these Regulations.

Development means any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Dredge shall mean to clean, deepen, widen, or excavate, either temporarily or permanently.

Erosion control shall mean the prevention or reduction of the detachment or movement of soil or rock fragments by water, wind, ice and/or gravity.

Emergency. See Section 12.3 of MCM.

Extension permit means a written extension of time within which the authorized work shall be completed (See Form “F”).

Federal Emergency Management Agency (FEMA) administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

Fill shall mean to deposit or place any material so as to raise an elevation, either temporarily or permanently.

Fisheries shall mean all species of fresh water fin-fish and shellfish.

Flood control shall be the prevention or reduction of flooding.

Flood Insurance Rate Map (FIRM) means an official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) means an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

Flood Plain shall be any land susceptible to being inundated by a flood having a 1% chance of being equaled or exceeded in any given year (a 100 year storm event). The Flood Plain in Methuen is further designated on the “Zoning Map of the Town of Methuen, Mass”.

Flooding shall be defined as a local and temporary inundation or a rise in the surface of a body of water such that it covers land not usually underwater.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

Groundwater shall mean water below the earth's surface in the Zone of Saturation.

Isolated Vegetated Wetland shall mean any area where surface or ground water, or ice, is at or near the surface of the ground and greater than five hundred square feet which supports or could support a plant community (cover) comprised of 50 percent or greater of wetland species, or which in the judgment of the Commission, supports a significant community of wetland vegetation, and is characterized by hydric soils and/or exhibits hydrologic characteristics.

Issuing Authority shall mean the Conservation Commission, or the higher court of appeals as provided for in the General Laws of Massachusetts.

Land shall mean any ground, soil and earth, including wetlands, drainage ways and any areas not permanently covered by water.

Land in agricultural use. As defined in 310 CMR 10.04, Wetlands Regulations.

Lake shall mean any body of fresh water with a surface area of ten (10) acres or more, and shall include Great Ponds.

Majority shall mean more than half of the duly appointed members of the Conservation Commission.

Notice of Intent shall be a written notice filed by any person intending to alter, or in any way change, the physical or chemical properties of land subject to this By-Law. It shall be in the form marked "A" in the Appendix of these Regulations.

One-Hundred-Year Flood - see BASE FLOOD.

Order shall mean an Order of Conditions or Superseding Order of Conditions, whichever is applicable.

Order of Conditions shall mean the document issued by the Conservation Commission or the courts containing conditions, which regulate or prohibit an activity

subject to this ordinance. It shall be in the form marked “D” in the Appendix of these Regulations.

Ordinance shall mean Chapter 12 of the Municipal Code of Methuen, 1983, and any amendments enacted thereafter.

Person. As defined in Section 12-7 of the Ordinance.

Person Aggrieved shall be a person who, because of an act or failure to act by the issuing authority, may suffer an injury in fact which is different either in kind or magnitude from that suffered by the general public and which is within the scope of the interests defined by this ordinance. Said person must specify in writing sufficient facts as to how they may be affected by said act or failure to act.

Plans shall mean such data, maps, engineering drawings, calculations, specifications, schedules and other materials deemed necessary by the issuing authority to describe the site and/or the impact of the proposed work upon the interests of the Ordinance. The plans, which may be required, are further defined in Section 5.0 of these Regulations.

Pond shall mean a body of water with a surface area up to ten (10) acres, either artificial or natural, continuous or intermittent.

Prevention of pollution shall be the prevention or reduction of contamination, degradation, or change in the physical, chemical, or biological characteristics of an area of land or water.

Private water supply shall be any source or volume of water available for private use.

Public water supply shall mean any source or volume of water available, or demonstrated to have a potential for availability, for public use as a designated water supply.

Quorum shall mean the majority of the duly appointed members of the Conservation Commission, that when duly assembled, is legally competent to transact business.

Remove shall mean the act or process of taking away or moving any type of materials thereby changing the elevation, either temporarily or permanently.

River shall be a natural stream of water that empties to any lake, pond, or other river or stream, and has a continuous or intermittent flow.

Significant shall be that standard to be used by the Conservation Commission in determining what condition, if any, they deem necessary to protect the public interest

under the Act. The standard that shall be considered to establish significance in order to protect the said public interest shall include one or more of the following factors:

1. Any actual or potential contamination to public, private or groundwater supply, including aquifers or recharge areas, land containing fisheries, including the biological life necessary to support a freshwater ecosystem.
2. Any reduction of the flood storage capacity of a freshwater wetland, river, stream or creek.
3. Any alteration of a river, stream, or creek that results in any increase in the volume or velocity of water, which may cause flooding.
4. Any actions, which shall remove, fill, dredge or alter any area subject to the By-Law and will result in any threat to the health, welfare and safety of the individual or the community.
5. An area consisting of “very poorly drained soil” as described by the National Cooperative Soils Survey of the U.S. Department of Agriculture, Soil Conservation Service.
6. An area, which would be flooded as a result of a 100-year storm as that storm is defined in the City of Methuen as part of a 100-year (H.U.D.) floodplain.

Special Flood Hazard Area means an area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, V, V1-30, VE.

Storm damage prevention shall mean the elimination or reduction of any damage caused by a storm.

Stream shall mean a body of running water, including brooks and creeks, whether continuous or intermittent, moving in a definite channel in the ground.

Waiver shall mean an authorization from the Conservation Commission to an applicant for a deviation from the terms of this By-Law as described in Section 1c. of these Rules and Regulations.

Water pollution prevention shall mean the prevention or reduction of contamination, degradation, or change in the physical, chemical, or biological characteristics of surface or ground water.

Wildlife habitat shall have that same meaning as is used in Chapter 131, Section 40, Massachusetts General Laws, as amended, and the regulations there under as listed in 310 CMR.

Work shall mean the same as activity.

Zone A means the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data.

Zone AE (for new and revised maps) means the 100-year floodplain where the base flood elevation has been determined.

Zone X are areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

Zone of Saturation shall mean the subsurface zone in which all open spaces are filled with water. This is an area of groundwater as defined in this By-Law.

SECTION 3. DETERMINATION OF APPLICABILITY

A. General

Any person who desires a determination as to whether this ordinance applies to an area, or work to be performed on said area, shall submit a written request to the Methuen Conservation Commission.

B. Filing Procedures

A request for a determination shall be sent by certified mail, or hand delivered, and shall be in the form shown in the Appendix annexed hereto and marked "C". The Commission may require that additional information be submitted to aid in evaluation.

A written determination as to applicability of this law shall be valid when signed by a majority of the Commission and shall be rendered within twenty-one (21) days after the date of receipt of all necessary materials. It shall be in the form "E" annexed hereto and shall state whether or not a filing of a Notice of Intent shall be necessary.

C. Appeal

The decision of the Commission may be appealed according to the provisions of the Massachusetts General Laws, Section 4 of Chapter 249.

SECTION 4. NOTICE OF INTENT

A. General

Any person who desires review of a Notice of Intent shall file with the Commission plans and specifications as required of an applicant under Massachusetts General Laws, Chapter 131, Section 40 and 310 CMR 10.00, and as further defined below.

B. Filing Procedure

The Notice of Intent (nine copies), accompanying plans (see Section 5 of these Rules and Regulations), and a filing fee as provided for in section 12.10 of the Ordinance, payable to the City of Methuen - unless exempted under Section 12.1 of the City of Methuen Wetland Ordinance - shall be sent by certified mail, or hand delivered, to the Methuen Conservation Commission and shall be in the form shown in the Appendix annexed hereto and marked "A". Copies of the Notice of Intent shall be sent to the Director of Public Works, the Community Development Board and the Board of Health, by certified mail, and proof of such notification shall be submitted to the Commission prior to, or at, the public hearing. The following must also be completed:

1. Notification of the City Clerk. The applicant shall submit one copy of the Notice of Intent form (Form "A" in the Appendix), excluding the additional plans required by the Commission.
2. Notification of all abutters by certified mail. Proof of such notification shall be submitted to the Commission prior to, or at, the public hearing. Such notification shall be per Form "J" in the Appendix.
3. In a riverine situation, the Conservation Commission shall notify the following of any alteration or relocation of a watercourse:
 - Adjacent Communities
 - Bordering States
 - NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
251 Causeway Street, Suite 600-700
Boston, MA 02114-2104
 - NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor
Boston, MA 02110

4. In Zone AE, along watercourses within the City of Methuen that have a regulatory floodway designated on the Essex County FIRM, encroachments are prohibited in the regulatory floodway, which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

5. In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways, which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

6. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

C. Incomplete Notice of Intent

A Notice of Intent must include, at a minimum, a properly executed form “A” annexed hereto, and the items required under Section 5 of these Rules and Regulations, unless a waiver is granted by the Commission. (See Section 1C of these Rules and Regulations).

If the Commission determines that a Notice of Intent is incomplete or improper, it shall notify the applicant within twenty-one (21) days of the date of receipt.

The Commission, at its discretion, may:

1. Return the entire filing, in which case all required time periods for processing this submitted Notice of Intent will no longer be valid.
2. Require the additional information or materials be submitted within a specified time period, which shall be no later than the date of the scheduled public hearing.

SECTION 5. PLANS

Plans shall describe the proposed activity and its effect on the environment. Due regard shall be shown for all natural features such as large trees, water courses and bodies, wetlands, wildlife habitat, and similar community assets.

The following items are set out as minimum standard, and are not intended to be a complete and final presentation as to what a plan should show. The applicant may submit, or be required to submit by the Commission, any further information which will assist in the review and which is deemed necessary to determine the proposed effect on the interests protected by this Ordinance.

A. General

1. The names and addresses of the record owners, the applicant and names of all abutters, as determined from the most recent local tax list, unless the applicant shall have more recent knowledge of such abutters.
2. A written list of all other required permits, variances, or approvals and copies thereof. If any of these documents have not been received by the applicant at the time of filing, a schedule for anticipated receipt shall be submitted.
3. Description of any alterations to Flood Storage capacity on the site.
4. Soil characteristics in representative portions of the site.
5. Maximum and minimum ground water elevations. The calendar dates of measurement, samplings, and percolation tests shall be included.
6. Hydraulic and hydrologic calculations using the Rational Method, the MoCoSoCo formula, U.S. Soil Cons. Service T.R. No. 55, Urban hydrology for Small Watersheds and Section 4 of the U.S. Soil Cons. Service National Engineering Handbook and prepared by a Massachusetts Registered Professional Engineer, or other professional competent in such matters, based on 10, 50, and 100 year flood frequency event. Calculations must show existing and proposed runoff conditions for the rate, volume and velocity.
7. Methods to be used to maintain embankments facing any wetlands.
8. Methods to control erosion.
9. All drawings shall be drawn with the title designating the name of the project location, the name(s) of the persons preparing the drawings, and the date prepared, including all the latest revision dates. Drawings whenever possible should be stamped by a Registered Professional Engineer, Architect, Landscape Architect or Land Surveyor of the Commonwealth of Massachusetts.
10. A sequence of construction with general timetable.
11. An 8 1/2 x 11 cutout sheet of the USGS quad sheet showing the location of the proposed activity and the outline of the wetland areas in which the activity is located.
12. For all projects, including construction of any sort, a written statement describing construction methodology, including type of machinery to be used, access way to the project site, proposed timetables, etc. is required.
13. All subdivision proposals must be designed to assure that:

- a) such proposals minimize flood damage;
- b) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
- c) adequate drainage is provided to reduce exposure to flood hazards.

B. Site Plan

A site plan at a scale of 1" = 40', but no more than 1" = 50', (or other such scale as approved by the Commission) showing the following items:

1. Existing and proposed contours, in contrasting symbols, of the entire site and effected adjacent areas. Generally a 2-foot contour interval will be satisfactory.
2. A delineation of the work limits.
3. All wetlands, boundaries, depths of organic matter and underlying soils, water bodies, waterways, ditches, creeks, rivers, streams, ponds, lakes, whether continuous or intermittent, natural or man-made, and the 100 foot jurisdictional extension from the wetland boundaries, shall be delineated.
4. A delineation of the Flood Plain as shown on the City of Methuen Flood Plain Maps.
5. Existing stone walls, fences, buildings, historic sites, rock edges and outcroppings should be delineated.
6. Location, extent and area of all existing and proposed structures and paved areas.
7. Proposed lowest elevations for all cellars or floors, septic systems, and leaching fields.
8. Existing and proposed location, rim elevation and invert elevation of all drains, culverts and other fluid conductors immediately upstream and downstream of the site, as well as on-site.
9. Proposed pollution control devices on-site, such as: hooded catch basins, oil absorption pillows, detention/retention basins, flow dissipaters, or vegetative buffers.
10. Cross sections showing slope, bank, and bottom treatment of each watercourse to be altered. Locations of cross sections shall be specified.
11. Location of any spoil areas.
12. Location of erosion control structures.

13. Site landscaping with vegetative species to be used and in what amounts.

SECTION 6. ORDER OF CONDITIONS

A. Hearings

Any hearing held under Chapter 12, MCM, may be continued for a reasonable time in order to allow the applicant sufficient time to produce information which the Commission deems necessary to make a decision on the impact of the project. As an alternative to continuance, or after failure or refusal by the applicant to produce additional information as requested, the Commission may deny the project.

B. Change in Submitted Development Plans

If, at any time, after a Notice of Intent or a request for a Determination of Applicability has been submitted to the Commission for review, there is significant change in the proposed activity, the applicant must notify the Commission, in writing or in person, of these changes. No work shall be done on the subject area until the Commission has reviewed the changes.

The Commission shall review these changes and determine if a new Notice of Intent or a request for a Determination of Applicability must be filed. The applicant shall be notified of the decision of the Commission within twenty-one (21) days of the date of notification of the changes.

C. Appeal

Any person aggrieved by the decision of the Conservation Commission, whether or not previously a party to the proceeding, may appeal according to the provisions of the Massachusetts General Laws, Section 4 of Chapter 249.

This appeal shall be made within sixty (60) days of the date of the decision by the Commission, or the date of the signing and/or notarization of said decision, whichever is the later. Notice of said appeal and a copy of the complaint shall be sent, certified mail, or hand delivered, to the Conservation Commission, its authorized representatives or assigns, and the City Counsel so as to be received within said sixty (60) days.

The complaint shall contain any facts pertinent to the issue, a copy of the decision appealed from, bearing the date of filing thereof, the complete name and address of the party filing the appeal, the name and address of the attorney, if any, representing the persons filing the appeal, and the relief sought.

If the complaint is filed by some person or persons other than the original applicant, appellant, or petitioner, such original applicant, appellant, and all members of the Conservation Commission shall be named as parties defendant.

SECTION 7. CERTIFICATE OF COMPLIANCE

A certificate of Compliance shall be requested by the applicant/owner in writing and may be issued by the Commission following a site inspection, provided that the request for the Certificate of Compliance must contain with it an affidavit signed and stamped by a Massachusetts Registered Professional Engineer, Land Surveyor, Architect or Landscape Architect, stating that all work has been completed in accordance with this Order of Conditions and plans submitted. Such request for certificate shall include with it an as-built plan signed and stamped by said individual.

The Certificate of Compliance shall be issued on the form marked "B" annexed hereto and shall be valid only when approved by a majority of the Commission.

If, after a site inspection, the Commission determines that the Order of Conditions has not been satisfactorily complied with, the request for certificate may be denied. This decision shall be forwarded to the applicant, along with the reasons for denial within twenty-one (21) days of the date of receipt of the request for a certificate.

SECTION 8. SECURITY

The Commission may require, as a permit condition, that the performance and observation of the Order of Conditions be secured by one or both of the following methods:

1. By a bond or deposit of money or negotiable securities in an amount and form determined by the Commission to be sufficient to secure the completion of all conservation measures specified in their Order of Conditions; and, the Commission may require that the applicant specify the time within which such construction shall be completed.

The penal sum of any such bond shall bear a direct and reasonable relationship to the expected costs, including the effects of inflation, necessary to complete the sub-work. Such amount or amounts shall be from time to time reduced as is, in the determination of the Commission, necessary to reflect the actual expected costs of the work remaining to be completed.

2. By a conservation restriction easement or covenant, executed and duly recorded by the owner of record, running with the land whereby such conservation measures, as are stated in the Order of Conditions, shall be provided before any lot may be built upon or conveyed. A deed of any part of the subject property in violation hereof shall be voidable by the grantee prior to the release of the covenant, but not later than three (3) years from the date of such deed.

The bond or conservation restriction easement or covenant shall, in the case of the bond, be given to the City, and, in the case of a covenant or other measures, recorded in the Registry of Deeds within fourteen (14) days of the granting of the Order of Conditions. Failure to meet the requirement of the fourteen (14) days time shall be automatic reason for the Commission to revoke the Order of Conditions and to order stoppage of all work on the applicant's property. (Form "K" in Appendix)

SECTION 9. ENFORCEMENT

Any person who violates any provision of this ordinance, the rules and regulations promulgated under said Ordinance, or any condition of the permit granted hereunder, shall be punished by a fine of not more than One hundred Dollars (\$100.00) each day, or portion thereof, during which a violation continues. If more than one violation, each condition violated shall constitute a separate offense.

This Ordinance, the rules and regulations, and the Order of Conditions may be enforced by a police officer of the City or by any other officer having police powers. Upon request of the Commission, the Mayor and the City Solicitor shall take such legal action, as may be necessary, to enforce this ordinance, the rules and regulations, and permits issued pursuant to it.

SECTION 9-A. ENFORCEMENT ORDERS

A. When the Conservation Commission determines that an activity is in violation of the ordinance, these rules and regulations, or a final order, the Commission may issue an Enforcement Order (Form "G" in Appendix). Violations include, but are not limited to:

1. failure to comply with a final order, such as failure to observe a particular condition or time period specified in the order;
2. Failure to complete work described in final order;
3. failure to obtain a valid final order or extension permit prior to conducting an activity subject to the ordinance or regulations.

B. An Enforcement Order issued by the Conservation Commission shall be signed by a majority of the Commission, provided however, that in a situation requiring immediate action, an Enforcement Order may be signed by a single member or its designated agent if said order is ratified by a majority of the members at the next scheduled meeting of the Commission.

SECTION 10. PUBLIC HEARINGS

In addition to any other specific requirements, the Conservation Commission may require notification of abutters for any Request for Determination, Notice of Intent, Amendment to an Order of Conditions or Extension of an Order of Conditions, which is to be discussed at a public meeting.

Section 11. Wetlands Setback Policy

Unless proven otherwise by the applicant, the Conservation Commission shall presume that any proposed activity within 50 feet of any wetland will have a significant adverse impact on the wetland and shall not be permitted.

PURPOSE OF POLICY

The Conservation Commission has found that activity in the 50 foot buffer zone bordering wetland resource areas poses a serious threat to such areas. As a result, the Conservation Commission strongly discourages such activity within 50 feet of wetland boundaries. This undisturbed zone will provide a minimum buffer to prevent negative impacts on wetlands.

BASIS OF POLICY

Scientific research, and the Conservation Commission's own experience in reviewing a wide variety of projects, demonstrate that alteration or construction activities within the buffer zone consistently result in destructive effects on the wetlands themselves. These include, but are not limited to, disturbance of natural vegetation along the wetlands boundary, run-off of pollutants, fill materials, and other substances into the wetlands, stockpiling or dumping materials or debris which migrate over time into the wetlands, and disturbance of wildlife habitat, such as nesting sites and corridors which are important to wetland species. The Conservation Commission has also noted a tendency on the part of many project proponents to design the project so that it goes to the absolute limit of the wetland boundary. Particularly given the difficulty, which often arises in defining that boundary, in most instances, it is vital to protect an adjacent section of the buffer zone and prevent the inevitable destructive impacts on the wetlands, which goes to the boundary.

THE POLICY

As used herein:

“**Alteration**” shall mean any removal (grading, filling and/or excavation) of vegetative cover, soil or other naturally occurring materials.

“Construction” shall mean the construction of any permanent or temporary structure or building, including, without limitation, any residential or commercial building, garage, shed, barn, tennis court, deck, swimming pool, parking area, driveway, fence, or landscaping project.

In acting upon Notices of Intent and Determinations of Applicability, the Conservation Commission will presume that any alteration or construction within 50 feet of a wetland boundary would have a significant adverse impact on the wetlands, and such alteration or construction within 35 feet of a wetland boundary shall not be permitted, and such alteration or construction within 50 to 36 feet of a wetland boundary shall not be permitted unless the applicant demonstrates that (1) such activity would not have such an impact, or (2) public benefits, such as health or safety, outweigh any such impact, or (3) the activity involves the maintenance of existing structures, or (4) the activity is the installation of the stormwater outlet structure. The applicant will have the burden of proof by clear and convincing evidence on this issue. Factors to be considered by the Conservation Commission in determining whether the applicant has met this burden shall include, but are not limited to, the following:

1. Slope of the buffer zone.
2. Type and structure of vegetation, soil type and hydrology in the buffer zone.
3. Degree and scale of past alterations in the buffer zone.
4. Ecological integrity of the adjacent wetlands.
5. Importance of the buffer zone to wildlife utilizing the wetlands.
6. Whether the proposed activity in the buffer zone would be permitted if it were in the wetland.
7. Any ecological benefits arising from the proposed activity, such as removal of exotic vegetation or creation of enhanced wildlife habitat.
8. Any public benefits arising from the proposed activity.
9. Alternatives have been considered and in the judgment of the Commission no practical alternative is available. However, restoration or plantings in the zone may be required, to help define and protect the remainder of the buffer zone.
10. Project scope and design minimized the work in close proximity to resource area.
11. Project will not lead to encroachment on the resource area after the project is completed.
12. Commission may impose a wider undisturbed buffer zone to ensure protection of wetland resource areas if the project involves: sensitive habitats, steep slopes, highly erodible soils, extensive disturbed area or hydraulic conditions likely to promote significant erosion.

Applicants wishing to rebut the presumption set forth in this policy shall provide the Conservation Commission with the following information, together with any additional relevant information, which the Conservation Commission may require:

1. A cross-sectional profile of elevation change in any area of the buffer zone within 50 to 36 feet of a wetland, which would be disturbed by the proposed activity.

2. A list of all vascular plant species occurring in the 50 to 36 foot area of the buffer zone and adjacent to wetland areas including data on relative abundance of each species.
3. A wildlife habitat evaluation of the 50 to 36 foot area of the buffer zone and adjacent wetlands including data on observed wildlife utilization of such area, such as breeding bird use, occurrence of fish, reptiles, amphibians and mammals.
4. A description of the nature of any public or ecological benefits, which may arise from the proposed activities.
5. A photograph of the area to be disturbed.

It is the Conservation Commission's policy, where it has discretion, to prohibit any activity in the wetlands except where there are exceptional circumstances, where no practical alternative exists. For example, the Commission may grant a waiver from these regulations for the construction and maintenance of a new roadway or driveway of a minimum legal and practical width consistent with Planning Board dimensional standards, where no alternative means of access from an existing public or private way to an upland area of the same owner is available. Such an approach is consistent with the limited project provisions of the Act, and where satisfactory replication at a 2.0 to 1 ratio takes place prior to any alteration or construction. Activity within the 100 foot buffer zone will continue to be reviewed on an individual case basis.

EXISTING CONDITIONS EXEMPTIONS

1) Maintenance (but, no further alteration or expansion) of yards which existed on or before 9/30/2004, within the 50 foot buffer will be permitted, however homeowners are encouraged to maintain natural vegetation within 50 feet of the wetland edge to help improve the water quality of wetlands and streams. A list of wetland vegetation, which could enhance wildlife and water quality can be obtained from the Conservation Office at the Quinn Public Safety Building. The Commission encourages homeowners to allow a natural vegetation buffer to establish itself along the edge of streams, ponds and wetlands.

2) Grandfather Provision: The following uses, structures or permits are exempt from the provisions of this policy.

The normal use and routine maintenance of any structure or alteration of land, within wetland resource areas and their buffers, existing at the time of enactment of Chapter 12 (effective date December 2, 1987) and/or subsequent revisions of the ordinance may be continued subject to the following:

a) existing structures, uses and/or alterations may not be extended and/or modified unless such extension or modification is permitted by a finding of the

Commission that such alteration or modification shall have no adverse impact/significant effect to the resource areas and interests protected by the ordinance.

b) existing structures, uses and/or alterations which have been abandoned for five years or more shall not be reestablished and any future use shall conform with then-current provisions of the ordinance, and

c) maintenance and/or repair to existing onsite sewage disposal systems and drinking water supply; wells are excluded from this definition.

d) projects having received a special permit under the comprehensive zoning ordinance where such permits were obtained prior to the effective date of this policy shall not be subject to this policy, however this exemption shall not apply if the permit is not exercised or expires.

Further, the use of herbicides/pesticides, inorganic fertilizers (excluding lime or other soil treatments) where labels indicate they are toxic to aquatic organisms, which may alter the adjacent resource area, should not be used adjacent to wetlands. It is likely that the use of these chemicals over time will have an impact on the adjacent wetlands.

APPENDIX

Form A	Notice of Intent
Form B	Certificate of Compliance
Form C	Request for Determination of Applicability
Form D	Order of Conditions
Form D1	Order of Conditions Amendment
Form E	Determination of Applicability
Form F	Extension Permit
Form G	Enforcement Order
Form G1	Pre Enforcement Order
Form G2	Post enforcement Order
Form H	Abbreviated Notice of Intent
Form I	Notification of Non-Significance
Form J	Notice to Abutters
Form K	Bond

In substitution, to use of separate municipal and state forms, the Commission may utilize the state form only (i.e. Order of Conditions, Determination of Applicability and the like) and to this extent, the use of said forms shall recognize as serving the dual purpose of the state and municipal requirements.