

# **BOSTON WETLANDS REGULATIONS**



## **BOSTON CONSERVATION COMMISSION BOSTON WETLANDS ORDINANCE CITY OF BOSTON CODE, ORDINANCES, CHAPTER VII-I.IV**

Approved by vote of the Boston Conservation Commission, XX/XX/XXXX

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## **PART I. PURPOSE AND PROCEDURES**

### **Section I. Introduction, Authority, and Purpose**

#### **A. Introduction**

These regulations are promulgated by the City of Boston's Conservation Commission (hereinafter "the Commission") pursuant to the authority granted to it under the City of Boston Wetlands Ordinance (hereinafter "the Ordinance") in order to implement the purposes of the Ordinance and to protect the wetlands, related water resources and adjoining land areas of the City of Boston, by controlling certain activities, pursuant to Section II(B), located in affecting the one or more Resource Areas or their associated buffer zones, pursuant to Section II(A). These regulations set forth additional definitions, regulations and performance standards necessary to protect the values and intent of the Ordinance, protect additional Resource Areas and wetland values, and specify standards and procedures stricter than those of the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40 (hereinafter "the Act") and implementing regulations at 310 CMR 10.00 (hereinafter "the Implementing Regulations").

#### **B. Authority**

These Regulations were promulgated by the Commission, pursuant to the authority granted to it under the Ordinance and under the Home Rule Authority of this municipality. These Regulations shall complement and effectuate the purposes of the Ordinance and shall have the force of law upon their effective date. Following public notice and a public hearing thereon, these Regulations may be amended or added to by a majority vote of the Commission.

The portion of these regulations concerning consultants and consultant fees are also promulgated pursuant to the authority granted the Commission under G.L. c. 44, § 53G.

#### **C. Purpose**

The 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 ensure the protection of the following resource area values, including but not limited to: protection of the public or private water supply and quality; protection of the public and private groundwater supply and quality; short term and long term coastal and stormwater flood control, erosion and sedimentation control; storm damage prevention, including coastal storm flowage; protection of surface water supply and quality, including water pollution control; flood conveyance and storage; protection of fisheries, land containing shellfish, wildlife habitat, rare and endangered plant and animal species and habitat, wetland plant habitat, and recreation, and to protect the health, safety, and welfare of the public and to mitigate impacts from climate change (collectively the

“Resource Area Values”). The purposes of these regulations are to define and clarify that process by establishing additional definitions, performance standards, and uniform procedures by which the Commission shall carry out its responsibilities under the Ordinance.

**Section II. Jurisdiction**

- A. The following areas are subject to protection under the Ordinance and these Regulations:
1. any freshwater or coastal wetlands, marshes, wet meadows, bogs, swamps, vernal pools, springs, banks, reservoirs, streams, brooks, creeks, rivers, lakes, ponds of any size, beaches, dunes, estuaries, flats, fens, the ocean, and lands under water bodies;
  2. lands adjoining these resource areas out to a distance of one hundred (100) feet, known as the Buffer Zone and excluding Land Subject to Coastal Storm Flowage and the Coastal Flood Resilience Zone;
  3. riparian lands adjoining rivers, streams, brooks, and creeks, whether perennial or intermittent out to a distance of twenty five (25) feet, known as the Riverfront Area;
  4. riparian lands adjoining rivers, streams, brooks, and creeks, whether perennial or intermittent out to a distance of two hundred (200) feet identified as Extended Riverfront Area, as established by the Commission;
  5. lands adjoining salt marsh out to a distance of one hundred (100) feet;
  6. lands subject to flooding or inundation by groundwater or surface water;
  7. lands subject to tidal action, coastal storm flowage, or flooding;
  8. lands adjoining coastal beach, dune, bank, tidal flats, rocky intertidal shores, salt marshes or land containing shellfish; or inland bank, lake, pond, intermittent stream, brook, creek or riverfront area out to a distance of twenty five (25) feet, known as the Waterfront Area;
  9. the Coastal Flood Resilience Zone, as established by the Commission;
  10. the Inland Flood Resilience Zone, as established by the Commission.
- B. The following activities are subject to regulations under the Ordinance and these Regulations:

1. Any activity proposed or undertaken that will remove, fill, dredge, build upon, over or under, degrade, discharge into, or otherwise alter or pose a significant threat to alter an area subject to protection listed in Section II(A).
2. Any activity proposed or undertaken, located in a Resource Area or associated buffer zone, pursuant to Section II(A), which is not set forth above but which activity the Commission, in its judgement, finds will remove, fill, dredge, build upon, over or under, degrade, discharge into, or otherwise alter or pose a significant threat to alter an area subject to the Ordinance and these Regulations will require the filing of a Notice of Intent. If any person wishes to have the Commission determine whether an activity may be subject to regulation under the Ordinance and these Regulations, they may submit a Request for Determination of Applicability pursuant to Section VI(A) of these Regulations.

### **Section III. General Provisions**

#### **A. Presumption of Significance**

Each area subject to protection under the Ordinance and these Regulations is presumed to be significant to one or more of the Resource Area Values identified in the Ordinance and these Regulations.

#### **B. Burden of Proof**

The applicant for a permit shall have the burden of proving by a preponderance of credible evidence that the work proposed in the permit application will not have a significant or cumulative adverse effect upon the Resource Area Values protected by the Ordinance and these Regulations. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny the application for a permit along with any work or activity proposed therein.

#### **C. Burden of Going Forward**

The applicant shall have the burden of going forward by a preponderance of credible evidence from a credible source in support of all matters asserted by the applicant in accordance with their burden of proof pursuant to Section III(B) of these Regulations. This burden shall be upon the person contesting the Commission's position on appeal.

### **Section IV. Promulgation of Regulations**

- ~~A.~~—The Commission may adopt such additional definitions, rules, regulations, policies, fees, and performance standards as it may deem necessary to protect the Resource Area Values. Said definitions, rules, regulations, fees, and performance standards shall become effective upon publication

following a public hearing for which public notice has been provided. Policies may be adopted by a majority vote of the Commission.

~~B.A.~~\_\_\_\_\_The Commission may amend these Regulations after public notice and public hearing.

~~C.B.~~\_\_\_\_\_For all proposed regulations, amendments, or reference maps delineating resource areas, the Commission shall conduct a public rule-making process, including but not limited to posted notice of a hearing on the proposed regulations, amendments, or reference map or maps, posting of the proposed regulations, amendments, or reference maps, written notice of posting to parties requesting such notice, a minimum 30-day comment period, a written “response to comments” shall be drafted and posted by the Commission’s Agent not less than 7 days before any hearing and a properly noticed public hearing. pursuant to Section VI(F)(4).

~~D.C.~~\_\_\_\_\_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 Implementing Regulations as most recently promulgated shall apply.

## **Section V. Definitions**

Except as otherwise provided in the Ordinance or these Regulations, the definitions of terms in these Regulations shall be as set forth in the Act and Implementing Regulations. The following definitions shall apply in the interpretation and implementation of the Ordinance and these Regulations.

### **RESERVED**

## **Section VI. Procedures**

Any person who proposes to perform work within an area subject to protection shall submit to the Commission a Request for Determination of Applicability or Notice of Intent for such work. Said requests shall include sufficient information to enable the Commission to find and view the area and to determine whether the proposed work will alter an area subject to protection under the Ordinance and these Regulations.

Any definitions, rules, regulations, policies, fees, and performance standards, set forth under the Act, Implementing Regulations, the Ordinance or these Regulations that are in effect at the time an application is filed with the Commission, shall apply.

Additional specific filing requirements, instructions, and fees can be found in the Commission’s Filing Guide, as most recently promulgated.

A. Request for Determination of Applicability (RDA)

1. Any person who desires to know whether or not a proposed activity or an area is subject to the Ordinance and these Regulations, may submit to the Commission electronically and by certified mail, regular mail, or hand delivery a written request for a determination of applicability and other application materials in accordance with the submittal requirements set forth in the Commission's filing guidelines.
2. Simultaneously with filing the Request for Determination of Applicability, the applicant shall provide notification to each abutter by hand delivery or certified mail, return receipt requested, or by certificates of mailing.
3. A Request for a Determination of Applicability shall include certification that the owner of the area subject to the request, if the person making the request is not the owner, has been notified that a determination is being requested under the Ordinance and these Regulations.

B. Determination of Applicability

1. Within 21 days after the date of receipt of the Request for a Determination of Applicability, all necessary supporting documentation and plans, and appropriate fees, the Commission shall hold a public hearing. Notice of the time and place of the public hearing 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 business days prior to such meeting, by publication in a newspaper of general circulation in the City of Boston. Notice shall also be given in accordance with the Open Meeting Law, M.G.L. c. 30A, §§18 - 25. Said determination shall be signed and issued by a majority of the Commission, and copies thereof shall be delivered by the Commission to the person making the request and to the owner, by certified mail or hand delivery, within 21 days of the close of the public hearing or any continuances thereof. Said determination shall be valid for three years from date of issuance and may not be extended or renewed.
2. The Commission shall have the authority to continue the public hearing to a date announced at the hearing, for reasons stated at the hearing. The applicant may also request to continue the hearing to a date announced at the hearing. Reasons for continuing a hearing may include, but are not limited to, failure of the applicant or others to provide information (including comments, recommendations, or action of other city boards and officials) by the submittal deadline, lack of timely receipt of necessary information from the applicant, time needed by the applicant to provide additional or missing information and for the Commission to review such information, inability to view the proposed project site, and need for additional information to evaluate the potential impacts upon the Resource Area

Values. Once the Commission closes the public hearing it shall issue a Determination of Applicability within 21 days.

3. The Commission shall find that the Ordinance and these Regulations apply to the land, or a portion thereof, if it is an area subject to protection under the Ordinance as defined in Section II(A). The Commission shall find that the Ordinance and these Regulations apply to the work, or a portion thereof, if it is an activity subject to regulation under the Ordinance as defined in Section II(B).
4. A Notice of Intent which is filed as a result of a Positive Determination of Applicability shall be filed with the Commission according to the procedures set forth in Section VI(D). A Determination of Applicability may also be conditioned by the Commission to protect the Resource Area Values of the resource areas involved.
5. A Request for Determination of Applicability or a Determination of Applicability shall not be used to evaluate or confirm the delineation of any Resource Area.

C. Abbreviated Notice of Resource Area Delineation (ANRAD)

1. To establish the extent of Bordering Vegetated Wetland and other Resource Areas ~~on areas~~ subject to protection under the Ordinance and these Regulations, applicants may use the Abbreviated Notice of Resource Area Delineation for the confirmation of a delineated boundary of bordering Vegetated Wetlands and other Resource Areas on the site, prior to filing a Request for Determination of Applicability or Notice of Intent for the proposed work. Alternatively, the boundary of bordering vegetated wetland (or other Resource Area) may be determined through the filing of a Notice of Intent
2. The ANRAD shall be submitted on the form and according to instructions provided by the Commission along with all necessary supporting documentation, plans, appropriate fees, and in accordance with the submittal requirements set forth in the Commission's filing guidelines. A public hearing shall be held as described in Section VI(G). Procedures for an ANRAD filing, hearing, and issuance of a decision follow those outlined for the Notice of Intent as described in Section VI(D).
3. If the Commission determines that the Resource Areas are correctly delineated, an approval Order of Resource Area Delineation (ORAD) will be issued.
4. If the Commission determines that the Resource Areas are incorrectly or incompletely delineated, they shall request that the applicant provide the correct delineation or missing information. If the correct delineation or missing information is not provided, the Commission

shall close the ANRAD hearing and issue a denial Order of Resource Area Delineation within 21 calendar days, specifying each Resource Area that is incorrectly or incompletely delineated. The Commission shall have the authority to deny any proposed Resource Area delineation when

- i) the application is incomplete;
- ii) the delineation is incorrect, or
- iii) the Commission requires additional information that is not provided by the applicant.

D. Notice of Intent (NOI)

1. Any person intending to conduct any activity subject to regulation in an area subject to protection under the Ordinance and these Regulations shall not commence such activity without filing a written Notice of Intent and without receiving an Order of Conditions and provided all appeal periods have elapsed.
2. Such Notice shall be sent electronically and by certified mail or hand delivered to the Commission, in accordance with the submittal requirements set forth in the Commission's filing guidelines, including all plans as may be necessary to describe the proposed activity and its effect on the environment~~,-~~.
3. The Commission may require information in addition to the plans and specifications required to be filed by an applicant under M.G.L. c. 131, § 40, in order to fulfill the requirements of the Ordinance and these Regulations. Such information shall take into consideration the effect that projected sea level rise, changes in storm intensity and frequency, and other consequences of climate change may have on resource areas and the activities proposed in the permit application, utilizing the best available data as determined by the City of Boston, its departments, agencies, quasi-city agencies, or boards.
4. No application shall be deemed complete or timely without the submission of all application forms, plans, appropriate fees, and all requested additional materials by the posted filing deadline.
5. No application shall be deemed complete or timely without the submission of all local permits, variances, and approvals required with respect to the activity or work that is the subject of the Notice of Intent has been obtained, or if all said permits, variances, and approvals have not yet been obtained, without the submission of all applications for all permits, variances, and approvals required with respect to the activity or work that is the subject of the Notice of Intent. Said submission shall contain all information submitted in

connection with such permits, variances, and approvals which is necessary to describe the effect of the proposed activity on the Resource Area Values, as identified in Section I(C).

6. Any supporting plans, calculations or other supporting material submitted as part of an application for a permit shall be prepared, signed, and, if applicable stamped, by a registered professional engineer, registered landscape architect, registered land surveyor, environmental scientist, geologist, or hydrologist when, in the Commission's judgment, the proposed work warrants such professional certification. Submitted materials may be used by the Commission to evaluate the effects of the proposed project on the Resource Area Values. Receipt of all required or requested materials does not imply approval of the project.

7. The Commission shall have the authority to continue the public hearing to a date announced at the hearing, for reasons stated at the hearing. The applicant may also request to continue the hearing to a date announced at the hearing. Reasons for continuing a hearing may include, but are not limited to, failure of the applicant or others to provide information (including comments, recommendations, or action of other city boards and officials) by the submittal deadline, lack of timely receipt of necessary information from the applicant, time needed by the applicant to provide additional or missing information and for the Commission to review such information, inability to view the proposed project site, and need for additional information to evaluate the potential impacts upon the Resource Area Values. Once the Commission closes the public hearing it shall issue an Order of Conditions within 21 days.

7.8. In the event that only a portion of a proposed project or activity lies within an area subject to protection under the Ordinance and these Regulations, and the remainder of the project or activity lies outside those areas, only that portion within those areas must be described in the level of detail called for by the General Instructions issued by the Department of Environmental Protection, these Regulations, and the Commission's Filing Guide. Sufficiently detailed information on the remainder of the project or activity that lies outside an area subject to protection must be provided for the Commission to determine if said project or activity may alter an area subject to protection. Notwithstanding the foregoing, when the Commission has determined that an activity outside an area subject to protection has in fact altered an area subject to protection, it may require such plans, supporting calculations and other documentation as are necessary to describe the entire activity.

8.9. A Notice of Intent shall expire when the applicant has failed to diligently pursue the issuance of an Order of Conditions in

proceedings under the Ordinance and these Regulations. A Notice of Intent shall be presumed to have expired one (1) year after the date of filing unless the applicant submits information showing that

- i) good cause exists for the delay of proceedings under the Ordinance and these Regulations; and
- ii) the applicant has continued to pursue the project diligently in other forums in the intervening period; provided, however, that unfavorable financial circumstances shall not constitute good cause for delay.

9.10. No Notice shall be deemed expired under the Ordinance or these Regulations when an appeal under the Ordinance and these Regulations is pending and when the applicant has provided all information necessary to continue with the prosecution of the case.

#### E. Abutter Notices

1. Any person filing a request, notice, permit, or other application with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivery, or by certificates of mailing to all abutters at their mailing addresses shown on the most recent applicable list provided by the tax assessor, including owners of land directly opposite on any public or private street or way, and owners of land abutters to the abutters, within three hundred (300) feet of the project property line including any in another municipality or across a body of water.

2. Where an abutter is a government agency or subdivision thereof, a reasonable effort must be made to properly identify the mailing address for the main office of the government agency or subdivision thereof. Evidence of such reasonable effort must be provided to the Commission.

2.3. A copy shall be provided in the same manner to the Commission of the adjoining municipality, if the request, notice, permit, or application pertains to property within three hundred (300) feet of that municipality.

3.4. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date if known. The notice to abutters shall be made using the template as designated by the Commission and shall also include a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters.

4.5. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a

person requesting a determination is other than the owner, the request, the notice of the hearing, and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

~~5.6.~~ Abutter notices shall be sent in both English and the second most commonly spoken language(s) in the neighborhood(s) where the project is proposed, per the instructions outlined in the Commission's Filing Guide. Notices shall also include babel cards for additional translation and language access services.

#### F. Public Hearings and Public Meetings

1. The Commission shall conduct a public hearing on any Request for Determination of Applicability, Abbreviated Notice of Resource Area Delineation, Notice of Intent, or other permit application. The Commission in an appropriate case may combine its hearing under the Ordinance and these Regulations with the hearing conducted under the Act and Implementing Regulations.

2. The Commission shall commence a public hearing within twenty-one (21) days from receipt of a completed request, notice, or permit application unless an extension is authorized in writing by the applicant.

3. The Commission shall have authority to continue the hearing

i) to a specific date announced at the hearing, for reasons stated at the hearing, which may include but are not limited to, failure of the applicant or others to provide information (including comments, recommendations, or action of other city boards and officials) by the submittal deadline, lack of timely receipt of necessary information from the applicant, time needed by the applicant to provide additional or missing information and for the Commission to review such information, inability to view the proposed project site, and need for additional information from the applicant or others as deemed necessary by the Commission in its discretion, to evaluate the potential impacts upon the Resource Area Values, ~~the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion,~~

ii) if the Commission finds that consideration of a project is premature due to review pending before any other city, state or federal permitting or regulatory body, or-

~~2.4.~~ due to a lack of quorum.

~~3.5.~~ Notice, including the date, time, place, and subject of any such hearing shall be given at least seven (7) days prior to the hearing by

the Commission or its Agent, in a newspaper of general circulation at the expense of the applicant, and on the Commission's **Internet Website**, as well as by any other method determined by the Commission to provide adequate notice to parties in interest. Notices shall be publicized, and hearings shall be conducted in accordance with the Open Meeting Law, M.G.L. c. 39, s. 23B.

~~4.6.~~ If the Commission requests additional information from the applicant, it must be submitted to the Commission and its agent at least 7 days prior to the next hearing or on a date determined by the Commission at the hearing. If the additional information is subject to consultant review, pursuant to section VII(C) of these Regulations, it must be submitted at least two weeks prior to the next hearing or on a date determined by the Commission at the hearing.

#### G. Orders of Conditions Regulating Work (OOC)

1. Within twenty-one (21) days of closing the public hearing, the Commission shall either:
  - i) Determine the proposed activity is not significant to any of the Resource Area Values identified by the Ordinance and these Regulations;
  - ii) Decide that the proposed activity is significant to one or more of the Resource Area Values identified by the Ordinance and these Regulations and shall issue an Order of Conditions for the protection of said values; or
  - iii) Issue a denial pursuant to Section VI(H) of these Regulations.
2. The performance standards and presumptions to be used by the Commission in determining whether an area is significant to the Resource Area Values under the Ordinance and these Regulations are found in Part II of these Regulations.
3. The Commission is authorized to approve a permit when it determines by findings supported by substantial evidence that the proposed work meets all applicable performance standards and procedures under the Ordinance and these Regulations or when work can be conditioned to meet all such performance standards, and where it determines by findings supported by substantial evidence that the work will not result in significant or cumulative adverse effects upon wetland Resource Area Values protected by the Ordinance and these Regulations. If it issues a

permit, the Commission may impose conditions that the Commission determines necessary or desirable to protect said Resource Area Values, and all activities shall be conducted in accordance with those conditions.

4. The Order of Conditions shall impose such conditions as are necessary to meet the performance standards set forth in Part II of these Regulations for the protection of those areas found to be significant to any of the Resource Area Values identified in the Ordinance and these Regulations. The Order shall prohibit any work or any portion thereof that cannot be conditioned to meet said standards.

#### H. Denials

1. Procedural Denials. If the Commission finds that the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the Resource Area Values, it may issue a denial prohibiting the work. The denial shall specify the information which is lacking and why it is necessary. In writing the procedural denial, the Commission shall:
  - i) State that the denial is specifically based on lack of information describing
    - (a) the site,
    - (b) the work, or
  - ii) the effect of the work on the wetland values; and
  - iii) List specific information needed in each of the three possible problem areas mentioned above, citing appropriate sections of these Regulations.
2. Substantive Denials. The Commission may deny permission for any activity within areas under its jurisdiction if, in its judgment, such denial is necessary to protect the avoid or prevent significant or cumulative effects upon the Resource Area Values. Due consideration shall be given to all possible effects of the proposal on all Resource Area Values. Substantive denials are based on an reasoned analysis of the proposed activity and the likely effects of the activity on the Resource Area Values. In most cases, neither the assumption of protection nor the assumption of damage will be able to be proven with certainty. The Commission will base its judgment on the best information available at the time and in all cases will act to protect the Resource Area Values. The written decision will include the reasons for the denial, citing the Resource Area Values protected, and relevant

regulations. The written decision will be signed by a majority of the Commissioners present.

3. Revocation. The Commission may revoke a permit, order, determination, or decision issued under the Ordinance and these Regulations, but only for violation of the Ordinance, ~~or these Regulations,~~ or any permit, order, determination, or decision issued thereunder, and only after notice of the violation has been given to the permittee and abutters, and after a properly noticed public hearing.
  - i) The Commission reserves the right to revoke any permit, order, determination, or decision issued under the Ordinance and these Regulations, upon a determination that any person issued a permit, order, determination, or decision has committed a violation of the Ordinance, ~~or these Regulations,~~ or any permit, order, determination, or decision issued thereunder.
  - ii) Revocation will be reserved for those instances where:
    - (a) the violation continues to occur even after an enforcement order has been issued, pursuant to Section X of these Regulations,
    - (b) the project under construction differs in a material manner bears no resemblance to that permitted, or
    - (c) if the permit, order, determination, or decision was obtained under fraudulent circumstances or based on circumstances not foreseeable or new information not available at the time of issuance.
  - iii) If the Commission decides to revoke a permit, order, determination, or decision, it will notify the permittee, in writing, twenty-one (21) days prior to the hearing. Notice of the hearing will also be provided in a newspaper of general circulation, to any abutters, and on the Commission's Internet Website, as well as by any other method determined by the Commission to provide adequate notice to parties in interest, ~~to any abutters~~ at least seven (7) days prior to the hearing.
  - iv) If the Commission finds, after a hearing, that the permittee has committed such a violation, and failed to address the violation the Commission may, by majority vote, revoke the permit, order, determination, or decision.

#### I. Recording in the Registry of Deeds or Land Court

The Order of Conditions or Order of Resource Area Delineation shall be recorded in the County Registry of Deeds or Registry District of the Land Court, where appropriate, prior to the commencement of any of the proposed activities regulated by the Order of Conditions. No work shall commence until proof of recording is provided to the Commission. If work is undertaken without the applicant first recording the permit, the Commission may issue an enforcement order.

J. Validity

A Determination of Applicability, Order of Resource Delineation and Orders of Conditions shall be effective for three (3) years from the date of issuance.

K. Extensions of Orders of Conditions and Orders of Resource Area Delineation

1. The Commission may extend a permit for a period of up to an additional three (3) year period from the date of issuance. The request for an extension shall be made to the Conservation Commission at least thirty (30) days prior to the expiration of the permit or else the permit shall be deemed to have expired on the day that falls three (3) years from the date of issuance. The Commission shall hold a public hearing in accordance with the Ordinance and its regulations within twenty-one (21) days of receipt of said request. Should said public hearing be continued past the date of the expiration of the permit, the expiration date shall be stayed to the date on which the Commission votes on whether to extend the permit.
2. The Commission may deny the request for an extension and require the filing of a new Notice of Intent for the remaining work or a new Abbreviated Notice of Resource Area Delineation in the following circumstances:
  - i) 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;
  - ii) Where new information, not available at the time the Order was issued, has become available and indicates that the Order is not adequate to protect the wetland values identified in the Ordinance and these Regulations;
  - iii) Where incomplete work is causing damage to the Resource Area and Resource Area Values in the Ordinance and these Regulations;
  - iv) Where work has been done in violation of the Order or Ordinance and these Regulations; or

- v) Where a Resource Area delineation or certification in an Order of Resource Delineation is no longer accurate.
3. The Extension Permit shall be recorded in the Land Court or the Registry of Deeds, whichever is appropriate and evidence of the recording shall be delivered to the Commission prior to re-commencing the work that is the subject of the Extension Permit.

L. Certificate of Compliance (COC)

1. Upon completion of the work described in the Order of Conditions, the applicant shall request in writing the issuance of a Certificate of Compliance stating that the work has been satisfactorily completed. Upon written request by the applicant on the required form with all necessary supporting documentation and plans, and appropriate fees, a Certificate of Compliance shall be acted on by the Commission within 21 days of receipt thereof, and, if issued, shall certify on the required form that the activity or portions thereof described in the Notice of Intent and plans has been completed in compliance with the Order.

2. 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 Order shall accompany the request for a Certificate of Compliance.

~~2.3.~~ Prior to issuance of a Certificate of Compliance a site inspection shall be made by the Commission or its agent.

~~3.4.~~ If the Commission determines, after review and inspection, that the work has not been done in compliance with the Order, it may refuse to issue a Certificate of Compliance. Such refusal shall be issued within 21 days of receipt of a request for a Certificate of Compliance, shall be in writing and shall specify the reasons for denial.

~~4.5.~~ 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 Order shall accompany the request for a Certificate of Compliance.

~~5.6.~~ If the Order contains conditions which continue past the completion of the 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 it applies, if it does not apply to all the work regulated by the Order.

6.7. The Certificate of Compliance shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate, and evidence of the recording shall be delivered to the Commission within fourteen (14) days of recording.

M. Emergency Certifications

1. The notice required by the Ordinance and these Regulations shall not apply to emergency projects necessary for the protection of the health or safety of the citizens of Boston and to be performed or ordered to be performed by an administrative agency of the Commonwealth, or a political subdivision thereof, or by the City, or a political subdivision thereof. Emergency projects shall mean any projects certified to be an emergency by the Commission or its agent. If issued by the Commission's agent, the emergency certification must be ratified at the next Commission meeting. An emergency certification shall be issued only for the protection of public health and safety.
2. The emergency certification shall include a description of the work which is to be allowed and shall not include work beyond that which is necessary to abate the emergency. If practicable, a site inspection shall be made prior to the certification.
3. The Commission or its agent may impose conditions upon emergency projects to protect the Resource Area Values protected under the Ordinance and these Regulations.
4. The time limitation for performance of emergency work shall not exceed 30 days unless written approval of the Commission or its agent is obtained. Failure to agree to or follow these conditions shall be due cause for stopping all work. Upon failure to meet these requirements, the Commission may order all such work stopped and require the filing of a Notice of Intent or other application.
5. The Commission may adopt emergency regulations in conformance with the Ordinance and these Regulations for limited durations after severe storms, flooding events, or other unusual events, notice of which shall be provided as soon as possible after their adoption.

N. Administrative Review and Decisions

**RESERVED**

**Section VII. Fees**

A. Filing Fees

The Commission is authorized to require an applicant to pay a fee to cover the reasonable costs and expenses borne by the Commission in processing and evaluating the application. At the time of filing an application, the applicant shall pay a filing fee specified in the filing fee schedule included in these Regulations. The fee is in addition to that required by the Act and Implementing Regulations. No application shall be deemed complete or timely without the payment of all required fees. All fees shall be doubled for applications submitted after the fact or in response to an Enforcement Order. Fees shall also be doubled for any Request for a Certificate of Compliance after the Order of Conditions has expired. The Commission may, at its discretion, waive the application fee, costs and expenses for an application. Application fees are not refundable.

B. Fee Schedule

1. Request for Determination of Applicability

- \$100 for project sites up to 1 acre
- \$25 for up to each additional additional acre

2. Abbreviated Notice of Resource Area Delineation

- \$3 per linear foot for each resource area (For each resource area fees shall not be less than \$100)

3. Notice of Intent

i) Category 1

- \$100

ii) Category 2

- \$300

iii) Category 3

- \$550

iv) Category 4

- \$750

v) Category 5

- \$4 per linear foot (The total fee shall not be less than \$100)

4. Request for an Amendment to an Order of Conditions

- \$50 Small Residential (1 to 4 units)

- \$200 Large Residential (5+ units), Commercial, or other
- 5. Request for an Extension of an Order of Conditions
  - \$100 Small Residential (1 to 4 units)
  - \$300 Large Residential (5+ units), Commercial, or other
- 6. Request for a Certificate of Compliance
  - i) Partial Certificate of Compliance
    - \$50 Small Residential (1 to 4 units)
    - \$100 Large Residential (5+ units), Commercial, or other
  - ii) Full Certificate of Compliance
    - \$50 Small Residential (1 to 4 units)
    - \$100 Large Residential (5+ units), Commercial, or other
  - iii) Full Certificate of Compliance after Partial
    - \$50 Small Residential (1 to 4 units)
    - \$100 Large Residential (5+ units), Commercial, or other
- 7. Request for a Reissuance
  - \$75
- 8. Request for Administrative Approval
  - **RESERVED**

C. Consultant Fees

1. As provided by M.G.L. Ch. 44, § 53G, the Commission may impose reasonable fees upon applicants for the purpose of securing the employment of outside consultants including engineers, wetland scientists, wildlife biologists or other experts in order to aid in the review of proposed projects or requests submitted to the Commission pursuant to the requirements of the Act, the Ordinance, these Regulations, or any other state or municipal statute, Ordinance or regulation, as they may be amended or enacted from time to time.
2. Funds received by the Commission pursuant to Section XI(B) of these Regulations shall be deposited with the City Treasurer who shall create a revolving fund specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

3. In such instances the Commission shall notify the applicant in writing of this need and the estimated costs to be borne by the applicant, request payment of that fee, and provide the opportunity for the application to be amended or withdrawn. Notice shall be deemed to have been given on the date the Commission mails or hand delivers said notification. The applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.
4. Expenditures from this fund may be made at the direction of the Commission without further appropriations as provided in M.G.L. Ch. 44, § 53G. Expenditures from this fund shall be made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant.
5. The fee must be received in its entirety prior to the initiation of consulting services. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to determine that the application is administratively incomplete.
6. The consultant shall be chosen by, and report only to, the Commission or its Agent. Consultants must meet the minimum qualifications of: An educational degree in or related to the field at issue; or three or more years of practice in the field at issue or a related field. Such consultants shall work for and represent the interests of the Commission. The Commission shall return any unused portion of the consultant fee to the applicant unless the Commission decides at a public meeting that other further or additional or different services of the consultant are necessary to make an objective decision.

### **Section VIII. Exemptions**

- A. The applications and permits required by ~~the this~~-Ordinance and these Regulations may not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Commission prior to commencement of work; the structure or facility will not be, as determined by the Commission or its agent, substantially changed or enlarged; and the work conforms to any performance standards and design specifications in regulations adopted by the Commission to the extent practicable as determined by the Commission.
- B. The following exemptions shall apply and no application or permit is required under ~~the this~~-Ordinance and these Regulations for:

1. normal maintenance or improvement of land in agricultural or aquacultural use as defined by the Implementing Regulations at 310 CMR 10.04;
2. minor activities, identified in the Implementing Regulations at 310 CMR 10.02(2)(b)2 proposed or undertaken within the Buffer Zone to an area subject to protection under ~~the this~~ Ordinance and these Regulations. In the judgment of the Commission any activity that will alter a resource area subject to ~~the this~~ Ordinance and these Regulations is subject to regulation and requires the filing of a Notice of Intent.
3. emergency projects for the protection of the health and safety of the public pursuant to Section VI(M) of these Regulations

#### **Section IX. Right of Entry**

The Conservation Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under the Ordinance and these Regulations and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

#### **Section X. Enforcement**

- A. No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by the Ordinance or these Regulations, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to the Ordinance or these Regulations .
- B. The Commission shall have authority to enforce the Ordinance, its regulations, decisions, and permits issued thereunder by letters, phone calls, and electronic communication, violation notices, fines, noncriminal citations under M.G.L. c. 40, § 21D, and civil and criminal court actions. Any person who violates the provisions of the Ordinance or these Regulations may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations.
- C. The Commission shall have the authority to set fine amounts and levy fines for violations under the Ordinance and these Regulations and under the ~~Wetlands Protection~~ Act and Implementing Regulations.
- D. Upon request of the Commission, the Corporation Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.

- E. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- F. Any person who violates any provision of the Ordinance, these Regulations, permits, or administrative orders issued thereunder, shall be punished by a fine established by the Commission. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the Ordinance, regulations, permits, or administrative orders violated shall constitute a separate offense. Each resource area, buffer zone or portion thereof in which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the Ordinance, regulations, permits, or administrative orders violated shall constitute a separate offense
- G. As an alternative to criminal prosecution in a specific case, the Commission may issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in M.G.L. c. 40, § 21D.

**Section XI. Security**

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

- A. By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.
- B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.
- C. By any other method the Commission determines effective by preponderance of the evidence to achieve the purposes and intent of ~~the this~~ Ordinance and these Regulations.

**Section XII. Appeals**

Any person with standing to challenge a decision of the Commission may appeal a decision of the Commission under the Ordinance and these

| Regulations in the Superior Court within sixty (60) days following the date of issuance of the decision, in accordance with M.G.L. c. 249 § 4.

**Section XIII. Severability**

Should any term, condition, definition, language, section or provision of these Regulations be found invalid by competent legal authority, the validity of any other term, condition, definition, language, section or provision thereof shall not be affected, nor shall it invalidate any permit, approval, enforcement order or determination which previously has been issued.