

# **CITY OF WORCESTER**

## **Wetlands Protection Ordinance**

**and**

## **Wetlands Protection Regulations**

Executive Office of the City Manager - Office of Planning and Community Development - September, 1990  
Regulations Amended July 1, 2007, September 26, 2016, and June 24, 2019

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## **Section 1: Purpose**

The purpose of this ordinance is to protect the wetlands, related water resources, and adjoining land areas in the City of Worcester by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon wetland values, including, but not limited to the following: public or private water supplies, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution, fisheries, and wildlife habitats (collectively, the “wetland values protected by this ordinance”).

## **Section 2: Jurisdiction**

Except as permitted by the Conservation Commission or as provided in this ordinance, no person shall remove, dredge, build upon, or alter the following areas: within one hundred (100) feet of any freshwater wetland, bordering vegetated wetland, marsh, wet meadow, bog or swamp; within one hundred (100) feet of any bank; any lake, river, pond, or stream; any land under said waters; any land subject to flooding; or within one hundred (100) feet of any existing or proposed inlet to any storm drain, catch basin, or other storm drain system component discharging to any lake, pond, river, stream, or wetland. In addition, any project in progress, which is not serviced by a combined sewer system, and from which a visible occurrence of silted/polluted effluent is entering any of the jurisdictional areas in the previous sentence, regardless of any exceptions in Section 3, shall be placed under the jurisdiction of the Conservation Commission and is subject to the permit and application required by this ordinance.

## **Section 3: Exceptions**

(a) The permit and application required by this ordinance shall not be required for certain categories of work that are within one hundred (100) feet of any existing or proposed inlet to any storm drain, catch basin, or other storm drain system component, but are not within any other areas of jurisdiction as described in Section 2 herein. These categories of work include 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 electricity, gas, telephone, water, telegraph, or other telecommunication services. These categories of work shall also include the following activities when performed by the City of Worcester, its agents, servant, or employees: street resurfacing and reconstruction; maintenance of private streets; sidewalk maintenance and construction; sanitary and surface sewer line maintenance and construction; maintenance of storm drainage systems, including catch basins; and the maintenance and construction of water mains. Notwithstanding the above, the work specifically excepted under this paragraph shall be performed in such a manner so that sediment shall be prevented from entering catch basins or the other areas of jurisdiction described in Section 2 herein.

(b) The permit and application required by this ordinance shall not apply to any project which involves no ground disturbance.

(c) For any project to be serviced by a combined sewer system which is placed under the jurisdiction of the Conservation Commission in Section 2 by its location “within one hundred (100) feet of any existing or proposed inlet to any storm drain, catch basin, or other storm drain system component,” the permit and application required by this ordinance shall not apply. For the purposes of this ordinance an area serviced by combined sewer system consists of any area where storm water normally enters the sewer system and flows to the Upper Blackstone Water Pollution Abatement District Treatment Facility where it is treated along with sanitary sewage.

(d) For any project involving less than ten thousand (10,000) square feet of ground disturbance in areas with slopes less than 15% which is placed under the jurisdiction of the Conservation Commission in Section 2 by its location “within one hundred (100) feet of any existing or proposed inlet to any storm drain, catch basin, or other storm drain system component”, the permit and application required by this ordinance shall not apply.

(e) For any project within the Downtown Commercial Area Revitalization District (CARD) which is placed under the jurisdiction of the Conservation Commission in section 2 by its location “within one hundred (100) feet of any existing or proposed inlet to any storm drain, catch basin, or other storm drain system component,” the permit and application required by this ordinance shall not apply. The CARD boundaries shall be those designated by the Executive Office of Communities and Development.

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

(g) The Conservation Commission may, by Regulations adopted by the Commission pursuant to section 8 of this Ordinance, establish categorical exceptions of activities proposed to be conducted in areas within one hundred (100) feet of any existing or proposed inlet to any storm drain, catch basin, or other component of a storm drain system for which categories of activities the permit and application required by this ordinance shall not be required.

(h) Other than stated in this section, the exceptions provided in the Wetlands Protection Act shall not apply.

#### **Section 4: Applications for Permits and Requests for Determination**

(a) Written application shall be filed with the Commission to perform activities regulated by this ordinance affecting resource areas protected by this ordinance. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit issued pursuant to this ordinance.

(b) The Commission in an appropriate case may not accept as the application and plans under this ordinance the Notice of Intent and plans under the Wetlands Protection Act, G.L. Ch. 131, Sec. 40.

(c) Any persons desiring to know whether or not a proposed activity or an area is subject to this ordinance may in writing request a determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission.

(d) At the time of an application or request the applicant shall pay a filing fee specified in regulations of the Commission. In addition, the Commission is authorized to require the applicant to pay the costs and expenses of any expert consultant chosen by the Commission and deemed necessary by the Commission to review the application or request. Costs to the applicant under this section may not exceed a maximum of Two Thousand Five Hundred (\$2,500) Dollars.

#### **Section 5: Notice and Hearings**

(a) Any person filing a Notice of Intent or a Request for Determination of Applicability with the Commission at the same time shall provide notice thereof in accordance with the Wetlands Protection Act, G. L. Ch. 131, Sec. 40.

(b) The Commission shall conduct a public hearing on any application or request for determination, with notice given at the expense of the applicant, five (5) working days prior to the hearing, in a newspaper of general circulation in the municipality.

(c) The Commission shall commence the public hearing within forty-five (45) days from receipt of a completed application or request for determination. If the Commission fails to comply with this provision, the project shall be deemed a constructive grant approval under this ordinance by the Commission.

(d) The Commission shall issue its permit or determination in writing within thirty-five (35) days of the close of the public hearing thereon. If the Commission fails to comply with

this provision, the project shall be deemed a constructive grant approval under this ordinance by the Commission.

(e) Where appropriate jurisdiction exists, the Commission shall combine its hearing under this ordinance with the hearing conducted under the Wetlands Protection Act, G.L. Ch. 131, Sec. 40.

(f) The Commission shall have the authority to continue the hearing to a date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in Section 6 herein. In the event the applicant objects to a continuance, the hearing shall be closed and the Commission shall take action on such information as is available. If a continued hearing is postponed for more than thirty-five (35) days due to a lack of quorum for the Conservation Commission, the project shall be deemed a constructive grant approval under this ordinance by the Commission.

(g) For any constructive grant approval, the applicant, who seeks such approval shall notify the Commission, in writing, by certified mail or hand delivery, within fourteen (14) days from the expiration of the applicable deadline.

### **Section 6: Coordination**

(a) Any person filing a Notice of Intent with the Commission shall provide copies thereof to the city boards and officials as required by the regulations of the Commission. The Commission reserves the right to solicit comments from city boards and officials to assist in evaluation of Notices of Intent. The applicant shall have the right to receive any such comments and recommendations and to respond to them at a public hearing of the Commission.

### **Section 7: Permits, Determinations and Conditions**

(a) If the Commission, after a public hearing, determines that the activities which are the subject of the application are likely to have a significant effect upon the wetland values protected by this chapter, the Commission, within thirty-five (35) days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, then the Commission shall impose conditions which the Commission deems necessary to protect those values, and all activities shall be done in accordance with those conditions. One such condition shall be that the person agrees to allow the Commission, its agents, servants, and employees to enter said property for periodic inspections to monitor compliance with such conditions.



(b) The Commission may deny a permit for failure to meet the requirements of this chapter; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant effects upon the wetland values protected by this chapter; and where no conditions are adequate to protect said values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

(c) A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission, in its discretion, may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed for additional one year periods, provided that a request for a renewal is received in writing by the Commission prior to thirty (30) days of expiration.

(d) The Commission may revoke or modify a permit issued under this chapter after public notice and public hearing, and notice to the holder of the permit, if in the opinion of the Commission the person is acting contrary to G.L c. 131 or this chapter.

(e) The Commission in an appropriate case may combine the permit or other action on application issued under this ordinance with the Order of Conditions issued under the wetlands act.

### **Section 8: Appeals**

(a) Appeal from a decision of the Conservation Commission acting under authority of G.L. c. 131, Sec. 40A is to the Department of Environmental Protection pursuant to the Code of Massachusetts Regulations. Appeal from a decision of the Conservation Commission acting under authority of this chapter shall be taken in accordance with law to the Superior Court or other body of competent jurisdiction. Any such appeal shall be taken within ten (10) days from the date from the receipt of such decision and shall not relieve the individual of the responsibility of taking an appeal to Department of Environmental Protection if such is required under said regulations.

(b) If the Commission issued a positive Determination of Applicability, then no work may proceed until the appeal has been decided, and all appeal periods have elapsed. If the Commission issued a negative Determination of Applicability, then work may proceed at the applicant's risk upon written notice to the Commission. No work may proceed until the appeal on the Commission's decision on a Notice of Intent has been decided and all appeal periods have elapsed.

### **Section 9: Certificate of Compliance**

Within twenty-one (21) days of the receipt of a written request by the applicant or the owner of the property for a Certificate of Compliance, the Commission shall grant such request if the activity or portions thereof described in the Notice of Intent and plans complies with the Order of Conditions imposed pursuant to requirements solely under this ordinance. The Certificate of Compliance shall state that the activity, or portions thereof, has been completed in accordance with such order.

### **Section 10: Regulations**

After public notice and public hearing the Commission shall promulgate rules and regulations to effectuate the purposes of this ordinance. These regulations shall be promulgated prior to the effective date of this chapter. A failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this ordinance.

### **Section 11: Definitions**

The following definitions shall apply in the interpretation and implementation of this chapter. For any terms not defined in this ordinance or the regulations thereunder, the definitions used in the Wetlands Protection act and its subsequent regulations shall apply:

“person” - shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to municipal ordinances, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

“alter” - shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this chapter:

- (1) removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- (2) changing of preexisting drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- (3) dumping, discharging or filling with any material which may degrade water quality;
- (4) placing of fill, or removal of material, which would alter elevation
- (5) driving of piles, erection of or additions to buildings or structures of any kind;

- (6) placing of obstructions or objects in water;
- (7) removal of vegetation from a combined total area exceeding ten thousand square feet on a single or adjacent lots;
- (8) changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water; but specifically excluding the use of de-icing materials and chemicals for roadway maintenance during the winter months;
- (9) any activities, changes or work which may cause or tend to contribute to the pollution of any body of water or ground water.
- (10) for the purposes of this ordinance more than one contiguous area under development constitutes a single project.

“Land subject to flooding” shall include:

- (1) bordering land subject to flooding defined as a low , flat area adjacent to and inundated by flood waters rising from creeks, rivers, streams, ponds, or lakes, also defined in the wetlands act;
- (2) isolated land subject to flooding defined as an isolated depression or closed basin without an inlet or an outlet which at least once a year confines standing water to a volume of at least 1/8 acre-feet.

“Wetlands protection act” , or “wetlands act”, shall refer to G.L. c. 131, section 40.

### **Section 12: Time of Receipt**

The date of receipt of any Request for Determination, Notice of Intent, or other filing requesting action by the Commission shall be the date it is received by the office of the Commission.

### **Section 13: Security**

(a) As part of a permit issued under this chapter, 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 hereunder be secured wholly or in part by one or more of the methods described below:

- (1) by a proper bond or deposit of money or other undertaking of financial responsibility sufficient in the opinion of the Commission and subject to approval by the City Manager and the City Solicitor;
- (2) by a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than mortgage deed.

(b) where appropriate jurisdiction exists, the Commission may accept one form of security to bind performance under this ordinance and the Wetlands Act.

#### **Section 14: Enforcement**

(a) The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this chapter and may make or cause to be made such examinations, surveys or samplings as the Commission deems necessary.

(b) The Commission shall have the authority to enforce this chapter, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions.

(c) The City Solicitor shall represent the Commission in any judicial proceeding in which it is a party.

(d) Upon request of the Commission, the City Manager and the City Solicitor shall take legal action for enforcement.

(e) Any person who violates any provision of this chapter, regulations thereof, or permits issued thereunder, shall be punished by a fine of not more than three hundred dollars (\$300). Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of this chapter, regulations, or permit violated shall constitute a separate offense.

(f) In the alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure set forth in G.L. c. 40, section 21D and chapter fifteen of these Revised Ordinances.

#### **Section 15: Burden of Proof**

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have an unacceptable significant effect upon the wetland values protected by this chapter. Failure to provide adequate

evidence to the commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

**Section 16: Wetlands Protection Act**

This chapter is adopted under the Home Rule Amendment of the Massachusetts Constitution and the home rule statutes, independent of the Wetlands Act and regulations thereunder.

**Section 17: Prior Violations**

Any such person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this ordinance or in violation of any order issued pursuant to this ordinance shall forthwith comply with any such order, or restore such real estate to its condition prior to any such violation; provided however that no such action, civil or criminal, shall be brought against such person unless commenced within three (3) years following the date of acquisition of the real estate by such person.

# CITY OF WORCESTER



## WETLANDS PROTECTION REGULATIONS

**Approved by the Worcester Conservation Commission on July 2, 1990  
Amended July 1, 2007, September 26, 2016, and June 24, 2019**

**Preface**

The Worcester Wetlands Protection Ordinance of 1990 was enacted by the Worcester City Council to provide more effective protection of the city's wetlands. The motivation for this Ordinance involved principally the need for additional standards governing certain activities in and near wetlands and the need for regulation of certain, particularly large, projects distant from wetlands but connected to them via the storm sewer system. This Ordinance in no way eliminates the need for any project to comply with the State Wetlands Protection Act (M. G. L. Ch. 131, Sec. 40) and its accompanying regulation (310 CMR 10.00), but rather supplements these and in some cases extends the jurisdiction of the Conservation Commission beyond that described in the State regulations.

In 310 CMR 10.00 performance standards are provided for five categories of inland resource areas: bank, bordering vegetated wetland, land under water bodies and waterways, bordering land subject to flooding, and isolated land subject to flooding. In the present regulations, the definitions and standards for bank and land under water bodies and waterways remains unchanged. The definition of bordering vegetated wetland has been modified to allow for delineation based on soils in cases where the vegetation has been disturbed. A specific list of conditions has been established for any project proposing a discretionary taking of bordering vegetated wetland. The definitions of bordering and isolated land subject to flooding have been modified but performance standards for these resource areas remain unchanged. Presumptions and standards concerning the buffer zone of resource areas have been elaborated and more specific. A new buffer surrounding stormwater drainage inlets has been introduced. General erosion and sediment control guidelines have been specified for all projects under Commission jurisdiction. Finally, the procedures and types of materials required for filings with the Commission have been described.

**1. Introduction and Purpose**

- 1.1 Authority - These Wetlands Regulations ("the regulations") are promulgated by the Worcester Conservation Commission ("the Commission") pursuant to authority granted in the Worcester Wetlands Protection Ordinance ("the Ordinance") as ordained on May 8, 1990.
- 1.2 Purpose - The purpose of these regulations is to establish definitions, uniform procedures and standards by which the Conservation Commission will carry out its responsibilities under the Ordinance.
- 1.3 Interpretation - The Regulations shall be interpreted and applied so as to be consistent with the Ordinance.

- 1.4 Revision - The Regulations may be revised from time to time by the Commission after public notice and hearing as required by the Ordinance.
2. **Definitions** - The following definitions shall apply in the interpretation and implementation of these Regulations. For any terms not defined in the Regulations or in the Ordinance, the definitions used in the Massachusetts Wetland Protection Act (MGL, Ch. 131, Sec. 40) and its accompanying regulations shall apply.
- 2.1 Bordering Vegetated Wetland - As defined in 310 CMR 10.55(2) except that where vegetation has been altered, the presence of hydric soils shall be considered in determining the boundary of a bordering vegetated wetland.
- 2.2 Bordering Land Subject to Flooding (BLSF) - Bordering Land Subject to Flooding is an area with low, flat topography adjacent to and inundated by flood waters rising from creeks, rivers, streams, ponds or lakes. BLSF extends from the banks of these waterways and water bodies. Where a bordering vegetated wetland occurs, BLSF extends from said wetland. The boundary of Bordering Land Subject to Flooding is the estimated maximum lateral extent of flood water which will theoretically result from the statistical 100 year frequency storm. Said boundary shall be that determined by reference to the most recently available flood profile data prepared for the City of Worcester under the National Flood Insurance Program administered by the Federal Emergency Management Agency. Said boundary, so determined shall be presumed accurate. This presumption may be overcome by credible evidence from a registered professional engineer or other professional competent in such matters. Where National Flood Insurance Program profile data is unavailable, the Conservation Commission may require the applicant to determine the boundary of BLSF by engineering calculations prepared by a registered professional engineer or other professional competent in such matters. The engineering calculations shall be based upon a design storm of seven (7) inches of precipitation in twenty - four (24) hours using the standard methodologies set forth in the U. S. Soil Conservation Service Technical Release No. 55, "Urban Hydrology for Small Watersheds" and Section 4 of the U.S. Soil Conservation Service, "National Engineering Hydrology Handbook." In determining the boundaries of the BLSF, the Commission shall also consider an observed flood boundary provided that the observation is documented and recorded.
- 2.3 Combined Sewer System - An area served by Combined Sewer System consists of any area where storm water normally (i.e. by design) enters the sewer system and flows to the Upper Blackstone Water Pollution Abatement District Treatment Facility or the Quinsigamond Avenue Overflow Treatment Facility where it is treated along with sanitary sewage.



- 2.4 Commercial Area Revitalization District (CARD) - The CARD boundaries shall be those designated by the Executive Office of Community Development on September 28, 1988. These boundaries are approximately from Lincoln Square on the north, to the Artery on the west, to Madison Street on the south, and I-290 on the east. (See Attachment 1 for detailed description).
- 2.5 Isolated Land Subject to Flooding (ILSF) - As defined by 310 CMR 10.57 (2) (b) except that is an area which at least once a year confines standing water to a volume of at least 1/8 acre-feet.
- 2.6 Impervious Surface - Material, above or on the surface of or immediately occurring within twelve (12) inches of the surface of the ground, that does not allow water to penetrate into the soil below. An impervious surface shall include but not be limited to all buildings, parking areas, driveways, roads, sidewalks, and areas of concrete or asphalt, except where runoff from impervious surfaces is recharged on-site and diverted to areas allowing for surface infiltration.
3. General Provisions - All general provisions in 310 CMR 10.53 shall apply in these regulations. In addition, the following shall apply.
- 3.1 Limited Project Wetland Crossings - Section 310 CMR 10.53 (3) indicates that the Commission has discretionary authority to issue permits for limited projects. In addition, DEP Policy 88-2 which is an interpretation of 310 CMR 10.53 (3) (e) on limited project wetland crossings for access roadways and driveways indicates that the Commission “may require the applicant to evaluate the reasonableness of any previously or currently available alternatives including the realignment or reconfiguration of the project”. In order to assist in the evaluation of the alternatives, the applicant shall submit an additional concept plan for each wetland crossing proposed in a limited project. The additional concept plans must show a potential use of the property under a configuration which eliminates each proposed crossing. For example, if an applicant proposes a limited project with two wetland crossings, three plans should be submitted, one showing the proposed project with two crossings, and alternatives showing the project with one crossing and no crossings. A concept plan requires only existing topography, wetlands, roadways, lot lines, and wetland impact areas. The requirements of section 5 herein shall not apply to concept plans.
- 3.2 Erosion and Sediment Control
- 3.2.1 Preamble - Sedimentation as a result of land development has long been acknowledged as the largest identifiable source of pollution and degradation of our wetlands. The intent of this section is to describe appropriate standards and measures applicable to all projects involving land disturbance.

3.2.2 Presumption - Where a proposed activity involves the removal of vegetative cover, or significant disturbance of the surface, erosion can be presumed to occur. This presumption may be overcome by providing evidence to the Commission that site conditions (i.e. soil and slope) will prevent sediment from leaving the disturbed area. In the event that the presumption is deemed to have been overcome, the commission shall make a written determination to this effect.

3.2.3 General Performance Standards - Where 3.2.2 is not overcome, the project shall meet the following performance standards. Any proposed alteration shall not expose or cause soil to be exposed so that uncontrolled erosion occurs. Evidence of this condition may include the formation of gullies, the cutting back of existing banks by stormwater flow or the presence of visible sediment in the runoff. Erosion shall be mitigated by a combination of the following means as appropriate to the specific site:

- (a) Limit erosion by minimizing the amount of exposed ground and the length of time it is exposed.
- (b) Reduce the steepness and length of slopes on the site.
- (c) Divert flows away from disturbed areas during construction.
- (d) Protect exposed surfaces through vegetative or other stabilizing cover.
- (e) Decrease the velocity of runoff through check dams, slope breaks, berms, and improved ( i.e., vegetation, rip rap) drainage surfaces.
- (f) Trap sediment in basins and behind barriers (i.e., staked hay bales and fencing). The barriers are to be keyed into the ground to prevent sediment from passing under them.
- (g) Maintain and adjust erosion and sediment control measures continuously during construction.

3.3 Denials - The Commission is empowered to deny a permit for failure to meet the requirements of the Ordinance; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and regulations of the Commission; for failure to avoid or prevent unacceptable effects upon the wetland values protected by the Ordinance; for situations where no conditions may be imposed which are adequate to protect those values.

- 3.4 Burden of Proof - The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not harm the interests protected by this Ordinance. Failure to provide adequate evidence to the Commission supporting a decision that the proposed work will not harm the interests protected by this Ordinance shall be sufficient cause for the Commission to: 1) deny a permit; 2) grant a permit with conditions; or 3) request permission to continue the hearing in order the applicant or others may present additional evidence.

#### **4. Performance Standards**

- 4.1 Activities Within Areas Subject to Protection Under the Ordinance - The general performance standards for Banks, Land Under Water Bodies, Bordering Land Subject to Flooding and Isolated Land Subject to Flooding shall be as stated in 310 CMR 10.00. The general performance standards for Bordering Vegetated Wetland (BVW) shall be as stated in 310 CMR 10.55 except where taking of BVW is proposed. The Commission will consider projects requiring the permanent alteration of up to 5,000 square feet of BVW as permitted by 10.55 (4) (b) only if the applicant demonstrates: 1) no practical alternative is available; 2) project scope and design minimize the amount of resource area destroyed; 3) in the judgment of the Commission such work will not lead to degradation of additional BVW; and 4) replication is provided in a ratio of 1.5:1 for the wetland destroyed.

#### 4.2 Activities Within the Buffer Zone

4.2.1 Preamble - Projects undertaken within one hundred (100) feet of a wetland resource area have a high likelihood of altering that area, either during construction or from routine operation of the completed project. In the experience of the Commission, projects in that part of the buffer zone closest to the wetland almost inevitably lead to degradation of the resource area. The intent of this section is to explain activities that are and are not acceptable adjacent to resource areas.

4.2.2 Definition - The buffer zone includes all land within one hundred (100) horizontal feet of any bank, freshwater wetland, marsh, swamp, creek, river, stream, pond, bog, lake , or bordering vegetated wetland.

4.2.3 Presumption - Within a buffer zone all activities that involve removal of vegetation (excepting routine lawn and garden maintenance), grading, filling, excavation, erection of permanent structures, application of inorganic fertilizers (excluding lime and other soil treatments approved by the Commission) or application of pesticides whose labels indicate they are toxic to aquatic organisms, may alter the adjacent resource areas. This presumption may be overcome by meeting the general performance standards set forth below.

4.2.4 General Performance Standards -

A. Structures and Improvements to Land - Except as may be allowed, no permanent or temporary foundation, building, road, sidewalk, bridge, sign, billboard or other permanent or temporary structure shall be placed within 30 feet of any resource area, unless,

1. It is a component of a qualified limited project under the state Wetlands Protection Act and the regulations promulgated pursuant thereto; or
2. It is a component of any storm water, flood control, water conservation, erosion control or soil conservation project otherwise approved.

B. Construction Activities - Except as may be allowed below, no grading, filling, excavation, removal of vegetation or other construction activity (hereinafter, collectively the work) shall be allowed within fifteen feet (15') of any resource area, unless,

1. The Work is required to provide access to a resource area where a discretionary taking has been allowed under section 4.1 of these regulations; or
2. The Work is a component of any of the activities cited in (1) or (2) of subsection (A), above.

C. Discretionary Allowances - The structures, Improvements and Work otherwise prohibited under subsections (A) and (B), above, may be allowed by the Conservation Commission if the applicant demonstrates and the Commission finds:

1. Alternatives to the applicant's proposal have been considered, and no reasonable alternative is available; and
2. The project scope and design minimize work in close proximity to any resource area; and
3. The particular site conditions (including, but not limited to slope, soil type and

hydrology) will allow prevention of wetlands damage from such work; and

4. The work will not lead to further encroachments on the resource area after completion of the project; and

5(A) the structure, improvement or activity is a component of any project to provide public access to and within the resource area after completion of the project;

or

(B) the permitted activity will not materially impair significant conservation interests and is consistent with the interests and purpose of the wetlands protection ordinance.

D. Burden of Proof - The applicant shall have the burden of proof that the work proposed in its notice of intent and for which approval is sought under subsection (C), above, satisfies all of the necessary findings set forth therein. Failure to provide adequate evidence shall be sufficient grounds for the Commission to deny or condition the applicant's proposal.

E. Waiver - Notwithstanding anything to the contrary in subsection (C), above, the Commission, upon request thereof, and after a public hearing on such request, may waive any of the provisions of this Section 4.2.4 upon making the following findings:

1. There are no reasonable conditions or alternatives that would otherwise allow the project to proceed in compliance with these regulations; and

2. A waiver is necessary to accommodate the project, which will provide a significant general public benefit and will not materially impair significant wetlands interests.

#### 4.3 Activities Within the Stormwater Protection Zone (SPZ)

4.3.1 Preamble - Certain projects undertaken within one hundred (100) feet of an inlet to any storm drain system component have resulted in impacts and alterations to downstream wetland resource areas. The intent of this section is to describe the SPZ and the performance standards for protecting wetland resource areas from pollution via stormwater systems.

4.3.2 Definition - the SPZ includes all land within one hundred (100) horizontal feet of any existing or proposed inlet to any storm drain, catch basin or storm drain system component discharging to any lake, pond, river, stream, or wetland.

Excluded from the SPZ are areas exempted in Section 3 of the Ordinance.

4.3.3 Presumption - Within the SPZ, all proposed activities that involve removal of vegetation (excepting routine lawn and garden maintenance), grading, filling, excavation or erection of permanent structures may alter a wetland resource area by transmitting pollutants through the stormwater system. For areas not exempted by Section 3 of the Ordinance, the presumption for the SPZ is as follows: (a) for locations involving slopes of 15% or greater, all activities within the SPZ that involve earth disturbance (removal of vegetation, grading, filling, excavation, etc.) of over five thousand (5,000) square feet are presumed to alter downstream wetland resources; (b) for locations involving slopes of less than 15%, all activities within the SPZ that involve earth disturbance (removal of vegetation, grading, filling, excavation, etc.) of over ten thousand (10,000) square feet are presumed to alter downstream wetland resources.

4.3.4 General Performance Standards - All projects within the SPZ that are presumed to alter downstream resource areas shall meet the following general performance standards: (a) erosion and sediment controls must be provided according to a plan conforming to the provisions of section 3.2 herein and approved by the Conservation Commission; (b) The general performance of erosion controls shall be considered adequate if there is no visibly silted effluent entering the stormwater system; and (c) for projects resulting in the conversion of five thousand (5,000) square feet or more of pervious surface to impervious surface, measures shall be provided to mitigate peak rates of runoff and minimize discharge of pollutants to the stormwater system.

## **5. Plans Engineering Information**

- 5.1 General - Plans shall describe the proposed activity and its effect on the environment. All plans, drawings, sketches, and calculations shall be dated and signed by the person responsible for their preparation. Plans and drawings involving the practice of surveying or engineering shall be stamped and signed by a professional surveyor or engineer if required by the Commission. Plans shall be consistent with those submitted to other City boards and departments.
- 5.2 Plan Requirements For A Request For Determination of Applicability - Unless otherwise authorized by the Commission, plans submitted for a Request For Determination of Applicability shall include the following information at a minimum:
- (a) A Project locus map copied from a U.S. Geological Survey quadrangle sheet or a City of Worcester map showing the location of the proposed activity.
  - (b) Names and locations of adjacent roadways.

- (c) Property lines with distances.
- (d) On all drawings the title designating the project location, the name of the person preparing the drawings, the date, and any revision dates.
- (e) Delineation of all known wetland resource areas and the Buffer Zone for Bordering Vegetated Wetland.
- (f) Location of all present and proposed structures and paved areas.

5.3 Plan Requirements for a Notice of Intent - Unless otherwise authorized by the Commission, plans submitted for a Notice of Intent shall include the following information at a minimum:

- (a) A project locus map copied from a U.S. Geological Survey quadrangle sheet or City of Worcester map showing the location of the proposed project.
- (b). Names and locations of adjacent roadways.
- (c) Property lines including distances.
- (d) On all drawings the title designating the project location, the name of the person preparing the drawings, the date prepared and any revision dates.
- (e) Delineation of all known wetland resource areas and the Buffer Zone for Bordering Vegetated Wetland.
- (f) Location of all present and proposed structures and paved areas.
- (g) Existing and proposed contours of the entire site and affected adjacent areas. Generally, two (2) foot contours should be shown. Contours should refer to the National Geodetic Vertical Datum of 1927 and any amendments thereof.
- (h) Location of existing and proposed stormwater management facilities and associated engineering data.
- (i) Location of proposed wetland areas to be filled and associated replication areas. Cross sections showing slopes, bank and bottom treatment of each wetland resource to be altered. Locations of cross sections must be specified.
- (j) Locations and elevations of cellars or floors and subsurface sewage disposal systems, including leaching facilities and reserve leaching areas.
- (k) Soil characteristics of the site.

- (l) Erosion and sediment control plans.
  - (m) Layout and site plans shall be drawn at commonly acceptable scales, preferably one (1) inch = forty (40) feet with detail and profile drawings drawn to appropriate scales.
  - (n) For plans involving construction of areas in excess of one acre, methods for stabilizing cleared areas of the site during extended shutdown due to weather, economic conditions or any other cause should be provided.
  - (o) The sequence of construction for proposed erosion and sediment controls, clearing and grubbing, excavation, installation of improvements, grading, and stabilization.
  - (p) For projects requiring hydraulic/hydrologic calculations, plans showing subcatchment areas, cover, soil types, drainage paths and design points with labelling which corresponds to the calculations should be provided. Analysis of the 1 (or 2), 10, 25, and 100 year frequency storms for pre-development and post-development conditions should be provided as appropriate, including a concise summary of peak rates of flow at design points as well as flood elevations and duration. Massachusetts Stormwater Standards, or standards otherwise required by the ordinance or regulations, shall be met using design storms based on NOAA Atlas 14, Cornell's Northeast Regional Climate Center data, or if newer data is available, most conservative data based on highest precipitation amounts.
- 5.4 Other Information - The requirements stated above are not definitive or exclusive. Some may be omitted in a particular case and an applicant may be required to submit additional information deemed necessary to determine compliance with the Ordinance. Applicants and their consultants are encouraged to contact Conservation Commission staff to ascertain information requirements for specific projects.

## **6. Procedures**

- 6.1 Determination of Applicability - A Request For Determination of Applicability shall be deemed filed pursuant to the Ordinance if it includes plans and other information as required by these regulations and is either hand delivered or sent by Certified Mail to the Conservation Commission office. The correct application form to be used is Form #1 (See 310 CMR 10.99). The Commission will issue its decision in a Determination of Applicability using Form #2 (See 310 CMR 10.99).
- 6.2 Notice of Intent - A Notice of Intent shall be deemed filed pursuant to the Ordinance if it includes correct filing fees (See Section 7.2.2 ), plans and other information as required by these regulations and is either hand delivered or sent



Certified Mail to the Conservation Commission office. The correct application form for Notice of Intent, which are solely under the jurisdiction of this Ordinance, is form #4 (See 310 CMR 10.99).

- 6.3 Forms - The forms to be under these Regulations are located in Attachment 2. For filings which are under the jurisdiction of the Ordinance and not under the jurisdiction of the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, Sec. 40), the applicant shall not send copies of the application to the Department of Environmental Protection.
- 6.4 Digital Submission – In addition to the required paper copies, all applications and associated plans and materials (“materials”) shall also be electronically submitted prior to or at the time of application submittal to the Conservation Commission Office.
- (a) Such materials shall be submitted using an electronic file sharing service acceptable to the Division of Planning & Regulatory Services and shall be provided in the following format: City of Worcester Wetlands Protection Ordinance and Wetlands Protection Regulations - 21 -
- (i) In portable document format (.pdf), readable by Adobe Acrobat v.7.0 or later, named by project address and application type;
- (ii) Minimum resolution of 200 dpi; and
- (iii) No single file shall be greater than 50 MB (collections may be broken into separate files).
- (b) Exceptions:
- (i) Any application items not produced electronically, such as hand-drawn plans, drawings or hand written applications are not required to be submitted electronically; and
- (ii) Plans, drawings and applications created prior to September 2016 that are not available to the applicant in electronic format.

## **7. Consolidation of Hearings and Fees Under the Wetlands Protection Act**

- 7.1 Hearing - Pursuant to Section 5 of the Ordinance, the Commission shall consolidate the hearing under the Act with the hearing under the Ordinance.
- 7.2 **Fees** - The fees required by this Section shall be separate from the fees pursuant to M.G.L. c. 131, § 40 of the Massachusetts Wetlands Protection Act. These fees shall be submitted as a separate check made payable to the City of Worcester.

**7.2.1 Advertising Fee** – A twenty-five dollar (\$25.00) advertising fee will be assessed for either a Request for Determination or a Notice of Intent filing. For a hearing that is continued to an unspecified date, the new hearing date will be advertised at a cost of twenty-five dollars (\$25.00) to the applicant.

**7.2.2 Late Filings** - Fees for filings after work has commenced shall be double the fee listed for activities contained in Sections 7.2.3.1, and 7.2.3.2(C) of these Regulations. A late filing is any filing that is submitted to the Commission after the start of any activity that is subject to these Regulations.

**7.2.3 Fee Schedule** – The following fee schedule is based on the following categories. Local fees for any single project shall not exceed five thousand dollars (\$5,000.00).

**7.2.3.1: Notice of Intent Filings**

**A. Category 1 Activities** – The fee for the following activities shall be seventy-five dollars (\$75.00):

- 1) work on single family lot, including but not limited to an addition, pool, or deck.;
- 2) site work without a structure;
- 3) control vegetation;
- 4) resource improvement;
- 5) work on septic system separate from house;
- 6) monitoring well activities minus roadway; and
- 7) new agricultural.

**B. Category 2 Activities** – The fee for the following activities shall be two hundred dollars (\$200.00):

- 1) construction of each single-family dwelling unit;
- 2) parking lot;
- 3) beach nourishment;
- 4) electric generating facility activities;
- 5) limited projects minus road crossings and agriculture;
- 6) each crossing for driveway to single dwelling unit;
- 7) each project source (storm drain) discharge;
- 8) control vegetation in development;
- 9) water level variations; and
- 10) any activity not in Section 7.2.3.1 (A), (C), and (D) and Section 7.2.3.2 (A) and (B).

**C. Category 3 Activities** – The fee for the following activities shall be five hundred dollars (\$500.00):

- 1) site preparation (for development) beyond Notice of Intent scope;
- 2) each building (for development)and site, including multi-family;
- 3) road construction not crossing or driveway; and
- 4) hazardous cleanup.

**D. Category 4 Activities** – The fee for the following activities shall be seven

hundred fifty dollars (\$750.00):

- 1) each crossing for subdivision or commercial road;
- 2) dam, sluiceway work;
- 3) landfills operation/closures;
- 4) sand and gravel operations;
- 5) railroad line construction;
- 6) bridge;
- 7) hazardous waste alterations to resource areas;
- 8) dredging;
- 9) package treatment plant and discharge;
- 10) oil and/or hazardous material release response actions; and
- 11) wetland replication.

### **7.2.3.2: Administrative Fees**

**A. Category 5 Activities** – The fee for the following activities shall be two dollars (\$2.00) per linear foot. The total fee shall not be less than fifty dollars (\$50.00) or more than one thousand dollars (\$1,000.00):

- 1) work on docks, piers, revetments, dikes, etc.

**B. Category 6 Delineation** – The fee shall be two dollars (\$2.00) per linear foot for each resource area. For each resource area delineation for a single-family house the fee shall not be less than one hundred dollars (\$100.00) or more than two hundred dollars (\$200.00). For each resource area delineation for any other activity the fee shall not be less than one hundred dollars (\$100.00) or more than two thousand dollars (\$2,000.00) for any single project.

**C. Category 7 Administrative** – The fee shall vary for each subsection, as follows:

**1) Request for Determination of Applicability**

Fee for a Request for Determination of Applicability is fifty dollars (\$50.00) for the first acre of land, and forty dollars (\$40.00) for each subsequent acre;

**2) Extension**

Fee for a Request for Extension is one hundred dollars (\$100.00) for Single-lot Residential projects and three hundred dollars (\$300.00) for Subdivisions and Commercial projects;

**3) Request for Amendment to Order of Condition**

Fee for a Request for Amendment to Order of Condition is fifty dollars (\$50.00) for Single-lot Residential projects and two hundred dollars (\$200.00) for Subdivisions and Commercial projects; and

**4) Certificate of Compliance and Partial Certificate of Compliance**

Fee for Certificate of Compliance or Partial Certificate of Compliance is

fifty dollars (\$50.00) for a Single-lot Residential project and one hundred dollars (\$100.00) for a Subdivision or Commercial project.

**D. Category 8 Consultant Fee** - The consultant fee shall be paid by the applicant/owner in an amount equal to one hundred and ten percent (110%) of the actual costs to be incurred to retain independent engineering or other advice deemed necessary by the Commission to review the application, grant or deny the permit and impose appropriate conditions. All consulting fees for a given project shall not exceed the maximum fee specified in the City of Worcester Wetlands Protection Ordinance.

**7.2.4 Payment** - The filing fee and advertising fee shall be payable upon filing of the application and shall be submitted with a City of Worcester Wetlands Protection Regulations Fee Calculation Sheet. Failure to pay the filing fee and the advertising fee or submit the Calculation Sheet when due shall cause the application to be deemed incomplete and the hearing will not be opened. The consultant fee shall be payable when the Commission engages an independent consultant. Failure to pay the consultant fee when due shall constitute sufficient cause to deny the permit.

- 8. Severability** - The invalidity of any section or provision of these Regulations shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.
- 9. Effective Date** - These Regulations shall take effect on September 5, 1990. Promulgation of these regulations shall not affect any action by the Commission prior to their effective date

**ATTACHMENT 1**









RESOLUTION OF THE CITY COUNCIL OF WORCESTER  
APPROVING CARD AMENDMENT

WHEREAS: In accordance with Chapters 40D and 23D Massachusetts General Laws, the Commonwealth of Massachusetts' acting by and through the Secretary of Communities and Development may approve Commercial Area Revitalization District Plans (herein referred to as CARD Plans); and

WHEREAS: Such approval is a precondition for the use of various state financial incentives for commercial development that would be in the public interest of the citizens of Worcester; and

WHEREAS: The existing Downtown Worcester CARD, situated in the City of Worcester is bounded as follows:

{That certain areas of land, referred to as the Downtown Commercial Area Revitalization District (CARD), situated in the City of Worcester and Commonwealth of Massachusetts, and bounded generally as follows:

Beginning at a point in the center line of Lincoln Square.

Thence north along the center line of Lincoln Street to a point of intersection with the center line of Concord Street.

Thence west along the center line of Concord Street to a point of intersection with the center line of Prescott Street.

Thence northwest along the center line of Prescott Street to a point of intersection with the center line of Rural Drive.

Thence west along the center line of Rural Drive to a point of intersection with the center line of Grove Street.

Thence southeast along the center line of Grove Street to a point of intersection with the center line of Humbolt Avenue.

Thence southwest along the center line of Humbolt Avenue to a point of intersection with the centerline of Salisbury Street.

Thence west along the center line of Salisbury Street to a point of intersection with the center line of Lancaster Street.

Thence south along the center line of Lancaster Street to a point of intersection with the center line of Linden Street.

Thence southwest along the center line of Linden Street to a point of intersection with the center line of Irving Street

Thence southwest along the center line of Irving Street to a point of intersection with the center line of Chandler Street.

Thence south east along the center line of Chandler Street to a point of intersection with the center line of Murray Avenue.  
Thence south west along the center line of Murray Avenue to a point of intersection with the center line of Piedmont Street.  
Thence southwest along the center line of Piedmont Street to a point of intersection with the center line of Main Street.  
Thence southwest along the center line of Main Street to a point of intersection with the center line of Hammond Street.  
Thence northeast along the center line of Main Street to a point of intersection with the center line of Hermon Street.  
Thence southeast along the center line of Hermon Street to a point of intersection with the center line of Southbridge Street.  
Thence north along the center line of Southbridge Street to a point of intersection with the center line of Madison Street.  
Thence southeast along the center line of Madison Street to a point of intersection with the center line of Harding Street.  
Thence south along the center line of Harding Street to a point of intersection with the center line of Seymour Street.  
Thence east along the center line of Seymour Street to a point of intersection with the center line of Millbury Street.  
Thence north along the center line of Millbury Street to a point of intersection with the center line of Madison Street.  
Thence southeast along the center line of Madison Street through Kelley Square to the western limits of the Worcester Expressway (Interstate 290).  
Thence north along the western limits of the Worcester Expressway to a point of intersection with the center line of Belmont Street.  
Thence west along the center line of Belmont Street to the point of Beginning in Lincoln Square, Commonly known as the Commercial Area Revitalization District (CARD)}, and

WHEREAS: The most recent CARD designation omitted the east side of Millbury Street north from Seymour Street as approved by the Secretary of Communities and Development.

NOW THEREFORE BE IT RESOLVED:

by the City Council of the City of Worcester as follows:

1. That the east side of Millbury Street, north from Seymour Street, also be included in the Downtown Worcester CARD to be described as follows:

That certain areas of land, referred to as the Downtown Commercial Area Revitalization District (CARD), situated in the City of Worcester and Commonwealth of Massachusetts, and bounded generally as follows:

Beginning at a point in the center of Lincoln Square.  
Thence north along the center line of Lincoln Street to a point of intersection with a center line of Concord Street.

Thence west along the center line of Concord Street to a point of intersection with the center line of Prescott Street.

Thence northwest along the center line of Prescott to a point of intersection with the center line of Rural Drive.

Thence west along the center line of Rural Drive to a point of intersection with the center line of Grove Street.

Thence southeast along the center line of Grove Street to a point of intersection with the center line of Humbolt Avenue.

Thence southwest along the center line of Humbolt Avenue to a point of intersection with the center line of Salisbury Street.

Thence west along the center line of Salisbury Street to a point of intersection with the center line of Lancaster Street.

Thence south along the center line of Lancaster Street to a point of intersection with the center line of Linden Street.

Thence southwest along the center line of Linden Street to a point of intersection with the center line of Irving Street.

Thence southwest along the center line of Irving Street to a point of intersection with the center line of Chandler Street.

Thence southeast along the center line of Chandler Street to a point of intersection with the center line of Murray Avenue.

Thence southwest along the center line of Murray Avenue to a point of intersection with the center line of Piedmont Street.

Thence southwest along the center line of Piedmont Street to a point of intersection with the center line of Main Street.

Thence southwest along the center line of Main Street to a point of intersection with the center line of Hammond Street.

Thence northeast along the center line of Main Street to a point of intersection with the center line of Hermon Street.

Thence southeast along the center line Hermon Street to a point of intersection with the center line of Southbridge Street.

Thence north along the center line of Southbridge Street to a point of intersection with the center line of Madison Street.

Thence southeast along the center line of Madison Street to a point of intersection with the center line of Harding Street.

Thence south along the center line of Harding Street to a point of intersection with the center line of Seymour Street.

Thence east along the center line of Seymour Street to a point of intersection with the western limits of the Worcester Expressway (Interstate 290).

Thence north along the western limits of the Worcester Expressway to a point of intersection with the center line of Belmont Street.

Thence west along the center line of Belmont Street to the point of Beginning in Lincoln Square Commonly known as the Commercial Area Revitalization District (CARD).

2. That implementation of the proposed inclusion of the east side of Millbury Street, north from Seymour Street, in the Downtown Worcester CARD will serve to prevent the decay of the area covered by the plan and will help deter the movement of commercial enterprises into previously non-commercial areas; and
3. That the Downtown Worcester CARD Plan is hereby approved and that said amended plan shall be submitted by the City Manager to the Secretary of Communities and Development for approval; and
4. That the City Manager is authorized to take such other actions as may be necessary in furthering the interest of this resolution.

