

I. Purpose

The purpose of this ordinance is to protect the wetlands, related water resources, and adjoining land areas in The City of Haverhill by controlling activities deemed by the Conservation Commission likely to have a significant immediate and/or adverse cumulative effect upon resource area values, including but not limited to the following: public or private water supply, ground water, flood control, erosion and sedimentation control, storm damage prevention including coastal storm flowage, water quality, water pollution control, fisheries, shellfish, wildlife habitat, rare species habitat, rare plants species, agriculture, aquaculture, sedimentation and erosion control sensitive wetland areas, and recreation and aesthetic values, deemed important to the community (collectively, the “resource area values protected by this ordinance”). This ordinance and the regulations of the Conservation Commission are intended to utilize the Home Rule authority of this municipality to protect additional resource areas for additional values, and with additional standards and procedures which are stricter and more protective than those of the Massachusetts Wetlands Protection Act, Massachusetts General Laws Ch. 131.sec. 40 and Regulations thereunder, 310 CMR 10.00.

II. Jurisdiction

Except as permitted by the Conservation Commission or as provided in this ordinance, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater or coastal wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, seeps, springs, replication areas, reservoirs, lakes, ponds of any size, rivers, streams, creeks, wetlands not bordering a body of water, lands under waterbodies, lands subject to flooding or inundated by ground water or surface water, lands subject to tidal action, coastal storm flowage, or flooding, poorly drained and very poorly drained areas, the potable drinking water and potential drinking water supply areas at Kenoza Lake, Crystal Lake, Chadwick Pond, Johnson Pond, Millvale Reservoir, and Round Pond, sensitive wetland areas, rare and endangered species habitats and lands within 100 feet of any of these resource areas. Said

resource areas shall be protected whether or not they border surface waters. Said resource areas will be determined by analysis.

Use of or work on any property within the City Limits which is not under Conservation Commission Jurisdiction through an up to date Order of Conditions which adversely affects another property's wetlands or watershed areas within the City Limits shall be made to fall under the Conservation Commission's Jurisdiction through the Notice of Intent process.

Although the Massachusetts Highway Department may be exempt from the Wetlands Protection Act, for specific bridgework identified in specific annual bond issues, the Haverhill Conservation Commission requires that a Notice of Intent shall be filed under the terms of this Ordinance. There is no fee for this filing.

III. Conditional Exceptions

The application and permit required by this ordinance shall not be required for:

- a.) 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, sewer, catch basins, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Commission at least five (5) business days prior to commencement of work.
- b.) Work performed for normal maintenance or improvement of land which is lawfully in agricultural use at the time the work takes place, provided that written notice has been given to the Commission at least five (5) business days prior to commencement of work.
- c.) Emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that advance written notice, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency

project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by 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.

d.) Maintaining, repairing, replacing, but not substantially changing or enlarging an existing and lawfully located structure or landscaping layout.

e.) Work necessary to and connected with crossing of a wetland to provide access to other land of the same owner or to a land-locked parcel.

f.) Work or structures providing public or private access to rivers, streams, lakes and ponds and any areas established for outdoor recreational use.

g.) Any activity, the prohibition of which would constitute a hardship or which would render the affected parcel to become of no viable economic use to its owner such that enforcement of the ordinance would constitute a taking of property in violation of the Massachusetts or United States Constitutions.

h.) Any activity which requires replication areas or detention basins, groundwater, or charge areas, flood storage areas, and temporarily disturbed areas to be restored to its previous state.

Nothing in the above exceptions to this ordinance shall be deemed to waive, alter or adversely effect the power and duties of the Conservation Commission as set forth in the Massachusetts Wetlands Protection Act which powers and duties are specifically retained. The exemptions set forth in paragraphs D-H shall only apply after application to the Conservation Commission in the form of a Request For Determination to establish the exemption.

Notwithstanding any other provision of this ordinance, a permit for work may be issued for work which is subject to a variance issued by the Commissioner of the Department of Environmental Protection. Prior to issuing a permit, the Commission shall find that conditions

contained in the variance or in the proposed permit will minimize any adverse affect on the interests protected by the Ordinance.

Other than stated in this section, the exceptions provided in the Wetlands Protection Act, G.L. Chapter 131 sec. 40 and Regulations 310 CMR 10.00, shall not apply under this ordinance.

No permit shall be required for work if a negative Determination of Applicability was issued under The Wetlands Protection Act three (3) years immediately preceding the effective date of this ordinance and if the activities were completed within three (3) years after the date of the negative determination.

IV. Requests for Determination and Applications for Permits

A written application shall be filed with the Commission to perform activities affecting resource areas protected by this ordinance. The permit application shall include such information and plans which follow the Commission's Submittal Guidelines as contained in the Commissions procedural regulations to describe the proposed activities and their effects on the resource areas protected by this ordinance. No activities shall commence without receiving and complying with a permit issued pursuant to this ordinance.

In cases in which the Notice on Intent and plans under the Wetlands Protection Act are required to be filed, the Commission, shall accept said Notice of Intent and plans as the permit application and plans under this ordinance. In all other cases the Commission shall accept a permit application and plans as set forth in its Procedural Regulations.

At the time of a permit application or Request For Determination, or application for Certificate of Compliance, the applicant shall pay a filing fee specified in Regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act, Massachusetts General Laws Ch. 131. 40, and Regulations, 310 CMR 10.00.

V. Notice and Hearings

Any person filing a permit application or a Request For Determination with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water boundary of the applicant. The notice to abutters shall have enclosed a brief project description and shall state where copies of the plans and application may be examined at no charge or obtained by abutters for a nominal fee at the expense of the abutter. 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 the person making the request. Abutters shall be renotified if a hearing remains open for more than 90 days without a finding at the Conservation Commission's request.

The Commission shall conduct a public hearing on any permit application or Request For Determination. Notice of such hearing shall be given by publication at the expense of the applicant in a newspaper of general circulation in the city at least five (5) business days prior to the hearing

The Commission shall commence the public hearing within 21 days from receipt of a completed permit application or Request For Determination unless an extension is authorized in writing by the applicant.

The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.

The Commission, shall combine its hearing under this ordinance with the hearing conducted under the Wetlands Protection Act, Massachusetts General Law Ch. 131, s. 40, and Regulations,

310 CMR 10.00 in each instance where such a hearing is required. The Commission shall have authority to continue the hearing for up to 14 days to allow for full departmental review to a certain date announced at the hearing for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission or comments and recommendations of the boards, officials, and the applicant or his/her representative.

VI. Permits and Conditions

If the Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which result thereof are likely to have a significant individual or cumulative effect upon the resource area values protected by this ordinance, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission may impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

A permit may be denied for failure to meet the requirements of this ordinance; 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 or cumulative effects upon the resource area values protected by this ordinance; and where no conditions are adequate to protect those values.

Land within 100 feet of specific resource areas, and 200 feet from sensitive resource areas such as: Kenoza Lake, Crystal Lake, Chadwick Pond, Johnson Pond, Round Pond and Millvale Reservoir are presumed important to the protection of these resources because activities undertaken in close proximity to wetlands and other resources have a high likelihood of adverse impact upon the

wetland or other resources, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover within the 100-foot area, unless the Commission finds that the area or part of it may be disturbed without harm to the values protected by the ordinance. When proposing alterations of land within 50' of a wetland, the applicant must overcome a strong presumption of adverse impact on the adjacent wetlands and their functions and values. The Commission is empowered to require a 25' no build - no disturbance zone extending from the edge of all wetland resource areas and a 50' no build zone. No activity is allowed in the no-disturbance zone except as allowed by the Commission or this ordinance. Building construction of any kind, except as allowed by the Commission or this Ordinance, is prohibited in the no-building zone.

Due to the highly sensitive nature of the six waterbodies, mentioned in this section of the ordinance, the size of restricted zones in these areas may be increased to the amount needed to protect the wetlands and receiving water bodies from degradation. The exact size of those zones will be made on a case-by-case basis.

The applicant shall have the burden of proving by a preponderance of the credible evidence and where required by overcoming the presumptions set forth in this ordinance, that the activity proposed in the Notice of Intent will not cause significant harm to any of the interests and values sought to be protected by this ordinance. Failure to provide to the Commission adequate evidence for it to determine that the proposed activity does not cause such significant harm shall be sufficient cause for the Commission to deny permission or to grant such permission with such conditions as it deems reasonable, necessary or desirable to carry out the purposes of this ordinance; or to postpone or continue the hearing to another date certain to enable the applicant and others to present additional evidence, upon such terms and conditions as seems to the Commission to be just.

Due consideration shall be given to possible effects of the proposal on all interests and values to be protected under this ordinance and to any demonstrated hardship on the petitioner by reason of a denial, as brought forth at the public hearing.

To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible; to minimize wetlands alteration; and where alteration is unavoidable, shall require at least 1 to 1 mitigation, to insure that adequate replication occurs and by posting a bond in the appropriate sum to insure that mitigation occurs. The Commission may authorize or require bridging of wetlands and replication of wetlands as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication. A pictorial log may be required showing the progress of the replication areas of 500 square feet or more from pre to post replication to include monitoring reports for 2-5 years or when a Certificate of Compliance is issued. All replication plans shall be given to the Commission before an Order of Conditions is issued. A permit or Order of Conditions shall expire three (3) years from the date of issuance. The Commission may issue a permit expiring up to five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of the time and location of work is given to the Commission at least two (2) weeks prior to the commencement of the work. Any permit may be renewed once for an additional one year period, provided that a request for a renewal is received in writing by the Commission prior to the expiration date on the Order. A permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land, their successors or assigns. The Commission may require as a condition precedent to a Certificate of Compliance, written acknowledgment by all subsequent owners of the affected property that they have been informed of the Conservation Commission's jurisdiction over the property. Failure to file such a Certificate within a reasonable time after the coverage of the property may be grounds for revocation of an issued permit or Order of Conditions.

For good cause the Commission may revoke or modify a permit or determination issued under this ordinance after notice to the holder of the permit or determination, notice to the public, abutters, and city boards, pursuant to Section V, and a public hearing.

The Commission, in an appropriate case, may combine the permit or determination issued under this ordinance with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act, Massachusetts General Law Ch. 131, s. 40, and Regulations, 310 CMR 10.00.

No work allowed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the Essex South District Registry of Deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded and all appeal periods have passed.

VII. Rules and Regulations

After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this ordinance. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this ordinance. At a minimum these regulations shall define key terms in this ordinance not inconsistent with the ordinance and procedures governing the amount and filing of fees.

Any rule or Regulation which is not merely procedural shall not become effective until it has been ratified by a majority vote of all of the members of the City Council and approved by the Mayor. If the Mayor does not approve of the Rule or Regulations, the City Council may ratify it by a 2/3 vote of all of its members in accordance with the procedure set forth in Section 55 of the City Charter.

IX. Definitions

The following definitions shall apply in the interpretation and implementation of this ordinance.

Except as otherwise provided in this ordinance or in regulations of the Commission, the definitions of terms in this ordinance shall be set forth in the Wetlands Protection Act, Massachusetts General Law Ch 131 s. 40, and Regulations, 310 CMR 10.00

Abutter: Owners of property immediately adjacent to or across a road or water body and in another municipality if within 300' of the boundary of the property where work is proposed or across a body of water..

Agriculture Use: As defined under 310 CMR 10.04

Alter: Shall include, without limitation, the following activities when undertaken

to, upon, within or affecting resource areas protected by this law:

- A. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
- B. Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- C. Drainage, or other disturbance of water level or water table;
- D. Dumping, discharging, or filling with any material which may degrade water quality;
- E. Placing of fill, or removal of material, which would alter elevation;
- F. Driving of piles, erection, or repair of buildings, or structures of any kind;
- G. Placing of obstructions or objects in water, rip-rap included;
- H. Destruction of plant life including cutting of trees, use of road salt where prohibited, changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
- I. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water, ground water, high ground water and septic systems;

- J. Application of pesticides or herbicides;
- K. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this law.

Bank: shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

Biochemical Oxygen Demand: A measure of the amount of oxygen required by bacteria and other microorganisms to biodegrade decomposable organic matter in water used as an indicator of the amount of organic carbon present in a water.

Boundaries of a Resource Area: The areas subject to protection under the ordinance.

Buffer Zone: Area of uplands 100' horizontally outward from the boundary of the resource area and in the case of a slope of 2:1 or steeper the area of buffer will increase 6" for every 1' of horizontal distance. The buffer zone around the six reservoirs mentioned in section II will be 200 feet.

Catch Basins: Drainage holes, usually located in low areas, to collect and disseminate water into larger reservoir areas.

Cumulative Effect: Any work done within the buffer zones or a wetland area which has had a detrimental or negative effect on any conditions stated in the Purpose Section of this ordinance.

(Section I)

Determination: (a) a Determination of Applicability means a written finding by the Commission as to whether a site or the work proposed thereon is subject to the jurisdiction of the ordinance. (b) a Determination of Significance means a written finding by the Commission, after a public hearing, that the area on which the proposed work will alter, is significant to one or more of the interests identified in the ordinance. © a Notification of Non-Significance means a written finding by the Commission, after a public hearing, that the area on which the proposed work will alter, is not significant to any of the interests of ordinance.

Department Review: Submittal of an application at the request of the chairman to any or all of the following departments for comments: Health Department, Building Inspector, City Engineer, Conservation Agent and/or Agent, and the Water Department.

Disturbed: Land or Water area that has been changed or altered from its usual state due to outside forces or due to a cumulative effect of outside forces.

Drainage Channels: The draining of lands or a system of water courses or drains, designed manually or naturally, for the purpose of removing excess water from an area.

Employees: A person secured by the City or Conservation Commission to give expert testimony at a Public Hearing.

Erosion: The wearing away of land by rain, wind, water or ice.

Extension Permit: A written extension of the time within which the authorized work shall be completed.

Fill: To deposit any material so as to raise an elevation, either temporarily or permanently.

Flooded: A condition in which the soil surface is temporarily covered with flowing water from any source, such as streams overflowing their banks, runoff from adjacent or surrounding slopes, inflow from high tides, or any combination of sources.

Flood control: The prevention or reduction of flooding and flood damage. General Performance Standards means those requirements established by these Regulations for activities in or affecting each of the areas subject to Protection Under the Ordinance.

Flooding Frequency: The number of times that flooding is likely to occur. The following classes are recognized: (1) none: no reasonable possibility of flooding (extraordinary chance of flooding in any year); (2) rare: flooding unlikely but possible under unusual weather conditions (from near zero to 5 percent chance of flooding in any year, or near zero to 5 times in 100 years); (3) occasional: flooding is expected in-frequently under unusual weather conditions (5 to 50 percent chance of

flooding in any year, or 5 to 50 times in 100 years); (5) common: occasional and frequent classes can be grouped for certain purposes and called common flooding.

Geographical Area: An area defined by neighborhoods, streets, landmarks, and/or water bodies within a larger area.

Groundwater Recharge: An area above or below ground which allows all the impurities to be filtered from water so as to make it drinkable according to Federal, State and Local laws.

Ground Water Supply: The water below the earth's surface in the zone of saturation.

Growing Season: the portion of the year when soil temperatures are above biologic zero (5 deg. C or 41 deg. F), as defined by Soil Taxonomy (16). The following growing season months are assumed for each of the soil temperature regimes: (1) mesic (March - October); (2) frigid (May - September); (3) cryic (June - August); and (4) pregelic (July - August).

Hardship: A hardship situation will exist where an applicant demonstrates denial of permission to build or issue an Order of Conditions would constitute a taking of property in violation of the Massachusetts and United States Constitution, provided, however, that no reasonably foreseeable danger to the public health, safety or welfare will arise from such permission. As for the City of Haverhill, hardship shall exist where there is no practical means to carry out a project in the public interest.

Hydrology: The scientific study of water, especially its natural occurrence, characteristics, control and construction.

Interests Identified in the Ordinance: Public or private water supply, ground water, flood control, erosion and sedimentation control, coastal storm flowage, water quality, water pollution control, fisheries, shell fish, wildlife habitat, rare plant species, agriculture, aquaculture, sedimentation and erosion control, recreation, storm damage prevention, protection of wildlife, sensitive wetland areas, and protection of aesthetics.

Isolated Wetland: A wetland Area of at least 5,000 square feet which has no visible inlet or outlet.

Lake: Any open body of fresh water with a surface area of ten (10) acres or more, and shall include great ponds.

Land Subject to inundation of Groundwater: Any land area where the water table is so high that water perks through the surface as standing water and/or drains off slowly during the year.

Marsh: Areas where a vegetational community exists in standing or running water during the growing season and where a significant part of the vegetational community is composed of, but not limited to nor necessarily including all, of the following plants or groups of plants: arums (Araceae), bladder worts (Utricularia), bur reeds (Sparganiaceae), button bush (Cephalanthus occidentalis), cattails (Typha), duck weeds (Lemnaceae), eelgrass (Vallisneria), frog bits (Hydrocharitaceae), horsetails (Equisetaceae), hydrophilic grasses (Gramineae), leatherleaf (chamaedaphne calyculata), pickerel weeds (Pontederiaceae), pipeworts (Eriocaulon), pond weeds (Potamogeton), rushes (Juncaceae), sedges (Cyperaceae), smartweeds (Polygonium), sweet gale (Myrica gale), water milfoil (Halragaceae), water lilies (Nymphaeaceae), water startworts (Callitrichaceae), water willow (Decodon verticillatus).

No Build - No Disturbance Zone An area set aside from development to allow for a buffer area between wetlands and buildings. 0-25' from the flagged wetlands on the site where no disturbance or building is allowed, except as stated in the exceptions sections of this ordinance (Sec. III).

No Build Zone 25'-50' from the flagged wetlands on the site where no building is allowed..

Order: An Order of Conditions.

Order of Conditions: The document issued by the Commission containing conditions which regulate or prohibit an activity.

Persons: an entity which includes any individual, group of individuals, association, partnership, corporation, company business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to city ordinances, administrative agency, public or quasi-public corporation or body, a municipality, and any other legal entity, its legal representatives, agents, or assigns.

Plans: Any such data, maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the Commission to describe the site and/or work, to determine the applicability of the ordinance or to determine the impact of the proposed work upon the interests identified in the ordinance.

Pond: Any open body of fresh water, either naturally occurring or man-made by impoundment, and which is never without standing water due to natural causes, except during periods of extended drought. For purposes of this definition, extended drought shall mean any period of four (4) or more months during which average rainfall for each month is 50 percent or less of the ten (10) year average for that same month. Basins or lagoons which are part of wastewater treatment plants, shall not be considered ponds, nor shall swimming pools or other impervious man-made retention basins.

Ponded: A condition when free water covers the soil surface as, for example, in a closed depression. The water is removed only by percolation, evaporation, or transpiration.

Poorly Drained: Water is removed from the soil so slowly that the soil remains saturated, according to the SCS method, periodically saturated during the growing season or remains wet for long periods.

Poor Water Quality: Water which fails to meet Department of Environmental Protection standards for cleanliness either in drinkability or aesthetics.

Primary Recharge Area: That land area delineated by Zone II as defined in 310 CMR 24.06 or in such cases as when the primary recharge area has not been designated it shall be, in the interim, be defined as a 1000 foot radius from the public drinking water supply unless otherwise determined by the Department of Environmental Protection.

Public Water Supply: Any source or volume of surface or ground water demonstrated to be in public use or approved for water supply pursuant to Massachusetts General Law C. 111, sec. 160 by the Division of Water Supply of the Department of Environmental Protection, or demonstrated to have a potential for public use.

Puddling: A small pool of water, especially from rainwater, which drains poorly.

Rare Species: Shall include, without limitation, all vertebrate and invertebrate animal and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division as per the most recent publication.

Recreation and Aesthetic Values: Activities of individuals done for relaxation, carried out in resource areas of this ordinance which include but are not limited to swimming, picnicking, walking, hunting, fishing, and boating. Those areas which provide important visual linkage for the public. These areas include but are not limited to: expansive open space and large areas of natural features. Views from areas used by the public whether private or publicly owned.

Remove: To take away any type of material, thereby changing an elevation, either temporarily or permanently.

Replacement: Any work which involves more than 25% of a structure to be moved and/or new sections to be put in.

Request for Determination of Applicability: A written request made by any person to the Commission for a determination as to whether a site or work thereon is subject to the Ordinance.

Resource Areas: The same as Areas subject to protection under the Purpose Section of this Ordinance.

River: A naturally flowing body of water that empties to any lake, ocean or other river and which flows throughout the year.

Sensitive Wetland Areas: Shall refer to any areas, including but not limited to the following, in which public health, environmental or agricultural concerns warrant special protection to further minimize the risk of unreasonable adverse effects;

- a. within the primary recharge area of a public drinking water supply or potential public drinking water supply.

- b. within 200' of any identified private drinking waters supply well.
- c. within 100' of any standing or flowing water.
- d. within 100' of any wetland.
- e. within 100' of any agricultural area presently in use or planned to be used within one (1) year of spraying.

Sewer: An underground tunnel that carries the drainage and waste matter from a house or town.

Significant: Anything which is important enough to the water quality or buffer zones stated in the Purpose Section of this Ordinance.

Siltation: Particles of minerals, soils, etc. which creep or flow into wetland areas or other areas where they are not indigenous to the area.

Soils: Organic and inorganic compositions consisting of silicates of aluminum, iron, calcium, magnesium, silica, etc. derived from the original rock by weathering and producing characteristic soil types. Also decomposed plants and animals as a result of microorganisms. Air, water and environmental factors also contribute to soils. Soils are used in determining wetland areas through their potential for support of wetland plant species as well as their inability to drain wetland areas freely.

Storm Damage Prevention: The prevention of damage caused by water from storms, including, but not limited to, erosion and sedimentation, damage caused by flooding, water-borne debris or water-borne ice.

Stream: A body of running water, including brooks and creeks, which moves in a definite channel in the ground due to a hydraulic gradient, and which flows within, into or out of an area subject to protection under the Ordinance. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (i.e., which is intermittent) is a stream, so long as it receives discharge from groundwater for periods of time such that it may be observed to flow during times when there is no surface water discharge occurring.

Swamp: Areas where ground water is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface, and where a significant part of the vegetational community is made up of, but not limited to nor necessarily include all of the following plants or groups of plants: alders (*Alnus*), ashes (*Fraxinus*), azaleas (*Rhododendron canadense* and *R. Viscosum*), black alder (*Ilex verticillata*), black spruce (*Picea mariana*), buttonbush (*Cephalanthus occidentalis*), American or white elm (*Ulmus americana*), white Hellebore (*Veratrum viride*), hemlock (*Tsuga canadensis*), cowslip (*Caltha palustris*), poison sumac (*Toxicodendron vernix*), red maple (*Acer rubrum*), skunk cabbage (*Symplocarpus foetidus*), sphagnum mosses (*Sphagnum*), spice bush (*Lindera benzoin*), black gum tupelo (*Nyssa sylvantica*), sweet pepperbush (*Clethra alnifolia*), white cedar (*Chamaecyparis thyoides*), willow (*Salicaceae*).

Tributary: Any body of water which in turn flows into another body of water and so on until it terminates in a significant water body.

Vegetated Wetlands: Areas where the topography is low and flat and where the soils are annually saturated. The boundary of vegetated wetlands is the line within which the vegetational community is substantially characterized by species identified in the Wetlands Protection Act or this Ordinance, or, when vegetation appears to have been altered, within which hydric soils are present. The types of vegetated wetlands are: wet meadows, marshes, swamps, and bogs. The Commission may find, based on substantial evidence in a particular case, that additional species are characteristic of wetlands.

Vegetation: Plant life included on Federal, State, and Local Wetland Protection Acts known as “Wetland Species”.

Vernal Pool: Shall be the same as in the Wetlands Protection Act; however, if a vernal pool is identified and certified within 90 days of filing a Notice of Intent such vernal pool shall be afforded full protection under this ordinance

Very Poorly Drained: Water is removed from the surface so slowly that the free water remains on the surface during most of the growing season

Water Supply: Shall refer to any raw or finished water source that is presently used, reserved for future use, or under investigation for future use by the City as a public water system as defined in 310 CMR 22.02 or used as a source of private drinking water by one or more persons. This shall include all land and waters used as or tributary to a public water system except those exempted under 310 CMR 22.20.

Water Table: The upper limit of the portion wholly saturated by water.

Wetlands Protection Act: Massachusetts General Law C. 131, s. 40.

Wildlife: All species of animals otherwise than domesticated of any of the several classes indigenous to the city for any period of time throughout the year.

Wildlife Habitat: Land and/or water areas which support any animals in a wild (not domestic) state including, but not limited to: birds, amphibians, four legged animals, and insects. Depending on the wildlife the range can be a few yards to a few miles in area. Plant Community composition and structure, hydrolic regime, or other characteristics provide important food, shelter, migratory travel or overwintering areas for these wildlife species over an indefinite time period.

IX. Security

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

- A. By a proper bond or deposit of money or negotiable securities 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 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 city whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

X. Enforcement

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this ordinance, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this ordinance.

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 ordinance 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.

The Commission shall have authority to enforce this ordinance, its regulations, and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions. Any person who violates provisions of this ordinance may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

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

Any person who violates any provision of this ordinance or any conditions of a permit or order issued pursuant to it shall be punished by a fine as listed herein below. Each day or portion thereof during which a violation continues shall constitute a separate offense.

(a) Alteration of an area subject to protection under the ordinance without having filed for and having in effect at the time of the activity a valid Order of Conditions regulating the activity undertaken. The penalty shall be three hundred (\$300.00) dollars.

(b) Failure to comply with any order or orders as set forth in any Order of Conditions in effect to regulate the activity thereby permitted within an area subject to protection under the ordinance within the time period specified within such orders. The penalty shall be two hundred (\$200.00) dollars.

(c) Failure to comply with any one or more of the terms of any Enforcement Order, duly issued by the Haverhill Conservation Commission within the time limits specified in such orders. The penalty shall be one hundred (\$100.00) dollars.

(d) Unauthorized removal or destruction of vegetation and/or property on conservation lands, and unauthorized disturbance of wildlife by actions other than the normal and lawful use and enjoyment of such property or lands. The penalty shall be one hundred (\$100.00) dollars.

(e) Failure to maintain in proper working order or condition appropriate to their intended function structures, improvements or facilities which were required or permitted as part of activities regulated under an Order of Conditions issued to protect an area subject to regulation under the ordinance and significant to the interests to be protected under this ordinance. The penalty shall be one hundred (\$100.00) dollars.

As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the non-criminal disposition procedure set forth in Massachusetts General Law Ch. 40, s. 21D.

XI. Appeals

A decision of the Commission shall be reviewable in the Superior Court in accordance with Massachusetts General Laws Ch. 249, s. 4. If the subject matter of the appeal is also within the

jurisdiction provided by Massachusetts General Laws 131A s. 40 and/or 310 CMR 10.00 then the decision shall first be appealed to the Massachusetts Department of Environmental Protection in accordance with such jurisdiction and within the time allowed by law for such an appeal. Any decision of the Department of Environmental Protection which alters, amends, or reverses a decision of the Conservation Commission shall be reviewed by the Commission to ascertain whether or not the interests and values to be protected by the terms of this Ordinance have been taken into consideration and adequately addressed by the Massachusetts Department of Environmental Protection. If the Commission finds that the Massachusetts Department of Environmental Protection has so acted, then the Commission shall adopt the decision of the Massachusetts Department of Environmental Protection. If the Commission finds that the Massachusetts Department of Environmental Protection has not so acted, then it shall declare that the decision of the Commission shall stand independent of any decision of the Massachusetts Department of Environmental Protection. A civil action in the nature of certiorari to correct errors in proceedings which are not according to the course of the common law, which proceedings are not otherwise reviewable by motion or by appeal, may be brought in the supreme judicial or superior court. Such action shall be commenced within 60 days next after the proceeding complained of this time shall be stayed during the pendency of any appeal to the Massachusetts Department of Environmental Protection and subsequent review of a Massachusetts Department of Environmental Protection decision by the Conservation Commission. Where such action is brought against a body or officer exercising judicial or quasi-judicial functions to prevent the body or officer from proceeding in favor of another party, or is brought with relation to proceedings already taken, such other party may be joined as a party defendant by the plaintiff or on motion of the defendant body or officer or by application to intervene. Such other party may file a separate answer or adopt the pleadings of the body or officer. The court may at any time after the commencement of the action issue an injunction and order the record of the proceedings complained of brought before it. The court may enter judgment as justice may require.

XII. Relation to the Wetlands Protection Act

This ordinance is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, Massachusetts General Law Ch. 131, s. 40, and Regulations, 310 CMR 10.00, thereunder.

XIII. Severability

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