

**Be It Ordained by the City Council of the City of Medford, that the Revised Ordinances, City of Medford is hereby amended by adding a Section to be number Chapter 87, which section reads as follows....**

**Chapter 87  
WETLAND'S**

**Article 1- In General**

Sec. 87-1-87-30 Reserved

**Article II-Wetland's Ordinance**

**Sec.87-31 Purpose**

The purpose of this Ordinance is to preserve and protect the wetlands, water resources, and adjacent upland areas within the boundaries of the City of Medford by controlling activities deemed by the Conservation Commission likely to have a significant individual and/or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, fisheries, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, aesthetics, recreation values, coastal storm flowage, and shell fisheries deemed important to the community (collectively, the "resource area values protected by this Ordinance"). This Ordinance is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Massachusetts Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations thereunder (310 CMR 10.00-10.99), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth.

**Sec.87-32 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 wetlands; marshes; wet meadows; bogs; swamps; vernal pools; isolated vegetated wetlands; bordering vegetated wetlands; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; coastal wetlands; estuaries; salt marshes; and lands subject to tidal action, coastal storm flowage, or coastal flooding (collectively the "wetland resource areas protected by this Ordinance"), and certain adjacent upland areas (collectively the "adjacent upland resource areas protected by this Ordinance") as described in Section X. Said resource areas shall be protected whether or not they border surface waters.

**Sec.87-33 Exemptions and Exceptions**

The application and permit required by this Ordinance shall not be required for work performed for normal maintenance or improvement of land in agricultural use as defined by the Wetlands Protection Act Regulations at 310 CMR 10.04.

The application and permit required by this Ordinance shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water,

sewer, drainage, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Conservation Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

The application and permit required by this Ordinance shall not be required for 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 notice, oral or written, 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.

The conversion of lawn to uses accessory to existing single-family houses in existence prior to August 7, 1996, such as decks, sheds, and patios, are grandfathered and/or exempted from the permit requirements in this Ordinance provided the activity is located more than 50 feet from the mean annual high-water line from a river or from a vegetated wetland, whichever is farther, and erosion and sedimentation controls are implemented during construction. The conversion of such uses accessory to existing single-family houses to lawn is also allowed. (Mowing of lawns in existence prior to the effective date of this Ordinance is not subject to jurisdiction under this Ordinance).

Other than stated in this section, the exceptions provided in the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00-10.99) shall not apply under this Ordinance.

#### **Sec. 87-34 Repeal of Ordinances**

Upon the acceptance of the foregoing Ordinance by the City and the publication as required by law of such thereof as shall be approved by the City Solicitor, all Ordinances heretofore existing, excepting the Zoning Ordinances, the rules and regulations of the Board of Health, Ordinances relating to plumbers and plumbing, and building regulations for inspection and construction of buildings, shall be annulled and repealed, provided that this repeal shall not apply to or affect any statute of the Commonwealth, and shall not revive any Ordinance in force before or at the time when the Ordinance repeal took effect.

#### **Sec. 87-35. Applications and Fees**

Written application shall be filed with the Conservation Commission to perform activities affecting resource areas protected by this Ordinance. The permit application shall include such information and plans as are deemed necessary by the Commission to describe 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.

The Commission, in an appropriate case, may accept as the application and plans under this Ordinance any application and plans filed under the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00).

Any person desiring to know whether or not a proposed activity or an area is subject to this Ordinance may file a Request for Determination of Applicability (RDA). Any person desiring a determination of the boundary of one or more wetland resource areas defined in this Ordinance may request an approval of delineation of said resource areas by filing an Abbreviated Notice of Resource Area (ANRAD). Such RDA or ANRAD shall include information and plans as are deemed necessary by the Commission. Any Determination of Applicability or Order of Resource Area Delineation issued by the Commission shall be binding for three years, except that the Commission may, in any Order of Conditions issued for the same property within that 3-year period, modify an Order of Resource Area Delineation based on newly discovered or disclosed information, mutual mistake, or other good cause. No Order of Resource Area Delineation shall be considered a final decision subject to appeal until a final Order of Conditions is issued.

At the time of an application, the applicant shall pay a filing fee specified in the Regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00-10.99).

Upon receipt of an application, or at any point during the hearing process, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee is called the "consultant fee." The specific consultant services may include, but are not limited to, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydrogeologic and drainage analysis; review of alternative analyses; and researching environmental or land use law.

Subject to the adoption of the regulation as referenced above, fees shall be deposited in a revolving account established under G.L. c. 44, § 53G for uses set out in the vote which established the fund. This account shall be kept separate from the account established for filing fees paid under the state Wetlands Protection Act.

The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information available only through outside consultants is necessary for the making of an objective decision. Any applicant aggrieved by the imposition of, or size of, the consultant fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws.

The Commission may waive the filing fee, consultant fee, and costs and expenses for a permit or other application or RDA filed by a government agency.

### **Sec. 87-36 Notice and Hearings**

Any person filing a permit, ANRAD or other application or RDA with the Conservation Commission shall at the same time give written notice thereof, by certified mail (return receipt requested) or hand delivery, to all abutters at their mailing addresses shown on the most recent applicable tax list of the Assessor, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 200 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice to abutters shall have enclosed a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice,

with a copy of the notice mailed or delivered, shall be filed with the Commission. The applicant shall submit to the Commission, at or before the public hearing, receipts for such notices or other satisfactory evidence that such notices have been given, and failure to provide such evidence shall be grounds for rescheduling of the hearing, or if intentional or repeated, denial of the requested permit. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any permit application, ANRAD or RDA, with written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the municipality.

The Commission shall commence the public hearing within 21 days from receipt of a completed permit application, ANRAD or RDA unless an extension is authorized in writing by the applicant or requested at a public hearing. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials.

The Commission shall issue its permit, other order 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, in an appropriate case, may combine its hearing under this Ordinance with the hearing conducted under the Wetlands Protection Act (G.L. Ch.131 §40) and Regulations (310 CMR 10.00).

#### **Sec. 87-37 Coordination with Other Boards**

At the discretion of the Conservation Commission, the Commission's Agent shall notify the Mayor, Community Development Board, Board of Appeals, Board of Health, City Engineer, and Building Commissioner when an application or request will be heard at a public hearing. Notification shall be provided to the Conservation Commission of the adjoining municipality, if the application or RDA pertains to property within 200 feet of that municipality. The Commission shall not take final action until the boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

#### **Sec. 87-38. Permits and Conditions**

If the Conservation Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which will result there from, are likely to have a significant individual and/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 shall impose conditions that it 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.

Where no conditions are adequate to protect those resource values, the Commission is empowered to deny a permit for failure to meet the requirements of this Ordinance. It may also deny a permit 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; or for failure to avoid or prevent unacceptable significant individual and/or cumulative effects upon the resource area values protected by this Ordinance.

Lands within 200 feet of rivers and lands within 100 feet of other resource areas, are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, clearing, 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, excessive nitrogen and/or phosphorous loading and loss of wildlife habitat. The Commission may therefore establish performance standards for protection of the adjacent upland resource area including without limitation strips of continuous, undisturbed vegetative cover within the adjacent upland resource area, or other form of work limit or setback to buildings, roads, landscaping and other features, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by this Ordinance. The specific size and type of protected area may be established by regulations of the Commission.

In the review of areas within 200 feet of rivers, no permit issued hereunder shall allow any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this Ordinance, has proved by a preponderance of the evidence that (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this Ordinance. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial purpose), logistics, existing technology, costs of the alternatives, and overall project costs.

To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require 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.

The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless of the type of resource area or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of "wildlife corridors" in the area, or possible presence of rare species in the area. The work shall be performed by an individual who is approved by the Conservation Commission and at a minimum meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act Regulations (310 CMR 10.60).

The Commission shall presume that all areas meeting the criteria of "vernal pools" of this Ordinance as defined in the Definitions, including its adjacent upland resource area, perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence, which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual meeting the qualifications under the wildlife habitat section of the Wetlands Protection Act Regulations (310 CMR 10.60).

A permit shall expire three years from the date of issuance. The Commission reserves the right to require a conservation restriction on any property or portion thereof that the Commission deems appropriate to the interests protected under the Wetlands Protection Act (G.L. Ch. 131 §40) and this Ordinance.

In carrying out its duties under this Ordinance, the Commission shall take into account the ongoing damage to and impairment of property values resulting from the enclosure of natural watercourses in pipes and culverts that has already occurred in various locations throughout the City, the loss of flood storage area associated with those projects, and the extent to which increased urbanization has increased flows to the City's existing stormwater infrastructure. The Commission may require replication of flood storage capacity on a greater than one-to-one basis, reduction of peak flows, or other mitigation where feasible.

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 and/or restoration work, provided that annual notification of time and location of work is given to the Commission. 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 30 days prior to expiration.

Notwithstanding the above, a permit may identify conditions 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.

For good cause the Commission may revoke any permit, other order, determination or other decision issued under this Ordinance after notice to the holder of the permit, the public, abutters, and City boards, and a public hearing. Amendments to permits or determinations shall be handled in the manner set out in the Wetlands Protection Act (G.L. Ch. 131 §40) and this Ordinance.

The Commission in an appropriate case may combine the decision issued under this Ordinance with the Order of Conditions, Order of Resource Area Delineation (ORAD), Determination of Applicability or Certificate of Compliance issued under the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00-10.99).

No work proposed in any application shall be undertaken until the permit, ORAD, or Determination issued by the Commission with respect to such work has been recorded in the 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 document has been recorded. If the applicant fails to perform, the Commission may record the documents itself.

If, at any time after a Determination of Applicability or Order of Conditions has been issued, there is a change in the proposed activity, the person on whose behalf the work is being done,

in the case of a Determination, or the applicant, in the case of an Order, must notify the Commission, in writing or in person, of the proposed changes. No work associated with these changes shall be done on the subject area until the Commission has reviewed the changes and issued its decision.

The Commission shall review these changes and determine either:

- (a) that the changes represent a substantial departure from the original proposal and that the potential impacts of the new proposal on the interests identified in the Ordinance are sufficiently different from those of the original proposal as to require the filing of a new Request for Determination or Notice of Intent;
- (b) that the changes involve a substantial departure from the original proposal in only one or two limited respects, and that the Commission will consider amending the original Determination or Order following submission of information on the proposed changes and their potential impacts on the interests identified in the Ordinance and following a public meeting or hearing and notice as required in this ordinance; or
- (c) that the changes represent an insignificant change in the original proposal and will cause no significant difference in the impact of the activity on the interests identified in the Ordinance, in which case the person proposing these changes may proceed in conformance with them.

The person making this request shall be notified by the Commission of its decision within 21 days of receipt of his request.

The Commission shall, after receiving a written request for a Certificate of Compliance, inspect the resource area where any activity governed by a permit issued under this Ordinance was carried out and if such activity has been completed in accordance with said permit, the Commission shall within 21 days after such request, issue a Certificate of Compliance evidencing such determination, which may in an appropriate case be combined with a Certificate of Compliance issued under the Massachusetts Wetlands Protection Act Wetlands Protection Act (G.L. Ch. 131 §40). A Certificate of Compliance may specify conditions in the permit, which will continue to apply.

### **Sec. 87-39 Regulations**

After public notice and public hearing, the Conservation Commission shall promulgate rules and regulations to effectuate the purposes of this Ordinance, effective when voted and filed with the City or City Clerk. 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.

### **Sec. 87-40 Definitions**

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

The term "abutter" is any landowner, as determined by the most recent assessors' records, whose land abuts the property that is the subject of the Notice of Intent or whose land lies directly across any street, road, river, stream, brook, or creek from the said property.

The term "adjacent upland resource area" shall include all lands within 100 feet of wetland resource areas as enumerated in Section II., except for perennial streams and rivers for which the adjacent upland resource area extends for 200 feet from the mean annual high water line of such stream or river as defined in 310 CMR 10.58(2), and except for vernal pools, isolated vegetated wetlands, and ponds under 10,000 square feet in area, for which special adjacent upland resource area definitions are set forth below.

The term "aesthetics" shall include the natural scenery and appearance of any area visually accessible to the public.

The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this Ordinance:

- A. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind
- B. Changing of preexisting 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 that may degrade water quality
- E. Placing of fill, or removal of material, which would alter elevation
- F. Driving of piles, erection, expansion or repair of buildings, or structures of any kind
- G. Placing of obstructions or objects in water
- H. Destruction of plant life including cutting or trimming of trees and shrubs
- I. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters
- J. Any activities, changes, or work that may cause or tend to contribute to pollution of any body of water or groundwater
- K. Application of pesticides or herbicides
- L. Incremental activities that have, or may have, a cumulative adverse impact on the resource areas protected by this Ordinance.

The term "applicant", as used in this Ordinance, shall mean a person giving notice of intention to remove, fill, dredge, build upon, or alter a resource area or its adjacent upland, or a person on whose behalf such a notice is filed.

The term "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.

The term "bordering vegetated wetlands" shall mean areas where groundwater discharges to the surface and where, under some circumstances, surface water discharges to the ground water. They are freshwater wetlands, which border on creeks, rivers, streams, ponds and lakes.



The types of freshwater wetlands are wet meadows, marshes, swamps and bogs. Bordering vegetated wetlands are areas where the soils demonstrate hydric properties and/or are inundated to such an extent that they support a predominance of wetland indicator plants.

The term "coastal wetlands" shall mean any bank, marsh, swamp, meadow, flat or other lowland subject to tidal action or coastal storm flowage.

The term "date of issuance" shall mean the date an Order of Conditions, modification or extension of an Order, or any written decision of the Commission is mailed, as evidenced by a postmark, certified mail card, or the date it is hand-delivered.

The term "isolated vegetated wetland" shall mean an isolated depression with no inlet or outlet which serves as a ponding area for run-off or high groundwater, supports wetland vegetation and/or contains hydric soils, and which is significant to one or more of the interests protected by this Ordinance as determined by the Commission. The adjacent upland resource area to isolated vegetated wetland shall be 25 feet.

The term "landscaped area" includes any area in which the natural plant community has been removed and replaced with garden or ornamental plantings that consist primarily of non-native species and which is actively maintained in that condition by the owner or occupant of the property. Disturbed areas containing non-native plant communities that are not actively maintained are not landscaped areas.

The term "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 City Ordinances, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

The term "pond" shall follow the definition of 310 CMR 10.04 except that the size threshold of 10,000 square feet shall not apply. The adjacent upland resource area for ponds under 10,000 square feet shall extend 100 feet from the top of the bank.

The term "rare species" shall include, without limitation, all vertebrate and invertebrate animal and all 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.

The term "river" shall mean a natural flowing body of water that empties to any ocean, lake, or other river and which flows throughout the year.

The term "single family dwelling" shall mean a 1, 2, or 3 family dwelling.

The term "stream" shall mean a body of running water, including brooks and creeks, which move in a definite channel in the ground due to a hydraulic gradient. A stream shall be subject to jurisdiction for its entire length, including any portion that has been enclosed within a culvert, pipe or other conveyance.

The term "vernal pool" shall include, in addition to those vernal pools certified by the Massachusetts Natural Heritage and Endangered Species Program, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at

least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The adjacent upland resource area for vernal pools shall extend 100 feet outward from the mean annual high-water line defining the depression.

The term "wetland" shall include bodies of water, such as lakes, streams, and rivers; and land that is always or periodically covered by water or land that is saturated by water even if no water is present at the surface, such as bordering vegetated wetlands (which include wet meadows, marshes and swamps), isolated vegetated wetlands and vernal pools.

The term "wildlife corridor" shall include any land, the topography, soil structure, plant community composition and structure, proximity to water bodies and waterways, and hydrologic regime of which provides food, shelter, migratory, breeding or overwintering areas for birds, mammal, reptiles, or amphibians.

Except as otherwise provided in this Ordinance or in regulations of the Conservation Commission, the definitions of terms and procedures in this Ordinance shall be as set forth in the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00).

#### **Sec.87-41 Security**

As part of a permit issued under this Ordinance, in addition to any security required by any other municipal or state board, agency, or official, the Conservation Commission may require that the performance and observance of the conditions imposed hereunder (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; or

B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

#### **Sec.87-42 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 Conservation 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 of Massachusetts.

The Commission shall have authority to enforce this Ordinance, its regulations, and permits issued thereunder by violation notices, non-criminal citations under G.L. Ch. 40 §21D, 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.

Upon request of the Commission, and with approval of the Mayor, the City Solicitor shall take legal action for enforcement under civil law. Upon request of the Commission, and with approval of the Mayor, the Chief of Police shall take legal action for enforcement under criminal law.

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 regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the Ordinance, regulations, permits, or administrative orders violated shall constitute a separate offense.

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

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

#### **Sec. 87-43 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 permit application will not have unacceptable significant individual and/or cumulative effects upon the resource area values protected by this Ordinance. Failure to provide adequate evidence to the Conservation Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

#### **Sec.87-44 Appeals**

All decisions of the Commission issued under Section VIII shall be deemed Tentative Decisions subject to the procedure for reconsideration and review set forth in this Section.

Any applicant aggrieved by the denial of a permit, or by conditions of approval contained in any permit, issued under this Ordinance may request reconsideration and review by written notice to the Commission. Such notice shall be hand delivered or sent by certified mail to the Commission within ten business days of the delivery or mailing of the Tentative Decision, shall include a statement of the grounds for the request and specify the changes to the decision requested. A request for reconsideration may be included in a Request for Superseding Order of Conditions filed with the Department of Environmental Protection, provided that such request is served on the Commission as specified herein and reconsideration under this Ordinance is expressly requested.

Within 21 days following the receipt of a request for reconsideration, the Commission shall either (a) issue a Final Decision incorporating the changes to the Tentative Decision requested by the applicant or (b) vote to reopen the hearing. If the applicant has also filed a Request for Superseding Order of Conditions under the Wetlands Protection Act (G.L. Ch. 131 §40), the applicant may request that the reopened hearing be scheduled after the issuance of such Superseding Order; otherwise, the reopened hearing shall be convened within 30 days of the request for reconsideration. Such reopened hearings shall be subject to the notice requirements in Section VI of this Ordinance.

Following the conclusion of the reopened hearing, the Commission shall issue a Final Decision in which it may reaffirm its Tentative Decision or modify the Tentative Decision as requested by the applicant in whole or in part; *provided that* if the Commission includes conditions of approval stricter than those imposed under the Wetlands Protection Act, or if the Commission denies a permit for a project approved under the Wetlands Protection Act, it shall include in its Final Decision a statement specifying each relevant respect in which this Ordinance, or regulations promulgated hereunder, are stricter than the requirements of the Wetlands Protection Act as applied to the project. In the event of any appeal to the Superior Court under G.L. Ch. 249, the Tentative Decision, the request for reconsideration, the Superseding Order of Conditions (if any), and the Commission's Final Decision shall be included in the record.

If the applicant does not request reconsideration as provided herein, the Tentative Decision shall be deemed final as of the date of issuance. If the applicant files a written statement waiving the right to reconsideration, or withdrawing a request for reconsideration previously filed, the Tentative Decision shall be deemed final as of the date such notice is received by the Commission.

A final decision of the Conservation Commission shall be reviewable in the superior court in accordance with G.L. Ch. 249 §4.

#### **Sec. 87-45 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 (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00-10.99) thereunder.

#### **Sec. 87-46 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, approval or determination, which previously has been issued.

#### **Sec. 87-47 Effective Date**

This Ordinance shall not apply to any project for which a Notice of Intent was filed with the Commission prior to the effective date of this Ordinance, provided that such project is completed before the expiration of the final Order of Conditions issued for such project, or any extension thereof.

Approved \_\_\_\_\_ Mayor

In Council May 3, 2005

Passed to take all three readings  
Ordained

Approved \_\_\_\_\_ City Solicitor

A true copy

Attest

Edward P. Finn, City Clerk