

PALMER WETLANDS REGULATIONS

2015

The purpose of these regulations is to clarify and define the 2013 Palmer Wetlands Protection Ordinance (hereafter referred to as the "Ordinance"), administered by the Palmer Conservation Commission (hereinafter "Commission"). The Ordinance identifies and protects certain wetland resource areas and the interests the general public has in these areas. These regulations establish a uniform process by which the Commission can review and regulate activities that affect the resource areas and interests identified by the Ordinance.

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SECTION I: GENERAL PROVISIONS

A) INTRODUCTION

These regulations are promulgated by the Palmer Conservation Commission pursuant to the authority granted to the Commission under Section 7 of the Town of Palmer Wetlands Protection Ordinance (2013). These rules and regulations complement and amplify the Ordinance and shall have the force of law upon their effective date.

B) PURPOSE

The purpose of the Palmer Wetlands Regulations (hereafter referred to as the "PWR") is to clarify and define the 2013 Palmer Wetlands Protection Ordinance (hereafter referred to as the "Ordinance"), administered by the Palmer Conservation Commission (hereinafter "Commission"). The Ordinance identifies and protects certain wetland resource areas and the interests the general public has in these areas. These regulations establish a uniform process by which the Commission can review and regulate activities that affect the resource areas and interests identified by the Ordinance.

In addition, the Commission wishes to provide clear guidance to applicants regarding the policies that the Commission has determined are necessary to protect wetland Resource Areas based on Palmer's particular topography and hydrology, by the special value these resource areas have to Palmer and to neighboring communities, and by the Commission's past experience with wetlands protection.

C) POLICIES

(1) No Net Loss Policy: It is the policy of the Palmer Conservation Commission to follow the "No Net Loss" guidelines set forth by the Massachusetts Department of Environmental Protection. Therefore, applicants who propose to alter resource areas under the Commission's jurisdiction must:

- a. demonstrate that there is no practicable alternative,
- b. minimize impacts where they are unavoidable,
- c. mitigate losses of wetland resource area, where applicable or appropriate, on at least a 1:1 basis. "Limited projects" are included in this requirement.

(2) No Net Change in Stormwater Runoff: It is the policy of the Palmer Conservation Commission to require applicants to demonstrate that no significant change in off-site runoff will result from proposed work. Because increased runoff impacts land downstream and reduces natural groundwater recharge, the Commission may require measures (such as stormwater detention basins) to prevent increased runoff. Direct discharge of runoff into a Resource Area will not be allowed.

(3) Resource Areas: The Conservation Commission has determined that certain additional areas of jurisdiction are significant to the protection of interests identified in the Palmer Wetlands Ordinance. The Commission presumes that the following additional resource areas are significant to those interests:

- a. isolated wetlands greater than 5,000 sq. ft.
- b. ponds greater than 5,000 sq. ft.
- c. Vernal pools.

These presumptions are rebuttable and may be overcome upon a clear showing that said land does not play a role in the protection of interests identified in the Ordinance.

In addition it is the policy of the Commission to advise applicants on three non-regulated wetland resource areas:

- a. Intermittent streams upgradient of wetland Resource Areas
- b. Isolated land subject to flooding below 310 CMR 10.57 size thresholds
- c. Isolated wetlands less than 5,000 sq. ft.

The Commission will make every effort to identify these areas at the site, will recommend locating them on the plans, will encourage applicants to avoid impacts to these areas, and will suggest possible measures to mitigate unavoidable impacts with respect to drainage and flood control.

(4) Vegetated Buffer Strip: Development proposed in the Buffer Zone can negatively impact the abutting Resource Areas(s). Negative impacts, both from the "construction" and "use" phase of the project can include erosion, siltation, loss of pollution attenuation, loss of groundwater recharge, reduced water quality and loss of wildlife habitat. A 50-foot strip of continuous, undisturbed, indigenous vegetative cover along the Resource Area boundary within the 100 foot Buffer Zone shall be maintained, where practicable, in order to protect water quality, improve water recharge, reduce erosion and pollution to the adjacent wetland resource areas, and provide wildlife habitat.

(5) Request for Determination versus Notice of Intent: Many times applicants are confused regarding when to file a Request for Determination and when to file a Notice of Intent for work in the Buffer Zone. For a project to be issued a Negative Determination, the Commission must be assured that the potential for alteration of a Resource Area is so insignificant as to not require the oversight provided by an Order of Conditions and subsequent Certificate of Compliance. Therefore the Commission may typically consider issuing a Negative Determination to projects that meet the following minimum criteria:

- no alteration of a wetland resource area
- less than 1,000 sq. ft. of alteration in the buffer

- no work will occur within 50' of a wetland resource area
- leach field of a septic system is at least 100' from Resource Area
- a plan is included for permanent stabilization - including loaming, seeding, and mulching
- erosion control measures are maintained until permanent vegetation is established
- maintenance of existing structures, water outfalls, spillways, and banks at impounded under 5,000 sq. ft

D) VALUES PROTECTED BY THE PALMER WETLANDS ORDINANCE

The following are the values under the Palmer Wetlands Ordinance:

- protection of public and private water supply
- protection of groundwater and groundwater quality
- protection of surface water and surface water quality
- flood control
- storm damage prevention
- prevention of pollution
- protection of fisheries
- protection of wildlife habitat
- erosion and sedimentation control
- protection of agricultural values

E) AREAS OF JURISDICTION

(1) Areas Subject to Jurisdiction under the local Ordinance: Except as permitted by the Conservation Commission or as provided for in this Ordinance, no person shall remove, fill, dredge, build upon, or alter the following RESOURCE AREAS:

- (a) Any freshwater wetland as determined by vegetational community, soil composition, and/or hydrologic regime, including isolated wetlands, and any marsh, wet meadow, bog or swamp;
- (b) Any pond, lake, river, any perennial or intermittent stream;
- (c) Any land under such waters;

(d) Any bank or beach;

(e) Any land subject to flooding or inundation by groundwater, surface water, storm flowage; including vernal pools and kettle holes;

or within 100 feet of the above resource areas, an area known as the BUFFER ZONE to the resource areas. Said resource areas shall be protected whether or not they border surface waters.

(2) Activities Subject to Regulations under the Ordinance:

(a) Activities within the Resource Areas. Any activity proposed or undertaken within an area specified in PWR Section (I)(E)(1)(a-e) which, in the judgment of the Commission, will remove, fill or alter an Area Subject to Protection Under the Ordinance is subject to regulation under the Ordinance and requires the filing of an Application for Permit under PWR (III)(D).

(b) Activities within the Buffer Zone. Any activity proposed or undertaken within one hundred feet of an area specified in PWR Section (I)(E)(1)(a)-(e) (hereinafter called the Buffer Zone) which, in the judgment of the Commission, will alter an Area Subject to Protection Under the Ordinance is subject to regulation under the Ordinance and requires the filing of an Application for Permit.

(c) Activities outside the Areas Subject to Protection and the Buffer Zone. See 310 CMR 10.02 (c).

Where natural vegetation is absent as a result of mowing, grazing, or other disturbance, the presence of hydric soils (soils that are annually saturated, as evidenced by the observed groundwater, soil gleying, or soil mottling within 18" of the surface) shall provide positive determination of jurisdiction. In cases where natural vegetation is absent as a result of filling or draining, historic evidence and record may provide positive determination of jurisdiction.

F) PRESUMPTION OF SIGNIFICANCE

Each Area Subject to Protection under the Palmer Wetlands Regulations is presumed to be significant to one or more of the values identified in PWR Section (I)(D). The presumptions are rebuttable and are set forth in PWR Section IV.

G) BURDEN OF PROOF AND GOING FORWARD

It is the applicant's responsibility to note those requirements contained in these regulations which are in addition to those set forth in 310 CMR 10.03.

H) INCORPORATION

All of the procedures and requirements set forth in the Wetlands Protection Regulations of 310 CMR 10.00 et. seq. are hereby incorporated and made a part of these regulations except where these regulations exceed state regulations. Where these regulations exceed the state regulations, PWR shall take precedent over the state regulations. The applicant should first address the

regulations at 310 CMR 10.00 et. seq. and then supplement them with the Palmer Wetlands Regulations.

I) EXCEPTIONS

(1) The application and permit required by the 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, telephone, telegraph or other telecommunication services, or sanitary or storm sewers, provided that written notice has been given to the Commission prior to the commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

(2) The application and permit required by the Ordinance shall not be required for 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 prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

(3) The application and permit required by the 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 the commencement of the work or within 24 hours after commencement; 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 the 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.

(4) The application and permit required by the Ordinance shall not be required for exemptions under the Rivers Act (310 CMR 10.58[6]).

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

(6) Limited tree removal and vista pruning on single family house lots within the buffer zone and/or resource areas shall require, at minimum, administrative approval before vegetation removal may commence

J) VARIANCES

(1) The Commission shall have the power, after the filing for a permit and the conduct of a public hearing in accordance with PWR Section III, to grant with respect to a particular project a

variance from the terms of the Ordinance. A variance will be granted only when the Commission finds, based on clear and convincing evidence adduced by the applicant, that owing to circumstances relating to the soil conditions, hydrological conditions, topography of such land and especially affecting such land but not affecting generally wetlands in the Town, a literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant. In addition, the applicant must demonstrate that desirable relief may be granted without material detriment to the values protected by the Ordinance and without substantially derogating from the intent or purpose of the Ordinance. Such variances are intended to be granted only in rare and unusual cases. It shall be the responsibility of the applicant to provide the Commission with any and all information which the Commission may request in order to enable the Commission to ascertain any such material detriment to the values protected by the Ordinance. The failure of the applicant to furnish any of the information so requested shall result in the denial of a request for a variance pursuant to this subsection.

(2) The Commission may impose conditions, safeguards, and limitations in a variance to protect further the interests protected by the Ordinance or the intent or purpose of the Ordinance.

(3) A variance shall expire on a date specified by the Commission, not later than three years from the date of issuance of the permit, and may be reestablished only after notice and a new hearing pursuant to this section.

K) SAVINGS

Should any portion of these regulations be declared invalid by a decision of the court, the legislature, or other body having jurisdiction, the remainder of these regulations shall remain in full force and effect.

L) RESERVATION

These regulations should not be construed to limit the authority under the Palmer Wetlands Ordinance. The Commission reserves the right to act in a manner consistent with the Ordinance upon any matter within its jurisdiction.

M) EFFECTIVE DATE

The effective date of these regulations shall be August 18, 2015. These regulations apply to all applications made on or after the effective date.

N) AMENDMENTS

These rules and regulations may be amended from time to time by a majority vote of the Commission if, prior to such a vote, the Commission has held a public hearing on the proposed changes.

SECTION II) DEFINITIONS

The definitions applicable to the Palmer Wetlands Ordinance shall be the same as set forth in 310 CMR 10.00 et. seq. except for the following modifications to those definitions and additional definitions:

Activity: Activity means any form of draining, dumping, dredging, damming, discharging, excavating, filling, or grading; the erection, reconstruction, or expansion of any buildings or structures; the driving of pilings or erection of walls; the construction or improvement of roads and other ways; the changing of runoff characteristics; the intercepting or diverting of ground or surface water; the installation of drainage, sewage, or water systems; the discharging of pollutants; the destruction of plant life; or any other changing of the physical characteristics of land, or of the physical, biological, or chemical characteristics of water.

Alter: Alter means to change the condition of any Area Subject to Jurisdiction under the Ordinance. Examples of alterations include, but are not limited to, the following:

- removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- drainage or other disturbance of water level or water table;
- dumping, discharging or filling with any material which may degrade water quality;
- placing of fill, or removal of material, which would alter elevations;
- driving of piles, erection or repair of buildings, or structures of any kind;
- placing of obstructions or objects in water;
- destruction of plant life including cutting of trees;
- changing water temperature, biochemical oxygen demand, or other physical, chemical or biological characteristics of surface and groundwater;
- any activities, changes, or work which may cause or tend to contribute to pollution of water or groundwater
- Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this ordinance.

Bankfull width: The **width** of the channel measured perpendicular to a break in bank slope that also typically is the edge of permanent vegetation.

Buffer Zone: Buffer zone means that area of land extending one hundred (100) feet horizontally outward from the boundary of any resource area described in Section IV of these regulations.

Cumulative Effect: Cumulative effects are changes to the environment that are caused by an action in combination with other past, present and future human actions.

Isolated Wetland: Isolated wetland means an area of at least 5,000 sq. ft. where groundwater, flowing or standing surface water, or ice supports a community composed of at least 50%

wetland plant species as included or identified in generally accepted scientific technical publications.

No-Disturb Zone: the 50 feet horizontally landward of a wetland (as defined herein) in which there shall be no alteration.

Pond: Pond means any open body of freshwater, either naturally occurring or man-made by impoundment, with a surface area observed or recorded within the last ten years of at least 5,000 sq. ft. and which is never without standing water due to natural causes, except during periods of extended drought. For the purposes of this definition, extended drought shall mean any period of four or more months during which the average rainfall for each month is 50% or less of the ten year average for that same month. Basins or lagoons which are part of waste-water treatment plants shall not be considered ponds, nor shall swimming pools or other impervious man-made retention basins.

Practicable Alternative: Practicable Alternative means a measure that is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Resource Area: Resource Area means any area specified in PWR (I)(E)(1)(a-e) and is synonymous with Area Subject to Protection Under the Ordinance.

Stream: Stream means any body of running water, including brooks and creeks, which moves in a definite channel in the ground due to the hydrologic gradient. A portion of a stream may flow through a culvert or beneath a bridge. A stream may be intermittent (discontinuous) or ephemeral (does not flow throughout the year). A stream does not necessarily drain an upgradient wetland.

Vegetated Buffer Strip: Vegetated Buffer Strip means a continuous 50-foot buffer strip, undisturbed and in its natural state, between development activities in the Buffer Zone and the Resource Area to be protected.

Vernal Pool: The term “vernal pool” shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, 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, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species. The resource area for vernal pools shall have a buffer zone of 100 feet outward from the top of the bank.

Water Dependent Use: Water Dependent Use means those uses and facilities that require direct access to, or location in, inland waters and which therefore cannot be located away from those waters.

SECTION III) PROCEDURES

A) TIME PERIODS: SEE 310 CMR 10.05 (1)

B) ACTIONS BY CONSERVATION COMMISSION: SEE 310 CMR 10.05 (2)

C) REQUEST FOR DETERMINATION OF APPLICABILITY (RDA):

(1) Explanation: Any person who desires a written Determination as to whether this Ordinance applies to an area, or work to be performed in an area, shall submit a written request to the Commission. This request, called a Request for Determination of Applicability, shall include description of the area and/or work to be performed and maps/plans as appropriate.

(2) Filing Procedure: It is the applicant's responsibility to provide all of the information required for this review. The applicant must submit all information on the Request for Determination.

(a) Return the original and one (1) copy by certified mail or hand delivery to:

Palmer Conservation Commission
4417 Main Street
Palmer, MA 01069.

Also submit one copy electronically to:

conservation@townofpalmer.com

(b) Mail a copy to:

DEP Western Regional Office
Division of Wetlands and Waterways Regulation
State House West, 4th Floor, 436 Dwight Street
Springfield, MA 01103

and

Landowner, when applicant is not landowner.

(c) Include an accurate description of the location (including assessors map and lot #), the boundaries of the proposed work, all structures, and the approximate distance to wetlands, water bodies, or other Resource Areas to be protected.

(d) When considering filing a Request of Determination for work in the Buffer Zone, and applicant must assure the Commission that the potential for alteration of a Resource Area is so insignificant as to not require the oversight provided by an Order of Conditions and

subsequent Certificate of Compliance. Therefore, the Commission may typically consider issuing a Negative Determination when a project meets the following minimum criteria:

- i. no alteration of a wetland resource area
- ii. less than 1,000 sq. ft. of alteration in the buffer
- iii. a fifty foot (50') undisturbed, vegetated Buffer Strip is left between the proposed work and the Resource Area
- iv. less than 5% slope toward the resource area
- v. leach field of a septic system is sited at least 100 feet from any wetland resource area
- vi. a plan for permanent stabilization is included - loaming, seeding, and mulching
- vii. erosion control measures maintained until permanent vegetation established

Any activity not meeting these criteria must be filed under a Notice of Intent filing per PWR Section (III)(D)(1-4)

(3) Public Hearing: The Commission shall hold a public hearing on the Request for Determination within twenty-one (21) days of receipt of the Request. Public notice shall be provided in the Palmer Journal Registrar or other local paper at the applicant's expense. The Commission shall issue a written determination within twenty-one (21) days from receipt of the request.

Prior to making a determination, the Commission may require the submission of additional data deemed pertinent to the Determination and shall inspect the property for which the Request was made. The Commission's Determination may be combined with a Determination made under the Wetlands Protection Act and sent to Massachusetts DEP.

Resource areas will be identified based on their definitions as provided in these regulations. In cases where the natural vegetative community has been disturbed by removal of the vegetative cover, the Commission may determine the boundary of a freshwater wetland based on the presence of hydric soils; or, may defer determination of a wetland boundary until the natural vegetation has regrown.

If a Positive Determination is issued where the area is determined to be jurisdictional, and when the work requires a permit, the applicant must file a Notice of Intent.

If the Positive Determination issued is to confirm the boundaries of a wetland, then those boundaries are valid for three years.

If a Negative Determination is issued, it means that the area is not subject to jurisdiction or that the work will not alter an Area Subject to Projection. In appropriate situations, the Commission may require the recording of a Negative Determination.

If the application for a Request for Determination of Applicability is incomplete, the Request must be resubmitted or a Positive Determination will be issued due to lack of sufficient information.

The Commission may defer action on a Request when snow cover makes the determination of resource area boundaries infeasible. Under these circumstances, the applicant will be advised to request and extension and the Commission shall continue the public hearing and make a Determination at the first available opportunity. If the applicant refuses to request an extension, upon majority vote of the Commission, a Positive Determination may be issued.

D) APPLICATION FOR PERMIT (NOTICE OF INTENT):

(1) Explanation: The role of the Commission is that of a reviewing agency. It is the applicants responsibility to provide all of the information required in the Notice of Intent necessary for proper review. It is in the applicant's interest to submit as complete and accurate a description of the project as possible to ensure that requests for additional information do not result in an unnecessary delay.

(2) Filing Procedure: An Application for Permit consists of the completion of a Notice of Intent form (310 CMR 10.05 (4)). An original and one (1) copy of the Notice of Intent and accompanying plans and data shall be sent by mail or hand delivered to:

Palmer Conservation Commission
4417 Main Street
Palmer, MA 01069.

Also submit one copy electronically to:

conservation@townofpalmer.com

The applicant shall sent two copies of the Notice of Intent and accompanying plans and data to:

DEP Western Regional Office
Division of Wetlands and Waterways Regulations
State House West, 4th floor, 436 Dwight Street
Springfield, MA 01103.

(3) Other Permits: The applicant is required to obtain or apply for all other permits, variances, and approvals required by any other applicable statute, Ordinance, or regulation prior to, or concurrently with, filing an application under the Ordinance. This requirement shall include only those approvals which are obtainable at the time the application is filed.

(4) Submission Requirements: For a Notice of Intent to be considered complete it must be submitted with a Site Plan (scale of 1" = not more than 40'). Following receipt of the above information, the Commission will schedule a site visit to view the proposed project in the field.

For the Commission to complete their visit, wetlands must be flagged and the project staked 10 days prior to the public hearing.

E) PUBLIC HEARING

The Commission shall hold a public hearing within twenty-one (21) days from the receipt of an Application for Permit. Notice of the public hearing will be provided in the Palmer Journal Registrar or other local paper in accordance with the Open Meeting Law at the applicant's expense. Prior to issuing its permit, the Commission may require the submission of additional data pertinent to the application. The Commission may continue the hearing to receive such information in accordance with Section 5 of the Ordinance.

Consolidation with Hearing Under the Wetlands Protection Act: Pursuant to Section 4.b of the Ordinance, the Commission may consolidate the hearing under the Act with the hearing under the Ordinance.

F) PERMIT REGULATING WORK

Within twenty-one (21) days of the close of the hearing, the Commission will issue a Permit/Order of Conditions with conditions to protect the interests as identified under the Ordinance. The written decision will be signed by a majority of the Commission and shall be valid for three years. Permits written under the Palmer Wetlands Ordinance and Regulations may be on the same form as the state regulations. Permits shall be valid for three (3) years.

Conditions may be for the construction period (e.g. straw bales for temporary erosion control) or may be in perpetuity (e.g. permanent buffer strips for erosion control, water supply protection, and wildlife habitat).

Conditions may be structural (e.g. hay bale barrier for erosion control) or may require a specified standard of performance (e.g., prevention of erosion).

(1) Standard Conditions: A standard set of conditions will be imposed on all projects approved by the Commission.

(2) Special Conditions: A special set of conditions will be imposed on all projects approved by the Palmer Conservation Commission where it is deemed that such conditions are necessary to protect the values of wetlands, related water resources, and adjoining land areas under its jurisdiction.

(3) Amended Permits: If at any time after a Permit has been issued there is a change in the proposed activity, the applicant or owner must notify the Commission, in writing, of the proposed changes, not less than 48 hours before a regularly scheduled meeting. No work associated with these changes shall be conducted until the Commission has reviewed the changes and issued a written decision. The person making this request shall be notified by the Commission of its decision within twenty-one (21) days of the receipt of this request. The Commission may determine that:

(a) The changes represent a significant departure from the original proposal and that the potential impacts of the new proposal are sufficiently different from those of the original proposal as to require the filing of a new Application for Permit.

(b) The changes involve a moderate departure from the original proposal and will require an Amended Permit. The Commission shall publish newspaper notice (at the applicant's expense) and make a decision on the Request for an Amended Permit after a public hearing. An Amended Permit must be filed at the Registry of Deeds with a marginal reference to the original Permit. The following may require an Amended Permit:

- i. decrease in the distance from the resource area
- ii. increase in potential for erosion
- iii. increase in size and change in location of structure
- iv. increase in the amount of vegetation to be removed
- v. activity beyond the limit of work.

(c) The changes represent an insignificant change in the original proposal and will have no likelihood of greater impact on any wetland resource area. The person proposing these changes may proceed with work upon written notification by the Commission.

(4) Denials: If the Commission deems that the interests stated in the Ordinance are not adequately protected under the terms of the applicant's proposal, the Commission may refuse to issue a permit. When the Commission votes to deny a permit, it shall issue a written decision.

G) EXTENSIONS OF PERMITS:

(1) The Commission may extend a Permit once for up to an additional three year period. Requests for extension shall be made to the Commission in writing at least 30 days prior to the expiration of the Permit.

(2) The issuing authority may deny the request for an extension and require the filing of a new Application for Permit for the remaining work in the following circumstances:

- a) where no work has begun on the project, except where such failure is due to an unavoidable delay, such as appeals, in the obtaining of other necessary permits;
- b) where new information, not available at the time the Permit was issued, has become available and indicates the permit is not adequate to protect the interests identified in the Ordinance;
- c) where incomplete work is causing damage to the interests identified in the Ordinance;
- d) where work has been done in violation of the Permit or these Regulations.

(3) If issued by the Commission, the Extension Permit shall be signed by a majority of the Commission.

(4) The Extension Permit shall be recorded in the Registry of deeds or land Court, whichever is appropriate. Certification of recording shall be sent to the issuing authority. If work is undertaken without the applicant so recording the Extension Permit, the Commission may issue an Enforcement Order.

H) APPEALS

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

I) FINAL RELEASE/CERTIFICATE OF COMPLIANCE

Upon completion of the work permitted, the applicant shall request, in writing, that a Final Release/Certificate of Compliance be issued stating that the work has been satisfactorily completed. Upon written request by the applicant, a Final Release/Certificate of Compliance may be issued within twenty-one (21) days of receipt thereof, and shall certify that the activity or portions thereof described in the Application for Permit and submitted plans have been completed in compliance with the Permit. The Final Release shall not be issued until a site inspection is made by a member of the Commission and shall be signed by a majority of the Commission. Final Release may be combined with Certificate of Compliance issued under 310 CMR 10.05 (6).

If the Commission determines, after review and inspection, that the work has not been done in compliance with the Permit, it may refuse to issue a Final Release/Certificate of Compliance. A refusal will be issued within twenty-one (21) days of receipt of a request for a Final Release, will be in writing, and will specify the reasons for denial.

If the final Permit contains conditions which continue past the completion of the work, such as maintenance or monitoring, the Final Release/Certificate of Compliance shall specify which, if any, of such conditions shall continue.

The Final Release will be recorded in the Registry of Deeds or Land Court. Certification of the recording shall be sent to the Commission. Upon failure of the applicant to so record, the Commission may do so.

J) RECORDING IN REGISTRY OF DEEDS OR LAND COURT

The following forms issued by the Commission are required to be recorded in the Hampden County Registry of Deeds or the Land Court, whichever is appropriate:

- Permit/Order of Conditions
- Amended Permit/Amended Order of Conditions

- Extension Permit
- Final Release/ Certificate of Compliance
- Negative Determinations where recording is required by conditions set forth in the Determination

As proof of recording, the applicant must deliver to the Commission the recording slip at the bottom of the Permit, Extension Permit, Certificate of Compliance. When required, proof of recording of a Determination of Applicability shall be a copy of the Determination with recording number. No work can begin under and Order of Conditions until proof of recording has been received by the Commission. If the applicant fails to record in a timely manner any of these documents (unless in accordance with exception below) the Commission will record the Order.

If the applicant desires to delay the recording of the Permit, he or she shall so state in writing to the Commission the reasons for the delay, and the estimated date of recording before the close of the hearing. In no case shall any construction commence unless and until a Permit has been recorded.

K) PERFORMANCE GUARANTEE

As part of a permit or variance issued under the Ordinance, 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 both of the methods described below:

(1) by a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission. Such bond or surety, if required to be filed or deposited, shall be approved as to form and manner of execution by the Town Counsel, and as to sureties by the Town Treasurer, and shall be contingent upon the satisfaction of such conditions within the time frame of the permit and extension. Such bonds shall be approved by the Commission prior to the close of the public hearing.

(2) by acceptance of 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 the Town, whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed (such method to be used only with the consent of the applicant).

L) EMERGENCY WORK See 310 CMR 10.06

M) COMPLIANCE WITH MASSACHUSETTS ENVIRONMENTAL POLICY ACT See 310 CMR 10.07

N) ENFORCEMENT

(1) The Commission shall have authority to enforce the Ordinance, its regulations, and permits and variances issued thereunder by violation notices, enforcement orders, and civil and criminal court actions.

(2) Upon request of the Commission, the Town Council and the Town Counsel (Attorney) shall take legal action for the enforcement under the civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.

(3) As an alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure set forth in G.L., Ch. 40 sec. 21D.

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

(5) Any person who violates any provision of the Ordinance, its regulations, and permits and enforcement orders issued thereunder, or has failed to obtain requisite Commission approval, shall be fined not more than \$300, commencing the day on which the violation has been confirmed by the Commission or its agents. Each day or portion thereof during which the violation continues shall constitute a separate offense, and each provision of the Ordinance, regulations, permit, or variance violated shall constitute a separate offense.

(6) When the Conservation Commission determines that an activity is in violation of the Ordinance or a Permit issued under the Ordinance, the Commission may:

- (a) Make an effort to secure voluntary compliance with the Ordinance and/or a Permit by the applicant or landowner;
- (b) Issue an Enforcement Order; and/or
- (c) Hold an Administrative Hearing to consider whether the landowner should be fined for the violation.

(7) Violations include, but are not limited to:

- (a) failure to comply with a Permit, including failure to observe a particular condition or time period specified in the Permit;
- (b) failure to complete work as described in a Permit when such failure causes damage to the interests identified in the Ordinance;
- (c) failure to obtain a permit prior to conducting an activity subject to regulation under the Ordinance (PWR Section II: Definitions).

(8) The Commission may issue an Enforcement Order under MGL Chapter 131 Section 40 in lieu of, or in addition to, an Administrative Order under these regulations.

(9) An Enforcement Order issued by the Conservation Commission shall be signed by a majority of the Commission. In a situation requiring immediate action, it may be signed by a single member or agent of the Commission if said Enforcement Order is ratified by a majority of the members at the next scheduled meeting of the Commission.

(10) If a fine or adjustment of fine for a violation is being considered, the Commission shall hold an Administrative Hearing to discuss the violation and to give the landowner and/or individuals(s) responsible for the violation an opportunity to respond to the evidence and circumstances. The Commission must give such parties at least forty-eight (48) hours notice in writing of the date, time, and place of an Administrative Hearing by certified mail or hand delivery to the last known address on record in the Assessors' Office. The Commission may grant a continuance, at its discretion, upon appeal by the landowner stating, in full the reason for the request. If a majority of the Commission present at the Hearing finds that a violation has occurred, the landowner and /or individual responsible for the violation may be fined not more than \$300.00 per violation, per day. The amount of the fine per violation will be determined by the Commission at the Administrative Hearing.

(11) An owner may apply in writing for a continuance of the Administrative Hearing stating in full the reason for the request. The Commission may grant a continuance for compelling and/or environmentally sound reasons.

(12) The Commission shall take into account the nature of the violation as follows:

(a) Where remedial action is possible, each day or portion thereof during which the violation continues or is repeated, shall constitute a separate offense, and each provision of the Ordinance, Regulations or Permit violated shall constitute a separate offense.

(b) Where remedial action is not possible or advisable the Commission will decide what procedural or legal remedies to take.

(13) The notice of the fine and explanation thereof, including the date or approximate date of the violation from which daily violations are counted, will be sent in writing to the responsible landowner and/or individual(s) responsible for the violation by certified mail or hand-delivery. The fine is payable to the Town of Palmer within twenty-one (21) days of the date of issuance of the Notice.

(14) The Commission may accept a written plan with timetable for full restoration and restitution of the violation and may then withhold sending the Notice of Fine for a specified time period. If satisfactory restitution is not made within a timely manner, the Notice of Fine is retroactive.

(15) The Commission reserves the right to adjust a fine in response to new information or new circumstances at an Administrative Hearing to which the owner will be given notice as above. A written notice of the adjustment of fine shall be sent to the owner by certified mail or hand delivered.

SECTION IV: STANDARDS FOR INLAND WETLANDS

A) GENERAL PROVISIONS: See 310 CMR 10.53 and the following:

Any agricultural activity as defined by the Farm Assessment Act, MGL Chapter 61A, exempt from the provisions of the Wetlands Protection Act, MGL c. 131, s. 40 and from the Wetlands Protection Regulations 310 CMR 10.00 (normal maintenance or improvement of land in agricultural use) will also be exempt under the Palmer Wetlands Regulations.

Additionally, any agricultural activity as defined by the Farm Assessment Act, MGL Chapter 61A and on land not under the jurisdiction of the Mass Wetlands Protection Act and implementing regulations (310 CMR 10.00) will be exempt from all local jurisdiction.

B) BANK

(Naturally Occurring Banks and Beaches) See 310 CMR 10.54

Work on a stream crossing shall be presumed to meet the performance standard set forth in 310 CMR 10.54(4)(a) provided the work is performed in compliance with the Massachusetts Stream Crossing Standards by consisting of a span or embedded culvert in which, at a minimum, the bottom of a span structure or the upper surface of an embedded culvert is above the elevation of the top of the bank, and the length structure spans the channel width by a minimum of 1.2 times the bankfull width. This shall apply to all streams, whether perennial or intermittent.

C) FRESHWATER WETLANDS

Freshwater wetlands include Bordering Vegetated Wetlands such as Marshes, Wet Meadows, Bogs, Swamps as defined in 310 CMR 10.55 and incorporated into these Regulations at PWR Section (IV)(D). They are areas of wetland vegetation where fifty percent or more of the vegetative community consists of obligate or facultative wetland plant species as included or identified in generally accepted scientific or technical publications. Freshwater wetlands also include isolated wetlands greater than 5,000 square feet in area.

D) BORDERING VEGETATED WETLANDS: See 310 CMR 10.55

E) ISOLATED WETLANDS

(1) Preamble: Isolated wetlands are freshwater wetlands that do not border on creeks, rivers, streams, ponds and lakes. Isolated wetlands are likely to be significant to public or private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, and the protection of wildlife habitat.

Isolated wetlands may be found either in areas with low, flat topography or below sidehill seeps. These areas provide temporary storage of water resulting from runoff, rising groundwater, or where groundwater breaks out of a sloped forming a sidehill seep, thereby providing for flood control and prevention of flood damage. Alteration can result in the lateral displacement of

retained water into adjacent properties resulting in modified drainage patterns with the potential for property damage.

Isolated wetlands are areas where groundwater may discharge to the surface either by a rising water table or from a sidehill seep. Under some circumstances, surface water may discharge to the groundwater in these areas, particularly where they are underlain by pervious materials. Contaminants introduced into such areas, such as septic system discharges, road salts, pesticides, or herbicides, find easy access into the ground water and may contaminate private or public water supplies

Where such areas are underlain by pervious material covered by a mat of organic peat or muck, they are likely to be significant to prevention of pollution.

Isolated wetlands may provide important habitat for wildlife. Isolated wetlands providing Seasonal Wetland habitats are essential breeding sites for certain amphibians which require isolated areas that generally flood in the Spring and/or Summer, and are free of fish predators. Many reptiles, birds, and mammals depend upon such Isolated Wetlands as a source of food.

(2) Definition, Critical Characteristics and Boundary: Isolated wetlands are freshwater wetlands as defined in these regulations that do not border on creeks, rivers, streams, ponds and lakes.

Isolated wetlands may occur in a depression or closed basin in otherwise flat topography. In these areas, water may pool above the surface at least once a year or may be contained in the top 18 inches of soil. In addition, some Isolated Wetlands occur downslope of sidehill seeps, depending on the topography, soils and water regime. Isolated Wetlands are areas of wetland vegetation where at least;

(a) Fifty percent (50%) or more of the natural vegetative community must consist of plants listed in the Massachusetts Wetlands Protection act or are obligate or facultative wetland plant species as included or identified in generally accepted scientific or technical publications, and

(b) The isolated wetland must cover an area that is 5,000 square feet or greater.

(3) Presumption: Where a proposed activity involves filling, dredging, or altering of an isolated wetland, the Commission shall presume that such an area is significant to the interests specified in the Preamble above. This presumption is rebuttable and may be overcome only by a clear showing that said land does not play a role in said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

(4) Performance Standards: A proposed project which may result in alteration of an Isolated Wetland shall not result in the following:

(a) Flood damage due to filling which causes lateral displacement of water that would otherwise be confined within said area.

(b) An adverse effect on public and private water supply or ground water supply, where said area is underlain by pervious material

(c) An adverse effect on the capacity of said area to prevent pollution of the ground water, where the area is underlain by pervious material which in turn is covered by a mat of organic peat or muck.

(d) An impairment of its capacity to provide important wildlife habitat.

No project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species as identified on the Natural Heritage and Endangered Species Estimated Habitat Maps on file with the Commission and identified under Section (IV)(I): Rare Species, of the Regulations to the State Wetlands Protection Act (310 CMR 10.00).

F) LAND UNDER WATER BODIES AND WATERWAYS: (Under any Creek, River, Stream, Pond or Lake)

See 310 CMR 10.56, except as where the definition of Pond (310 CMR 10.04 Pond) applies. In these situations, substitute the definition of Pond under PWR (II): Pond; which defines Pond as having a surface area of at least 5,000 square feet.

G) LAND SUBJECT TO FLOODING: See 310 CMR 10.57.

H) RIVERFRONT

In reviewing activities within the riverfront area, the Commission shall presume the riverfront area is important to all the resource area values unless demonstrated otherwise, and no permit issued hereunder shall permit 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), logistics, existing technology, costs of the alternatives, and overall project costs.

In 2002, the Town of Palmer adopted a Densely Developed Area (DDA) that comprises of four areas bordering the Swift, Ware, Quaboag, and Chicopee Rivers. The town's historic pattern of development has been along the river valleys, with railroads, industries, residences and commercial uses being located in the four villages adjacent to one or more of the rivers. The DDA map, entitled Palmer, Massachusetts River Protection Act 25-foot Set-back Area Map; signed by Fuss & Oneil, Inc.; dated May 2004; is an amendment to the River Protection Act's

200-foot riverfront, and shows specific lots in Palmer that have a 25-foot Riverfront. The Palmer Conservation Commission requires the filing of a Notice of Intent for any work proposed within this 25-foot area.

Within 25 foot riverfront areas, any proposed work shall cause no significant adverse impact by:

- a. Limiting alteration to the maximum extent feasible, and at a minimum, preserving or establishing a corridor of undisturbed vegetation of a maximum feasible width. Replication and compensatory storage required to meet other resource area performance standards are allowed within this area; structural stormwater management measures shall be allowed only when there is no practicable alternative;
- b. Providing stormwater management according to standards established by the Department;
- c. Preserving the capacity of the riverfront area to provide important wildlife habitat functions. Work shall not result in an impairment of the capacity to provide vernal pool habitat when identified by evidence from a competent source but not yet certified; and
- d. Proposed work shall not impair groundwater or surface water quality by incorporating erosion and sedimentation controls and other measures to attenuate nonpoint source pollution.

I) RARE SPECIES: See 310 CMR 10.59

J) WILDLIFE HABITAT EVALUATIONS

The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless 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 actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60).

K) VERNAL POOLS

(1) Preamble: Vernal pools are usually isolated depressions or closed basins that serve, in most years, as ponding areas for runoff or high ground water that has risen to the surface. Vernal pools are, by definition, of seasonal duration; accordingly, the degree of wetness necessary for the establishment of a typical wetland plant community does not exist in most cases. Since the temporary nature of Vernal pools precludes the presence of fish species, these areas are able to support viable populations of several amphibian and invertebrate species which are highly vulnerable to fish predation. The presence of a sustaining population of any species of fish at a site in question would rule it out as a Vernal Pool.

Vernal Pools are not located within Resource Areas under jurisdiction of the Massachusetts Wetlands Protection Act, but serve as Vernal Pool habitat. Where one of these ponded areas is shown to be Vernal Pool habitat, it shall be considered a Vernal Pool under these regulations and presumed significant to the protection of wildlife habitat.

(2) Definition, Critical Characteristics and Boundary:

(a) Definition: Vernal pools are isolated depressions or closed basins which temporarily confine water during periods of high water table and high input from spring runoff, snowmelt, or heavy precipitation, and serve as wildlife habitat. They are essential breeding sites for certain amphibians which require isolated areas that are generally flooded for at least two continuous months in the spring and/or summer and are free from fish predators. Most of these amphibians remain near the breeding pool during the remainder of their lifecycle. Many reptiles, birds and mammals also feed here.

(b) Critical Characteristics:

(i) Temporality: Vernal pools generally fill up during the spring rains and snowmelt, dry up during the summer, and may fill again during the fall rains or during summer thundershowers. An area where water stands on a year-round basis will not be considered to be a temporary wetland (it may be an isolated wetland). The cycle of filling and drying may occasionally miss a year due to dry conditions.

(ii) Isolated Depressions: Shallow areas of no minimum size where water ponds in response to flooding, high groundwater or inputs from rain and snow meltwater and lack permanent inlets or outlets.

(iii) Organic Accumulation: The presence of a well-developed organic layer is a feature of most Vernal pools. These pools have generally existed since the end of the glacial period and will probably continue in their semi-open condition for many more thousands of years unless artificially altered. These pools act as traps for organic matter, especially during the autumn when they trap quantities of airborne leaves. The presence of water-stained leaves in a depression which is otherwise dry is a good indicator that the area temporarily serves to pool water.

(c) Boundary: Because Vernal pools are dry much of the year, it may be necessary to determine their boundaries using indicators other than pooled water. Further, because the area inundated varies so widely from year to year, pooled water is not a good indicator of extent. An Vernal pool boundary shall be determined using a combination of pooled water, if present, and by the presence of a depression covered by water-soaked leaves, water marks or lack of moss on trees, buttressed tree trunks, shallow-rooted trees, or adventitious roots on trees. Other indicators of the temporary pooling of water, such as the presence of caddis fly cases or fingernail or pea clams, can also be used. The burden of proof for identification of a Vernal pool shall be upon the Conservation Commission. Identification must be made prior to the close of a public hearing and shall follow the guidelines for Vernal Pool Certification Criteria established by the Massachusetts Division of Fisheries and Wildlife. In the case of disputes, hydrological calculations using the 2-year storm may be used to provide a determination of the boundary of an Vernal pool.

(3) Presumption: Where a proposed activity involves the removing, filling, dredging or altering of a Vernal Pool, the Conservation Commission shall presume that such an area is significant to the protection of wildlife habitat, particularly amphibian breeding habitat. This presumption is

rebuttable and may be overcome upon a clear showing that the Vernal Pool does not play a role in the protection of wildlife habitat. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

(4) General Performance Standards: A proposed project in a Vernal pool shall not result in the following:

(a) any impairment of the capacity of the Vernal Pool as well as the area within 100' of the mean annual boundary of the Vernal Pool to provide wildlife habitat. Alterations may be permitted if they will have no adverse effects on wildlife habitat, as determined by the procedures listed in 310 CMR 10.60.

(b) endangering state-listed species, which shall be protected under the procedures listed in 310 CMR 10.59.

L) BUFFER ZONE

(1) Preamble: It is the Commission's experience that any project undertaken in close proximity to a wetland resource area has a high likelihood of resulting in some alteration of that area, either immediately, as a consequence of construction, or over a longer period of time, as a consequence of daily operation of the completed project. These negative impacts from construction, as well as long-term use, in the buffer zone can include erosion, siltation, loss of groundwater recharge, poor water quality characteristics and loss of wildlife habitat. The Commission's prime concern in the Buffer Zone is the ultimate impact on the adjacent wetland resource area from both the "construction" and "use" phases of the proposed activity. The policy of the Commission is to have the applicant maintain a strip of continuous, undisturbed, indigenous vegetative cover in the Buffer Zone adjacent to the Resource Area to reduce erosion and pollution to the adjacent wetland resource area, maintain water quality, improve water recharge, and provide wildlife habitat.

(2) Definition, Critical Characteristics and Boundary:

(a) Definition: The Buffer Zone is that area of land extending 100 feet horizontally outward from the boundary of any resource area specified in PWR Section (I)(E)(1)(a-e).

(b) Critical Characteristics: Where surface runoff or groundwater from the Buffer Zone drains toward the resource area, vegetative cover and soils may filter runoff and provide uptake or renovation of pollutants from adjacent areas, thereby protecting water quality within the resource area. The vegetation and soils may slow surface runoff and permit infiltration of precipitation, maintaining the hydrologic regime to which the resource area is adapted.

Indigenous vegetation is often used by wildlife for important functions such as nesting, feeding, and protective cover sites. Dense understory in wooded areas may provide nesting sites, travel corridors and protective cover for a wide variety of fauna. Cutting of vegetation, especially canopy trees, alters the physical environment by allowing more light and air, and may increase temperatures during the summer and decrease temperatures in winter.

(3) Presumption: A continuous fifty foot (50') VEGETATED BUFFER STRIP between development activities in the buffer zone and the resource area to be protected shall be presumed to be significant to the interests specified in the Preamble above. This presumption is rebuttable and may be overcome upon a clear showing that said land will not play a role in the protection of said interests. In the event that the presumption is deemed to have been overcome, the issuing authority shall make a written determination to this effect, setting forth the grounds.

The following activities within the 50 foot buffer strip shall be presumed not to be significant to interests specified in the Preamble above.

- (a) on-going landscaping activities on existing developed lots (continued mowing, landscape plantings, and selective pruning) provided that soil is not exposed to erosion, there is no change in grade, and sod cover or natural litter layer is maintained.
- (b) construction or installation of fences or structures not requiring a building permit.
- (c) construction of footpaths of minimum size.

Water-dependent activities, "limited projects" approved by the Commission, and activities where there is no practicable alternative may be allowed by the Commission where impacts are minimized and mitigated, as necessary. As with any work in the Buffer Zone, these activities still require the filing of a Request for Determination of Applicability, or Notice of Intent, whichever is appropriate under these Regulations.

(4) Performance Standards:

- (a) Any work within the Buffer Zone shall not result in alteration of any resource area; or
- (b) If work within the Buffer Zone which alters a resource area is permitted by the Commission, the alteration of the resource area shall comply with the applicable performance requirements for the altered resource area and any other conditions the Commission may require to enforce those performance requirements.
- (c) Unless as specified above, a continuous fifty foot (50') NO DISTURBANCE BUFFER STRIP, untouched and in its natural state, shall be left between development activities in the Buffer Zone and the Resource Area to be protected.
- (d) Any drainage outletting in the Buffer Zone shall be shown to be non-erosive and shall demonstrate there is no significant change in off-site runoff from the proposed work.

M) TITLE FIVE

(1) Preamble: The State Environmental Code (310 CMR 15.00 et. seq.), administered locally by the Palmer Board of Health, is a minimal public health regulation that may be supplemented at the local level. Where they concern septic-derived contaminants, the Palmer Wetlands Regulations complement local health regulations, which are independently authorized and administered.

(2) Septic System Location: Within the area of the Commission's jurisdiction, a septic system is considered to be properly sited only if all of the following conditions are met:

(a) none of the septic components is located within a Resource Area as defined in the Palmer Wetland Ordinance Section 2 and PWR Section (I)(E)(1)(a-e).and

(b) the leaching facility of a disposal system is set back at least one hundred feet (100') from a Resource Area defined under the Ordinance as required by local Board of Health regulations, except:

i. the setback for areas which are defined as Resource Areas only under this Ordinance

ii. the set back required for the renovation, replacement, or maintenance of septic systems constructed prior to the date of these regulations, provided that no alternative location is available on the lot.

In these instances, if the proposed leaching facility setback is greater than fifty feet (50') and receives Palmer Board of Health approval, the Commission will presume the design meets requirements for effluent impacts and the Commission will only review construction impacts. If the proposed leaching facility setback is less than fifty feet (50') from a Resource Area under these regulations, Commission review will cover both effluent and construction impacts.

The setback distance is to be determined as specified in 310 CMR 10.03

(3) The Commission shall determine the edge of the Resource Area for the Board of Health upon request.

SECTION V) SITE PLAN REQUIREMENTS

A) SITE PLAN REQUIREMENTS:

1. Title Box: date, owner, scale, north arrow
2. Assessor's Reference: Map, Section, Parcel, Lot
3. Engineer's Stamp and Signature when required
4. Boundaries of all Resource Areas as defined by the Palmer Wetlands Regulations
5. 100' Buffer Zone and 50' No Disturb Zone from Resource Areas
6. Location, extent, and area of all present and proposed structures and paved areas
7. Limit of Work (construction envelope)
8. Location of Temporary Erosion and Sedimentation Control measures
9. Distance (100' minimum) of Leaching Facility from Resource Areas (PWR Section (IV)(M)(2)(i and ii).
10. Existing contours
11. Proposed new contours
12. Soil Characteristics in representative portions of the site, including characteristics of hydric soils and depth of peat and muck in wetlands. Sampling sites shall be specified.
13. The maximum groundwater elevation at the period of the year when the ground water table is at its highest elevation, including calendar dates of measurements, samplings, and percolation tests, if any.
14. Location of Resource Areas to be filled or altered
15. Amount (square feet) of filled or altered Resource Areas
16. Location of Replacement Areas
17. 100 year flood plain, with elevations
18. Amount of fill in floodplain
19. Location of compensatory storage areas
20. Cross sections showing slope, bank, and bottom treatment of each water course to be altered

21. Existing natural drainage patterns and proposed alterations
22. Drainage easements and ways
23. Location of proposed and existing water detention areas and all existing and proposed storm drainage pipes
24. Ditches, structures, culverts and outfalls, fully described with information on inverts, slopes, materials, entrance and outlet conditions, bedding in unstable soils, details of drainage structures, and endwalls, and other standard engineering data on such work
25. Details of storm drainage outlets showing no direct discharge into a resource area

The following guidelines are intended to aid the applicant in deciding which plan items must be submitted to the Commission for review. For final clarification of what items will be required for a given project, please contact the Conservation Commission Office.

B) WORK DESCRIPTION

PLAN ITEM #

Work in Buffer:

Grading/landscaping activities on single family lot	1-11
Addition to single family house	1-11
Single family house with leach field	1-13
Subdivision	1-13; 21-25
Commercial/Industrial	1-13; 21-25

Work in Resource Area:

Work in Wetland	1-11; 12-14
Work in Stream	1-11; 14-20
Single Family house with Limited Access	1-20
Highway Work	1-11
	14-16 possibly
	17-20
	21-25 possibly

C) ENGINEERING CALCULATIONS

- (1) Engineering calculations are required to show the effect of the proposed activity on soil and water. Calculations and watershed modeling shall normally be performed using a hydrograph analysis based on the techniques developed by the USDA, Soil Conservation Service. Calculations shall be made that show the impact for 2-year, 10-year, 100-year storms using the SCS Type II or III 24 hour rainfall, or other storms consistent with Palmer Planning Board policy (Subdivision Regulations). The calculations shall be prepared by a registered professional civil engineer or qualified hydrologist.
- (2) Engineering calculations are required to fully support the design of compensatory flood storage areas and stormwater management systems, including detention or retention basins and infiltration systems.
- (3) Soil and Vegetation Data: This information is required to describe alterations to and replication of Resource Areas.
- (4) Wildlife Habitat Evaluation: The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless 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 actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60).

SECTION VI) FILING FEES (AMENDED 10/4/2016):

A) INTRODUCTION

- (1) Procedural History: On 6 September 2016, the Palmer Conservation Commission held a public hearing to amend the existing regulations governing fees. At the close of the public hearing, on 4 October 2016, the Conservation Commission voted to adopt the amended regulations governing fees and a revised schedule of fees for permitting review conducted by the Conservation Commission.

- (2) Purpose: The Palmer Conservation Commission may impose reasonable fees related to application review, permit conditioning, and/or monitoring. The Commission may also assess fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services. These regulations and fee schedules have been adopted to: promote more informed decision-making by the Conservation Commission, produce a more equitable schedule of fees which more accurately reflects the costs of technical and legal review of applications to the Conservation Commission; to take advantage of the procedures offered by M.G.L. c. 44, §53G and establish a review procedure in the selection of consultants.

B) GENERAL REGULATIONS

- (1) General: Any person requesting action by the Commission pursuant to the PWO shall, at the same time, shall pay a filing fee in accordance with the Filing Fee Schedule listed below.
- (2) Form of Payment: The fees pertain to local Ordinance review and are in addition to those required under the Massachusetts Wetlands Protection Act. The check shall be made payable to the “Town of Palmer”, and shall be a separate check from the MassDEP WPA fee.
- (3) Refund: Fees are non-refundable.
- (4) Municipal Projects: Municipal projects where the Town of Palmer or any other government agency is the Applicant are exempt from the fees.
- (5) Waivers: The Commission or its Agent reserves the right to waive fees. Said request for waiver shall be made at the time of submittal of the application.
- (6) Outside Consultants: In addition to the Schedule of Fees listed below, reimbursement for outside consulting services/third party reviews may be required, as provided in Section 4 of the PWO and Section (D) of these regulations.
- (7) Violations: All fees associated with after the fact applications or fillings as a result of a violation and/or enforcement action shall be charged double (200%) the fees listed below.
- (8) Re-Inspection Fee's: The purpose of this fee is to cover the town's cost and to account for the inconvenience imposed on the Commission and staff, for having to re-inspect a site multiple times due specifically to an applicant's negligence. Any additional site visits required during

the site plan review and prior to the Commission authorizing activity to commence shall be assessed this fee.

- a) Activities that may result in a re-inspection fees include, but are not limited to: the applicant failure to properly mark the site prior to a scheduled site visit, the applicants failure to prepare a site plan in accordance with Section 6 of these regulations, the applicants failure to ensure all conditions required prior to activity are completed before requesting a pre-activity inspection and work authorization (No DEP #, ESC not installed properly). Failure to submit the fee will result in the denial of the project due incomplete application. Additionally, the Commission will not authorize the activities to begin until all outstanding fees are paid in full.
- b) The Commission shall not impose a fees for the initial site visit required during the public hearing process, when multiple site visits are necessary due to project complexity, when site visit are required as a specific condition of a permit (pre-activity visit, visits to monitor replication/mitigation measures), when site visit are request by a town department to assess compliance on permits with cross jurisdictional issues, or when it is at the Commission's discretion to revisit the site.

C) SCHEDULE OF FEES

Filing	Fee
Notice of Intent (NOI), Abbreviated NOI, & Amended Order of Conditions (50% Fee)	\$50 first acre, \$100/additional acre of Project Site ¹
Monitoring of Replication, Restoration & Mitigation Areas ²	50-Foot “NDZ”: \$1/square foot BVW: \$2/square foot Bank: \$5/linear Foot RFA: \$2/square foot Flood Plain: \$1/square foot Land Under Water: \$1/square foot
Request for a Determination of Applicability (RDA)	\$50
Resource Area Confirmations (RDA, NOI or ANRAD)	\$1/linear foot of flagging
Certificate of Compliance (COC)	\$50 or \$10/acre of Project Site, whichever is higher
Emergency Certification	\$50
Administrative Approvals (building permits, tree removal, and other general inquiries)	\$25
Re-inspection Fee	\$50
Extension Permit	\$50
Lift an Enforcement Order	\$100

¹ **Project Site:** means the area within the parcel(s) that comprises the limit of work for activities, including but not limited to, the dredging, excavating, filling, grading, the erection, reconstruction or expansion of a building or structure, the driving of pilings, the construction or improvement of roads or other ways, and the installation of drainage, stormwater treatment, environmentally sensitive site design practices, sewage and water systems.

² **Replication, Restoration & Mitigation Areas:** Any resource area restoration required as a result of a violation and/or enforcement action shall be charged double (200%) the fees listed above.

D) OUTSIDE CONSULTANTS FEE, AS PROVIDED BY MGL CH. 44 §53G:

- (1) Purpose: As provided by G.L. Ch. 44 §53G, the Palmer Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services. Such services shall be deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of: the Wetlands Protection Act (G.L. Ch. 131 §40), the Town of Palmer non-zoning wetlands Ordinance, Conservation Commission Act (G.L. Ch. 40 §8C), or any other state or municipal statute, ordinance or regulation, as they may be amended or enacted from time to time. The Conservation Commission may also impose fees for other consultant services, related to application review, or permit conditioning or monitoring, under any of the above-referenced laws or regulations.
- (2) Special Account: Funds received pursuant to these rules shall be deposited with the town treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriation as provided in G.L. Ch. 44 §53G. Expenditures from this account shall be made only in connection with a specific project or projects for which a consultant fee has been collected from the applicant. Expenditures of accrued interest may also be made for these purposes.
- (3) Consultant Services: Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. Services may also include on-site monitoring during construction, or other services related to the project deemed necessary by the Commission. The consultant shall be chosen by, and report only to, the Commission and/or its Agent.
- (4) Notice: The Conservation Commission shall give written notice to the applicant of the selection of an outside consultant. Such notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given.
- (5) Payment of Fee: The fee must be received prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment, or refusal of payment, shall be cause for the Commission to deny the application based on lack of sufficient information to evaluate whether the project meets applicable performance standards in 310 CMR 10.00 and the Town of Palmer's Wetlands Ordinance, or its regulations. An appeal stops the clock on the above deadline; the countdown resumes on the first business day after the appeal is either denied or upheld. A denial for lack of information may be based solely on the lack of the third party consultant review

identified as necessary by the Commission. The Commission shall specify in its denial the nature of the information lacking which its chosen consultant would provide, e.g., the questions it needs answered. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to deny the permit application under the PWO.

- (6) Appeals: The applicant may appeal the selection of the outside consultant to the Town Council, which may only disqualify the outside consultant selected on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the Town Council and a copy received by the Conservation Commission, so as to be received within ten (10) days of the date consultant fees were requested by the Conservation Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.
- (7) Return of Unspent Fees: When the Commission's review of a project is completed and an Order of Conditions issued, any balance in the special account attributable to that project shall be returned within 30 days. The excess amount, including interest, shall be repaid to the applicant or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Commission with appropriate documentation. A final report of said account shall be made available to the applicant or applicant's successor in interest.