

**CITY OF PEABODY**



**AN ORDINANCE ESTABLISHING THE  
WETLANDS AND RIVERS PROTECTION REGULATIONS  
IN THE CITY OF PEABODY**

**BE IT ORDAINED** by the City Council of the City of Peabody as follows:

**SECTION ONE:** That the Code of the City of Peabody, as adopted on January 9, 1986 and amended, is hereby further amended adding a new Chapter to the Code as follows:

**Chapter 32**  
**Wetlands and Rivers Protection Regulations**

**ARTICLE I. IN GENERAL**

- Sec. 32-1. Purpose
- Sec. 32-2. Definitions
- Sec. 32-3. Jurisdiction
- Sec. 32-4. Reserved

**ARTICLE II. EXEMPTIONS**

- Sec. 32-5. Generally
- Sec. 32-6. Seasonal and Isolated Wetlands
- Sec. 32-7. Utilities
- Sec. 32-8. Emergency Projects
- Sec. 32-9. Forestry and Agriculture
- Sec. 32-10. Reserved

**ARTICLE III. FORMS AND SUBMITTAL REQUIREMENTS**

- Sec. 32-11. Generally
- Sec. 32-12. Request for Determination of Applicability (RDA)
- Sec. 32-13. Notice of Intent (NOI)
- Sec. 32-14. Plan Requirements
- Sec. 32-15. Reserved

**ARTICLE IV. PUBLIC NOTICE AND HEARINGS**

- Sec. 32-16. Public Notice
- Sec. 32-17. Public Hearing
- Sec. 32-18. Continuation of Public Hearing
- Sec. 32-19. Reserved

**ARTICLE V. ISSUANCE OF PERMITS, DETERMINATIONS, AND CONDITIONS**

- Sec. 32-20. Determination of Applicability (DOA)
- Sec. 32-21. Order of Conditions (OOC)
- Sec. 32-22. Denial of Permit
- Sec. 32-23. Recording at Registry and Notification to Commission
- Sec. 32-24. Expiration of Order of Conditions (OOC)
- Sec. 32-25. Amendments and Revocation
- Sec. 32-26. Certificate of Compliance (COC)
- Sec. 32-27. Reserved

**ARTICLE VI. PERFORMANCE STANDARDS**

- Sec. 32-28. Generally
- Sec. 32-29. Commission Approval
- Sec. 32-30. Wildlife and Wildlife Habitat
- Sec. 32-31. Structures of Historical Significance
- Sec. 32-32. Recreation
- Sec. 32-33. No Disturb Zone Presumption
- Sec. 32-34. Storm Water and Drainage Requirements
- Sec. 32-35. Rivers and Streams
- Sec. 32-36. General Wetland Loss and Replacement
- Sec. 32-37. 500 Square Foot Wetland Loss
- Sec. 32-38. Dimensional Regulations
- Sec. 32-39. Seasonal Restrictions
- Sec. 32-40. Reserved

**ARTICLE VII. GENERAL FEES**

- Sec. 32-41. Application Fees
- Sec. 32-42. Advertisement Fees
- Sec. 32-43. Reserved

**ARTICLE VIII. CONSULTANT FEES**

- Sec. 32-44. Generally
- Sec. 32-45. Reserved

**ARTICLE IX. PERFORMANCE GUARANTEES AND SECURITIES**

- Sec. 32-46. Generally
- Sec. 32-47. Reserved

**ARTICLE X. ENFORCEMENT**

- Sec. 32-48. Generally
- Sec. 32-49. Inspections of Privately Owned Land
- Sec. 32-50. Action Under Civil and Criminal Law
- Sec. 32-51. Fine for Violation of Ordinance or Order of Conditions (OOC)
- Sec. 32-52. Pre-Acquisition Violation
- Sec. 32-53. Reserved

**ARTICLE XI. BURDEN OF PROOF**

Sec. 32-54. Generally  
Sec. 32-55. Reserved

**ARTICLE XII. APPEALS**

Sec. 32-56. Generally  
Sec. 32-57. Reserved

**ARTICLE XIII. COORDINATION WITH OTHER BOARDS**

Sec. 32-58. Generally  
Sec. 32-59. Reserved

**ARTICLE XIV. VARIANCES**

Sec. 32-60. Generally  
Sec. 32-61. Procedure  
Sec. 32-62. Reserved

**ARTICLE XV. EFFECTIVE DATE**

Sec. 32-63. Generally  
Sec. 32-64. Reserved

**ARTICLE XVI. SEVERABILITY**

Sec. 32-65. Generally  
Sec. 32-66. Reserved

**ARTICLE I. IN GENERAL**

**Sec. 32-1. Purpose**

The purpose of this ordinance is to protect the wetlands and rivers, related water resources, and adjoining land areas in the City of Peabody by review and control of activities likely to have significant or cumulative effect upon wetland and river resource area values, including, but not limited to the following: public or private water supply, groundwater, fisheries, wildlife, wildlife habitat, recreation, agriculture, aquaculture, flood control, erosion, sedimentation control, storm damage prevention, water quality, water pollution control, fisheries, shellfish, and rare species habitat, including rare plant species. These values shall to be known collectively as the “wetland values protected by this ordinance.”

This ordinance is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, independent of the *Wetlands Protection Act (WPA) (G. L. Chapter 131, Section 40)* and the *Regulations (310 CMR 10.00)* thereunder, in order to protect the aforementioned “wetland values protected by this ordinance,” with standards and procedures stricter than those of the WPA, and Regulations thereunder. Nothing in this ordinance shall absolve the applicant of his or her obligations under the Wetlands Protection Act or Rivers Protection Act, or Regulations adopted pursuant thereto.

**Sec. 32-2. Definitions**

The following definitions shall apply in the interpretation of this ordinance:

Agent: is any Conservation Commissioner or City staff who is appointed agent by a majority vote of the Conservation Commission at a regularly scheduled meeting of the Conservation Commission, and upon written approval of the Mayor. (M.G.L. Chapter 40, Section 8c)

Alter: shall include, without limitations, the following activities when undertaken to, upon, within, or affecting resource areas and buffer zones protected by this ordinance:

- A. Removal, excavation or dredging of soil, sand, gravel, clay, minerals, 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 which degrades water quality;
- E. Placing of fill, or removal of material, which would alter elevation;
- F. Driving of piles, erection or repair of buildings, or structures of any kind;
- G. Placing of obstructions or objects in water;
- H. Destruction of plant life including cutting of trees;
- I. Changing water temperature, biochemical oxygen demand, or other physical, chemical or biological characteristics of surface and/or ground water;
- J. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater;
- K. Incremental activities or changes which have, or may have, a cumulative adverse impact on the resource areas protected by this ordinance.

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

Buffer Zone: shall include, without limitation, that area of land extended one hundred (100) feet horizontally from the boundary of any *resource area* defined in *Sec. 32-2. Definitions Resource Area (A-H)*, and (200) feet horizontally from the boundary of any *resource area* defined in *Sec. 32-2. Definitions Resource Area (I)*. Said buffer zones under the jurisdiction of the Conservation Commission shall overlay the buffer zones and riverfront area defined in the Wetlands Protection Act Regulations, 310 CMR 10.00, and Rivers Protection Act, Chapter 258 of the Acts of 1996.

Commission The duly appointed Conservation Commission of the City of Peabody.

Freshwater Wetlands: Riverine wetlands, marshes, wet meadows, bogs, or swamps that meet the following requirements: Fifty percent of the natural vegetative community must consist of obligate or facultative wetland plant species as included or identified in generally accepted scientific publications, including the Wetland Plant List – Northeast Region (U.S. Fish and Wildlife Service), and the soils must be annually saturated, as evidenced by the observed groundwater, soil gleying, or soil mottling, within 18 inches of the surface, or must be mapped by the Soil Conservation Service as a hydric soil or as having inclusions of hydric soils. If an applicant believes that a soil is not wet or hydric in spite of soil mottles, soil gleying, or soil mapping, the burden is on the applicant to prove the soil is not hydric. Wetlands may be defined on soil conditions alone, using the above criteria, if the natural vegetation has been disturbed and wetland identification cannot be made using vegetation.

Groundwater Recharge: Recharge of groundwater provided by infiltration of storm water through permeable surfaces and soils, unobstructed by any impervious surfaces. Impervious surfaces and enclosed drainage systems obstruct recharge of groundwater, by collecting and withholding storm water during rainstorms, and releasing concentrated quantities of water into natural or man-made systems, and therefore cannot provide necessary groundwater recharge to resource areas or buffer zones protected by this ordinance.

Isolated Wetlands and Seasonal Wetlands: Freshwater wetlands that do not border on creeks, rivers, streams, ponds, and lakes, isolated depressions which hold standing water for extended periods of time, such as kettle holes which are too small to be called ponds; and isolated depressions or closed basins which are subject to flooding during periods of high water table and high input from spring runoff, snow-melt, or heavy precipitation. Isolated wetlands shall include any isolated depression with no inlet or outlet which serves as a ponding area for run-off or high groundwater which has risen above the ground surface, and shall be capable of containing at least 5,000 cubic feet of water. Isolated and seasonal wetlands include temporary ponds and pools and vernal ponds and pools.

Lands Subject to Flooding: Depressions or closed basins which serve as ponding areas for runoff, snow-melt, heavy precipitation, or high ground water which has risen above the ground surface, and areas which flood from a rise in a bordering resource area as defined in *Sec. 32-2 Definitions Resource Area*.

Person: Shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof to the extent subject to municipal ordinance, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents or assigns.

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

Resource Area: The primary resource being protected by this ordinance, which is the area of jurisdiction defined in *Sec. 32-3. Jurisdiction*, excluding the one hundred (100) and two hundred (200) foot *buffer zones*. Resource areas include:

- A. Any coastal or freshwater wetland, bordering vegetated wetland, riverine wetland, marsh, wet meadow, bog or swamp;
- B. Any seasonal wetland, isolated wetland, including kettle holes;
- C. Any land subject to flooding or inundation by groundwater, surface water, or storm flowage.
- D. Any pond, reservoir, lake, natural or man-made;
- E. Any estuary, the ocean, land subject to tidal action, coastal storm flowage or flooding;
- F. Any land under aforesaid waters;
- G. Any bank, beach, dune;
- H. Any vernal pool, whether certified or uncertified;
- I. Any river, stream, creek, brook, whether intermittent or continuous, natural or man-made.

Vernal Pool: Shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring, and/or summer, and which is free of adult fish populations, as well as the area within two hundred (200) feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.

Wetland: Refer to *Sec. 32-56. Definitions*.

Unless otherwise stated in this ordinance or in regulations of the Commission, the definitions of terms and the procedures, and performance standards in this ordinance shall be as set forth in the *Wetlands Protection Act (G. L. Chapter 131, Section 40)* and *Regulations (310 CMR 10.00)*.

**Sec. 32-3. Jurisdiction**

Any activity proposed or undertaken which will remove, fill, dredge, build upon, discharge into, degrade, or otherwise alter a *resource area* or *buffer zone*, as defined in *Sec. 32-2. Definitions*, is subject to regulation under this ordinance and requires the filing of a Notice of Intent (NOI) or a Request for Determination (RDA). Except as permitted by the Conservation Commission or as provided in this ordinance, no person shall commence any of the aforementioned work in said resource areas or buffer zones.

This ordinance is not restricted to protection of Bordering Vegetated Wetlands (BVWs), but applies to all wetlands. Unless otherwise stated in this ordinance, wetlands and their boundaries shall be identified in the manner designated in the *Wetlands Protection Act (G. L. Chapter 131, Section 40)* and *Regulations (310 CMR 10.00)*.

**Sec. 32-4. Reserved**

**ARTICLE II. EXEMPTIONS**

**Sec. 32-5. Generally**

Other than stated in this ordinance, the exemptions provided in the *Wetlands Protection Act (G. L. Chapter 131, Section 40)* and the *Wetland Protection Act Regulations (310 CMR 10.00)* shall not apply under this ordinance.

**Sec. 32-6. Seasonal and Isolated Wetlands**

The Commission may allow work within the one hundred (100) foot buffer zone around an isolated wetland or seasonal wetland itself if the area of the wetland is less than four hundred (400) square feet and it does not appear likely that area is a vernal pool or otherwise critical to the wetland values protected by this ordinance. Seasonal wetlands and isolated wetlands which are less than 30 square feet are not within the jurisdiction of this ordinance, unless they contain a certified vernal pool, as identified under the Wetlands Protection Act, G. L. Chapter 131, Section 40.

**Sec. 32-7. Utilities**

Notwithstanding the definition of alter (under *Sec. 32-2. Definitions*) the application and permit required by this ordinance shall not be required for maintaining, repairing, replacing, or cleaning of catch basins, manholes, and dropped inlets that discharge into an existing pipe, but not increasing capacity or enlarging, an existing or lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunications services, sanitary sewers and storm sewers, provided that written notice has been given to the Commission at least forty-eight (48) hours prior to commencement of work, and the work conforms to performance standards in or cited by this ordinance.

**Sec. 32-8. Emergency Projects**

The application and permit required by this ordinance shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that: the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; the Commission or its agent certifies the work as an emergency project; the work is performed only for the time and place certified by the Commission necessary to abate the emergency; and within twenty-one (21) days of commencement of an emergency project a permit application is filed with the Commission for review as provided in this ordinance. If no member of the Commission or the Commission's agent can be reached before emergency work begins, the required notice must be given to the Commission on the next business day, or as soon as is practicably possible, after commencement of the project. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

**Sec. 32-9. Forestry and Agriculture**

Notwithstanding the definition of alter (under *Sec. 32-2. Definitions*) 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 in *Wetlands Protection Act Regulations 310 CMR 10.04*), provided that the work conforms to performance standards in or cited by this ordinance.

**Sec. 32-10. Reserved**

**ARTICLE III. FORMS AND SUBMITTAL REQUIREMENTS**

**Sec. 32-11. Generally**

Applicants submitting filings governed by this ordinance shall use the standard Wetlands Protection Act (WPA) Forms from the Department of Environmental Protection (DEP). Applicants shall include the words: "City of Peabody - Wetlands and Rivers Protection Ordinance: Chapter 32" on all

applications for projects within the City of Peabody, subject to review under this Ordinance and the Wetlands Protection Act Regulations.

**Sec. 32-12. Request for Determination of Applicability (RDA)**

Any person desiring to know whether or not a proposed activity or area is subject to this ordinance shall submit fourteen (14) copies of a written Request for Determination of Applicability (RDA) to the Commission. The application materials required shall be the same as those used in filing under the *Wetlands Protection Act Regulations (310 CMR 10.00)*, *WPA Form 1: Request for Determination of Applicability*.

**Sec. 32-13. Notice of Intent (NOI)**

Fourteen (14) copies of a written Notice of Intent (NOI) shall be filed with the Commission for a permit to perform activities affecting resource areas and buffer zones, protected by this ordinance. Any person submitting a Notice of Intent (NOI) shall at the same time provide a copy to the City's Environmental Engineer, at the Department of Public Services, for review under drainage requirements and the Storm Water Rules and Regulations. A single copy shall be provided with all plans and attachments to the Conservation Commission of the adjoining municipality, if the application or determination pertains to property within 300 ft of that municipality. An Abutter Notification Affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The application materials required shall be the same as those used in filing under the *Wetlands Protection Act Regulations (310 CMR 10.00)*, *WPA Form 3: Notice of Intent*. Where appropriate, under the requirements of the *Wetlands Protection Act Regulations (310 CMR 10.00)*, the applicant may submit *WPA Form 4: Abbreviated Notice of Intent*. No activities shall commence without receiving, and complying with, a permit (Order of Conditions) issued pursuant to this ordinance.

**Sec. 32-14. Plan Requirements**

The following requirements apply to all plans submitted for review by the Commission. At its sole discretion the Commission may relax these requirements where such information is not necessary to make a determination on an Request for Determination of Applicability (RDA) or Notice of Intent (NOI).

1. Sheet Size: Maximum 30" (inches) by 42" (inches);
2. Scale: Not smaller than 1" (inch) equal to 50' (feet);
3. Title Block (including name of owner of record, applicant, surveyor and/or PE, wetlands specialist or hydrologist), original and revision dates and nature of revision, North arrow, locus map;
4. Property boundaries, rights-of-way, easements and restrictions, assessors map and lot number, street name and number;
5. Existing Improvements, e.g. buildings, stone walls, roads, drives, trails, trees, wells, septic systems, etc.;
6. All resource areas and a legend depicting all natural resources, wetland boundaries indicated by numbered points corresponding to flags placed in the field, one hundred (100) and two hundred (200) foot buffer zones (including Inner and Outer Riparian Zones), shown as a dashed line and labeled, floodway, one hundred year flood plain boundary and elevation;
7. All proposed replication areas with plantings and plant legend, drainage improvements, discharge points, retention and detention areas with calculations;
8. Nearest reference benchmark and utility pole number if applicable;

9. All existing topography and proposed contours at no less than two (2) foot intervals;
10. Cross sections (to scale);
11. Project sequence and procedures, location of erosion, sedimentation, debris, and pollution control measures, oil and gas separators, limit of work;
12. Operation and Maintenance Plan.

All plans and packets shall be folded so that they may fit into an envelope of 12” x 15.”

**Sec. 32-15. Reserved**

**ARTICLE IV. PUBLIC NOTICE AND HEARINGS**

**Sec. 32-16. Public Notice**

A Notice of Intent or a Request for Determination of Applicability shall be hand delivered or sent by certified mail, return receipt, to the Commission. In accordance with the *Wetlands Protection Act Regulations (310 CMR 10.00)* the applicant shall within 48 hours, send notice of application or request for determination, by certified mail (return receipt requested) to all abutters at their mailing address shown on the most recent tax list of the assessors. Said list of abutters shall include owners of land directly opposite on any public or private street or way, and abutters to abutters, within 300 feet of the property line of the project location, including any in another municipality or across a body of water. The applicant shall use the form entitled *Notification to Abutters under the Massachusetts Wetlands Protection Act*, available at the Commission office, for the aforementioned notification. The applicant shall include with the NOI or RDA a signed copy of the *Affidavit of Service under the Massachusetts Wetlands Protection Act* (available at the Commission office), with the form of notification, and a list of abutters to whom notice was given.

**Sec. 32-17. Public Hearing**

The Commission shall conduct a public hearing on any NOI or RDA, with written notice given at the expense of the applicant at least five (5) business days prior to the hearing in a newspaper of general circulation in the City of Peabody. Pursuant to the requirements of the Wetlands Protection Act, G. L. Chapter 131, Section 40, the published notice, which shall be prepared by the Commission, shall contain the following information: the date, time, and place of the hearing; the location of the property affected; the name of the applicant; and the action requested from the Commission. The Commission shall deliver the notice to the newspaper. The Commission shall commence the public hearing within twenty-one (21) days from receipt of a completed application or request for determination, unless the applicant waives the twenty-one (21) day time period in writing.

**Sec. 32-18. Continuation of Public Hearing**

The Commission shall have the authority to continue any hearing for good cause, to a certain date announced at the hearing, for reasons stated at the hearing, which may include the receipt of additional information offered by the applicant or others, including the DEP, or information and plans required of the applicant deemed necessary by the Commission. In addition, when there is snow on the ground and/or the ground is frozen the Commission may continue a hearing until the snow melts and/or the ground thaws if it determines that accurate wetland delineation is not possible otherwise. If a date for continuation is not specified, the hearing shall reconvene within twenty-one (21) days after the submission of a specified piece of information or the occurrence of a specified action. If the date of said continued hearing is not announced at an earlier hearing, the new hearing date shall be published in a newspaper of general circulation in the City of Peabody, and written notice shall be sent to any

person who so requests in writing, at the expense of the applicant, pursuant to the requirements of the *Wetlands Protection Act, G. L. Chapter 131, Section 40.*

**Sec. 32-19. Reserved**

**ARTICLE V. ISSUANCE OF PERMITS, DETERMINATIONS, AND CONDITIONS**

**Sec. 32-20. Determination of Applicability (DOA)**

The Commission shall have the authority to determine, after a public hearing, whether a specific parcel of land contains or does not contain resource areas or buffer zones protected under this ordinance. If the Commission finds that no such resource areas or buffer zones are present, it shall issue a *negative* determination. If the Commission finds that such resource areas or buffer zones are present, it shall issue a *positive* determination. A negative determination may be issued with or without conditions. A positive determination shall result in the applicant needing to file a Notice of Intent (NOI), for any work proposed in the parcel of land. The Commission shall issue a Determination of Applicability (DOA) in writing within twenty-one (21) days of receipt of a Request for Determination of Applicability (RDA).

**Sec. 32-21. Order of Conditions (OOC)**

The Commission shall within twenty-one (21) days of the close of the hearing issue or deny a permit (Order of Conditions) for the activities requested.

The Commission shall have the right to refuse to issue an Order of Conditions if a previous Order of Conditions on the same property or on contiguous properties under the same or affiliated ownership has not been complied with or has not received a Certificate of Compliance.

**Sec. 32-22. Denial of Permit**

The Commission is empowered to deny a permit (Order of Conditions). If the application is denied, it shall be for one of the following reasons:

- A For failure to meet the requirements of these regulations;
- B For failure to submit necessary information or plans requested by the Commission;
- C For failure to meet design specifications, performance standards or other requirements in these regulations;
- D For failure to avoid or prevent unacceptable or cumulative effects on the wetland values protected by this ordinance; or
- E Where no conditions can be imposed which are adequate to safeguard the wetland values protected by this ordinance.

**Sec. 32-23. Recording at Registry and Notification to Commission**

No work proposed in any permit application shall be undertaken until the Order of Conditions issued by the Commission with respect to such work has been recorded at the Registry of Deeds or the Land Court, for the district in which the land is located, within the chain of title of the affected property, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded. The applicant, and not the Commission, is responsible for insuring that the Order is properly recorded and that future buyers are advised of permit conditions. A full copy of the permit (Order of

Conditions) shall be on site at all times during construction activities related to the resource area or buffer zone.

**Sec. 32-24. Expiration of Order of Conditions (OOC)**

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue an Order of Conditions expiring five years from the date of issuance for recurring and continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed, for good cause, for up to one year, provided that a request for renewal is received in writing by the Commission prior to expiration and that financial guarantees and other securities required by the Commission are also renewed. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.

**Sec. 32-25. Amendments and Revocation**

For good cause, the Commission may revoke or amend a permit issued under this ordinance after notice to the holder of the permit or determination and to the abutters, and after a public hearing, in accordance with Article IV of this ordinance.

**Sec. 32-26. Certificate of Compliance (COC)**

After all work is done in accordance with a permit (Order of Conditions) issued under this ordinance, the landowner shall apply for a Certificate of Compliance. This application shall be accompanied by an “as-built” plan, if different from the original plan, and by the project engineer’s statement of the project’s compliance with the permit, signed and stamped, unless the requirement for the statement has been waived by the Commission.

When it has been adequately demonstrated to the Commission that the Order of Conditions has been adhered to, the Commission shall issue a Certificate of Compliance. The Order of Conditions and the Certificate of Compliance may include conditions, such as maintenance requirements, that are perpetual and do not expire with the issuance of the Certificate of Compliance. The applicant or landowner shall record the Certificate of Compliance in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property.

**Sec. 32-27. Reserved**

**ARTICLE VI. PERFORMANCE STANDARDS**

**Sec. 32-28. Generally**

- A The applicant shall demonstrate a plan to preserve existing drainage and vegetative cover to the maximum extent possible.
- B Temporary vegetative cover and mulching shall be used on all disturbed and exposed slopes during construction.
- C Permanent vegetative cover shall be planted within the first growing season.
- D Plans shall demonstrate protection and preservation of all healthy trees to the maximum extent possible on the site, and when this is not possible, revegetation plans shall include replacement with suitable plantings.
- E Wherever possible, brooks and streams shall remain as open waterways.

**Sec. 32-29. Commission Approval**

If it issues an Order of Conditions, the Commission may impose standard and special conditions in the Order of Conditions which the Commission deems necessary or desirable to protect the wetland values protected by this ordinance. All activities shall be done in accordance with those conditions. For all projects, the Commission shall take into account the cumulative adverse effect of loss, degradation, isolation, and replication of protected resource areas and buffer zones throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities. The Commission may, at its discretion, require that construction of erosion control features and other features that protect the resource areas be completed before other work on the project proceeds. All work shall meet the requirements of this ordinance, a Determination of Applicability and Order of Conditions, and shall be subject to inspection by the Conservation Commission and its agents.

**Sec. 32-30. Wildlife and Wildlife Habitat**

- A Except as provided in this section, the performance standards contained in the Wetlands Protection Act Regulations (310 CMR 10.00) shall apply.
- B The Commission shall retain the right to require measures (such as the planting of vegetative cover) to maintain and/or restore wildlife habitat in disturbed areas.
- C The Commission may require from the applicant an analysis, by an individual or firm acceptable to the Commission, of the impact on wildlife and/or wildlife habitat based upon a site inspection and review of the project where it is concluded that wildlife or wildlife habitat is of significant concern to the site.
- D The Commission may impose reasonable conditions as deemed necessary to limit adverse impacts on wildlife and/or wildlife habitat.

**Sec. 32-31. Structures of Historical Significance**

- A When structures of historical significance are located within a resource area or the buffer zone (old mill sites, dams, drainage systems, ice making sites, etc.), the Commission may require adequate measures to protect these structures after consultation with the Peabody Historical Commission and/or Peabody Historical Society.

**Sec. 32-32. Recreation**

- A Where any recreation activity is proposed in any area subject to regulations under this ordinance, the Commission may impose such conditions as may be deemed necessary to protect the interests under the ordinance, such as prevention of pollution.

**Sec. 32-33. No Disturb Zone Presumption**

Lands within two hundred (200) feet of rivers, streams, creeks, and brooks, and lands within one hundred (100) feet of all other resource areas, are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas are presumed to result in alteration of the resource area and to have adverse impact upon the wetland values protected by this ordinance, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss or impairment of groundwater recharge or flood control, poor water quality, and loss of wildlife habitat. The Commission, therefore, may require that the applicant maintain a strip or buffer of continuous, undisturbed vegetative cover within 200 feet of resource areas defined in *Sec. 32-2 Definitions Resource Area (I)*, and within 100 feet of resource areas

defined in *Sec. 32-2 Definitions Resource Area (A-H)*, respectively, unless the applicant convinces the Commission by a preponderance of the credible evidence that the area or part of it may be disturbed without harm to the wetland values protected by this ordinance. Said buffer shall be known as the "No Disturb Zone." Within the No Disturb Zone established by the Commission, no grading, planting, site work, construction, or storage of materials is allowed. Vegetation in the No Disturb Zone shall not be cut or trimmed in any manner.

In the review of proposed work within 200 feet of resource areas defined in *Sec. 32-2 Definitions Resource Area (I)*, and within 100 feet of resource areas defined in *Sec. 32-2 Definitions Resource Area (A-H)*, 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 technically demonstrated feasible alternative to the project with less adverse effects and that 2) such activities, including proposed mitigation measures, will have no significant adverse impact on the wetland values protected by this ordinance. The closer an activity is proposed to a resource area, the more scrutiny will be given to the potential impacts of a proposed project.

No activity which will result in the alteration of land within the presumptive No Disturb Zone shall be permitted by the Conservation Commission with the following exceptions:

- A Planting of native vegetation or habitat management techniques designed to enhance the wetland values protected by the Bylaw;
- B Construction and maintenance of unpaved pedestrian access paths not more than 4' in width;
- C Maintenance of existing structures, utilities, stormwater management structures and paved areas;
- D Construction and maintenance of water dependent structures and uses;
- E Vista pruning and removal of dead and diseased vegetation consistent with Conservation Commission standards;
- F Construction of new utility lines where the proposed route is the best environmental alternative;
- G Septic system maintenance and, if a system has failed, repair/replacement meeting state/local standards where the maximum feasible buffer is maintained;
- H Construction of accessory structures/uses associated with lawfully existing single family houses where the Conservation Commission finds that alternatives outside the buffer area are not available; the size and impacts of the proposed structure/use have been minimized; and the structure/use is located as far from the resource as possible;
- I Where a buffer zone is already altered such that the required buffer cannot be provided without removal of structures and/or pavement, this requirement may be modified by the Conservation Commission provided that it finds that the proposed alteration will not increase adverse impacts on that specific portion of the buffer area or associated wetland and that there is no technically demonstrated feasible construction alternative;
- J Where a lot is located entirely within buffer area, the Commission may permit activities within the buffer area when the applicant has demonstrated that the proposed work has been designed to minimize impacts to the buffer area. As mitigation, the Commission may require the applicant to plant or maintain a naturally vegetated buffer of the maximum feasible width given the size, topography, and configuration of the lot.

**Sec. 32-34. Storm Water and Drainage Requirements**

All work subject to review under this ordinance shall conform to the Storm Water Rules and Regulations of the City of Peabody, and all federal, state, and local drainage regulations.

**Sec. 32-35. Rivers and Streams**

In the review of areas within two hundred (200) feet of rivers and streams, 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 credible evidence that:

- A There is no practicable alternative to the proposed project with less adverse effects; and that
- B Such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or wetland 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.

**Sec. 32-36. General Wetland Loss and Replacement**

Pursuant to this ordinance, the Conservation Commission shall not permit wetland alteration except in the following circumstances:

- A Water dependent uses and structures
- B Construction of new utilities and operation and maintenance of existing utility lines;
- C Public projects

If the Conservation Commission finds that there is no feasible alternative to the proposed project, that the amount of wetland alteration is the minimum necessary to accomplish the goals of the project, and that acceptable mitigation has been provided to foster the values and interests protected by this ordinance, the Commission may permit limited wetland alteration.

**Sec. 32-37. 500 Square Foot Wetland Loss**

At its sole discretion, the Commission may issue an Order of Conditions allowing work which results in the loss of a portion of freshwater wetlands when:

1. Said portion has a surface area of less than 500 square feet; and
2. Said portion extends in a distinct linear configuration (finger-like) into adjacent uplands; and
3. In the judgment of the Commission it is not reasonable to scale down, redesign or otherwise change the proposed work so that it could not be completed without the loss of said wetland.

**Sec. 32-38. Dimensional Regulations**

- A. Underground Storage Tanks for chemicals and petroleum products, regardless of size, shall not be located within one hundred (100) feet of any resource area described in *Sec. 32-2. Definitions*.
- B. No paddock shall be located within one hundred (100) feet of any resource area described in *Sec. 32-2. Definitions*, except for agricultural purposes.
- C. Driveways and utility service connections or mains shall be installed as far as is practicably possible from any resource area described in *Sec. 32-2. Definitions*.
- D. Manure shall not be stockpiled or stored within one hundred (100) feet of any resource area described in *Sec. 32-2. Definitions*.

**Sec. 32-39. Seasonal Restrictions**

- A. Work within a resource area shall be performed during “low flow” months of the year for working within a wet area. The Commission shall impose construction date limitations on an as needed basis determined by each individual project.
- B. All stabilization work must commence by October 15 and be in place and fully functional prior to November 15. This shall include any and all required plantings (or temporary protection methods), slope protection, and pavement as required by the Commission in its decision. No work within any resource area described in *Sec. 32-2. Definitions* shall be permitted after November 15 or before April 1 of the following year.

**Sec. 32-40. Reserved**

**ARTICLE VII. GENERAL FEES**

**Sec. 32-41. Application Fees**

The application fees required for projects under the jurisdiction of this ordinance shall be in accordance with those fees used in filing under the *Wetlands Protection Act, G. L. Chapter 131, Section 40*. Where an application or project is subject to review under this Ordinance and the *Wetlands Protection Act, G. L. Chapter 131, Section 40*, the submission form requirements shall be the same as required under the *Act*.

**Sec. 32-42. Advertisement Fees**

An advertisement fee is required for project review under this ordinance, in accordance with the public notice requirements of the *Wetlands Protection Act, G. L. Chapter 131, Section 40*. A list of current advertisement fees is available at the Commission office.

**Sec. 32-43. Reserved**

**ARTICLE VIII. CONSULTANT FEES**

**Sec. 32-44. Generally**

In addition to application and advertisement fees, the Commission is authorized, any time during the hearing process, to require the applicant to pay all the costs and expenses of any expert consultant deemed necessary by the Commission to review the application or resource area. 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; and researching environmental or land use law.

The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. If a revolving fund for consultant expenses and fees is authorized by the Commission, City Council, or by any general or special law, the applicant’s fee shall be put into such revolving fund, and the Commission may draw upon that fund for specific consultant services approved by the Commission at one of its public meetings. Any unused portion of the consultant fee shall be returned to the applicant unless the Commission decides at a public meeting that additional services will be required.

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 acquirable only through outside consultants would be 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 Notice of Intent or Request for Determination filed by a government agency. The maximum consultant fee charged to reimburse the Commission for reasonable costs and expenses shall be according to the following schedule:

<b>PROJECT COST</b>	<b>MAXIMUM FEE</b>
Up to \$100,000	\$2,000
\$100,001 - \$500,000	\$4,000
\$500,001 - \$1,000,000	\$8,000
\$1,000,001 - \$1,500,000	\$12,000
\$1,500,001 - \$2,000,000	\$15,000
<i>Each additional \$500,000 project cost increment (over \$2,000,000)</i>	<i>An additional \$2,500 maximum fee per increment</i>

The project cost means the estimated, entire cost of the project, including, but not limited to, building, construction, site preparation, landscaping, and all site improvements. The project shall not be segmented to avoid being subject to the consultant fee. The applicant shall submit estimated project costs at the Commissioners request, but the lack of such estimated project costs, or inaccuracies thereof, shall not avoid the payment of the consultant fee.

A copy of all consultant reports shall be provided by the Commission to the applicant in a timely manner.

**Sec. 32-45. Reserved**

**ARTICLE IX. PERFORMANCE GUARANTEES AND SECURITIES**

**Sec. 32-46. Generally**

As part of a permit issued under this ordinance, except for permits issued for work being performed or contracted by any agency of the Commonwealth or political subdivision thereof, and in addition to any security required by any other municipal or state board or agency, the 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 following methods described below:

- A. A financial guarantee, such as a bond or deposit of money or negotiable securities or other undertakings of financial responsibility sufficient in the opinion of the Commission. Surety performance bonds, cash escrows, and standby letters of credit are the usual forms of financial guarantees that will be accepted. Property escrows will not be accepted. Applicants shall submit their estimates of what the required improvements will cost, with contractor bids to perform the work.

The term of any financial guarantee must be at least six months longer than the time an applicant has to complete a project. The Commission, at its discretion, may allow partial or complete release of guaranteed funds as sections of a project are completed. The Commission

has the right not to release any part of the guaranteed funds until after the project is finished and a Certificate of Compliance is issued.

The Commission has the right to reject the terms of a proposed financial guarantee, including the financial institution holding guaranteed funds if it is not a local bank, and to determine the amount of funds that must be guaranteed. The Commission's only duty to secure release of guaranteed funds is to certify that required improvements have not been completed on time or to a satisfactory standard, as defined by the Commission.

At the discretion of the Commission, a joint financial guarantee may be used to comply with Commission requirements and that of other agencies, boards, and commissions in the City of Peabody, provided however that all relevant parties agree on the terms and the principal and that the guarantee is structured so that all relevant parties agree before any funds are released.

- B. 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 Peabody Conservation Commission, whereby the permit conditions shall be performed and observed, before any lot may be conveyed other than by mortgage deed.

**Sec. 32-47. Reserved**

**ARTICLE X. ENFORCEMENT**

**Sec. 32-48. Generally**

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas or buffer zones 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, except as authorized by the Conservation Commission, or fail to comply with a permit (Order of Conditions) or Enforcement Order issued pursuant to this ordinance.

The Commission and its agents shall have the responsibility, duty, and authority to enforce this ordinance, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions. Any person who violates the 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.

**Sec. 32-49. Inspections of Privately Owned Land**

The Commission, its agents, officers, and employees shall have the authority to enter upon privately owned land for the purposes of performing their duties under this ordinance, including site inspections, and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary. Any Request for Determination (RDA), Notice of Intent (NOI), or Request for Certificate of Compliance is evidence of the landowner's permission for said parties to enter a private land. An Enforcement Order issued by the Commission shall be signed by a majority vote of the Commission. In a situation requiring immediate action, an Enforcement Order may be signed by a single member or agent of the Commission, if said Order is ratified by a majority of the members at the next scheduled meeting of the Commission.

**Sec. 32-50. Action Under Civil and Criminal Law**

Upon request of the Commission or its agent, the Mayor and City Solicitor may take legal action for the Enforcement Order under civil law. Upon request of the Commission, the Chief of Police or other appropriate official may take legal action for enforcement under criminal law. Municipal boards and officers, including any police officer or other officer having police powers, shall have the authority to assist the Commission in enforcement.

**Sec. 32-51. Fine for Violation of Ordinance or Order of Conditions (OOC)**

The violation of any provision of this ordinance, including any causing, suffering, or allowing of illegal work, any failure or refusal to comply with an Enforcement Order, violation notice or administrative order, and any failure or refusal to remove fill, restore property, or obtain necessary Commission approval, violation of any permits issued hereunder, shall be punishable by a fine of three hundred dollars (\$300.00) per offence. Each day, or portion thereof during which a violation continues shall constitute a separate offence. This fine may be in addition to any levied under the *Wetlands Protection Act, G.L. Chapter 131, Section 40*.

**Sec. 32-52. Pre-Acquisition Violation**

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this ordinance or in violation of any permit issued pursuant to this ordinance shall forthwith comply with any such Order of Conditions or Enforcement Order to restore such land to its condition prior to any such violation. No civil or criminal complaint shall be brought against any such owner provided that said restoration has begun within three years of acquisition or from the issuance of an Enforcement Order to said owner by the Commission, whichever is greater.

**Sec. 32-53. Reserved**

**ARTICLE XI. BURDEN OF PROOF**

**Sec. 32-54. Generally**

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have, in the opinion of the Conservation Commission, unacceptable significant or cumulative effect upon the resource areas, buffer zones, or wetland values protected by this ordinance. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

**Sec. 32-55. Reserved**

**ARTICLE XII. APPEALS**

**Sec. 32-56. Generally**

A decision of the Commission shall be reviewable in the Superior Court in accordance with G. L. Chapter 249, Section 4.

**Sec. 32-57. Reserved**

**ARTICLE XIII. COORDINATION WITH OTHER BOARDS**

**Sec. 32-58. Generally**

The Commission shall provide copies of its meeting agenda to the Mayor, City Council, Planning Department, Department of Public Services, Board of Health, Building Inspector, and Historical Commission. The Commission shall consider recommendations from these officials and any other City boards and officials but they shall not be binding on the Commission.

**Sec. 32-59. Reserved**

**ARTICLE XIV. VARIANCES**

**Sec. 32-60. Generally**

The Conservation Commission may, in its discretion, grant variances from the specific requirements of these regulations pursuant to this Section. The Conservation Commission may grant a variance from these regulations when an overriding public interest is demonstrated or when it is necessary to avoid so restricting the use of the property as to constitute an unconstitutional taking without compensation pursuant to Federal and State laws. The intent of this section is to ensure that reasonable use may be made of such property; however, the extent of use shall be limited in so far as is necessary to protect the wetland values protected by this ordinance, and to ensure that there is no foreseeable danger to the public health or safety. In all cases, the burden of proof shall be on the applicant to demonstrate maximum feasible compliance with the requirements of this ordinance. The Conservation Commission may require mitigation to offset adverse impacts to resource areas protected by this ordinance.

The Commission may waive the application of any performance standard herein when it finds, after opportunity for a hearing that:

- A There are no reasonable conditions or alternatives that would allow the project to proceed in compliance with these regulations;
- B Mitigating measures are proposed that will allow the project to be conditioned so as to contribute to the protection of the wetland values protected by this ordinance; and
- C That the project is necessary to accommodate an overriding public interest or that it is necessary to avoid a decision that so restricts the use of property as to constitute an unconstitutional taking without compensation.

**Sec. 32-61. Procedure**

A request for a variance or waiver shall be made in writing and shall include, at a minimum, the following information:

- A A description of the alternatives explored that would allow the project to proceed in compliance with the performance standards in these regulations and an explanation of why each is not feasible;
- B A description of the mitigating measures to be used to contribute to the protection of the wetland values protected by this ordinance.
- C Evidence that an overriding public interest is associated with the project which justifies modifying one or more performance standards in these regulations, or evidence that the

decision regarding the permit application would so restrict the use of the land that it constitutes an unconstitutional taking without compensation.

D In the event a taking claim is being made, the following additional information shall be submitted:

1. Documentation that the subject property is legally and/or equitably owned by the applicant, including the date of acquisition. Also, identification of all property in contiguous ownership, including contiguous properties in which the Applicant has a present, future or past fee interest or beneficial interest and documentation of the assessed value of the said contiguous property.
2. Documentation of the assessed value of the property subject to regulation as well as documentation of acquisition costs, proceeds received to date, expected proceeds (including copies of purchase and sales agreements, expenditures, and any other financial and economic data relevant to the waiver/variance request.
3. Documentation of the value of the loss alleged to result from compliance with the relevant performance standards from which a waiver/variance is sought.

E The request for waiver/variance shall be sent to the Commission by certified mail or hand delivered and a copy thereof shall at the same time be sent by certified mail or hand delivered to any other parties in interest.

F Within 21 days of the close of the public hearing, the Commission shall issue a decision as to whether to grant the waiver/variance request. Such decision shall set forth the findings as required herein.

**Sec. 32-62. Reserved**

**ARTICLE XV. EFFECTIVE DATE**

**Sec. 32-63. Generally**

The effective date of this ordinance shall be as provided in G. L. Chapter 40, Section 32. The ordinance shall not, however, apply to:

- A. Any structure or use lawfully in existence or lawfully begun prior to the effective date;
- B. Any structure or use which is the subject of a submitted Notice of Intent (NOI), the original Notice of Intent for which was filed prior to the effective date;
- C. Any structure or use for which any Extensions of or Modifications or Amendments to any existing Order of Condition, may now or hereafter be issued, the original Notice of Intent for which was filed prior to the effective date.

**Sec. 32-64. Reserved**

**ARTICLE XVI. SEVERABILITY**

**Sec. 32-65. Generally**

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

**Sec. 32-66. Reserved**

**SECTION TWO: All ordinances or parts of ordinances inconsistent herewith are hereby repealed.**

**SECTION THREE: This ordinance shall take effect as provided by law.**