

City of Salem | Wetlands Protection and Conservation Regulations

Adopted by vote of the Salem Conservation Commission April 19, 2022

1. Authority

The Salem Wetland Protection Regulations are promulgated pursuant to the Salem Wetlands Protection Ordinance (Chapter 50 of Code of Ordinances, the “Ordinance”).

2. Definitions

The definitions in Section 2.00 of these Regulations are for terms as used in the Ordinance and for terms as used in these Regulations. To the extent not defined herein or in the Ordinance, words used in these Regulations shall have the definitions contained in the Massachusetts Wetlands Protection Act (M.G.L.A. Chapter 131, Section 40) and the rules and regulations promulgated thereunder (310 CMR 10.00), and any future amendments thereto.

The following definitions shall apply in the interpretation and implementation of these Regulations.

Abutter - means the same as Owner of land abutting the activity.

Act - The Massachusetts Wetlands Protection Act (incorporating The Rivers Protection Act, 1996 Mass. Acts c. 258), Massachusetts General Laws (M.G.L.) c. 131, §40, that authorizes Conservation Commissions to review and permit activities within wetland resource areas/areas subject to jurisdiction.

Activity - Any form of drainage, dumping, filling, removing, dredging, excavating, or grading; the erection, reconstruction or expansion of any buildings or structures; the driving of pilings; the construction or improvement of roads and other ways; the changing of hydrology runoff characteristics; the intercepting or diverting of ground or surface water; the installation of any component of drainage, sewage and water systems; the discharging of pollutants; the destruction of plant life; the cutting of vegetation; the changing of any habitat; and any other changing of the physical characteristics of the land, or the physical or chemical characteristics of water.

Applicant - Any person who files a Request for Determination of Applicability, Abbreviated Notice of Resource Area Delineation, a Notice of Intent, Abbreviated Notice of Intent, or any formal request for decision or action by the Commission, or on whose behalf such notice is filed.

Buffer Zone – That area of land extending 100 feet horizontally outward from the boundary of any Resource Area specified in Section 50-3 of the Ordinance, including Lands Subject to Flooding and excluding the 200-foot Riverfront Area.

Certificate of Compliance - A written determination by the Conservation Commission as to whether work or a portion thereof has been completed in accordance with the permit issued under the Ordinance or Act governing said work.

Conservation Commission or Commission - The body in Salem comprised of members lawfully appointed pursuant to M.G.L. c. 40, Section 8C.

Cumulative - Gradually building up; becoming successively larger; in this case normally related to impact. In such cases, Impact shall include both measurable or appreciable units of change or qualitative assessment.

Drainage Ditch/Swale - A man-made, channelized conveyance system normally created to convey surface or groundwater away from a developed area, such as a road, driveway, parking lot, roof, agricultural land, or the like.

Estimated Habitat Map of State-listed Rare Wetlands Wildlife - The map of the estimated habitats of state-listed rare wetlands wildlife published by the Natural Heritage and Endangered Species Program (the Program or NHESP).

Flood Zones/Floodplains - Areas of flood hazard designated by FEMA to represent the potential extent of flooding based on 100-year storms (e.g., a storm event that has a 1% chance of being equaled or exceeded in any given year). Various zones are determined by topographical analysis performed under a Flood Insurance Study. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V and VE while areas outside of the Special Flood Hazard Areas include Zones X unshaded (areas determined to be outside the 0.2% (500-year) annual chance floodplain) and D (areas in which flood hazards are undetermined, but possible). The Base Flood Elevation is the elevation that has a 1% chance of being equaled or exceeded in any given year.

General Performance Standards (Act) - Those requirements established by 310 CMR 10.00 for activities in or affecting each of the Areas Subject to Protection under M.G.L. c. 131, § 40. They are found in 310 CMR 10.25 through 10.35, 10.37, and 10.54 through 10.60.

General Performance Standards (Ordinance and Regulations) - Those requirements as established by Section 9 *et seq* of these Regulations.

Impacts of Climate Change - The Impacts of Climate Change include but are not limited to: (i) extreme heat; (ii) the timing, frequency, intensity, and amount of precipitation; (iii) storm surges and rising water levels; (iv) increased intensity and/or frequency of storm events or extreme weather events; and (v) frequency, intensity and duration of droughts.

Impair - To make or cause to become worse; weaken or damage the resource area interests of the Act.

Issuing Authority - The Salem Conservation Commission.

Land Subject to Coastal Storm Flowage -- Land subject to any inundation caused by coastal storms up to and including that caused by the 100-year storm, surge of record or storm of record, whichever is greater.

Landowner - The Owner of record of land or an interest in land that is subject of a Reviewable Decision. A Reviewable Decision shall include, without limitation, a Determination of Applicability, Order of Resource Area Delineation, Enforcement Order, or Order of Conditions.

Migratory Areas - Those areas used by wildlife moving from one habitat to another, whether seasonally or otherwise. In the context of the Vernal Pool Performance standards for time of year restrictions, Migratory Areas may include the upland 100-foot Buffer Zone of the Vernal Pool boundary and/or the 100-foot Buffer Zone of the Resource Area within which the Vernal Pool lies. The Commission may exclude lawfully constructed and permitted, prior to the adoption of the Ordinance, impervious surfaces or Previously Disturbed or Degraded (Ordinance Section 50-5) from the definition of *Migratory Areas* within the 100-foot Buffer Zone.

Notice of Intent - The written notice filed by any Applicant intending to remove, fill, dredge, or alter an Area Subject to Protection under M.G.L. c. 131, § 40 and the Ordinance. It shall be made on WPA Form 3 or 4, regardless of whether or not the filing is exclusive to the jurisdiction of the Ordinance.

Owner of Land Abutting the Activity – The owner of land sharing a common boundary or corner with the site of the proposed activity in any direction, including land located directly across a street, way, creek, river, stream, brook or canal.

Plans - Data, maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the Conservation Commission necessary to describe the site and/or work to determine the applicability of the Ordinance or to determine the impact of the proposed work upon the interests identified in the Ordinance.

Priority Habitat of Rare Species - Priority Habitat is based on the known geographical extent of habitat for all state-listed rare species, both plants and animals, and is codified under the Massachusetts Endangered Species Act (MESA)

Sea Level Rise (SLR) - The relative rise in elevation of the sea surface over time as interpreted by the best available science. Sea level rise may cause greater risk to human safety and development, increased risk to infrastructure, greater and more frequent coastal inundation, elevated storm surge flooding levels, salt water intrusion to water wells and septic systems, loss of coastal recreational resources, increased coastal erosion, and loss of coastal habitats and resources.

Stormwater - Stormwater is runoff caused by water originating from precipitation, snowmelt, dewatering, and other sources, flowing over and through pervious land surfaces and over impervious areas. Stormwater may contain pollutants in quantities that could adversely affect

the quality of the jurisdictional areas to which the runoff drains either through stormwater discharge pipes or from diffuse sources.

3. General Provisions and Procedures

The following general provisions shall apply to permitting interactions and general processes of the Salem Conservation Commission:

A. Burden of Proof and Burden of Going Forward

Any Applicant who files a written application for a permit (Notice of Intent (NOI) or Request for Determination of Applicability (RDA), including amendments, to perform work within an Area Subject to Protection has the burden of demonstrating to the Conservation Commission by a preponderance of the credible evidence submitted by qualified experts in support of all matters asserted by the Applicant (1) that the area is not significant to the protection of any of the values identified in the Ordinance, or (2) that the proposed work will contribute to the protection of the interests identified in the Ordinance. Failure to meet the burden of proof shall be cause for the Conservation Commission to issue a denial or impose such conditions as deemed necessary to protect the Ordinance resource area values from the effects of any work or activity proposed by the application.

B. Time Periods

Time periods of ten days or less are counted in business days whereas periods greater than ten days are counted as calendar days.

C. Actions by the Conservation Commission

All actions under the Ordinance, these Regulations, and administrative matters must be approved by a majority of the Commission members present at a meeting where at least a quorum of members is present. A quorum is defined as a majority of the members then in office.

D. Permitting Allowance

Where any Section of the Ordinance and Regulations denotes that a proposed project "may be permitted" in certain circumstances, no such project shall be undertaken until all of the other applicable procedures required by the Ordinance and Regulations have been followed and a Determination or Order has been issued for the work. The Commission shall impose such conditions on projects as may be necessary to contribute to the protection of the resource area values in the Ordinance (Section 50-2).

E. Orders and Determinations

Any Order or Determination shall be signed by a majority of the Conservation Commission meaning a majority of the members then in office, who need not convene as a body to sign said order, determination, notification or document provided they met pursuant to the Open Meeting Law when voting on the matter. Emergency certifications shall be evaluated in accordance with the procedures of 310 CMR 10.06 *et seq.*

4. Public Hearings

The Conservation Commission shall commence a public hearing for a Permit application within 21 days of receipt and acceptance of a completed application (as determined by the Commission staff), unless a waiver of the timeframe has been granted by the Applicant. Notice of time, date and place of hearing shall be given by the Commission as described in the Salem Wetlands Protection Ordinance. All application and advertising fees due to the Commission must be paid in full prior to the opening of a public hearing. Failure to pay these fees, missing plans, or incomplete information constitutes an incomplete Application and may result in a denial of the application or delay to the start of the public hearing.

The Conservation Commission's review and deliberation on an RDA under the Ordinance or Regulations shall not be considered a public hearing.

5. Abutter Notification Process

Public hearing notification to Abutters at the expense of the Applicant is required under the Massachusetts Wetlands Protection Act and the Salem Wetlands Protection Ordinance. The time, date and place of the public hearing for an (NOI, Abbreviated Notice of Intent (ANOI), or Abbreviated Notice of Resource Area Delineation (ANRAD) application, must be provided to all abutters within 100 feet of the land on which the proposed work is to be done and across bodies of water to a distance of 100 feet. If Abutters within 100 feet are located in an adjacent municipality, they must also be notified. Abutter notification shall be undertaken in accordance with 310 CMR 10.05(4)(a) regardless of whether an area is subject to jurisdiction pursuant to the MA Wetlands Protection Act and implementing Regulations at 310 CMR 10.00. No abutter notification is required for an RDA.

6. Buffer Zone Standards

A resource area Buffer Zone is an area subject to protection under the Ordinance and is land extending 100 feet horizontally outward from the boundary of all the resource areas subject to protection under the Ordinance (excluding Riverfront Area, Land Under Waters, Land Containing Shellfish, Fish Runs, Land Subject to Tidal Action, and Designated Port Areas). The Buffer Zone is not itself a resource area.

A. Presumptions of Significance; Findings

1. A Buffer Zone is presumed significant to the protection of the resource area values of the Ordinance and serves to protect, maintain, as well as enhance the function of the adjoining resource area. The Commission may require specific No Disturbance Zones, or Mitigation Zones starting at the delineated edge of wetland resource areas in order to adequately protect the resource area values under the Ordinance.

The Commission will employ heightened scrutiny for activities proposed within the setbacks described below, including use of peer review consultants to provide expert technical input as needed.

Minor activities as enumerated in 310 CMR 10.02(2)(b)2 shall not be subject to the Buffer Zone standards listed herein, including the 25-foot No Disturbance Zone and the 50-foot Mitigation Zone.

- i. The 25-foot No Disturbance Zone is as established in Section 50-8 of the Ordinance. The intent of the 25-foot No Disturbance Zone is that no alterations, other than activities that improve the character of this Zone with regard to its contribution to the associated resource area's ability to maintain the Ordinance values, shall be allowed other than as may be described in the Ordinance or elsewhere herein. Prohibited alterations within No Disturbance Zones include, but are not limited to, clearing or cutting of vegetation, landscaping, grading, filling, excavating, constructing driveways, buildings, roads, septic systems, stormwater management systems and structures.
- ii. The 50-foot Mitigation Zone is as established in Section 50-8 of the Ordinance. The Mitigation Zone overlaps with the 25-foot No Disturbance Zone such that even if disturbance is allowed between 0' to 25' through an exemption or waiver, the requirements of the Mitigation Zone still apply. This Mitigation Zone shall also encompass wetland resource areas defined under the Ordinance (Section 50-5). Therefore, the subject resource area shall be considered within the Mitigation Zone.

The intent of the Mitigation Zone is that disturbance is prohibited without adequate mitigation provided as determined by the Conservation Commission. Such mitigation may be located on or off the site of the proposed work, as long as it is located in, contributing to the interest of, or creating new areas subject to Salem Conservation Commission jurisdiction.

Mitigation may take the form of passive public walking paths, tree plantings, other native plantings, select adaptive plantings for climate change planning, creation of additional wetland areas, invasive species management, improved stormwater controls, elevation of structure above heights required by other statute/building code, Conservation Restrictions, or funding other City mitigation projects, for example. The extent and type of mitigation required shall be based upon a variety of factors, including but not limited to the impact of proposed activities and nature of the existing Mitigation Zone.

On-site mitigation, especially in relation to the climate change adaptation and mitigation resource area value, shall be preferred over off-site mitigation for the purposes of protecting the statutory interests of the Ordinance.

The Commission may exclude certain activities that are undertaken for the direct benefit of the public or that will result in notable public benefits from the mitigation requirements in the Mitigation Zone. Such activities may include

seawall pointing, replacement, and/or improvement, wetland creation, and the creation and management of passive walking trails, among others.

The Conservation Commission may, at its discretion, require the Applicant to provide a quantitative and/or qualitative assessment of the existing Mitigation Zone by a competent source to demonstrate that land use activities within the 50-foot Mitigation Zone will not adversely impact the resource area values of the Ordinance. The Commission may also require greater mitigation for activities that pose multiple or sequential impacts, such as grading and then paving, and base this mitigation requirement on the complexity and proposed final state of the land disturbance.

For all activities within the Mitigation Zone, the Applicant shall demonstrate that such activities will not have an adverse effect on the ability of the wetland resource areas to protect the values of the Ordinance.

Additionally, the Applicant shall address how on-going use of the Mitigation Zone will not contribute to future degradation of the wetland resource area values of the Ordinance.

- B. The Commission may, at its discretion, require the installation of permanent, immovable barriers (large rocks, stone walls, fencing, or other types of permanent markers) along the line where the limit of work or disturbance is proposed. Permanent barriers are an effective visual reference, and help avoid “lawn creep” or other future disturbances by future landowners who may not be as aware of the wetland resource areas as the original Applicant. The Commission shall prefer natural or low-impact barriers for this demarcation and reserves its right to review these materials on a case-by-case basis.
- C. The No Disturbance Zone and Mitigation Zone to wetland resource areas are as tabulated below. Where a resource area is not listed, there is not a specified setback; however as with all resource area Buffer Zones, the Conservation Commission will review each project on a case-by-case basis to evaluate which setback distance(s) are appropriate.

Table A. No Disturbance Zone and Mitigation Zone (in linear feet distance from resource area)

Resource Area	Project Site Characteristic	
	<i>Undeveloped</i>	<i>Previously Disturbed or Degraded¹</i>
<i>Freshwater Vegetated Wetlands (Including IVW), Coastal Wetlands (including Bank), Perennial Stream/River, Intermittent Stream, Water Body²</i>		
No Disturbance Zone	25'	Existing Limit of Disturbance or up to 25'
Mitigation Zone	50'	Existing Limit of Disturbance or up to 50'
<i>Vernal Pools</i>		
No Disturbance Zone (Calculated from the Vernal Pool Boundary, not the surrounding resource area if applicable.)	75'	Existing Limit of Disturbance or up to 75'
Mitigation Zone (Calculated from the Vernal Pool Boundary, not the surrounding resource area if applicable.)	100'	Existing Limit of Disturbance or up to 100'

- D. Site plans submitted to the Salem Conservation Commission for either an NOI or an ANRAD shall reflect the resource area setbacks displayed in Table A.
- E. The establishment of the No Disturbance Zone and Mitigation Zone as defined by the Ordinance and herein shall not compromise or diminish the Conservation Commission’s jurisdiction over the 100-foot Buffer Zone as established by the Act or the Ordinance.

7. Climate Change Adaptation and Mitigation

Projects shall be evaluated with regard to whether they preclude the ability of a wetland resource area to be resilient to the effects of climate change (e.g. salt marsh migration, increased inundation and/or temperatures, etc.) or if project components will be likely to result in future wetland resource area impacts due to the effects of climate change (e.g. water tight

¹ Commission may reduce setbacks for redevelopment of previously disturbed or degraded areas, per section 50-8 of the Ordinance

² Includes pond, reservoir, or lake

sanitary sewer in areas subject to current or predicted future flooding where the latter occurs within other areas subject to the Commission's jurisdiction). When evaluating the Application Criteria listed below for Climate Change Adaptation and Mitigation, the Commission shall assess the Applicant's written responses in the context of the stated resource area values of the Ordinance.

A. Application Criteria for Climate Change Adaptation and Mitigation

To satisfy the resource area values defined in the Ordinance related to climate change, project Applicants submitting a Notice of Intent must provide the following documentation for the Conservation Commission's review:

1. Describe project design considerations which address storm and flood damage, including the potential for potential future flood damage.
2. Describe how the project accounts, to the maximum extent practicable, for potential future increases in stormwater runoff (increased frequency and intensity of storm events), and how best management practices account for storm surges and extreme weather events anticipated due to climate change.
3. Describe planting plans and other measures such as limiting increases in impervious surface cover to maintain and enhance the resiliency of the resource area(s) to withstand potential temperature and rainfall changes due to climate change, as well as Sea Level Rise.
4. Describe measures to protect proposed and existing structures and minimize damage to structures due to the impacts of climate change.
5. Any vegetated wetland impacts proposed within areas also situated within Land Subject to Flooding or Coastal Storm Flowage shall be mitigated at a 2:1 ratio and shall be located within the same reach of the mapped flood zone area. Impacts allowed within said resource areas shall be at the discretion of the Conservation Commission's findings that the resource area values of the Ordinance are not adversely affected by the project.

Unless the Commission documents otherwise in its generation of an Order of Conditions, it may be presumed that the Commission finds that a project protects and/or enhances resource area values with relation to Climate Change Adaptation and Mitigation.

An Applicant's failure to demonstrate that the project protects and/or enhances resource area values with relation to Climate Change Adaptation and Mitigation shall be cause for the Conservation Commission to issue a denial or such conditions as deemed necessary to protect and/or enhance said values.

Applicants petitioning for an RDA shall not be required to respond to the Climate Change Adaption and Mitigation standards herein.

8. Applications

In addition to the administrative procedures outlined in 310 CMR 10.05 *et seq*, the following administrative procedures shall apply to the Conservation Commission review of the applications and petitions defined herein.

A. Filing and Notification Procedures

Any person filing an NOI or ANRAD with the Conservation Commission requiring notification under the Act at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including Owners of land directly opposite on any public or private street or way, within 100 feet of the property line of the Applicant, including any in another municipality or across a body of water up to 100 linear feet. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date if known.

An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission prior to the opening of a public hearing.

When a person filing an RDA is a person or entity other than the Owner, the request, the Notice of the meeting and the Determination itself shall be sent to the Owner as well as to the person making the request.

The Commission shall issue its permit, other Order or Determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the Applicant. The Commission in an appropriate case may combine its hearing under the Ordinance and these Regulations with the hearing conducted under the Wetlands Protection Act (G.L. Ch.131 §40) and regulations (310 CMR 10.00).

B. Request for Extension to an Order of Conditions (OOC)

The Commission may extend an Order of Conditions for a period of up to three years. Written requests for an Extension shall be made not less than thirty days prior to the expiration of said Order of Conditions.

The Commission may deny a request for Extension under the following circumstances:

1. Where no work has begun on the project, except where such failure is due to unavoidable delay, such as appeals in obtaining other necessary permits;
2. Where new information, not available at the time of original permanent filing, has become available and indicates the Order of Conditions is insufficient to protect the resource area values of the Ordinance;
3. Where incomplete work is causing damage to the Areas Subject to Protection; or
4. Where work has been done in violation of the Order of Conditions; and

5. Where Climate Change Adaptation and Mitigation considerations or other Resource Areas have changed under the promulgation of these Regulations.
6. Any other reason that the Commission deems of concern to the statutory interests of the Ordinance.

9. Inland Resource Area Performance Standards

In addition to the performance standards afforded to inland wetland resource areas (310 CMR 10.51 *et seq*), the following performance standards are applied to inland wetlands jurisdictional under the Ordinance.

A. Isolated Vegetated Wetlands (IVW)

1. No activity or alteration of an IVW shall be permitted by the Conservation Commission, except upon a clear showing by a preponderance of the credible evidence that any proposed work as well as its natural and consequential cumulative impacts shall have no adverse effect upon any of the resource area values under the Ordinance. Wetland replication shall be required for IVW impacts permitted by the Conservation Commission.
2. When a project is proposed to alter IVW, the Applicant shall complete Appendix A: Simplified Wildlife Habitat Evaluation, and Appendix B: Detailed Wildlife Habitat Evaluation if so prompted by Appendix A, of the Massachusetts Wildlife Habitat Protection Guidance for Inland Wetlands (March 2006 and as it may be amended). Projects proposing to alter IVW within mapped habitat of potential regional or statewide importance require the completion of Appendix B: Detailed Wildlife Habitat Evaluation.
3. Notwithstanding the provisions in Section 9(A)(1) through (2) above, no project may be permitted which will have any adverse effect on specified habitat sites of rare species, as identified on the most recent Priority Habitat and Estimated Habitat Map of state-listed rare plants and wildlife as published by the MA Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program without appropriate review, mitigation, and approval of NHESP.
4. IVW replication shall be performed in accordance with Section 11 of the Regulations.

B. Vernal Pool Performance Standards

1. No activity or alteration of a Vernal Pool shall be permitted by the Conservation Commission except in cases where a project contemplates the direct ecological enhancement of the Vernal Pool (e.g., replanting native species or selective removal of invasive or noxious species) to the benefit of the resource area values of the Ordinance.

2. The Commission may require time-of-year restrictions for work within the 100-foot Buffer Zone to vernal pools and/or within 100 feet of the boundary of the vernal pool's surrounding wetland resource area as applicable to protect amphibian migration during the breeding season. Said timeline restrictions shall be defined in the applicable Order of Conditions or Determination of Applicability.
3. Failure to find evidence of breeding or the presence of vernal pool indicator species (pursuant to NHESP certification criteria) may only hold evidentiary value if the investigation is conducted during those periods in which breeding is likely to occur or when the indicator species are likely to be present. Prior to making a determination of the presence or absence of a Vernal Pool the Commission may require that the pool be investigated by a competent source at least two times in the spring and/or summer months, but not within seven (7) days of each other. The Conservation Commission may further require multiple years of monitoring of the potential vernal pools through the Order of Conditions.

10. Coastal Resource Area Performance Standards

In addition to the Coastal Resource Area performance standards established by the Act (310 CMR 10.21 *et seq*), these Regulations establish additional performance standards for certain coastal resource areas as noted below.

Land Subject to Coastal Storm Flowage (LSCSF)

When the Commission determines that Land Subject to Coastal Storm Flowage (A, AO, AH and/or V Flood Zones; 'LSCSF') overlays other protected resource areas, the applicable performance standards for each resource area shall be independently applied and the project shall be appropriately conditioned to protect all stated interests.

When LSCSF (A, AO, AH and/or V- Flood Zones) is significant to the interests of flood control and storm damage prevention, or any other resource area values of the Ordinance, the following performance standards shall apply:

- A. Any activity shall not have an adverse effect on the Ordinance values by increasing the elevation or velocity of flood waters, altering flow paths, or increasing flows on the subject site, adjacent properties, or any public or private way. This performance standard is not to be construed as preventing alteration or elimination of LSCSF where such alteration is demonstrated not to adversely affect the Ordinance values (e.g., coastal resiliency planning and implementation).
- B. Sea level rise and the landward migration of resource areas in response to relative sea level rise shall be incorporated into the design and construction of structures and other activities proposed in LSCSF to the extent practicable. To maintain the Climate Adaptation and Mitigation resource area values of the Ordinance, work within LSCSF shall include:

1. At a minimum, for activities proposed in coastal A-Zones, the historic rate of relative sea level rise in Massachusetts of one (1) foot per 50 years shall be factored in the project design and construction to the extent practicable.
 2. At a minimum, for activities proposed in the V-Zone, a two (2) foot elevation per 50 years shall be factored into the project design and construction to the extent practicable.
- C. When LSCSF is significant to wildlife and wildlife habitat a proposed activity shall not impair the capacity of those portions of LSCSF to provide important wildlife habitat functions. Alterations may be permitted only if they will have no adverse effect on wildlife and wildlife habitat. The burden of proof that the project will result in no adverse effect is upon the Applicant.
- D. When LSCSF is significant to the prevention of pollution, there shall be no adverse effects to the critical characteristic of this area to remove suspended solids from runoff before entering into other wetland resource areas.
- E. A proposed project within a velocity zone shall not destroy or otherwise impair the function of any portion of other overlapping resource areas. Activities and their ancillary uses in velocity zones which result in reductions in vegetative cover, interruptions in the supply of sediment to relevant wetland resources, and/or changes to the form or volume of a coastal dune or coastal beach may have an adverse effect on said landform's ability to provide storm damage prevention and flood control and are, therefore, prohibited.
- F. Notwithstanding the provisions of Section 10 (A-E), the Commission may permit the following activities (or others as determined by the Commission) provided that the Applicant demonstrates, to the satisfaction of the Commission, that best available measures are utilized to minimize adverse effects on LSCSF, and provided that all other applicable state (310 CMR 10.00) and local (Ordinance and Regulations) performance standards for underlying resource areas are met:
- Beach and bank nourishment and restoration projects, including fencing, native plantings and other devices designed to increase stabilization and decrease erosion;
 - Elevated pedestrian walkways, certain walkways flush with existing grade, and elevated decks with appropriate height and spacing between planks to allow sufficient sunlight penetration;
 - Boat launching facilities, navigational aids, piers, docks, wharves, dolphins, float stops;

- Improvements necessary to maintain the structural integrity/stability of existing coastal engineering structures, including blue or living shorelines;
- A project which will restore, rehabilitate, or create a salt marsh or freshwater wetland;
- Natural resource improvement projects;
- Resiliency projects, or resiliency components of redevelopment projects;
- Projects that are approved, in writing, or conducted by the Division of Marine Fisheries that are specifically intended to increase the productivity of land containing shellfish, including aquaculture, or to maintain or enhance marine fisheries; and
- Projects that are approved, in writing, or conducted by the Division of Fisheries and Wildlife that are specifically intended to enhance or increase wildlife habitat;
- Certain redevelopment activities within Previously Developed or Degraded Areas as defined in Section 50-5 of the Ordinance; and
- In certain instances, infiltration into the coastal floodplain to encourage water quality improvement

11. Wetland Replication

Under the Ordinance and these Regulations, the Salem Conservation Commission shall maintain a no net loss of wetland resource area policy (excluding riverfront area), with the exception of LSCSF which may be eliminated in association with resiliency measures as outlined elsewhere herein (Section 10(A)(1)). As replicated wetlands carry no assurance that they will serve the functions of the impacted wetlands as effectively, the Commission's policy is that the replication of an impacted wetland shall be compensated on at least a 2:1 basis with a 90% survival rate of native wetland species and executed in accordance with Section 11 (A through F). The exact proportion of replication to destruction as well as location of replication will be approved by the Conservation Commission on the basis of site-specific considerations and likelihood of success as demonstrated by the Applicant.

Accordingly, the Conservation Commission discourages any plan that requires replication. In those instances where replication is proposed the following conditions must be met:

- A. The replicated wetland must be hydrologically and geographically associated with the same water body as the original wetland as applicable.
- B. A competent source, paid for by the Applicant, may be required by the Conservation Commission during the construction of the wetland replication area. The credentials of

the competent source shall be submitted to the Conservation Commission for approval prior to the start of construction.

- C. At a minimum the replicated wetland must reproduce all the values and functions of the original wetland as determined by the Conservation Commission. Site conditions permitting, the Conservation Commission may require that additional values and functions be incorporated into the replication design.

In particular, in circumstances where replacement of specific functions and values would require substantial amounts of time before being completely replicated, (for example, those functions provided by mature trees), the Conservation Commission may require additional compensation area, functions, values, etc. beyond those required in other sections of the Ordinance and these Regulations.

- D. Soil materials to be reused (from the wetland to be lost during construction) shall be removed and placed in the prepared replication area within one day. If this is not possible, these soils shall be stockpiled with appropriate sediment controls for the minimum amount of time practicable and kept loosely covered and moist at all times. These soils must be reasonably free of invasive species propagules, such as plant fragments, stems, rhizomes, or seeds. If invasive species are identified in the stored soil, the material shall be deemed unsuitable for replication and may not be re-used in the replication area.
- E. The competent source shall inspect the wetland replication area twice each year during late spring and during the mid to late summer of the first two full growing seasons or as otherwise specified in the Order of Conditions to evaluate the success of the replication effort. A written report shall be submitted to the Conservation Commission at the end of each growing season.
- F. The Conservation Commission may require surety in the form of a bond to be posted with respect to the replication area. In such cases, this bond shall be posted that will enable the Conservation Commission to complete the replication should the Applicant fail to fulfill obligations set forth in the Order of Conditions. The amount of the bond shall be determined by the Applicant and approved by the Conservation Commission.

12. Waiver Provisions

An Applicant may seek relief from the standards contained in the Ordinance and/or these Regulations. Requests for waiver(s) must be submitted in writing at the time of application. The Applicant shall not presume that the Commission will waive any standards as outlined in Section 6. Rather, the Applicant shall first demonstrate that no reasonable or practicable alternatives are available. The Applicant must also demonstrate, and the Commission must first determine if the standards for the granting of waivers as outlined in Section 50-10 of the Ordinance the Request(s) for waiver(s) have been met and vote accordingly. If that determination has been made, the Commission may then vote to issue an Order of Conditions

which includes a waiver. The standards for the granting of waivers are as outlined in Section 50-10 of the Ordinance.

13. Effective Date

These Regulations become effective upon the vote of the Conservation Commission in favor of adoption and shall apply to all Applications filed on or after that date and any subsequent procedures related to such filings made on or after that date. These Regulations shall not apply to projects for which an Application was filed (and for which a Permit remains valid) prior to the effective date.

14. Enforcement

By Administrative Order, Conservation letter of non-compliance, and/or enforcement order, the Commission may: a) require any responsible person or entity to remediate any damage or harm caused by any violation of the Ordinance or Regulation or any applicable permit. Such remediation shall be in the manner and to the extent specified by the Commission. Any enforcement actions taken by the Conservation Commission shall be done in compliance with applicable laws of the City of Salem and of the Commonwealth.

15. Severability

The invalidity of any section or provision of these Regulations or the Ordinance shall not invalidate any other section or provision thereof, nor shall it invalidate any Order or Determination previously issued.