

**TOWN OF WENDELL**  
**GENERAL WETLANDS PROTECTION BYLAW REGULATIONS**

(Amended after public hearing Dec., 14, 2021)

**I. GENERAL PROVISIONS**

**A. INTRODUCTION:**

It is the intent of the Conservation Commission in administering the Town of Wendell, Massachusetts General Wetlands Protection Bylaw to reduce the impacts to wetland resources because these areas serve important public health, safety and welfare functions, such as pollution control, groundwater recharge and discharge, flood damage prevention, wildlife habitat, atmospheric carbon sequestration and mitigation of temperature extremes.

This Wetlands Protection Bylaw is designed to augment the protection afforded to wetland areas by the Wetlands Protection Act (M.G.L. ch. 131, s. 40.) by extending protected resource areas to include temporary wetlands and the buffer zone around wetlands. It is not meant to restrict activities that have no demonstrable impact on wetlands.

These regulations are promulgated by the Wendell Conservation Commission pursuant to the authority granted to the Commission under Section 9 of the Town of Wendell, Massachusetts General Wetlands Protection Bylaw. These rules and regulations complement and clarify the Bylaw and shall have the force of law upon their effective date.

**B: PURPOSE:**

1. The purpose of the Town of Wendell, Massachusetts General Wetlands Protection Bylaw (the "Bylaw") is to protect the wetlands, water resources, flood prone areas and adjoining upland areas in the Town of Wendell by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect on wetland resource area values, including but not limited to the following, which are the resource area values protected by the Bylaw:
  - a. public or private water supply;
  - b. groundwater supply and groundwater quality;
  - c. aquifer recharge and discharge;
  - d. surface water and surface water quality;
  - e. flood control;
  - f. erosion and sediment control;
  - g. storm damage prevention;
  - h. prevention and control of pollution;
  - i. fisheries;
  - j. shellfisheries;
  - k. storm drainage;
  - l. runoff;
  - m. wildlife habitat;
  - n. rare species habitat including rare plant and animal species;
  - o. recreation;

- p. agriculture;
- q. aquaculture.

2. These regulations serve to implement the Town of Wendell, Massachusetts General Wetlands Protection Bylaw by establishing standard definitions, uniform procedures, design specifications, and performance standards by which the Commission may carry out its responsibilities under the Bylaw.

### C. JURISDICTION:

#### 1. Areas Subject to Protection Under the Bylaw

The following resource areas (collectively the "resource areas protected by this Bylaw")

- a. any freshwater wetland, isolated wetland, marsh, wet meadow, spring, bog or swamp;
- b. any certified or uncertified vernal pool;
- c. any bank;
- d. any land under water bodies or waterways;
- e. any riverfront area;
- f. any land subject to flooding (bordering and isolated);
- g. any land within 100 feet of the areas described under Subsections 1 a., c., and e. above;
- h. any land within 200 feet of the area described under Subsection 1 b above.

Said resource areas shall be protected whether or not they border surface waters.

#### 2. Activities Subject to Regulation Under the Bylaw

- a. Any activity proposed or undertaken which constitutes removing, filling, dredging, building upon, degrading, polluting, discharging into or otherwise altering any areas specified in Section I.C.1 above is subject to regulation under the Bylaw and requires the filing of a Notice of Intent (NOI) or a Request for a Determination of Applicability (RDA).
- b. To determine whether a proposed activity or an area is subject to the Bylaw, any person may request in writing a Determination from the Commission. Such a Request for Determination of Applicability (RDA) shall be submitted pursuant to these regulations.

### D. EXEMPTIONS, EXCEPTIONS AND VARIANCES

#### 1. Existing Structures or Facilities

The applications and permits required by the Bylaw shall not be required for maintaining, repairing, or replacing an existing and lawfully located structure or facility:

- a. in existence prior to March 10, 1988; or
- b. used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunications services;

provided that all of the following conditions are met:

- i. the structure or facility is not substantially changed or enlarged;
- ii. written notice has been given to the Commission prior to

- commencement of work;
- iii. the work conforms to all performance standards and design specifications specified in these regulations.

2. Emergency Projects

The applications and permits required by the Bylaw shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that all of the following conditions are met:

- a. the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth, Town of Wendell, or a political subdivision thereof;
- b. advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement;
- c. the Conservation Commission or its agent certifies the work as an emergency project;
- d. the work is performed only for the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency;
- e. within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided in the Bylaw.
- f. upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

3. Agriculture

The applications and permits required by the Bylaw shall not be required for work performed for normal maintenance or improvement of land in agricultural and aquacultural use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04.

4. Invasive Species

The applications and permits required by the Bylaw shall not be required for the removal of non-native invasive species, as identified in these regulations or certified in advance by the Commission or its Agent in a particular instance, using hand removal methods when the purpose of this work is to protect the resource area values protected by the Bylaw. The Commission or its Agent may require erosion control if it is deemed necessary.

5. The exceptions provided in the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations thereunder (310 CMR 10.00) shall not apply under the Bylaw unless expressly allowed in this Bylaw.

6. Variances

- a. The Commission shall have the power, after the filing of an application for a permit or other approval and conducting a public hearing in accordance with Section III, to grant with respect to a particular project a variance from the terms of the Bylaw. A variance will be granted only when the Commission finds, based on clear and convincing evidence introduced by the applicant,

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

- b. The Commission may impose conditions, safeguards, and limitations in a variance to protect further the interests protected by the bylaw or the intent or purpose of the bylaw.
- c. A variance shall expire on a date specified by the Commission, not later than three years from the date of issuance thereof, and may be reestablished only after notice and a new hearing pursuant to this section.

#### **E. BURDEN OF GOING FORWARD AND BURDEN OF PROOF**

1. The applicant shall have the burden of proof, from a competent source, for all matters asserted by the applicant in accordance with the standard stated in Section I. E.2 below.
2. The applicant shall have the burden of proving by a preponderance of the credible evidence that the activities proposed in the application will not have a significant or cumulative effect on the values protected by the Bylaw. Failure to meet the burden of proof shall be cause for the Commission to deny the application for permit, along with any work or activity proposed herein.

#### **F. FEES:**

Fees shall be the same as the current fee schedule under the Massachusetts Wetlands Protection Act and Regulations. In the event that a project is being filed under the Wendell Wetlands Bylaw alone, the entire fee shall be payable to the Town of Wendell.

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#### **II. DEFINITIONS**

Except as otherwise provided in the Bylaw or in these regulations, the definitions of terms in these Regulations shall be as set forth in the Wetlands Protection Act and in the regulations thereunder, 310 CMR 10.00. The following terms shall apply in the interpretation and implementation of the Bylaw.

Agriculture – As defined under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Sec. 40, and Regulations thereunder, 310 CMR 10.00.

**Alter** – Includes, without limitation, the following activities when undertaken upon, within or affecting resource areas protected by the Bylaw:

- a. Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- b. Changing of preexisting drainage characteristics, flood retention characteristics, flow patterns, or changing of preexisting soil profiles;
- c. Drainage or other disturbance of water level or water table;
- d. Dumping, discharging or filling with any material which may degrade water quality;
- e. Placing of fill, or removal of material, which would alter elevation;
- f. Driving of piles, erection or repair of buildings or structures of any kind;
- g. Placing obstructions or objects in water;
- h. Destruction of plant life, including but not limited to cutting of trees;
- i. Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
- j. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater;
- k. Such other activities which have, or may have, a cumulative adverse impact on the resource areas protected by the Bylaw.

**Applicant** – Any person who files a Notice of Intent, Request for Determination of Applicability, Abbreviated Notice of Resource Area Delineation or on whose behalf such a notice is filed.

**Aquaculture** – The growing of aquatic organisms under controlled conditions, including one or more of the following uses: raising, breeding or producing a specified type of animal or vegetable life including, but not limited to, finfish such as carp, catfish, black bass, salmon, shad, smelt, sturgeon, sunfishes, trout, eel, tilapia; shellfish such as mussels; amphibians such as frogs; reptiles such as turtles; and edible freshwater plants.

**Bank** – As defined under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Sec. 40, and regulations thereunder, 310 CMR 10.00.

**Consultant(s)** – Include, but are not limited to architects, biologists, wetland scientists, soil scientists and other qualified experienced professional environmental experts, chemists, engineers, geologists, landscape architects, lawyers, sanitarians, and surveyors.

**Cumulative Effect** – An effect that is significant when considered in combination with, or as part of, the effect of other activities that have occurred, are going on simultaneously, or that are likely to occur, whether such other activities have occurred or are contemplated as a separate phase of the same project, such as the build-out of a subdivision or an industrial park, or unrelated but reasonably foreseeable actions, including other development projects that are currently under construction, under review, or that may be expected to come forward.

**Dredge** – To deepen, widen, or excavate, either temporarily or permanently.

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

**Hydric Soil** – A soil that in its undrained condition is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of hydrophytic vegetation.

Land Subject to Flooding (Isolated and Bordering) – As defined under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Sec. 40, and regulations thereunder, 310 CMR 10.00.

Maintenance – Routine and/or periodic activity undertaken to prevent, stop, or to correct deterioration of an existing condition, facility or structure so that, after completion, the condition, facility, or structure is as near as possible to that which originally existed.

Permit Application – Any application for a permit or action under the Massachusetts Wetlands Protection Act, MGL Chapter 131 Sec 40, or the Bylaw. Examples include, but are not limited to, a Notice of Intent, Abbreviated Notice of Intent, Abbreviated Notice of Resource Area Delineation, or request for an Amendment to a Notice of Intent or Extension to an Order of Conditions.

Person – Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town Bylaws, administrative agencies, public or quasi-public corporations or bodies, Town of Wendell, and any other legal entity, its legal representatives, agents, or assigns.

Plans – Such data, maps, engineering drawings, calculations, specifications, schedules and other materials, to describe a site and/or work proposed thereon, to determine the applicability of the Bylaw or to determine the impact of the proposed work upon the resource area values identified in the Bylaw. An applicant shall submit, in addition to those plans specified in the Bylaw and these regulations, such plans as are deemed necessary by the Conservation Commission.

Rare Species – All vertebrate and invertebrate animal species and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

Recreation – Any passive leisure activity that does not conflict with or diminish wetland functions or the resource area values protected under the Bylaw. Examples include, but are not limited to, the following: legally licensed fishing or hunting, boating, swimming, walking and hiking, canoeing, and bird watching.

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

Riverfront Area – As defined under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Sec. 40, and regulations thereunder, 310 CMR 10.00.

Substantially Changing or Enlarging – As pertaining to Section 4 of this Bylaw, a footprint addition of more than one thousand (1000) square feet in the Conservation Zone.

Vernal Pool – In addition to that already defined under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Sec. 40, and regulations thereunder, 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, in at least most years, holds water for a minimum of two continuous months during the spring and/or summer, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Natural Heritage & Endangered Species Program. Vernal Pools may have an inlet or outlet. The Conservation Zone for vernal pools shall extend 100 feet from the mean annual high water line

defining the basin or depression, but shall not extend over existing lawns, gardens, landscaped or developed areas.

Wetlands – For the purposes of the Bylaw wetlands are defined by vegetation and type as in the Wetlands Protection Act (M.G.L. Ch. 131 s. 40). Wetlands shall include swamps, wet meadows, marshes, and bogs as defined in the Wetlands Protection Act. The Bylaw does not require that the wetlands border on a body of surface water. The Conservation Commission may, at its discretion, decline to take jurisdiction over small isolated wetlands provided that they are not vernal pools and do not provide other important wetland functions. Where natural vegetation has been altered or is absent as a result of mowing, grazing, or other disturbance, or where determination by the Conservation Commission based on wetland vegetation is inconclusive, wetland hydrology, which may include hydric soils, shall be used to provide positive determination of wetland boundaries.

Wetlands Protection Act – The Massachusetts Wetlands Protection Act, M.G.L. c. 131, s. 40.

Wildlife Habitat – Those areas which, due to their plant community composition and structure, hydrologic regime, or other characteristics, provide important food, shelter, migratory or overwintering areas, or breeding areas for wildlife.

### III. PROCEDURES

#### A. DETERMINATION OF APPLICABILITY

##### 1. General

- a. Any person who desires a determination as to whether the Bylaw applies to an area, or to work to be performed in an area, or to confirm the delineation of wetland boundaries on three (3) acres or less shall submit a RDA and the appropriate fee to the Commission. Any person who desires to confirm the delineation of wetland boundaries on a parcel of land greater than three (3) acres shall submit a RDA and the appropriate fee to the Commission and shall, in addition, file with the Commission an Abbreviated Notice of Resource Area Delineation (ANRAD) as specified under MGL Chapter 131, § 40
- b. Any person who desires a determination as to whether the Bylaw applies to an area or activity may submit to the Commission by certified mail or hand delivery two copies of a Request for Determination of Applicability and a digital copy of same. The RDA shall include a written description of the project and site plans.

##### 2. Filing Procedure

- a. Any person filing a RDA with the Commission may be required, at the Commission's request, to give written notice thereof, by certified mail (return receipt requested), or hand delivery, to all direct abutters (including owners of land directly opposite any public or private street or way) and abutters to the abutters within 300 feet of the property line of the applicant (including any in another municipality or across a body of water). The notice shall state where copies of plans may be examined and obtained; the documents shall be public and viewable by anyone. Any person filing a RDA shall also comply with the notice requirements stated herein.
- b. When a person requesting a determination is other than the owner, the RDA, the notice of the hearing, and the determination itself shall be sent by the applicant to the owner as well as

to the person making the request, and the applicant shall supply the Commission with the name and current address of the owner.

- c. A RDA, on the appropriate application form, and the appropriate fee shall be submitted to the Commission. All applications shall include the original material, two (2) hard copies, and an electronic copy by email, flash drive, CD, or other form acceptable to the Commission. The applicant shall provide additional copies to the Commission upon request.
- d. Notice of the time and place of the public hearing shall be given by the Commission, at the expense of the applicant, not less than five (5) business days prior to the hearing, by publication in a newspaper of general circulation in the Town.
- e. The Commission shall hold a public hearing on the RDA within twenty-one (21) days after the day of the receipt of the RDA by the Commission at a scheduled hearing.
- f. Prior to making a determination, the Commission may require the submission of additional data deemed pertinent to the determination. Any additional materials requested by the Commission or its staff shall be submitted at least five business days prior to the scheduled hearing date. The Commission shall issue its determination in writing within twenty-one (21) days of the close of the public hearing, unless an extension is authorized in writing by the applicant.
- g. A RDA or any other proceeding before the Commission under the Bylaw and these regulations shall expire when the applicant has failed to diligently pursue the issuance of the determination or other proceeding. A RDA or any other proceeding shall be presumed to have expired one (1) year after the date of filing unless the applicant submits information showing that (a) good cause exists for the delay of proceedings under the Bylaw and these regulations, and (b) the applicant has continued to pursue the project diligently in other forums in the intervening period. Unfavorable financial circumstances shall not constitute good cause for delay. No RDA or other proceeding shall be deemed to have expired under this section when an adjudicatory hearing is pending and when the applicant has provided all information necessary to continue with the prosecution of the case.

## **B. APPLICATION FOR PERMIT (NOTICE OF INTENT)**

- 1. General Any person who proposes work that will remove, fill, dredge, build upon, or alter any resource area shall file with the Commission plans and specifications as required under MGL Chapter 131 § 40, and as further defined below.
- 2. Filing Procedure An original, two (2) hard copies, and an electronic copy by email, flash drive, CD, or other form acceptable to the Commission of the application for the Wetlands Permit (Notice of Intent), and accompanying plans and appurtenant data, and the appropriate filing fee, payable to the "Town of Wendell," shall be sent by certified mail, or hand delivered, to the Wendell Conservation Commission, Town Offices, 9 Morse Village Road, Wendell, MA 01379. The applicant shall provide, as part of the application, a certified list of abutters within 300 feet of the property line of the applicant (including any in another municipality or across a body of water) to whom notice has been sent, in accordance with the provisions of Section 6 of the Bylaw. The notice to abutters shall be sent on the



appropriate form within the application packet. No later than the date of the public hearing, the applicant shall provide copies of signed receipts from abutters, as proof of notification, plus an affidavit of all to whom notice was given.

3. Any person filing a Permit Application (Notice of Intent) with the Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested), or certificates of mailing, or hand delivery, to the Selectboard, Planning Board, Board of Health, Building Inspector, and Zoning Board.

The boards and offices referred to above may file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. Any such written comments and recommendations that are not privileged will be provided to the applicant and owner

4. Incomplete Application: The Applicant must include, at a minimum, a properly executed WPA Form 3, and the items required under Section IV of these regulations, unless a variance is granted by the Commission, pursuant to Section I.D. of these regulations. If the Commission determines that an application is incomplete or improper, it shall notify the applicant within twenty-one (21) days of the date of receipt. The Commission may, at its discretion:
  1. Return the entire application, in which case all required time periods for processing the application shall be void and no longer applicable;
  2. Require that additional information or materials be submitted. Any additional materials requested by the Commission or its staff shall be submitted at least five business days prior to the scheduled hearing date.
  3. Reschedule the public hearing, at the applicant's expense, to a date to be determined by the Commission.
  4. Deny the Wetlands Permit.
5. When a person filing an application is other than the owner, the application, the notice of the hearing, and the findings themselves shall be sent by the Commission to the owner as well as to the person filing the application, and the applicant shall supply the Commission with the name and current address of the owner.
6. In the event that only a portion of a proposed activity lies within a resource area, all aspects of the activity shall be described in the detail called for, including without limitation a description and calculation of peak flow and estimated water quality characteristics of any drainage discharge from a point source (whether closed or open channel) outside a resource area.
7. Notwithstanding the foregoing, if the Commission determines that an activity outside a resource area has in fact altered a resource area, it may require an application including such plans, supporting calculations, and other documentation as are necessary to describe the entire activity.

### C. PUBLIC HEARINGS

1. Public hearings on applications filed pursuant to the Bylaw and these regulations may be

conducted simultaneously with public hearings held pursuant to MGL Chapter 131, § 40, as amended.

2. The Commission shall commence the public hearing within twenty-one (21) days of receipt of a complete application unless an extension is authorized in writing by the applicant.
3. The Commission may continue the public hearing to a date certain announced at the hearing, for reasons stated at the hearing. In the event that the applicant objects to a continuance, the hearing shall be closed and the Commission shall take action on such information as is available.

#### **D. PERMITS (ORDER OF CONDITIONS) AND DECISIONS**

1. As part of a Permit issued pursuant to the Bylaw, the Commission shall impose such conditions as are necessary to protect the values of wetlands, related resources, and adjoining land areas under its jurisdiction.
2. If the Commission deems that the interests stated in the Bylaw are not adequately protected under the terms of the applicant's proposal, the Commission may deny a Permit. Where the Commission votes to deny a Permit, it shall issue a written decision.
3. The Commission may require, as a condition of a Permit, that certain work shall be performed within specific periods of time.
4. Permits approved pursuant to the Bylaw may be issued on the same forms as the Orders of Conditions issued under the Massachusetts Wetlands Protection Act.
5. The Commission shall issue its Permit, or decision to deny a Permit, in writing within twenty-one (21) days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.
7. The Commission may revoke or modify a Permit issued under the Bylaw if any of the following circumstances occur: a. The applicant and/ or his successors fail(s) to comply with the terms of the Permit; b. The applicant and/or his successors fail(s) to comply with the terms of other Town permits which have been issued for the project and the issuing authority has requested in writing that the Commission revoke or modify the Permit.

No revocation or modification shall be voted upon until after the Commission has conducted a public hearing on the matter.

#### **E. ACTIONS BY THE CONSERVATION COMMISSION**

Where the Bylaw states that a particular action (except receipt of a RDA or Permit Application) is to be taken by the Commission, that action is to be taken by a majority of the members present at a meeting in which a quorum exists. Where the Bylaw states that a permit or notification shall be issued by the Commission, that action is to be taken by a majority of the members then in office, who need not convene as a body in order to sign said permit or notification, provided they met pursuant to the Open Meeting Law (G.L. Ch. 30A Sections 18-25) when voting on the matter

#### **IV. PLANS**

##### **A. GENERAL**

All applications shall include the original material and a digital copy. The applicant shall provide additional copies to the Commission upon request.

For projects that require the filing of an Environmental Notification Form (ENF) under the Massachusetts Environmental Policy Act (MEPA), the applicant must demonstrate to the Commission that such a filing has been completed at the time the application is submitted.

In order to demonstrate full compliance with the Bylaw and these Regulations, the applicant has the burden of proof to completely describe the site, the work, and its effect on the protected resource areas. The applicant is obligated to demonstrate that the work subject to regulation under the Bylaw can be performed in a manner that meets all applicable performance standards and will not have unacceptable significant or cumulative effect upon the resource area values protected by the Bylaw.

Applicants are urged to retain the services of qualified, experienced, professional consultants when filing an application for a Permit. Submission of incomplete or inadequate information or a failure to meet the burden of proof may result in delays and/or continuations in the review and hearing procedure. Failure to supply complete and adequate documentation describing the potential impact of the project on protected resource areas may result in the issuance of a denial.

The following standards and design specifications are intended to provide the Commission with the minimum amount of data needed to determine the impact of the project on the protected resource areas and to protect the health, safety, and welfare of the inhabitants of the Town of Wendell. The Commission may adopt and publish additional guidelines and minimum technical standards for plans, calculations, and environmental impact reports submitted with an application for a Permit. The Commission may find it necessary to request additional site-specific information to adequately determine the effect of the work on protected resource areas.

All plans shall include: the title designating the name of the project, the location, the name(s) of the person(s) preparing the drawings, the date prepared, and the latest revision date.

Plans shall be stamped and signed by a duly qualified Registered Professional Engineer or Registered Land Surveyor of the Commonwealth of Massachusetts. Registered Professional Engineers shall indicate the engineering discipline in which they are certified.

Plans depicting proposed drainage systems must be stamped by a Registered Professional Civil Engineer.

##### **B. TECHNICAL DATA AND PLANS**

Depending on the complexity of the project, the following technical data shall be submitted, with calculations as necessary to substantiate the designs proposed.

1. Project Narrative Describing Proposed Work and Impacts
2. Locus Plan: An 8 ½" x 11" photocopy of the USGS quad sheet, showing the location of the proposed activity and the outline of the area in which the activity is located.
3. Assessors' Map and Zoning Map: An 8 ½" x 11" section of the Town of Wendell Assessors' and Zoning Maps on which the site of the proposed activity is outlined in red.
4. Existing Conditions Site Plans
  - a. Property boundaries showing metes and bounds and abutters from the most recent information on record at the Assessors' Office.
  - b. All zoning district boundaries including aquifer, floodplain, and wetland overlay districts.
  - c. Existing contours at two (2) feet intervals based on the National Geodetic Vertical Datum.
  - d. All existing natural and man-made features including tree lines, rock outcrops, stone walls, fence lines, cart roads, foot paths, overhead and underground utilities, and drainage structures.
  - e. The location of all surface and subsurface water supplies, wells, sewer lines, and septic systems on the property and abutting properties.
  - f. All water courses, water bodies, intermittent streams, springs, open and closed channels, drainage ways with or without a defined channel, storm drains, kettleholes, bordering or isolated land subject to flooding, and freshwater wetlands on the site and within 100 feet of the site and rivers, perennial streams, and vernal pools on the site and within 200 feet of the site. The boundaries of these features shall be identified by a wetland scientist and marked by numbered flags. Delineation data sheets must be provided. Boundary locations shall be determined from an on-the-ground field survey performed by a registered land surveyor or registered professional civil engineer.
  - g. Elevations of all natural and man-made drainage structures, waterways, and wetlands.
  - h. Flood elevations of all natural and man-made waterways and water bodies as determined from the FEMA Flood Insurance Rate Maps and Flood Boundary and Floodway Maps. Where the floodplains of wetlands and water bodies have not been mapped by FEMA, hydrologic and hydraulic calculations must be prepared by a registered professional engineer to determine the boundary of the two (2), ten (10), and 100-year floodplains. Watershed modeling, hydrograph routing, and backwater analysis shall be performed using the nationally recognized modeling techniques developed by the USDA

Natural Resource Conservation Service (NRCS). The NRCS Type III, 24-hour storm shall be used in the drainage calculations. Calculations based on a Rational Method analysis will not be accepted.

- i. Hydraulic calculations showing the full-flow capacity and velocity of all water courses, open and closed channels, and storm drains flowing into, on and out of the property.
- j. Soil boundaries as determined from mapping by the NRCS and confirmed in the field by on site soils assessment.
- k. Soil characteristics in representative portions of the site, including depth of peat, muck, and organic matter in wetland areas.
- l. Maximum groundwater elevations must be given. The calendar dates of measurement, samplings, and percolation tests on non-sewered lots shall be included.
- m. Site plan shall be submitted at a scale of 1" = not more than 50'.

5. Developed Conditions Site Plans

- a. All proposed man-made features including roads, driveways, parking areas, structures, buildings, overhead and underground utilities.
- b. Subsurface sewage disposal systems.
- c. Proposed grading and changes in elevation shown with two (2) foot contours and spot grades.
- d. All surface and subsurface drainage structures including the location, cross-section, slope, and surface treatment of all drainage channels and the inverts, slope, pipe materials, catch basins, manholes, and end treatment of all storm drains discharging within 100 feet of any wetland or waterway.
- e. The location and detail of all temporary erosion control devices, including but not limited to: diversions, terraces, silt fences, straw bale barriers, and sedimentation basins.

6. Supplemental Documentation

- a. Engineering calculations to fully support the design of compensating flood storage areas for alterations that affect bordering land subject to flooding and isolated land subject to flooding. The calculations shall detail the existing incremental flood storage volumes and the proposed incremental flood storage volumes up to and including the 100-year flood elevation.
- b. Engineering data shall be prepared that describes the alteration and replication of resource areas changed by site work that affects land under a water body, bank, or bordering vegetated wetland. Calculations shall show

that the capacity and stability of existing and altered waterways is not impaired by the proposed work.

- c. Where alterations will exceed the maximum allowable thresholds described in 310 CMR 10.00 for land on the lower (10-year) floodplain, bank, land under a water body, or bordering land subject to flooding, or where the alteration of a habitat of a rare species is involved, or where a vernal pool, or other potentially significant wildlife habitat will be altered, a habitat study shall be performed by a qualified wildlife biologist. The habitat study and the design of a compensating wetland/wildlife habitat shall be performed in accordance with 310 CMR 10.60.
- d. Planting plans, specifications, and construction schedules shall be provided for all areas that will be altered within 100 feet of a bordering vegetated wetland. Specifications shall be provided for both temporary and permanent ground covers. Planting of invasive species is prohibited.
- e. An erosion control plan shall be submitted describing all methods to control erosion and siltation on site, temporarily and permanently. The proposed location of any fill material which will be stored on site must be shown.
- f. A site-specific phasing plan shall be submitted for all projects disturbing three (3) acres or more.
- g. Where new point source discharges are proposed within 100 feet of a protected resource area, either through open channels or a closed subsurface system, a comprehensive stormwater management system shall be designed that will not impair the value and function of the receiving or downstream water courses, wetlands, surface water, and groundwater supplies. Stormwater management systems shall be designed to meet the Massachusetts Stormwater Management Standards detailed in the "Stormwater Management Policy" issued by the Massachusetts Department of Environmental Protection on November 18, 1996, as it may be amended. The applicant must submit a stormwater management plan prepared by a registered Professional Civil Engineer that demonstrates compliance with the DEP Stormwater Management Policy and Town of Wendell regulations. The plan must include a copy of the DEP Stormwater Management Form describing how the project meets the stormwater management standards. The form must be signed and stamped by a registered Professional Civil Engineer.
- h. Stormwater management systems shall be designed, constructed, and operated in accordance with the most recent editions of DEP Stormwater Management Handbooks: Volume I, Stormwater Policy Handbook; and Volume II, Stormwater Technical Handbook. In addition, detention basins, wet ponds and infiltration systems shall also be designed to meet the following standards:
  - i. The maximum slope of the embankment on both the inside and

- outside of the basin shall be no steeper than three (3) horizontal to one (1) vertical.
- ii. The minimum width of the top of an earthen embankment shall be twelve (12) feet along the side designed for maintenance access and ten (10) feet along the remaining sides.
  - iii. If determined to be necessary by the applicant, the Commission, or Wendell's Highway Department, basins may be fenced and securely gated to deter unauthorized access. Fencing shall be placed so as not to interfere with the maintenance of the basin or impede wildlife travel.
  - iv. The basin may not be located within 100 feet of an existing residence.
  - v. The applicant shall be responsible for securing by way of a covenant, easement, deed restriction, bond, or other legal instrument a perpetual mechanism or fund for the maintenance or repair of the basin by the heirs and assigns of the property on which the basin is located.
  - vi. Forebays shall be sized for a minimum of 0.1-inch runoff/acre times the entire drainage area to the forebay, not just the impervious area.
  - vii. The basin and outlet structures shall be located a minimum distance of twenty-five (25) feet outside the boundary of all water resource areas and important wildlife habitat areas.
  - viii. The basin shall be designed to intercept overflows from the upstream storm drainage system when the capacity of this collection system is exceeded by the maximum designed storm. Diversions, swales, high capacity inlet grates, and other hydraulic improvements may be necessary to successfully collect and transmit flows to the detention basin.
  - ix. The soil structure and composition at the bottom of a wet basin shall be capable of supporting wetland vegetation within two (2) years following the completion of the storm drainage system.
  - x. Infiltration systems shall be designed in conjunction with other best management practices that remove at least 80% of the total suspended solids before discharging to the infiltration system.
  - xi. Infiltration-type drainage systems shall be located outside the boundary of all protected wetland resource areas and wildlife habitat areas.

#### V. PRE-CONSTRUCTION REQUIREMENTS

1. Prior to commencement of site alteration, the applicant shall provide to the Commission receipted proof that the Permit has been recorded in the chain of title of the subject property at the Franklin District Registry of Deeds.
2. Prior to commencement of site alteration, the applicant shall display, at the entrance of the site, a sign, at least two (2)' x two (2)' and no longer than three (3)' x three (3)', giving the Permit file number assigned to the project as follows:

"WENDELL WETLANDS PERMIT NO. \_\_\_" The sign shall be displayed at all times and shall

not be removed until a Certificate of Compliance has been issued by the Commission. The sign, in appropriate cases, may be the same sign as that required by an Order of Conditions, provided that the words:

“WENDELL WETLANDS PERMIT NO. \_\_\_\_\_” are displayed.

## VII. CERTIFICATE OF COMPLIANCE

Upon completion of the project, the applicant shall submit a request in writing to the Commission for a Certificate of Compliance. This request shall be accompanied by a Registered Professional Engineer’s certification of project compliance with the Permit or an “as built” plan and engineer’s explanation as to how and why the project differs from the project as permitted. The applicant must also submit a copy of the request to the current owner of the property subject to the release.

If, after a site inspection, the Commission determines that the requirements of the Permit have not been satisfactorily met, the request for a Certificate of Compliance may be denied. The decision, along with the reasons for denial, shall be forwarded to the applicant within twenty-one (21) days of the receipt of the request.

The Commission may specify on the Certificate of Compliance that certain conditions of the Permit, including, but not limited to: maintenance of waterways, erosion control, and undisturbed vegetated buffers are imposed perpetually and do not expire with the issuance of the Certificate of Compliance.

The person to whom the Certificate of Compliance is issued shall record the Certificate of Compliance at the Franklin District Registry of Deeds in the chain of title of the affected property and shall notify the Commission, in writing, that said recording has occurred, by sending a copy of the recorded instrument to the Commission.

## VIII. ENFORCEMENT

- A. No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by the Bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a Permit or an enforcement order issued pursuant to the Bylaw.
- B. The Commission, its agents, officers, employees, and consultants shall have authority to enter upon privately owned land for the purpose of performing their duties under the Bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.
- C. The Commission shall have authority to enforce the Bylaw, its regulations, and permits issued thereunder, and may issue violation notices, non-criminal citations under G.L. Ch. 40 §21D, and file civil and criminal court actions. Any person who violates any provision of the Bylaw may be ordered to restore the subject property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.



- D. Upon request of the Commission, the Selectboard and the Town Counsel (counsel to the Commission) shall take legal action for enforcement under civil law. Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law.
- E. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- F. When the Commission determines that an activity is in violation of the Bylaw or a Permit issued under the bylaw, the Commission may: a. issue an Enforcement Order; and/or b. hold an administrative hearing to consider whether landowner fine should be imposed and/or other action taken for the violation.
- G. Violations include, but are not limited to: a. failure to comply with a Permit, such as failure to observe a particular condition or time period specified in the Permit; b. failure to complete work described in a Permit, when such failure causes damage to the interests identified in the Bylaw; or c. failure to obtain a valid Permit prior to conducting an activity subject to regulation under the Bylaw.
- H. An Enforcement Order issued under the Bylaw will constitute a warning that an administrative hearing and possible fine may result.
- I. An Enforcement Order issued by the Commission shall be signed by a majority of the Commission. In a situation requiring immediate action, the Order may be signed by a single member or agent of the Commission. Such an Order must be ratified by a majority of the members at the next scheduled meeting of the Commission.
- J. If a fine or an adjustment of fine for a violation is contemplated, the Commission may hold an administrative hearing to discuss the violation and to give the owner or owner's representative an opportunity to respond to the evidence and circumstances.
- K. In considering a violation, the Commission shall take into account the nature of the violation as follows: a. in the case where the violation may adequately be remedied by payment of money the Commission may impose a fine, with each day or portion thereof during which a violation continues or is repeated constituting a separate offense; b. in the case where the violation may not adequately be remedied by payment of money, the Commission will decide what procedural or legal remedies to take, in the case of destruction of vegetation, for example, directing that all activity on the site cease until the vegetation has reemerged, grown, or otherwise replenished itself to the Commission's satisfaction.
- L. The notice of a fine or fines and explanation thereof, including the date from which daily violations may be counted, will be sent in writing to the responsible owner(s) by certified mail return receipt requested or hand delivery. The fine or fines are payable to the Town of Wendell within 21 days of the date of issuance of the notice.
- M. The Commission may pursue all legal options for collection of fines imposed.

- N. The Commission may accept a written plan with a timetable for a full cure of the violation and may then withhold imposing a fine(s) for a specified time period. If a satisfactory cure is not made in a timely manner, the fines may be assessed for the full period of the violation.
- O. Unless otherwise stated in the Bylaw or these regulations, the definitions, procedures, and performance standards of the Wetlands Protection Act (G.L., Ch. 131 Sec. 40) and associated Regulations (310 CMR 10.00), as most recently amended, shall apply.
- P. Any person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of the provisions of the Bylaw or in violation of any Permit issued pursuant to the Bylaw shall forthwith comply with any order of the Commission to restore said land to its condition prior to said violation.

#### **XI. AMENDMENTS**

These regulations may be amended by a majority vote of the Commission. All amendments shall be effective upon adoption by the Commission following a public hearing and filing with the Town Clerk.

#### **XIII. SEVERABILITY**

If any section, paragraph, sentence, clause, provision, phrase, or word of these regulations shall be adjudged not valid, the adjudication shall apply only to the material so adjudged and the remainder of these regulations shall be deemed to remain valid and effective. Any such adjudication shall not invalidate any Permit or determination which has previously been issued.