

TOWN OF BEDFORD GENERAL BYLAWS

Bylaw Adopted at Annual Town Meeting of 1987 with revisions
through Annual Town Meeting of 1995

SECTION 36—WETLANDS PROTECTION BYLAW

36.1 Purpose

The purpose of this bylaw is to protect the wetlands, related water resources, and adjoining land areas in the Town of Bedford by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon wetland values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution, fisheries, wildlife habitat, state-listed rare plant species, recreation, aesthetics, and agriculture values (collectively, the "wetland values protected by this bylaw").

36.2 Jurisdiction

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, or alter the following resource areas: within 100 feet of any freshwater wetland, marsh, wet meadow, bog, swamp or vernal pool; within 100 feet of any bank or beach; within 100 feet of any lake, river, pond, or stream; and land under said waters; or within 100 feet of any land subject to flooding or inundation by groundwater or surface water.

36.3 Exceptions

The applications for Determination of Applicability and Notice of Intent required by this bylaw shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services, provided that the structure or facility is not substantially changed or enlarged, provided that written notice has been given to the Conservation Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Conservation Commission.

The applications for Determination of Applicability and Notice of Intent required by this bylaw 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, provided that advance notice, oral, or written, has been given to the Conservation Commission prior to commencement of work or within 24 hours after commencement, provided that the Conservation Commission or its agent certifies the work as an emergency project, provided that the work is performed only for the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency, and provided that within 21 days of commencement of an emergency

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project an application for a Notice of Intent shall be filed with the Conservation Commission for review as provided in this bylaw. Upon failure to meet these and other requirements of the Conservation Commission, the Conservation Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

Other than stated in this section the exceptions provided in the Wetlands Protection Act, G.L. c. 131, Sec. 40, shall not apply.

36.4 Applications for Determinations of Applicability and Notices of Intent

Written application shall be filed with the Conservation Commission to perform activities regulated by this bylaw affecting resource areas protected by this bylaw. The application shall include such information and plans as are deemed necessary by the Conservation Commission to describe proposed activities and their effects on the resource area. No activities shall commence without receiving and complying with either a negative Determination of Applicability or Order of Conditions issued pursuant to this bylaw.

Any person desiring to know whether or not proposed activity or an area is subject to this bylaw may in writing request a Determination of Applicability from the Conservation Commission. Such a request for Determination of Applicability shall contain data and plans specified by the regulations of the Conservation Commission.

The Conservation Commission in an appropriate case may accept as the application for Determination of Applicability and plans under this bylaw, the Request for Determination of Applicability and plans filed under the Wetlands Protection Act, G.L. c. 131, Sec. 40.

Any person proposing activity in a resource area regulated by this bylaw shall file in writing a Notice of Intent with the Conservation Commission. Such a Notice of Intent shall contain data and plans specified by the regulations of the Conservation Commission.

The Conservation Commission in an appropriate case may accept as the application of Notice and Intent and plans under this bylaw, the Notice of Intent and plans filed under the Wetlands Protection Act, G.L. c. 131, Sec. 40.

At the time of an application for Determination of Applicability and Notice of Intent the applicant shall pay a filing fee specified in the regulations of the Conservation Commission. This fee is in addition to that required by the Wetlands Protection Act, G.L. c. 131, s. 40.

The Conservation Commission may waive the filing fee and costs and expenses for an application or request filed by a government agency and shall waive them for a request for Determination of Applicability filed by a person having no financial connection with the property which is the subject of the request.

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Upon receipt of a Notice of Intent or Request for Determination of Applicability under the Bylaw, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee is called the consultant fee. The specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values and impacts thereto, including wildlife habitat evaluations, hydrogeological and drainage analysis, and environmental or land use law.

The Commission may require the payment of the consultant fee at any point prior to the close of the public hearing or during its deliberations prior to a final decision. The consultant fees shall be deposited into an account established pursuant to G.L. c. 44, s. 53E or s. 53E 1/2, if the Town has established either account. The Commission may draw upon any such account for specific consultant services approved by the Commission at one of its public meetings.

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 with respect to compliance with the Bylaw.

The Commission shall return any unused portion of the consultant fee to the applicant. 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 maximum consultant fee charged to reimburse the Commission for reasonable costs and expenses shall be according to the following schedule.

<u>Project Cost</u>		<u>Maximum Fee</u>
Up to -	\$100,000	No Fee
\$100,001-	\$500,000	\$2,500
\$500,001-	\$1,000,000	\$5,000
\$1,000,001-	\$1,500,000	\$7,500
\$1,500,001-	\$2,000,000	\$10,000

Each additional \$500,000 project cost increment (over \$2,000,000) may be charged at an additional \$2,500 maximum fee per increment.

The project cost means the estimated, entire cost of the project including, but not limited to design engineering, building construction, site preparation, landscaping, and all site improvements, but excluding land acquisition. If the project has been subject to MEPA review the project cost shall be the "Approximate Cost" stated on the Environmental Notification Form. The project shall not be segmented to avoid being subject to the consultant fee. The applicant shall submit estimated project costs at the Commission's request, but the lack of such estimated project costs shall not avoid the payment of the consultant fee.

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36.5 Notice and Hearings

The Conservation Commission shall conduct a public hearing on any application for Determination of Applicability or Notice of Intent. Notice of the time, place and subject matter of the hearing shall be given by the Conservation Commission, at the expense of the applicant, not less than five days prior to the hearing, by publication in a newspaper of general circulation in the Town of Bedford. Notice shall be mailed to the applicant and when the applicant is other than the owner, the application, the notice of the hearing and the determination itself shall be sent to the owner.

The Conservation Commission shall commence the public hearing within 21 days from receipt of a completed application for Determination of Applicability or Notice of Intent.

The Conservation Commission shall issue its Determination of Applicability or Order of Conditions in writing within 21 days of the close of the public hearing thereon.

The Conservation Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, G.L. c. 131, Sec. 40.

The Conservation Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Conservation Commission in its discretion, or comments and recommendations of boards and officials of the Town of Bedford. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed and the Conservation Commission shall take action on such information as is available.

36.6 Determinations of Applicability and Orders of Conditions

After a Determination of Applicability public hearing, the Conservation Commission shall issue a Determination of Applicability within 21 days of the close of the hearing.

If the Conservation Commission after a Notice of Intent public hearing determines that the activities which are the subject of the application for Notice of Intent are not likely to have a significant or cumulative effect upon the wetland values protected by this bylaw, the Conservation Commission, within 21 days of the close of the hearing, shall make a determination that the proposed work will not alter the area subject to protection under this bylaw.

If the Conservation Commission after a Notice of Intent public hearing determines that the activities which are the subject of the application for Notice of Intent are likely to have a significant or cumulative effect upon the wetland values protected by this bylaw, the Conservation Commission, within 21 days of the close of the hearing, shall issue an Order of Conditions for the activities proposed. If the Conservation Commission issues an Order of Conditions, it shall impose conditions which it deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

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The Commission is empowered to deny a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Conservation Commission; failure to meet the design specifications, performance standards, and other requirements in regulations of the Conservation Commission; failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this bylaw; and where no conditions are adequate to protect those values.

An Order of Conditions shall expire three years from the date of issuance. Any permit may be renewed once for an additional one year period, provided that a request for a renewal is received in writing by the Conservation Commission at least 30 days prior to expiration.

For good cause the Conservation Commission may revoke or modify a permit issued under this bylaw after public notice and public hearing, and written notice to the holder of the permit.

The Conservation Commission in an appropriate case may combine the Determination of Applicability or Order of Conditions issued under this bylaw with the corresponding Determination of Applicability or Order of Conditions issued under the Wetlands Protection Act, G.L. c. 131, Sec. 40.

36.7 Regulations

After public notice and public hearing the Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw. Failure by the Conservation Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

As a minimum these regulations shall define key terms in this bylaw not inconsistent with this bylaw.

36.8 Definitions

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

The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents or assigns.

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

- (a) Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- (b) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;

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- (c) Drainage or other disturbance of water level or water table;
- (d) Dumping, discharging or filling with any material which may degrade water quality, including, but not limited to bituminous material and concrete;
- (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) Destruction of wildlife habitats or state-listed rare plant species;
- (j) Changing water temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of water;
- (k) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

Except as otherwise provided in this bylaw or in regulations of the Commission, the definition of terms in this bylaw shall be as set forth in the Wetlands Protection Act, G.L. Ch. 131, s. 40, and the Regulations, 310 CMR 10.00.

36.9 Security

As part of an Order of Conditions issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Conservation Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

- (a) By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Conservation Commission;
- (b) By a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Bedford, whereby the Order of Conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

36.10 Enforcement

The Conservation Commission, its agents, officers, and employees shall have authority to enter upon privately owned land after notification to the landowner for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys or sampling as the Conservation Commission deems necessary.

The Conservation Commission shall have authority to enforce this bylaw, its regulations, Determinations of Applicability and Orders of Conditions issued thereunder by violation notices, administrative orders, and civil and criminal court actions.

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Upon written request of the Conservation Commission, the Board of Selectmen is authorized to take legal action for enforcement under civil law. Upon written request of the Conservation Commission the chief of police is authorized to take legal action for enforcement under criminal law.

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

Any person who violates any provision of this bylaw, regulations thereunder, Determinations of Applicability or Orders of Conditions issued thereunder, shall be punished by a fine of not more than \$300.00. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw, regulations, Determination of Applicability or Order of Conditions shall constitute a separate offense.

In the alternative to criminal prosecution the Conservation Commission may elect to utilize the non-criminal disposition procedure set forth in G.L. c. 40, Section 21d.

36.11 Burden of Proof

The applicant for a Determination of Applicability shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application is not within the jurisdiction of this bylaw.

The applicant for a Notice of Intent shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable, significant, or cumulative effect upon the wetland values protected by this bylaw.

Failure to provide adequate credible evidence to the Conservation Commission supporting the burden of either an application for Determination of Applicability or Notice of Intent shall be sufficient cause for the Conservation Commission to deny the application.

36.12 Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and Home Rule statutes, independent of the Wetlands Protection Act, G.L. c. 131, Section 40, and regulations thereunder.

36.13 Severability

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

COMMONWEALTH OF MASSACHUSETTS

TOWN OF BEDFORD

BEDFORD CONSERVATION COMMISSION

**Regulations Pursuant to the
Bedford Wetlands Protection Bylaw**

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COMMONWEALTH OF MASSACHUSETTS
TOWN OF BEDFORD
BEDFORD CONSERVATION COMMISSION
Regulations Pursuant to the
Bedford Wetlands Protection Bylaw

PART 1

1.1 INTRODUCTION

These regulations are promulgated by the Bedford Conservation Commission pursuant to the authority granted to it under the Town of Bedford General Bylaws, Section 36, Wetlands Protection Bylaw. These regulations shall complement the town Bylaw and shall have the force of law upon their effective date.

1.2 PURPOSE

The Bylaw sets forth a public review and decision making process to protect the wetlands, related water resources and adjoining land areas by controlling activities deemed likely to have a significant or cumulative impact upon wetland values, including but not limited to the following:

- a. Public or private water supply;
- b. Groundwater;
- c. Flood control;
- d. Erosion and sedimentation control;
- e. Storm damage prevention;
- f. Prevention of water pollution;
- g. Fisheries;
- h. Protection of wildlife habitat;
- i. State-listed rare plant species;
- j. Recreation;
- k. Aesthetics;
- l. Agricultural values;

(Collectively, the wetland values).

1.3 STATEMENT OF JURISDICTION

1.3.1 Areas Subject to Jurisdiction

Areas subject to the jurisdiction of the Bylaw, "resource areas," are:

- a. any freshwater wetland;
- b. the bank of any waterbody or watercourse;
- c. land under any waterbody or watercourse;
- d. land subject to flooding, or inundation by groundwater or surface water;
- e. vernal pools;
- f. Buffer Zone -- land within 100 feet in a horizontal straight line of any of the above areas (a) - (e).

1.3.2 Jurisdiction Outside of Resource Areas

Activities outside of resource areas are not regulated unless and until an activity actually alters a resource area. Any person who requests the Commission to regulate activity taking place outside a resource area has the burden of demonstrating to the satisfaction of the Commission that the activity has altered a resource area. The presentation of such information shall be made in writing, sent to the Commission, with a copy sent to the owner of the land and the project proponent, if the project proponent is not the owner. If the Commission determines, after a vote of at least a majority at a meeting held pursuant to the Massachusetts Open Meeting Laws, that an activity outside a resource area has altered a resource area, the Commission shall require that the project proponent and the owner of the land file a Notice of Intent detailing said activity.

1.4 GENERAL PROVISIONS

1.4.1 Burden of Proof

Any proponent who files a Notice of Intent or Request for a Determination of Applicability to perform any activity within a protected resource area has the burden of proving by a preponderance of the credible evidence that:

- a) the affected area and/or the proposed activity will not have significant, unacceptable, or cumulative effect upon any of the wetland values of the Bylaw;
- b) the activity will contribute to the protection of the wetland values of the Bylaw by complying with the performance standards established for each resource area, (see section 2.2); or
- c) neither the affected area nor the proposed activity is within the jurisdiction of the Bylaw.

1.4.2 Minimum Requirements for Application

In order for an application to be deemed complete, the proponent must provide the material listed in Appendices B or C as appropriate. The Commission reserves the right to require any additional

information deemed necessary in order to evaluate the impacts of the proposed activity on the resource area.

1.4.3 Performance Guarantee

The Commission may require as a condition in the Order of Conditions that the proponent post a proper bond, a deposit of money, negotiable securities, or other security sufficient to secure the protection of the resource areas affected by the project as approved by the Commission. The amount of the performance guarantee shall be proposed by the proponent and shall reflect the total cost for the town to engage private contractors to complete the activity, including any additional consultation fees, and shall be subject to approval by the Commission. The Commission may require that a time be specified within which the activity shall be completed. In the event the activity is not completed as approved, the Commission, at its option, may require an additional amount or security to cover the cost of restoring the damaged resource areas to their original condition. Upon failure of the proponent to complete the activity in accordance with the Order of Conditions, the Commission, at its option, shall be entitled to enforce such bond or to apply such deposit of money or securities for the benefit of the Town to the extent necessary to complete the activity to protect the resource area without delay. The penal sum of any such bond, or the amount of any deposit held under this section, may, from time to time, be reduced by the Commission and the obligations of the parties thereto released by the Commission in whole or in part.

1.4.4 Filing Fees for Notice of Intent

1.4.4.1 Notice of Intent

In addition to any fees mandated by state law, the proponent shall pay to the Town of Bedford the local filing fee which shall be the sum of the fee for proposed alteration in the Buffer Zone, plus the filing fee for the proposed alteration of all other resource areas as set forth in the following fee schedule:

BUFFER ZONE

<u>Area of alteration (square feet)</u>	<u>Fee</u>
0.0 - 1000	\$25.00
1001 - 2000	\$50.00
2001 - 3000	\$75.00
3001 - 4000	\$100.00
4001 - 5000	\$125.00
5001 or more	\$0.03 per s.f.

ALL OTHER RESOURCE AREAS

<u>Area of alteration (square feet)</u>	<u>Fee</u>
0 - 100	\$25.00
101 - 200	\$50.00
201 - 300	\$75.00
301 - 400	\$100.00
401 - 500	\$125.00
501 or more	\$0.30 per s.f.

1.4.4.2 Determination of Applicability

There is no filing fee for an application requesting a Determination of Applicability under the Bylaw.

1.4.4.3 Refunds

All filing fees are non-refundable, except when a proponent who has filed a Notice of Intent withdraws the Notice prior to the opening of the public hearing. In the event that a Notice of Intent is withdrawn prior to the opening of the public hearing any filing fee paid in excess of \$100 shall be refunded. In the event that a proponent modifies the submitted plans during the review process and the revisions cause an increase in the proposed alteration of resource areas, an additional fee reflecting the additional square footage of alteration shall be submitted at the same time as the revisions. In the event that a proponent modifies the submitted plans in the course of the review process and the revisions cause a reduction in the proposed alteration of resource area, the original filing fee will be retained and not be refunded.

1.4.5 Consultant Fees for Notices of Intent and Requests for Determination of Applicability

1.4.5.1 Statement of Intent

The consultant fee may only be invoked with respect to compliance with the Bylaw; it may not be used to determine compliance with the Massachusetts Wetlands Protection Act.

The Commission must strive to limit the amount and scope of the consultant's work rather than incur the maximum amount of the consultant fee allowed by the bylaw.

The applicant has the burden of proof (1) that the proposed activity will not have a significant, unacceptable or cumulative effect upon any of the wetland values of the Bylaw, and (2) that the activity will comply with the performance standards established for each resource area. It is the applicant's responsibility to familiarize itself with the requirements of the Bylaw and these regulations and to file a complete application. However, the applicant shall be allowed the opportunity to furnish additional information in the course of the public hearing, including information deemed necessary by the Commission to evaluate the impacts of the proposed activity on resource areas.

The consultant fee shall be invoked only on a case-by-case basis, and not as a rule. Even if the Commission decides that the services of an independent consultant are necessary, the Commission has the discretion to not pass on to the applicant any or all of those costs.

1.4.5.2 Exemption from Consultant Fee

The following projects are exempt from a consultant fee:

- a) Projects with a total project cost under \$100,000.
- b) Projects relating to a single-family dwelling in which the applicant is the homeowner.
- c) Projects in which the applicant is a Bedford town board or department.

1.4.5.3 Assessment of Consultant Fee

In reaching a decision to retain an independent consultant or to pass on an or all of the consulting costs to the applicant, the Commission shall consider the following:

- a) The size or scope of the project.
- b) The amount of the bylaw filing fee in relation to the anticipated amount of the consultant cost.
- c) The nature of the project, including but not limited to projects of particular benefit to Bedford's natural resources.
- d) The need for an independent verification of information submitted with the application.
- e) The need for an independent review regarding compliance of the proposed project with the bylaw and these regulations.
- f) The ability and willingness of the applicant to provide information deemed necessary by the Commission.

1.4.5.4 Procedures

- a) Choosing the Consultant

The Commission shall make its decision to engage an independent consultant at a public meeting, consistent with the Uniform Procurement Act.

- b) Scope of Work

The Commission has the discretion to establish the scope of work, which shall be consistent with the questions raised from the applicant's technical submission relative to compliance with the bylaw and the performance standards.

- c) Notifying the Applicant

The applicant or the applicant's representative shall be informed as soon as possible before the close of the public hearing as to the Commission's decision to engage a consultant, the identity of the consultant, and the amount of the estimated consultant fees and expenses.

The applicant will be deemed formally notified:

if the applicant or the applicant's representative was present for that portion of the public meeting at which the Commission determined an independent consultant was required; or

if the applicant or the applicant's representative was informed orally or in writing.

d) Amount of the Consultant Fee; Payment; Refund

The amount of the consultant fee shall be determined as follows, at the Commission's discretion:

the cost of the services as estimated by the Commission at the public meeting; or

the cost of the services as estimated by the independent consultant; or

any amount not exceeding the maximum fee allowed by the bylaw.

The Commission may require that the consultant fee be paid prior to the Commission engaging the independent consultant.

Failure by the applicant to pay the consultant fee associated with a notice of intent shall render the application incomplete and may be cause for the Commission to deny all or a part of the project.

The applicant will not be responsible for payment of the consultant fee if the application is withdrawn, provided that the Commission has not incurred costs associated with engaging the consultant.

Final calculation of the consultant fee shall be the actual cost of the consultant(s) engaged by the Commission. Any excess amount attributable to a specific project shall be reimbursed to the applicant or the applicant's successor in interest as soon as possible.

e) Review of Consultant's Work Product

The written report generated by the independent consultant shall be made available to the applicant or the applicant's representative upon receipt of the report by the Commission.

The Commission shall agree to a request by the applicant to continue the hearing for purposes of reviewing and responding to the consultant's written report.

PART 2

2.1 INTRODUCTION

Part Two applies to all activity which will alter any freshwater wetland, marsh, wet meadow, bog or vernal pool, any bank, land under any watercourse or waterbody, land subject to flooding, or an area within 100 feet in a horizontal straight line of any of the foregoing. Part Two is intended to establish criteria for the uniform and coordinated administration of the Bylaw. It is intended to ensure that any proposed alteration of a resource area is performed in such a manner that the interests of the Bylaw are protected.

If the Commission determines that a resource area is significant to any of the wetland values identified in the Bylaw for which no presumption is stated in the preamble to the applicable section, the Commission shall impose such conditions as are necessary to protect the wetland values.

2.2 PERFORMANCE STANDARDS

2.2.1 General Standards

2.2.1.1 Activities in Resource Areas

With respect to any proposed activity within a resource area as defined in section 1.3.1,

- a) in order to control flooding, the activity shall not result in an increase in the peak discharge rate of surface run-off from either a 10-year or a 100-year storm at the boundary of the wetland resource area(s) in question [exclusive of the Buffer Zone];
- b) in order to prevent erosion, the activity shall not increase the peak velocity of run-off from either a 10-year or a 100-year storm to any portion of the resource area(s) in question [including the Buffer Zone];
- c) in order to protect the hydrology of resource areas, the activity shall not decrease the amount of water discharge that would normally enter the wetland resource area(s) in question [exclusive of the Buffer Zone]; the stormwater management system shall be designed to maximize infiltration prior to discharge, and to maintain, to the extent possible, flows and watershed lines; and
- d) in order to preserve water quality, the activity shall not increase levels of contaminants or pollutants in groundwater, surface water, or surface runoff; the stormwater management system shall be designed to maximize treatment prior to discharge; drainage structures shall not discharge directly to any wetland resource area [exclusive of the Buffer Zone]; all unvegetated drainage structures (including outfall pipes and riprap or velocity dissipators) shall be set back at least 50 feet horizontally from the edge of the wetland resource area; the Commission may require an additional setback (not to exceed a total setback of 100 feet horizontally from the wetland resource area) due to conditions affecting water quality, including but not limited to slope, soil infiltration rates, vegetative cover, and the effectiveness of the proposed stormwater Best Management Practices in preventing erosion and channelization within the Buffer Zone and in promoting infiltration, sheetflow runoff, and removal of sediments, nutrients and other pollutants.

2.2.1.2 Rare and Endangered Species

When a wildlife or plant species listed as rare, threatened, endangered or of special concern by the Massachusetts Natural Heritage Program is known to inhabit or occur in a protected resource area, no activity shall occur in the resource area that will destroy or displace said species or will alter either permanently or temporarily, said species' habitat, niche, or food source. The Commission shall presume that any activity in a resource area where any listed species is known to inhabit or occur will adversely affect the species unless the contrary is proven by a preponderance of the credible evidence presented to the Commission by the proponent.

2.2.2 Specific Standards

2.2.2.1 Buffer Zone

Where an activity is proposed within the Buffer Zone, the Commission shall presume that the activity has a high likelihood of altering any resource area adjacent to the Buffer Zone unless the proponent proves by a preponderance of the credible evidence that either:

- a) the Buffer Zone does not play a role in the protection of any of the wetland values of the Bylaw; or
- b) the activity shall occur in such a manner that any potential adverse environmental impacts on any of the wetland values are avoided.

Notwithstanding any of the above, the placement of impervious surface in the Buffer Zone is limited to the greater of:

- a) 25% of the Buffer Zone; or
- b) the percentage of the Buffer Zone covered by previously placed impervious surface due to activity allowed at the time it was performed.

2.2.2.2 Buffer Strip

Where an activity is proposed within the Buffer Zone to a wetland, vernal pool, bank or beach, or isolated land subject to flooding, the Commission shall require that a continuous Buffer Strip (at least 25 feet wide) of undisturbed, natural vegetation be maintained between the proposed activity and the resource area(s). The Commission may require that a buffer strip be created where none currently exists, due to previous activities.

In designing a project to meet this performance standard, the applicant shall take into account not only proposed construction activity, but also realistic future use of the site. As an example, in the case of construction of a single-family residence, it shall be presumed that such future use includes a yard, and that the yard shall extend at least 25 feet horizontally from the structure, exclusive of any portion of the Buffer Strip. Typically, the Commission shall expect new structures to be sited at least 50 feet from wetland resource area(s), and that a Buffer Strip significantly greater than 25 feet will be provided where slopes exceed 25%.

When partial encroachment of proposed structures into the 25-foot "yard" setback is unavoidable, the applicant may mitigate the encroachment by increasing the Buffer Strip area by an amount equal to or greater than the encroachment into the "yard". The following guidelines are offered: (1) The encroachment should not exceed 10% of the total recommended "yard" setback for the lot; and (2) The encroachment should not exceed one quarter of the recommended width of the total setback from the resource area.

It is the applicant's burden to demonstrate to the Commission's satisfaction that realistic future use of the site is not likely to result in intrusion into, or alteration of, the Buffer Strip. The Commission may require the applicant to submit a use plan and narrative as part of that demonstration. At the Commission's request, the applicant shall demonstrate to the Commission's satisfaction that work or activities proposed at the edge of the Buffer Strip are necessary and that reasonable alternatives, including reducing the scale and scope of the project or adjusting other setbacks, do not exist.

2.2.2.3 Bank

Where a proponent proposes altering a bank, the Commission shall presume that the bank is significant to all the wetland values of the Bylaw. This presumption is rebuttable, and may be overcome upon the proponent proving by a preponderance of the credible evidence that the bank does not play a role in the protection of any of the wetland values. When the presumption is not overcome, activities affecting a bank shall comply with the performance standards identified in 310 Code of Massachusetts Regulations (CMR) 10.54 (4)(a) 1-5, and any amendments thereof.

2.2.2.4 Wetland

Where a proponent proposes altering a wetland, the Commission shall presume that the wetland is significant to all the wetland values of the Bylaw. This presumption is rebuttable, and can be overcome upon the applicant proving by a preponderance of the credible evidence that the wetland does not play a role in the protection of any of the wetland values. In the event the presumption is not overcome, no activity may alter a wetland area, except that, the Commission, at its discretion, may issue an Order of Conditions permitting any activity to alter a wetland when all of the following conditions are met:

- a) the area to be altered is less than 5000 square feet;
- b) the proponent has provided the Commission with an evaluation of the reasonableness of any previously or currently available alternatives.
- c) every reasonable effort has been made to minimize the amount of wetland altered;
- d) the replicated wetland shall be created in a non-wetland area located within the bounds of the proposed project on at least a one-to-one basis, shall comply with the performance standards identified in 310 CMR 10.55(4)(b) and any amendments thereof and shall protect the wetland values of the Bylaw;

- e) provisions are made for monitoring and bonding replicated wetland areas for a period of not less than 5 years. The project proponent shall present to the Commission for its approval a monitoring proposal with an annual reporting system lasting for the term specified by the Commission. The performance bond shall be the sum of the amount necessary to: 1) Pay for replication of the area in the event that the original replication has failed in the opinion of the Commission and such experts as they may consult so as to achieve at least 75% re-vegetation of the native wetland plant species and 2) Pay for the costs incurred by the Commission to monitor the re-replication for the term specified by the Commission. The amount of the performance bond shall be proposed by the proponent, reviewed by the Commission, and if found to be appropriate by the Commission, shall be approved by the Commission.
- f) provisions are made upon the successful completion of the project, but prior to the issuance of a Certificate Of Compliance under the Town of Bedford's Wetlands Protection Bylaw, at the proponent's expense, for a registered land surveyor to modify the master set of the town's wetland maps to indicate the replicated wetland(s), and to deliver certified, stamped copies of the modified map(s) to the Bedford Conservation Commission, Planning Board, Building Inspector, Department of Public Works, Board of Assessors, and Town Clerk.

2.2.2.5 Land under waterbodies and watercourse.

Where a proposed activity will alter land under a waterbody or watercourse, the Commission shall presume that said land is significant to all the wetland values of the Bylaw. This presumption is rebuttable, and can be overcome by the proponent proving by a preponderance of the credible evidence that said land does not play a role in the protection of any of the wetland values. In the event that the presumption is not overcome, any activity within land under a waterbody or watercourse shall:

- a) comply with the performance standards identified in 310 CMR 10.56(4) and any amendments thereof; and
- b) not affect the groundwater infiltration or discharge rates.

2.2.2.6 Land Subject to Flooding (bordering and isolated)

Where a proposed activity will alter land subject to flooding, the Commission shall presume that the land is significant to all the wetland values of the Bylaw. This presumption is rebuttable, and can be overcome by the proponent proving by a preponderance of the credible evidence that the land does not play a role in the protection of any of the wetland values. In the event that the presumption is not overcome, any activity within land subject to flooding shall:

- a) comply with the performance standards identified in 310 CMR 10.57(4) (a-b) and any amendments thereof; and
- b) not alter the ability of the land to provide breeding habitat, escape cover, or food for wildlife; and
- c) neither decrease the flood storage capacity, nor increase or decrease the groundwater infiltration rate of the land.

Notwithstanding the foregoing, permanent alterations of any sort may not occur within any area two vertical feet or more below the contour of the 100 year floodplain, or within the 10 year floodplain according to the most recently adopted flood insurance rate map.

2.2.2.7 Detention Ponds, Retention Ponds and other Flood/Discharge Control Measures

Any facilities constructed for flood and/or discharge control from or on the site shall be mapped onto the master set of the town's wetland maps, and copies of the modified map(s) shall be delivered to the Bedford Conservation Commission, Planning Board, Building Inspector, Department of Public Works, Board of Assessors, and Town Clerk. The work shall be performed, certified, and stamped by a registered land surveyor at the proponent's expense. Further, the Commission shall require that the proponent submit a maintenance plan for the flood and discharge control measures which shall:

- a) insure the continuing function of the facilities as originally designed, and
- b) identify the source of funds and the party responsible for implementing the maintenance plan.

2.3 LIMITED PROJECTS

Notwithstanding the provisions of 2.2.2, the Commission may issue an Order of Conditions which will protect the wetland values identified in the Bylaw permitting the following limited projects:

2.3.1 Public Utilities

The installation and/or construction of underground and overhead public utilities such as distribution, transmission, communication, sewer, water, or natural gas lines.

2.3.2 Access

The construction of a new roadway or driveway of minimum practical width acceptable to the Planning Board, Building Inspector, Department of Public Works, Fire Department, and Police Department; provided there exists no alternative reasonable use of the land and no possible reasonable alternative means of access from a public way to an upland area. The Commission shall require that the proponent minimize all potential impacts to the resource areas impacted by the project.

2.3.3 Construction of Waterbodies

If a proponent proposes an activity which results in the excavation of wildlife impoundments, farm ponds or ponds for fire protection, the proponent must furnish the following information for the Commission's consideration prior to the excavation. In the case of wildlife impoundments, a wildlife/fisheries biologist or an ecologist must detail what impacts (both positive and negative) the pond will have on the existing ecosystem, and a hydrologist must certify in writing that the pond will function as designed and not have any effect on hydrologically connected resource areas. In the case of a farm pond(s) or pond(s) for fire protection, the proponent must certify a need for the pond(s). In either case:

- a) ponding areas shall not be created in conjunction with any other project which impacts any other resource area under the jurisdiction of the Bylaw.
- b) pond construction shall not result in the placement of fill or other material upon the wetland except as may be necessary for impoundment, bank stabilization, and access.

2.4 VARIANCE

The Conservation Commission may waive the application of any regulations contained herein when it receives a written request for a variance from the proponent, and

- a) it determines that a variance is necessary to accommodate an overriding community, regional, state or national public interest. The proponent shall have the burden of demonstrating that there is no reasonable alternative design of the project that would minimize alteration of protected resource areas and that the activity serves an overriding public interest,

or

- b) in the case of an unimproved lot existing prior to the effective date of the particular regulation or bylaw provision in question, the proponent proves by a preponderance of the credible evidence that a regulation contained herein or a provision of the Town of Bedford General Bylaws, Section 36 — Wetlands Protection Bylaw, will deprive the proponent of any economic use of the proponent's property as a whole, including any present or former property of the proponent which previously incorporated the subject lot. The proponent shall have the burden of proving that there is no reasonable alternative design of the project or use of the lot that would result in any economic use while still complying with these regulations and the Town of Bedford General Bylaws, Section 36 — Wetlands Protection Bylaw.

2.5 ATTACHMENTS

Attached and incorporated herein are Appendixes A, B, and C.

2.6 SEVERABILITY

The invalidity of any part or provision of these regulations shall not invalidate any other parts or provisions thereof, nor shall it invalidate any permit or determination which has previously been issued.

APPENDIX A: DEFINITIONS

Abutter — any person whose property adjoins, shares a corner, or is directly across any right-of-way, or watercourse from the property in question.

Activities — any work or action, proposed or undertaken, which will alter the existing conditions, use or ecology of the land.

Proponent — any person who files a Request for Determination of Applicability or Notice of Intent.

Bank — the portion of the land surface which normally abuts and confines a waterbody or watercourse. The upper boundary of a bank is the uppermost observable break in the slope or the mean annual flood level, whichever is higher. The lower boundary is the mean annual low water level. Banks may be either naturally occurring or man-made.

Bordering land subject to flooding — an area which floods from a rise in a bordering watercourse or waterbody. The 100 year or 10 year floodplain shall be determined as indicated in Mass. General Laws, Chapter 131, Section 40 or any amendments thereof.

Buffer Zone — that area of land extending 100 feet horizontally outward from the boundary of any wetland, bank, land subject to flooding or inundation by groundwater or surface water, waterbody or watercourse, or land under any waterbody or watercourse.

Bylaw — the Town of Bedford General Bylaws, Section 36 — Wetlands Protection Bylaw.

Conditions — those requirements set forth in a written Order of Conditions issued by the Commission for the purpose of permitting, regulating, or prohibiting any activity.

Detention Pond, Retention Pond — an open surface reservoir, which may or may not have a permanent pool of water, sited to collect runoff from a drainage area in order to control peak discharges. For the purposes of this Bylaw a retention pond shall be considered the same as a detention pond.

Isolated land subject to flooding — an isolated depression or basin which confines at least either 10,000 square feet or 1/8 acre foot, whichever is smaller in surface area, of standing water at least once a year.

Land subject to flooding — land that is subject to either surface or groundwater inundation.

Land under a Waterbody or Watercourse — the boundary of Land under a Watercourse or Waterbody is defined by the mean annual low water level.

Vernal Pool — a confined basin depression which provides habitat for Vernal Pool Species, whether or not certified by the Massachusetts Natural Heritage Program. Vernal Pool Species are those vertebrate and invertebrate species listed in the January 1991 edition of Massachusetts Audubon Society's "A Citizen's Step-by-Step Guide to Protecting Vernal Pools".

Waterbody — any open body of fresh water, either naturally occurring or man-made, with a surface area observed or recorded within the last ten (10) years of at least 2000 square feet, and which is never without standing water due to natural causes, except during periods of extended drought. For purposes of this definition, extended drought shall mean any period of four (4) or more months during which the average rainfall for each month is 50 percent or less of the ten (10) year average for that same month. Swimming pools shall not be considered waterbodies.

Watercourse — a river or stream.

A river is a natural flowing body of water that flows year-round and empties into the ocean, any lake, or another river.

A stream is a body of running water, either naturally occurring or man-made, which moves in a definite channel in the ground due to a hydraulic gradient, and which flows within, into or out of a resource area. A stream includes, but is not limited to brooks, creeks, drainage ditches, intermittent streams, canals.

Wetland — an area with a vegetated community consisting of 50% or more of wetland indicator species including, but not limited to, the plants identified in Mass. General Laws, Chapter 131, Section 40 and any amendments thereof. An area consisting of predominantly peat/muck soils, even where no vegetation exists, shall be considered a wetland. A wetland can be either isolated or bordering.

Wildlife Habitat — those resource areas which due to their plant community composition and structure, hydrologic regime or other characteristics, provide food, shelter, migratory or over-wintering areas, or breeding areas for wildlife.

APPENDIX B: CHECKLIST FOR REQUEST FOR DETERMINATION OF APPLICABILITY

The proponent shall submit two (2) copies of the completed Request for Determination of Applicability form to the Conservation Commission. This application shall include the following information:

1. Name and street address of proponent, and the proponent's representative, if any. If the proponent's mailing address is a post office box, then the proponent's street address shall also be furnished;
2. Street address of proposed project. In the event that there is no street address, the Assessors map and lot number shall be used for identification;
3. The telephone numbers, day and evening, where the proponent and any representatives may be contacted;
4. General locus map;
5. Project description;
6. Plan of land showing 1) buildings (existing and proposed), 2) topography with maximum contour intervals of one foot (existing and proposed), and 3) resource areas as defined in MGL Chapter 131, s. 40 and any amendments thereof and the Town of Bedford By-Laws and any amendments thereof with, at a minimum, delineation according to the Town of Bedford Wetlands Maps being indicated.

The proponent shall submit eight (8) additional copies of the project description and the plan as described above in subsections 5 and 6.

7. Photographs of the project site, to include resource areas, vegetational communities, and proposed construction staking;

In addition to the above, the Commission may require the following information:

1. List of abutters and proof that they have been notified of the hearing;
2. Certification of compliance with Title 5, Massachusetts Sanitary Code;
3. Any other information which the Commission deems necessary to reach a determination.

APPENDIX C: CHECKLIST FOR NOTICE OF INTENT

The proponent shall submit ten (10) copies of the completed Notice of Intent form to the Conservation Commission. This submission shall include the following information:

1. Name and street address of proponent, and the proponent's representative, if any. If the proponent's mailing address is a post office box, then the proponent's street address shall also be furnished.
2. Street address of proposed project. In the event that there is no street address, the Assessor's map and lot number shall be used for identification;
3. The telephone numbers, day and evening, where the proponent and any representatives may be contacted;
4. General locus map from a USGS topographic map;
5. Plan of land showing:
 - 1) buildings and structures (existing and proposed);
 - 2) topography with maximum contour intervals of one foot (existing and proposed);
 - 3) resource areas

as defined in MGL Chapter 131, s. 40 and any amendments thereof and the Town of Bedford By-Laws and any amendments thereof with, at a minimum, delineation according to the Town of Bedford Wetlands Maps being indicated; and locations and numbers of wetland boundary flags or markers;
 - 4) North arrow;
 - 5) legend;
 - 6) property boundaries;
 - 7) location of erosion control measures;
 - 8) limits of work line;
 - 9) location of stockpile areas, including temporary storage of equipment, fill, supplies;

- 10) Professional Engineer's and/or Registered Land Surveyor's stamp and date;
 - 11) location of proposed replication and/or restoration areas, including transition slopes and proposed 25 foot post-construction buffer to these areas;
 - 12) location of any conservation lands within 100 yards of the project;
 - 13) location of soil borings, test pits;
 - 14) drainage divides (pre and post construction);
 - 15) contours of water table;
 - 16) storm drainage system;
 - 17) location of site in watershed;
 - 18) direction of groundwater flow.
6. Check(s) made payable to the Town of Bedford for the filing fee(s).
 7. List of abutters and proof that they have been notified of the hearing.

In addition to the above, the Commission may require the following information:

1. Certification of compliance with Title 5, Massachusetts Sanitary Code;
2. Soils information (U.S. Natural Resources Conservation Service soils maps, soil logs, soil classification);
3. Drainage calculations: to include pre and post construction, method used, assumptions, and worksheets;
4. Erosion control specifications and details;
5. Description of how work will comply with 310 CMR 10.00 and any amendments thereof and Town of Bedford Wetlands Protection Bylaw and any amendments thereof;
6. Work completion schedule;
7. Depth to average annual high water table;
8. Water quality analysis (pre and post construction) of surface and groundwater;

9. Analysis of wetland soils including depth, organic content, etc.;
10. Vegetation maps showing types of vegetation, impervious cover, etc.;
11. Landscaping plans;
12. Potential sources of pollution such as fertilizer, pesticides, petroleum products, heavy metals, etc.;
13. Aquifers and groundwater resources in vicinity of site;
14. Dates when all field work was conducted;
15. Headwall and riprap specifications;
16. Retaining wall cross sections;
17. Maintenance plans:
 - Detention and/or retention ponds
 - Replicated resource areas
 - Oil and grease traps
 - Conservation and pedestrian easements or rights of way
 - Culverts; and
18. Narrative for wetland replication/restoration, including baseline information, proposed soils and vegetation criteria, compliance with performance standards, construction sequence, and monitoring plan;
19. 100 scale plan of field-delineated and approved wetland boundaries;
20. Photographs of project site, to include resource areas, vegetational communities, and proposed construction staking;
21. Any other information which the Commission deems necessary to reach a determination.