

**Belchertown Wetlands Regulations, BWR 10 :00**  
**May 23, 2006 Copy**

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## **BELCHERTOWN WETLANDS REGULATIONS, BWR 10:00**

**PURPOSE:** The purpose of these regulations is to clarify and define the 1989 Belchertown Wetlands Protection Bylaw (hereafter referred to as the «Bylaw»), administered by the Belchertown Conservation Commission (hereinafter «Commission»). The Bylaw identifies and protects certain Wetland Resource Areas and the interests the general public has in these areas. These regulations establish a uniform process by which the Commission can review and regulate activities that affect the Resource Areas and interests identified by the Bylaw.

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

### **POLICIES:**

1. **No Net Loss:** It is the policy of the Belchertown Conservation Commission to follow the "No Net Loss" guidelines set forth by the Massachusetts Department of Environmental Protection. Therefore, applicants who propose to alter Resource Areas under the Commission's jurisdiction must:
  - a. demonstrate that there is no practicable alternative,
  - b. minimize impacts where they are unavoidable
  - c. mitigate losses of Wetland Resource Areas, where applicable or appropriate, on at least a 2:1 basis, (2 parts replicated to 1 part lost). "Limited projects" are included in this requirement.
2. **No Net Change in Stormwater Runoff:** It is the policy of the Belchertown Conservation Commission to require applicants to demonstrate that no significant change in off-site runoff will result from proposed work. Because increased runoff impacts land downstream and reduces natural groundwater recharge, the Commission may require measures (such as Stormwater detention basins) to prevent increased runoff. Direct discharge of runoff into a Resource Area will not be allowed.
3. **Stormwater Management:** The Town of Belchertown adopts the DEP Stormwater Management policy and all nine management standards. For the purpose of these Regulations, all Buffer Zones and Wetland Resource Areas will be considered critical areas and all drainage calculations and all storm water runoff to be treated

for water quality must be based on the following calculation: 1 inch of runoff x total impervious area of post-development on the site.

The Town of Belchertown will presume that projects that meet the nine Stormwater Management Standards satisfy regulatory requirements. When one or more of the Standards cannot be met, an applicant may demonstrate that an equivalent level of environmental protection will be provided.

4. Resource Areas: The Conservation Commission has determined that certain additional areas of jurisdiction are significant to the protection of interests identified in the Belchertown Wetlands Bylaw. The Commission presumes that the following additional Resource Areas are significant to those interests:
  1. Isolated Wetlands greater than 5,000 sq. ft.
  2. Ponds greater than 5,000 sq. ft.
  3. Ephemeral Pools.

These presumptions are refutable and may be overcome upon a clear showing that said land does not play a role in the protection of interests identified in the Bylaw. In addition, it is the policy of the Commission to advise applicants on three non-regulated Wetland Resource Areas:

1. Intermittent Streams up-gradient of Wetland Resource Areas
2. Isolated Land Subject To Flooding below 310 CMR 10:57 size thresholds
3. Isolated Wetlands less than 5,000 sq. ft.

The applicant shall identify these areas at the site, locate them on the plans, avoid impacts to these areas and will mitigate unavoidable impacts with respect to drainage and flood control.

5. Wetlands Delineation: Delineation of the boundary of a Bordering Vegetated Wetland under the Belchertown Regulations is governed by:
  - The Massachusetts Regulations (310 CMR 10:55 (2) (c))
  - DEP Wetlands Program Policy 95-1 (BVWs)
  - The DEP Publication, entitled “Delineating Bordering Vegetated Wetlands under the Massachusetts Wetlands Protection Act”, dated March 1995.

Where natural vegetation is absent as a result of mowing, grazing, or other disturbance, the presence of Hydric soils (soils that are annually saturated, as evidenced by the observed groundwater, soil gleying, soil mottling or other redoximorphic features within 18” of the surface) shall provide positive determination of jurisdiction. In cases where

natural vegetation is absent as a result of filling or draining, historic evidence and record may provide positive determination or jurisdiction.

Also for the purpose of these Regulations, Wetland plant communities, which are dominated by plants, rated as FACW or FACW<sup>+</sup> by the Fish and Wildlife Service in the document entitled “National List of Plant Species That Occur in Wetlands: Massachusetts 1988” and which contain Obligate Wetland plants species, shall presumed to be underlain by Hydric soils.

6. Vegetated Buffer Strip: Development proposed in the Buffer Zone can negatively impact the abutting Resource Areas(s). Negative impacts, both from the “construction” and “use” phase of the project can include erosion, siltation, loss of pollution attenuation, loss of groundwater recharge, reduced water quality and loss of wildlife habitat. A minimum 25ft. strip of continuous, undisturbed, indigenous vegetative cover (the no disturb area), along the Resource Area boundary within the 100 ft. Buffer Zone shall be maintained, in order to protect the adjacent Wetland Resource Areas, and provide wildlife habitat. All footing drains and drainage outlets must stay out of the 25ft. no-disturb area. In addition, the Conservation Commission requires all applicants to submit an alternative analysis, demonstrating need and justification for any work proposed within the 50ft. Buffer Zone. The applicant shall prove by a preponderance of the evidence that there are no practicable and substantially equivalent economic alternatives to the proposed project with less adverse effects on any Wetland Resource Areas. A practicable alternative means a measure that is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. A larger buffer may be required in sensitive areas, such as but not limited to, steep slopes, critical areas and highly erodable soils.

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

- No alteration of a Wetland Resource Area
- Less than 2,500 sq. ft. of alteration in the Buffer Zone
- No work will occur within 50’ of a Wetland Resource Area.
- The slope within the buffer zone must be no steeper than 15% (6.7 to 1 slope)
- Not in the Buffer of Endangered Species Habitat
- A plan is included for permanent stabilization-including loaming, seeding, and mulching
- Erosion control measures are maintained until permanent vegetation is established

8. Consultants: The Commission reserves the right, as stated in the Belchertown Wetland Bylaw to require third party verification of all submittal information and

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. The Commission will hire at the applicant's expense a consultant(s) to review part or the entire submittal. This fee is called the "consultant fee". Such consultant fees should be reasonable and/or appropriate to the work undertaken. The specific consultant services may include, but are not limited to, performing or verifying the accuracy of Resource Area surveys and delineations; analyzing Resource Area functions and values, including wildlife habitat evaluations, hydrogeologic and drainage analysis, review applications and plans and researching environmental or land use law. Failure to compensate the Commission's consultant(s) in a timely manner will result in the application being deemed incomplete and/or the issued permit being null and void.

**BWR 10:01 VALUES PROTECTED BY THE BELCHERTOWN WETLANDS BYLAW:**

The following are the values under the Belchertown Wetlands Bylaw:

- Protection of public and private water supply
- Protection of groundwater and groundwater quality
- Protection of surface water and surface water quality
- Flood control
- Storm drainage prevention
- Prevention of pollution
- Protection of fisheries
- Protection of wildlife habitat
- Erosion and sedimentation control
- Storm drainage
- Protection of agriculture and forestry
- Protection of aquaculture
- Recreation
- Preservation of open space

**BWR 10.02 AREAS OF JURISDICTION:**

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

- (A) any freshwater Wetland, over 5,000 ft.<sup>2</sup> in size, as determined by vegetational community, soil composition, and/or hydrologic regime, including Isolated Wetlands, and any marsh, wet meadow, bog or swamp;
- (B) any pond, lake, river, any Perennial or Intermittent Stream;
- (C) any land under such waters;

- (D) any bank or beach;
- (E) any land subject to flooding or inundation by groundwater, surface water, storm flowage;
- (F) any Ephemeral Pools, Vernal Pools;

or within 100 feet of the above Resource Areas, an area known as the BUFFER ZONE to the Resource Areas.

(F) any Bordering Land Subject to Flooding

(G) Riverfront Area, because the State has established a 200 ft. setback on each side of a perennial stream, river or brook, the Commission recognizes the need to protect this area. For the purpose of administrating these regulations, the Commission has adopted the States definition and jurisdiction of the Riverfront Area.

(II) Activities Subject to Regulations under the Bylaw:

(A) Activities Within the Resource Areas. Any activity proposed or undertaken within an area specified on BWR 10:02 (1) which, in the judgment of the Commission, will remove, fill, or alter an Area Subject to Protection Under the Bylaw is subject to regulation under the Bylaw and requires the filing of an Application for Permit (BWR 10:05 (2)).

(B) Activities within the Buffer Zone. Any activity proposed or undertaken within one hundred feet of an area specified in BWR 10:02 (I) (a)-(e) (hereinafter called the Buffer Zone) which, in the judgment of the Commission, will affect an Area Subject to Protection Under the Bylaw is subject to regulation under the bylaw and requires the filing of an Application for Permit.

(C) Activities Outside the Areas Subject to Protection and the Buffer Zone. See 310 CMR 10:02 (2) (c).

### **BWR 10:03 GENERAL PROVISIONS:**

(I) Burden of Proof and Going Forward: It is the applicant's responsibility to note those requirements contained in these regulations which are in addition to those set forth in 310 CMR 10:03.

(II) Incorporation: All of the procedures and requirements set forth in the Wetlands Protection Regulations of 310 CMR 10:00 et. Esq. are hereby incorporated and made a part of these regulations except where they differ from or depart from these regulations. Where these regulations differ from or depart from the State regulations, they shall take precedence over the State regulations. The applicant should first address the regulations

at 310 CMR 10:00 et. Seq. and then supplement them with the Belchertown Wetlands Regulations.

(III) Title V & Belchertown Board of Health Septic System Regulations:

(A) Preamble: the State Environmental Code (310 CMR 15:00 et. Seq.), administered locally by the Belchertown Board of Health, is a minimal public health regulation that may be supplemented at the local level. Where they concern septic-derived contaminants, the Belchertown Wetlands Regulations complement local Board of Health regulations, which are independently authorized and administered.

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

(1) none of the septic components is located within a Resource Area as defined in the Belchertown Wetland Bylaw (BWR 10:02 (I) (A-D)); and

(2) the leaching facility of a disposal system is set back at least one hundred feet (100') from a Resource Area, except Land Subject to Flooding and the Riverfront Area, defined under the Bylaw and as required by local Board of Health regulations, except:

- a. the setback for areas which are defined as Resource Areas only under this Bylaw
- b. the set back required for the renovation, replacement, or maintenance of septic systems constructed prior to the date of these regulations, provided that no alternative location is available on the lot.

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

The setback distance is to be determined as specified in 310 CMR 10:03 (3). The Commission shall determine the edge of the Resource Area for the Board of Health upon request.

(IV) Presumption Concerning Point Source Discharge: See 310 CMR 10:03 (4).

- a. all footing drains and all stormwater outfalls must be at a minimum, at least 25ft. from any Wetland Resource Areas and must be shown on all plans.

(V) Presumption of Significance: Each Area Subject to Protection Under the Belchertown Wetlands Regulations is presumed to be significant to one or more of the Values

identified in BWR 10:01. The presumptions are refutable and are set forth in Part III of BWR 10:00.

(VI) Presumption Concerning Application of Herbicides: See 310 CMR 10:03 (6).

(VII) Fees: Same as 310 CMR 10:03 (7), except as stated below.

- a. a Request for Determination of Applicability for any work on any lot other than a single family lot, shall be \$50.00.

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

**Deleted:** b. a fee of an additional 50 % of the original filing fee shall be assessed to any project not submitting an ANRAD, NOI, or other permit request before any work commences. ¶

(IX) Reservation: These regulations should not be construed to limit the authority under the Belchertown Wetlands Bylaw. The Commission reserves the right to act in a manner consistent with the Bylaw upon any matter within its jurisdiction.

(X) Effective Date: The effective date of these regulations shall be January 1, 1992. These regulations apply to all applications made on or after the effective date.

#### **BWR 10:04 DEFINITIONS:**

The definitions applicable to the Belchertown Wetlands Bylaw shall be the same as set forth in the Wetland Protection Act, MGL ~~v. 131, 40~~ and the Wetland Protection Regulations 310 CMR 10:00 et. Seq. except for the purpose of administrating these regulations, the Commission has adopted the following modifications and additional definitions:

**Deleted:** c.

**Deleted:** s.

Alter: Alter means to change the condition of any area, either temporary or permanent, subject to jurisdiction under the Bylaw. Examples of alteration include, but are not limited to, the following:

- removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- changing or modifying pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- drainage or other disturbance of water level or water table;
- dumping, discharging or filling with any material which may degrade water quality;
- placing of fill, or removal or material, which would alter elevations;
- driving of piles, erection or repair of buildings, or structures of any kind;
- placing of obstructions or objects in water;
- destruction of plant life including cutting of trees;
- changing water temperature, biochemical oxygen demand, or other physical, chemical or biological characteristics of surface and/or groundwater;



- excavation for the purpose of percolation or deep hole testing or the crossing of a Resource Area with heavy equipment for this purpose;
- any activities, changes, or work which may cause or tend to contribute to pollution of water or groundwater;
- shading

Alternative Analysis: The applicant shall prove by a preponderance of the evidence that there are no practicable and substantially equivalent economic alternatives to the proposed project with less adverse effects on any Wetland Resource Areas.

ANRAD: Abbreviated Notice of Resource Area Delineation. The ANRAD (Form 4A) provides a procedure for an applicant to confirm precise boundaries of Wetland Resource Areas.

Application: Notice of Intent, Request for Determination and Abbreviated Notice of Resource Area Delineation

BMP: Best Management Practices means the most up-to-date technology or the best designs, measure, or engineering or bioengineering practices that have been developed and that are commercially available.

Buffer Zone: Buffer Zone means that area of land extending one hundred (100) feet horizontally outward from the boundary of any Resource Area, except Land Subject to Flooding and Riverfront Area, (which have no Buffer Zones), and as described in Section 10.02 of these regulations.

Commission: Conservation Commission means that body comprised of members lawfully appointed pursuant to MGL CH. 40 Sec. 8C.

Conditions: means those requirements set forth in a written Permit issued by the Commission for the purpose of permitting, regulating, or prohibiting any activity that removes, fills, dredges, builds upon, or alters any Resource Area.

DEP: Massachusetts Department of Environmental Protection

Ephemeral Pool: means an isolated depression or closed basin, which can be isolated and have water year round. An Ephemeral Pool generally confines water during periods of high water table and high input from spring runoff, snowmelt, or heavy precipitation, and serves as Vernal Pool habitat. It is an essential breeding site for certain amphibians, which require isolated areas that are generally flooded for at least two continuous months in the Spring and/or Summer. Most of these amphibians remain near the breeding pool during the remainder of the lifecycle. Many reptiles, birds, and mammals also feed here.

Erosion Control: means the process and the prevention of the wearing away of land by running water, gravity, waves, wind, ice, abrasion and transportation.

Extension Permit: means a written permission issued by the Commission extending the time within which an authorized activity shall be completed.

Flood Plain: the area adjacent to a watercourse or a drainage way subject to flooding when the watercourse may overflow its normal channel.

Hydric Soils: are those that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part. For the purposes of these Regulations, “upper part” is defined as 6 inches for Somewhat Poorly Drained Soils. Poorly and Very Poorly Drained Soils are presumed to be Hydric, unless they have been artificially drained or otherwise altered. In such special cases, the “upper part” shall be defined as within 12 inches of the soil surface. Oxidized rhizospheres and mottling within the “upper part” of the soil as defined above shall be considered as evidence of anaerobic conditions, and the soil shall be considered hydric. Also for the purpose of these Regulations, Wetland plant communities, which are dominated by plants, rated as FACW or FACW<sup>+</sup> by the Fish and Wildlife Service in the document entitled “National List of Plant Species That Occur in Wetlands: Massachusetts 1988” and which contain Obligate Wetland plants species, shall be presumed to be underlain by Hydric soils.

Isolated Wetland: means an area of at least 5,000 sq. ft where groundwater, flowing or standing surface water, or ice supports a community composed of at least 50% Wetland plant species as included or identified in generally accepted scientific technical publications.

NOI: Notice of Intent means the written Application for Permit filed by any person (see definition below), intending to remove, fill, dredge, or alter any Area Subject to Protection under the Massachusetts Wetlands protection Act (M.G.L. Ch. 131, Sec. 40) or the bylaw.

Ongoing Conditions: Special conditions set forth in a written Permit issued by the Commission for the purpose of permitting, regulating, or prohibiting any activity that removes, fills, dredges, builds upon, or alters any Resource Area and or Buffer Zone. These perpetual conditions must remain with the title/deed of the property and are include in the Certificate of Compliance for said property.

OOC: Order of Conditions, means the written document issued by the Commission containing conditions which regulate or prohibit an activity in a Resource Area Subject to Protection under the Wetlands Protection Act or the bylaw.

Open Space: any undeveloped area of land.

ORW: Outstanding Resource Water. Waters designated as Class A public water supplies and Vernal Pools certified by the Natural Heritage Endangered Species program.

Person: means 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 bylaw, administrative agency, public or quasi-public corporation of body, the Town of Belchertown, or any other legal entity, its legal representatives, agents or assigns.

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

Practicable Alternative: means a measure that is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. The scope of alternatives under consideration shall be commensurate with the type and size of the project. Alternatives may be based on cost, existing technology, proposed use and logistics in light of the overall project purpose.

RDA: Request for Determination of Applicability means a written request made by any person to the Commission for a determination as to whether an area or activity is subject to the bylaw.

Riverfront Area: as defined in 310 CMR 10:58 (2). Because the State has established a 200 ft. setback on each side of a perennial stream, river or brook, the Commission recognizes the need to protect this area. For the purpose of administrating these regulations, the Commission has adopted the States definition of the Riverfront Area.

Vegetated Buffer Strip: a continuous buffer strip, undisturbed and in its natural state, between development activities in the Buffer Zone and the Resource Area to be protected, (see Policies under Vegetated Buffer Strip).

Vernal Pool: defined as a confined basin depression which holds water in most years for two consecutive months during the Spring and Summer, does not support established breeding fish populations and has no permanent flowing outlet, (most of the time). Vernal Pools can be isolated depressions in upland or low pockets within Wetland communities. It is an essential breeding site for certain amphibians, which require isolated areas that are generally flooded for at least two continuous months in the Spring and/or Summer and are free from fish predators. Most of these amphibians remain near the breeding pool during the remainder of the life cycle.

Deleted: lifecycle

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

**BWR 10:05 Procedures:**

The following procedures shall apply to all filings under the Belchertown Wetlands Bylaw, (unless specifically stated).

(I) Time Periods: See 310 CMR 10:05 (1)

(II) Actions by Conservation Commission: See 310 CMR 10:05 (2)

(III) Request for Determination of Applicability (RDA)

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

(B) Filing Procedures: It is the applicant's responsibility to provide all of the information required for this review. The applicant must complete the Combination of Filing Form (Form A) and all information on the Request for Determination. The Commission may require additional information.

1. Return the original and one (1) copy by certified mail or hand delivery to:  
Belchertown Conservation Commission  
Lawrence Memorial Hall, 2 Jabish Street, P.O. Box 670  
Belchertown, MA 01007

2. Mail a copy to:  
DEP Western Regional Office  
Division of Wetlands and Waterways Regulations  
State House West, 4<sup>th</sup> Floor, 436 Dwight Street  
Springfield, MA 01103

**And**

Landowner, when applicant is not the landowner.

3. Include an accurate description of the location (including Town Assessors Map and Lot #), a locus map consisting of the appropriate USGS topographic map with the property boundaries clearly identified.  
A site map, including but not limited to the following; the boundaries of the proposed work, all existing and proposed structure, and the distance to Wetlands, Water bodies, or other Resource Areas to be protected, pre and post development contours, and the name and contact information of site map preparer. All applications will be deemed incomplete without a site identification of the parcel to be reviewed.

4. When considering filing a Request for Determination for work in the Buffer Zone, and applicant must assure the Commission that the potential for alteration of a Resource Area is so insignificant as to not require the oversight provided by an Order of Conditions and subsequent Certificate of Compliance. **Therefore, the Commission may typically consider issuing a Negative Determination when a project meets the following minimum criteria:**

- No alteration of a Wetland Resource Area
- Less than 2,500 sq. ft. of alteration in the Buffer Zone
- A fifty foot (50') undisturbed, vegetated Buffer Strip is left between the proposed work and the Resource Area
- The slope within the buffer zone must be no steeper than 15%
- Leach field of a septic system is sited at least 100 feet from any Wetland Resource Area
- A plan for permanent stabilization is included – loaming, seeding, and mulching
- Erosion control measures maintained until permanent vegetation established
- Not in the Buffer Zone of critical areas.

Any proposed activity or work not meeting the above referenced criteria must be submitted under a Notice of Intent filing (See BWR 10:05 IV).

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

Prior to making a determination, the Commission may require the submission of additional data deemed pertinent to the Determination and shall inspect the property for which the Request was made. The Commission's Determination shall be issued on Form WPA Form 2 and will be combined with a Determination made under the Wetlands Protection Act and sent to Massachusetts DEP. In the event that the applicant is not the property owner, the Commission will require the property owners written permission to access the property.

Resource Areas will be identified and delineated based on their definitions as previously defined and stated in these regulations. In cases where the natural vegetative community has been disturbed by the removal of the vegetative cover, or some other type of disturbance, the Commission may determine the boundary of a Freshwater Wetland based on the presence of hydric soils; and/or may defer determination of a Wetland boundary until the natural vegetation has re-grown.

If a Positive Determination is issued, the applicant must file an Application for a Permit. A Positive Determination may also be issued to confirm the delineation for boundaries of Resource Areas and/or when the area is determined to be under jurisdiction, and/or when the proposed work requires a permit.

If a Negative Determination is issued, it means that the area is not subject to jurisdiction or that the work will not alter an Area Subject to Protection. In appropriate situations, the Commission may require the recording of a Negative Determination at the Hampshire County Registry of Deeds, Proof of Recording must be submitted to the Commission prior to the commencement of any work, or the permit will be considered null and void.

Incomplete applications will not be accepted for review, or the Commission may issue a Positive Determination, due to lack of sufficient information. This will require the applicant to file a Notice of Intent for, (See BWR 10:05 IV).

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

(IV) Application for Notice of Intent:

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

(B) Filing Procedure. An Application for Permit consists of the completion of the Combination Filing Form (Form A), under the Belchertown Wetland Regulations and completion of a Notice of Intent form (WPA Form 3), as defined in (310 CMR 10:05 (4)). An original and two (2) copies of the Application for Permits and accompanying plans and data shall be sent by mail or hand delivered to:

Belchertown Conservation Commission  
Lawrence Memorial Hall, 2 Jabish Street, P.O. Box 670  
Belchertown, MA 01007

The applicant shall send one copy of the Notice of Intent/Application for Permit and accompanying plans and data to:

DEP Western Regional Office  
Division of Wetlands and Waterways Regulations  
State House West, 4<sup>th</sup> Floor, 436 Dwight Street  
Springfield, MA 01103

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

(D) Submission Requirements. In addition to the submittal requirements outlined in Section III (B) (3) above, the following is required for an application to be reviewed:

- Completed Combination of Filing Form (Form A)
- Completed Notice of Intent and/or BRP WPA Form 3
- Locus Map, USGS Map
- Abutters List and Proof of Notification
- Wetland Fee Transmittal Form
- Town Assessors Map
  
- Site Plan (scale of 1" = not more than 50') must be submitted. In addition, the following minimal submission will require the following features to be shown on the Plan: Item#:
  1. Title Box: date, owner, scale, north arrow
  2. Assessor's Reference: Map, Section, Parcel, Lot #
  3. Engineer's Stamp and Signature when required
  4. Boundaries of all Resource Areas as defined by the Belchertown Wetlands Regulations
  5. 100' Buffer from Resource Areas
  6. Location, extent, and area of all present and proposed structures and paved areas
  7. Limit of Work (construction envelope)
  8. Location of Temporary Erosion and Sedimentation Control measures
  9. Distance (100' minimum) of Leaching Facility from Resource Areas (BWR 10:03 (III) (B) (2) a and b
  10. Existing contours
  11. Proposed new contours
  12. Soil Characteristics in representative portions of the site, including characteristics of Hydric soils and depth of peat and muck in wetlands  
Sampling sites shall be specified

13. The maximum groundwater elevation at the period of the year when the ground water table is at its highest elevation, including calendar dates of measurements, samplings, soil evaluations and data, percolation tests, if any
14. Location of proposed Resource Areas to be filled or altered
15. Amount (square feet) of proposed filled or altered Resource Areas
16. Location of Replacement Areas
17. 100 year Floodplain, with elevations
18. Amount of proposed fill in floodplain, including square ft. and cubic ft. measurements
19. Location of compensatory storage areas
20. Alternative analysis for the justification of any Resource Area fill, alteration and/or work in the 50 ft. Buffer Zone to a Wetland. At a minimum, this analysis shall include the effects on all values listed in BWR 10:01; **VALUES PROTECTED BY THE BELCHERTOWN WETLANDS BYLAW**
21. Cross sections showing slope, bank, and bottom treatment of each watercourse to be altered
22. Existing natural drainage patterns and proposed alteration
23. Drainage easements and ways
24. Location of proposed and existing water detention area and all existing and proposed storm drainage pipes
25. Ditches, structures, culverts and outfalls, fully described with information on inverts, slopes, materials, entrance and outlet conditions, bedding in unstable soils, details of drainage structures, and end-walls, and other standard engineering data on such work
26. Details of storm drainage outlets showing no direct discharge into a Resource Area
27. If the project is proposed within the estimated habitat of a rare wetlands wildlife species, a copy of the completed application must be sent simultaneously to the Natural Heritage and Endangered Species Program (NHESP; HB§12.22)
28. Aerial photographs are required for all projects other than a single-family dwelling
29. Permanent Markers identifying the limit of work area
30. Replication Plan and detail showing a 2:1 replication ratio. Replication construction activities must be supervised by a wetland specialist who shall be a professional with experience in Wetland replication, Wetland hydrology and a working knowledge of botany.

Following the receipt of the above information, the Commission will schedule a site visit to view the proposed project in the field. For the Commission to complete their site visit the Wetlands must be flagged and the project staked 10 days prior to the public hearing.

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



Engineering calculations:

1. Engineering calculations are required to show the effect of the proposed activity on soil and water, Calculations and watershed modeling shall normally be performed using a hydrograph analysis based on the techniques developed by the USDA, Soil Conservation Service. Calculations shall be made that show the impact for 2-year, 10-year, 100-year storms using the SCS Type II or III 24 hour rainfall, or other storms consistent with the Belchertown Planning Board policy (Subdivision Regulations, Sec. 5.4.8). A registered professional civil engineer or qualified hydrologist shall prepare the calculations. All plans and data submitted must be signed and stamped by a registered professional civil engineer or any other appropriate professional.

2. ~~Engineering calculations are required to fully support the design of compensatory flood storage areas and Stormwater management systems, including detention and/or retention basins and infiltration systems.~~

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3. The Town of Belchertown adopts the DEP Stormwater Management policy and all nine management standards. For the purpose of these Regulations, all Buffer Zones and Wetland Resource Areas will be considered critical areas and all drainage calculations and all stormwater runoff to be treated for water quality must be based on the following calculation: 1 inch of runoff x total impervious area of post-development on the site.

The Commission will presume that projects meeting the Stormwater Management Standards, satisfy regulatory requirements. When one or more of the Standards cannot be met, an applicant may demonstrate that an equivalent level of environmental protection will be provided.

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- (1). No new Stormwater conveyances (e.g. outfalls) may discharge untreated Stormwater directly to or cause erosion in Wetlands or waters of the Commonwealth.
- (2). Stormwater management systems must be designed so that post-development peak discharge rates do not exceed pre-development peak discharge rates.
- (3) Loss of annual recharge to groundwater should be minimized through the use of infiltration measures to the maximum extent practicable. The annual recharge from the post-development site should approximate the annual recharge from the pre-development or existing site conditions, based on soil types.

- (4) For new development, Stormwater management systems must be designed to remove 80% of the average annual load (post-development conditions) of Total Suspended Solids (TSS). It is presumed that this standard is met when:
  - (a) Suitable nonstructural practices for source control and pollution prevention are implemented;
  - (b) Stormwater management best management practices (BMPs) are sized to capture the prescribed runoff volume; and
  - (c) Stormwater management BMPs are maintained as designed.
- (5) Stormwater discharges from areas with higher potential pollutant loads require the use of specific Stormwater management BMPs. The use of infiltration practices without pretreatment is prohibited.
- (6) Stormwater discharges to critical areas must utilize certain Stormwater Management BMPs approved for critical areas. Critical areas are Outstanding Resource Waters (ORW), shellfish beds, swimming beaches, cold-water fisheries and recharge areas for public water supplies.
- (7) Redevelopment of previously developed sites must meet the Stormwater Management Standards to the maximum extent practicable. However, if it is not practicable to meet all the Standards, new (retrofitted or expanded) storm water management systems must be designed to improve existing conditions.
- (8) Erosion and sediment controls must be implemented to prevent impacts during construction or land disturbance activities.
- (9) All Stormwater management systems must have an Operation and Maintenance plan to ensure that systems function as designed.

Soil and Vegetation Data: This information is required to review Resource Area delineations and must also be provided to describe alterations to and replication of any Resource Areas. Minimum qualifications for submittal of this data will require a Wetland Specialist who shall be a professional with experience in Wetland science, Wetland hydrology and a working knowledge of botany. Minimum qualifications for submittal of soil data, will require a soil scientist with a minimum experience and working knowledge of soil morphology, geology and soil hydrology.

Wildlife Habitat Evaluation: A Wildlife Habitat Evaluation will be required for all proposed alterations or fill of Wetland Resource Area, Riverfront Area or proposed work in the 25ft. no-disturb area. Qualifications of person submitting evaluations are defined in 310 CMR 10:60(1)(b).

Replication: Where the presumption set forth above is not overcome, any proposed work in a freshwater wetland shall not destroy or otherwise impair any portion of said area. Notwithstanding this, the Commission may issue a Permit allowing work that results in

the loss of up to 5,000 square feet of Wetland when said area is replaced in accordance with the following general conditions, as well as any additional conditions the Commission deems necessary to ensure that the replacement area will function in a manner similar to the area being lost:

- a. The surface of the replacement area being created shall be double that of the lost area.
- b. The groundwater and surface water elevation of the replacement area shall be approximately equal to that of the lost area.
- c. The overall horizontal configuration and location of the replacement area with respect to the bank shall be similar to that of the lost area.
- d. The replacement area shall have an unrestricted hydraulic connection to the same water body or waterway associated with the lost area.
- e. The replacement area shall be located within the same general area of the water body or reach of the waterway as the lost area.
- f. At least 75% of the surface of the replacement area shall be reestablished with indigenous, non-invasive Wetland plant species within two growing seasons, and prior to said vegetative reestablishment, any exposed soil in the replacement area shall be temporarily stabilized to prevent erosion in accordance with U.S Soil Conservation Service methods.
- g. The replacement area shall be constructed in a manner that is consistent with all other general performance standards for each Resource Area described in these Regulations.
- h. Notwithstanding the above provisions, no project may be permitted that might have adverse effect on: (1) habitat sites of rare plants, as well as vertebrate or invertebrate species as identified on the Natural Heritage and Endangered Species Estimated Habitat Maps, on file with the Commission and identified under "Estimated Habitats of Rare Wildlife" (Section 10:59) of the state Wetlands Protection Act Regulations.

Stream Crossings: Roadways cross our streams in more than 30,000 places in Massachusetts. Recent research has shown that stream crossings, including culverts, have the potential to degrade streams and block fish and wildlife passage, segment and cut off valuable habitat and stop migration. All Intermittent and Perennial stream crossings must meet or exceed the general standards of the Massachusetts River and Stream Crossing Standards: Technical Guidelines. The Commission reserves the right to require Wetland crossings to meet the Stream Crossing Standards for critical areas.

Permanent Markers: The Commission reserves the right to require the installation of permanent markers, identifying the limit of work area. The design of these permanent markers can be concrete bounds, iron pins, fences, stonewall, shrubs, boulders, etc. These markers must be identified and located on a plan. The applicant is fully responsible for the installation of these permanent markers and shall instruct all agents to explain these markers to buyer/lessees/landscapers and all persons taking over the property from the applicant. Prior to issuance of a Certificate of Compliance, an as-built plan detailing the location of the permanent markers must be prepared and

submitted to the Commission along with proof of recording said plan, at Registry of Deeds.

V. Application for ANRAD- Abbreviated Notice of Resource Area Delineation (ANRAD) - The ANRAD (Form 4A) provides a procedure for an applicant to confirm precise boundaries of Wetland Resource Areas. It is the applicant's responsibility to provide the information required for the review of this application. At the Commission's discretion, larger projects generally will require the filing of an ANRAD.

(A) Explanation: Any person who desires a written Determination as to whether this Bylaw applies to an area, or work to be performed in an area, shall submit a written request to the Commission. This request, called an Abbreviated Notice of Resource Area Delineation shall include description of the area and maps as appropriate.

(B) Filing Procedures: It is the applicant's responsibility to provide all of the information required for this review. The applicant must complete the Combination of Filing Form (Form A) and all information on the Abbreviated Notice of Resource Area Delineation, ANRAD (Form 4A). Include an accurate description of the location (including Town Assessors Map and Lot #), a locus map consisting of the appropriate USGS topographic map with the property boundaries clearly identified. A site map, including but not limited to the following; the boundaries of the proposed work, name and contact information of site map preparer.

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All applications will be deemed incomplete without a site identification of the parcel to be reviewed. The Commission may require additional information.

Return the original and one (1) copy by certified mail or hand delivery to:  
Belchertown Conservation Commission  
Lawrence Memorial Hall, 2 Jabish Street, P.O. Box 670  
Belchertown, MA 01007

**And** Mail a copy to:  
DEP Western Regional Office  
Division of Wetlands and Waterways Regulations  
State House West, 4<sup>th</sup> Floor, 436 Dwight Street  
Springfield, MA 01103

**And** the Landowner, when applicant is not the landowner.

(C) Submission Requirements. In addition to the submittal requirements outlined in Section V (B) above, the following is required for an application to be reviewed.

Delineation of the boundary of a Bordering Vegetated Wetland under the Belchertown Regulations is governed by:

- The Massachusetts Regulations (310 CMR 10:55 (2) (c))
- DEP Wetlands Program Policy 95-1 (BVWs)

- The DEP Publication, entitled “Delineating Bordering Vegetated Wetlands under the Massachusetts Wetlands Protection Act”, dated March 1995. The Commission encourages applicants to complete the BVW Field Data Form contained in this publication and submit it with the Abbreviated Notice of Resource Area Delineation. If detailed vegetative assessments are not submitted for a particular site, the reasons should be noted on the Field Data Form.

Resource Areas will be identified and delineated based on their definitions as previously defined and stated in these regulations. In cases where the natural vegetative community has been disturbed by the removal of the vegetative cover, or some other type of disturbance, the Commission may determine the boundary of a Freshwater Wetland based on the presence of hydric soils; and/or may defer determination of a Wetland boundary until the natural vegetation has re-grown.

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

Also for the purpose of these Regulations, Wetland plant communities, which are dominated by plants, rated as FACW or FACW<sup>+</sup> by the Fish and Wildlife Service in the document entitled “National List of Plant Species That Occur in Wetlands: Massachusetts 1988” and which contain Obligate Wetland plants species, shall presume to be underlain by Hydric soils.

#### VI. Coordination with Other Boards

A copy of the legal notice, to be published in the local paper, must be submitted to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, and the Building Inspector. Upon request from said Board or Department, the Conservation Commission will submit a copy of the application to the appropriate department. The Commission shall not take final action until the boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

VII. Public Hearing: The Commission shall hold a public hearing within twenty-one (21) days from the receipt of an Application for Permit. Notice of the public hearing will be provided in the Belchertown Sentinel or other local paper in accordance with the Open Meeting Law at the applicant’s expense. Prior to issuing its permit, the Commission may

require the submission of additional data pertinent to the application. The Commission may continue the hearing to receive such information in accordance with Section 5 of the Bylaw.

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

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

Conditions may be for the construction period (e.g. straw bales/hay bales, compost filter berms), for temporary erosion controls or may be in perpetuity (e.g. permanent buffer, strips for erosion control, limit of work area), for water supply protection, and wildlife habitat.

Conditions may be structural (e.g. gabion walls for erosion control) or may require a specified standard of performance (e.g. prevention of erosion or sedimentation).

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

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

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

- (1) The changes represent a significant departure from the original proposal and that the potential impacts of the new proposal are sufficiently different from those of the original proposal as to require the filing of a new Application for a Permit.
- (2) The changes involve a moderate departure from the original proposal and will require an Amended Permit. The applicant must file a written request for an Amended Order with the Commission. The Commission shall publish a newspaper notice (at the applicant's expense) and make a decision on the Request

for an Amended Permit after a public hearing. Any Amendment Permit shall be valid for 3 years from the original date of issuance. An Amendment Permit must be recorded at the Registry of Deeds with a marginal reference to the original Permit. The following may require an Amended Permit:

- decrease in the distance from the Resource Area
- increase in potential for erosion
- increase in size and change in location of structure
- increase in the amount of vegetation to be removed
- activity beyond the limit of work.

(3) The changes that represent an insignificant change in the original proposal and will not have a likelihood of greater impact on any Wetland Resource area. The person proposing these changes may proceed with work upon written notification by the Commission.

(D) Denials: If the Commission deems that the interests stated in the Bylaw are not adequately protected under the terms of the applicant's proposal, or if after a reasonable period of time the application is deemed incomplete, the Commission may refuse to issue a permit. When the Commission votes to deny a permit, it shall issue a written decision.

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

(X) Extensions of Permits: See 310 CMR 10:05 (8).

(XI) Final Release/Certificate of Compliance: Upon completion of the work permitted, the applicant shall request, in writing, that a Final Release/Certificate of Compliance be issued stating that the work has been satisfactorily completed. Upon written request by the applicant, a Final Release/Certificate of Compliance may be issued within twenty-one (21) days of receipt thereof, and shall certify that the activity or portions thereof described in the Application for Permit and submitted plans have been completed in compliance with the Permit. The Final Release shall not be issued until a member of the Commission or its agent or assign makes a site inspection, and shall be signed by a majority of the Commission. Final Release may be combined with a Certificate of Compliance issued under 310 CMR 10:05 (6).

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

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

The Final Release will be recorded in the Registry of Deeds or Land Court. Certification of the recording shall be sent to the Commission. Upon failure of the applicant to so record, the Commission may do so at the applicant's expense. This may include reasonable travel time, mileage, parking, and fees associated with the filing of documents.

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

- Permit/Order of Conditions
- Amended Permit/Amended Order of Conditions
- Extension Permit
- Final Release/Certificate of Compliance
- Negative Determinations where recording is required by conditions set forth in the Determination
- Permanent markers plan

As proof of recording, the applicant must deliver to the Commission the recording slip at the bottom of the Permit and /or receipt from the Registry of Deeds. When required, proof of recording of a Determination of Applicability shall be a copy of the Determination with recording number. No work can begin under an Order of Conditions until the Commission has received proof of recording. If the applicant fails to record in a timely manner any of these documents (unless it is in accordance with the exception below) the Commission will record the Order at the applicant's expense. The cost to record the Order may include reasonable travel time, mileage, parking, and fees associated with the filing of documents.

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

**BWR 10:06 EMERGENCY WORK:** See 310 CMR 10:06

**BWR 10:07 COMPLIANCE WITH MASSACHUSETTS ENVIRONMENTAL POLICY ACT:** See 310 CMR 10:07

**Deleted:** (XIII) Performance Guarantee: the applicants engineer, for all Subdivision review must complete a Performance Guarantee Control Form G. These are the estimated costs for completion, prior to posting a performance guarantee for Planning Board endorsement. The Conservation Commission must review the estimated costs for the Wetland category of this form.¶



**BWR 10:08 ENFORCEMENT:**

(I) When the Conservation Commission determines that an activity is in violation of the Massachusetts Wetlands Protection Act and Regulations 310 CMR and/or Belchertown Wetland Bylaw (BWR 10:00) or a Permit issued under the Bylaw, the Commission may:

(A) Make an effort to secure voluntary compliance with the Bylaw and/or a Permit by the applicant or landowner;

(B) Issue an Enforcement Order; and/or

(C) Hold an Administrative Hearing to consider whether the landowner should be fined for the violation.

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

(A) failure to comply with a Permit, including failure to observe a particular condition or time period specified in the Permit;

(B) failure to complete work as described in a Permit when such failure causes damage to the interests identified in the Bylaw;

(C) failure to obtain a permit prior to conducting an activity subject to regulation under the Bylaw (BWR 10:02);

(D) failure to record permit at registry of deeds.

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

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

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

(VI) The Commission shall calculate the amount of the fine as follows, ~~\$50 for the first violation, \$100 for the second, and \$300 for the third violation.~~

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

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

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

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

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

(X) Non-criminal Disposition – Any Bylaw of the Town of Belchertown, or rule or regulation of its Officers, Boards or Departments, the violation of which is subject to a specific penalty, may at the discretion of the Town official who is the appropriate person, be enforced by the method provided in Section 21D of Chapter 40 of the Massachusetts General Laws.

### **PART III: ADDITIONAL REGULATIONS FOR INLAND WETLANDS**

**BWR 10:51 INTRODUCTION:** See 310 CMR 10:51

**BWR 10:52 PURPOSE:** See CMR 10:52

**BWR 10:53 GENERAL PROVISIONS:** See 310 CMR 10:53 and the following:

1. Any agricultural activity as defined by the Farm Assessment Act, MGL, Chapter 61A, exempt from the provisions of the Wetlands Protection Act, MGL c. 131, s. 40 and from the Wetlands Protection Regulations 310 CMR 10:00 (normal maintenance or improvement of land in agriculture use) will also be exempt under the Belchertown Wetlands Regulations. The Wetlands Protection Act, (WPA) provides an exemption for work performed for normal maintenance or improvement of land in agricultural use. In the Wetlands Protection Regulations (310 CMR 10:00), forestry is considered an agricultural activity. Agriculture, is defined as stated in 310 CMR 10:04.

2. In forestry provisions of the Wetlands Protection Regulations, only those portions of the forest that are subject to the jurisdiction of the Wetlands Protection Act (i.e. in Wetland Resource Area and Buffer Zone) are regulated. Forestry activities outside these areas are not regulated, unless and until such activity causes an impact, such as siltation, to a Resource Area.

3. Alteration of any Wetland Resource Areas and/or the 25 ft. no disturb area requires the applicant to submit a Wildlife Habitat Evaluation report. In addition, alteration of any Wetland Resource Area and/or work within the 50 ft. of the Wetland Resource Area shall require an Alternative Analysis, (excluding Bordering Lands Subject to Flooding and/or Riverfront Area, because no buffer zone area exists.)

4. Any Brook, River or Intermittent Stream crossings must meet or exceed the standards set forth under the U.S. Army Corps of Engineers (Corps) PGP stream crossing guidelines and as detailed in the Massachusetts River and Stream Crossing Standards: Technical Guidelines document dated August 6, 2004. All other Resource Area crossings shall be designed to limit potential impacts to wildlife, wildlife habitat and migratory patterns.

**BWR 10:54 BANK:** Naturally Occurring Banks and Beaches (See 310 CMR 10:54)

**BWR 10:55 FRESHWATER WETLANDS:** Freshwater wetlands include Bordering Vegetated Wetlands such as Marshes, Wet Meadows, Bogs, Swamps as defined in 310 CMR 10:55 and incorporated into these Regulations as (BWR 10:55A). They are areas of Wetland vegetation where fifty percent or more of the vegetative community consists of obligate or facultative wetland plant species as included or identified in generally accepted scientific or technical publications. Freshwater Wetlands also include Isolated Wetlands greater than 5,000 square feet in area.

**BWR 10:55A BORDERING VEGETATIVE WETLANDS:** See 310 CMR 10:55

**BWR 10:55B ISOLATED WETLANDS:**

I. Preamble: Isolated Wetlands are freshwater Wetlands that do not border on creeks, rivers, streams, ponds and lakes. Isolated Wetlands are likely to be significant to the

- Protection of groundwater and groundwater quality
- Protection of surface water and surface water quality
- Flood control
- Storm damage prevention
- Protection of fisheries
- Protection of wildlife habitat
- Erosion and sedimentation control
- Storm drainage
- Protection of agriculture and forestry

- Protection of aquaculture
- Recreation
- Preservation of open space, and
- Critical habitats for threatened and endangered species as listed through Massachusetts Natural Heritage Program

Isolated Wetlands may be found either in areas with low, flat topography or below hillside seeps. These areas provide temporary storage of water resulting from runoff, rising groundwater, or where groundwater breaks out of a slope forming a sidehill seep, thereby providing for flood control and prevention of flood damage. Alteration can result in the lateral displacement of retained water into adjacent properties, resulting in modified drainage patterns with the potential for property damage.

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Isolated Wetlands are areas where groundwater may discharge to the surface either by a rising water table or from a sidehill seep. Under some circumstances, surface water may discharge to the groundwater in these areas, particularly where they are underlain by impervious material. Contaminants introduced into such areas, which as septic system discharges, road salts, pesticides, or herbicides, find easy access into the ground water and may contaminate private or public water supplies. Where such areas are underlain by material covered by a mat of organic peat or muck, they are likely to be significant to prevention of pollution.

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

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

Isolated Wetlands may occur in a depression or closed basin in otherwise flat topography. In these areas, water may pool above the surface at least once a year or may be contained in the top 19 inches of soil. In addition, some Isolated Wetlands occur down slope of hillside seeps, depending on the topography, soils and water regime. Isolated Wetlands are areas of Wetland vegetation where at least:

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(A) Fifty percent (50%) or more of the natural vegetative community must consist of plants listed in the U. S. Fish and Wildlife Service publication “National List of Plant Species That Occur in Wetlands: Massachusetts 1988” or are or facultative or wetter Wetland plant species as included or identified in generally accepted scientific or technical publications, and/or are underlain by Hydric Soils, except in disturbed areas.

(B) The Isolated Wetland must cover an area that is 5,000 square feet or greater.

III. Presumption: Where a proposed activity involves filling, dredging, or altering of an Isolated Wetland, the Commission shall presume that such an area is significant to the

interests specified in the Preamble above. This presumption is refutable and may be overcome only by a clear showing that said land does not play a role in said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

IV. Performance Standards: A proposed project, which may result in alteration of an Isolated Wetland, shall not result in the following:

- (A) Flood damage due to filling which causes lateral displacement of water that would otherwise be confined within said area
- (B) An adverse effect on public and private water supply or ground water supply, where said area is underlain by pervious material
- (C) An adverse effect on the capacity of said area to prevent pollution of the ground water, where the area is underlain by pervious material, which in turn is covered by a mat of organic peat or muck
- (D) An impairment of its capacity to provide important wildlife habitat

No project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species as identified on the Natural Heritage and Endangered Species Estimated Habitat Maps on file with the Commission and identified under section 10:59 ("Rare Species") of the Regulations to the State Wetlands Protection Act (310 CMR 10:00).

**BWR 10:56 LAND UNDER WATER BODIES AND WATERWAYS:** (Under any Creek, River, Stream, Pond or Lake)

See 310 CMR 10:56, except as where the definition of Pond (310 CMR 10:04 Pond) applies. In these situations, substitute the definition of Pond under BWR 10:04 Pond, which defines Pond as having a surface area of at least 5,000 square feet.

**BWR 10:57 LAND SUBJECT TO FLOODING:** See 310 CMR 10:57.

**BWR 10:58 RIVERFRONT AREA:** See 310 CMR 10:58

**BWR 10:59 RARE SPECIES:** See CMR 10:59

**BWR 10:60 WILDLIFE HABITAT EVALUATIONS:** See 310 CMR 10:60

**BWR 10:61: VARIANCE**

**BWR 10:62- 10:79: RESERVED**

**BWR 10:80 EPHEMERAL POOLS:**

I. Preamble. Ephemeral Pools are usually depressions or closed basins that serve, in most years, as ponding areas for runoff or high ground water that has risen to the surface. The degree of wetness necessary for the establishment of a typical Wetland

plant community does not exist in most cases. These areas are able to support viable populations of several amphibian and invertebrate species.

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

## II. Definition, Critical Characteristics and Boundary:

### Definition:

Ephemeral Pools are isolated depressions or closed basins which confine water during periods of high water table and high input from spring runoff, snowmelt, or heavy precipitation, and serve as Vernal Pool habitat. They are essential breeding sites for certain amphibians which require isolated areas that are generally flooded for at least two continuous months in the Spring and/or Summer. Most of these amphibians remain near the breeding pool during the remainder of their lifecycle. Many reptiles, birds, and mammals also feed here.

### Critical Characteristics:

(A) Holding Capacity: Ephemeral Pools generally fill up during the spring rains and snowmelt, dry up during the summer, and may fill again during the fall rains or during summer thundershowers and in some cases, may hold water year round. The cycle of filling and drying may occasionally miss a year due to dry conditions. Isolated Wetlands can be Ephemeral Pools.

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

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

Boundary:

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

III. Presumption. Where a proposed activity involves the removing, filling, dredging or altering of an Ephemeral Pool, the Conservation Commission shall presume that such an area is significant to the protection of wildlife habitat, particularly amphibian breeding habitat. This presumption is rebuttable and may be overcome upon a clear showing that the Ephemeral Pool does not play a role in the protection of wildlife habitat. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

The Conservation Commission shall presume that an Ephemeral Pool is significant to the protection of wildlife habitat, particularly amphibian breeding habitat. Therefore, the removing, filling, dredging or altering of an Ephemeral Pool or a 100' buffer shall not be allowed. This presumption is rebuttable and may be overcome upon a clear showing that the Ephemeral Pool does not play a role in the protection of wildlife habitat. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

IV. General Performance Standards. A proposed project in a Ephemeral Pool area shall not result in the following:

(A) any impairment of the capacity of the Ephemeral Pool as well as the area within 100' of the mean annual boundary of the Ephemeral Pool to provide wildlife habitat. Alterations may be permitted if they will have no adverse effects on wildlife habitat, as determined by the procedures listed in 310 CMR 10:60

(B) endangering state-listed species, which shall be protected under the procedures listed in 310 CMR 10:59.

**VERNAL POOL:** The Conservation Commission shall presume that a Vernal Pool is significant to the protection of wildlife habitat, particularly amphibian breeding habitat. Therefore, the removing, filling, dredging or altering of a Vernal Pool or a 100' buffer shall not be allowed. This presumption is rebuttable and may be overcome upon a clear showing that the Vernal Pool does not play a role in the protection of wildlife habitat. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

**BWR 10:81 BUFFER ZONE:**

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

II. Definition, Critical Characteristics and Boundary:

(A) Definition: The Buffer Zone is that area of land extending 100 feet horizontally outward from the boundary of any Resource Area specified in section BWR 10:02 (I).

(B) Critical Characteristics: Where surface runoff or groundwater from the Buffer Zone drains toward the resource area, vegetative cover and soils may filter runoff and provide uptake or renovation of pollutants from adjacent areas, thereby protecting water quality within the resource area. The vegetation and soils may slow surface runoff and permit infiltration of precipitation, maintaining the hydrologic regime to which the Resource Area is adapted. Indigenous vegetation is often used by wildlife for important functions such as nesting, feeding, and protective cover sites. Dense under story in wooded areas may provide nesting site, travel corridors and protective cover for a wide variety of fauna. Cutting of vegetation, especially canopy trees, alters the physical environment by allowing more light and air, and may increase temperatures during the summer and decrease temperatures in winter.

III. Presumption:

A **minimum of a** continuous twenty-five foot (25') **VEGETATED BUFFER STRIP** between development activities in the buffer zone and the Resource Area to be protected, shall be presumed, is rebuttable and may be overcome upon a clear showing that said land will not play a role in the protection of said interests. The Conservation Commission



requires all applicants to submit an alternative analysis, demonstrating need and justification for any work proposed within the 25ft. to 50ft. no-disturb area. The applicant shall prove by a preponderance of the evidence that there are no practicable and substantially equivalent economic alternatives to the proposed project with less adverse effects on any Wetland Resource Areas. A practicable alternative means a measure that is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. A larger Buffer may be required in sensitive areas.

In the event that the presumption is deemed to have been overcome, the issuing authority shall make a written determination to this effect, setting forth the grounds.

The following activities within the 25 foot vegetated buffer strip shall be presumed not to be significant to interests specified in the Preamble above.

(1) on-going landscaping activities legally permitted or grand-fathered, (prior to date of Wetland Regulations, 1-1-1992) on existing developed lots (continued mowing, landscape plantings, and selective pruning) provided that soil is not exposed to erosion, there is no change in grade, and sod cover or natural litter layer is maintained.

~~2) maintaining existing~~ footpaths of minimum size.

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

**Deleted:** (2) construction or installation of fences or structures not requiring a building permit.¶

**Deleted:** (3

**Deleted:** construction of

#### IV. Performance Standards:

(A) Any work within the Buffer Zone shall not result in alteration of any Resource Area; or

(B) If any work within the Buffer Zone, which alters a Resource Area is permitted by the Commission, the alteration of the Resource Area shall comply with the applicable performance requirements for the altered Resource Area and any other conditions the Commission may require to enforce those performance requirements.

(C) Unless as specified above, **a minimum of a** continuous twenty-five foot (25') NO DISTURBANCE VEGETATED BUFFER STRIP, untouched and in its natural state, shall be left between development activities in the Buffer Zone and the Resource Area to be protected.

(D) Any drainage outletting in the Buffer Zone shall be shown to be non-erosive and shall demonstrate there is not significant change in off-site runoff from the proposed work.