

**REVISED CHAPTER 565, WETLANDS PROTECTION  
REGULATIONS, AS APPROVED BY THE BEVERLY  
CONSERVATION COMMISSION ON MARCH 20, 2018.**

(Note that incorporation of these revised regulations into the City’s official Code of Ordinances is pending. See § 565-33 for the “effective date.”)

**Chapter 565  
Wetlands Protection Regulations**

**[HISTORY: Adopted by the Conservation Commission of the City of Beverly as amended through March 20, 2018. Subsequent amendments noted where applicable.]**

**GENERAL REFERENCES**

Stormwater management — See Ch. **249**.

Wetlands protection — See Ch. **287**.

Zoning — See Ch. **300**.

Subdivision of land — See Ch. **375**.

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**Note to Applications: Application forms, instructions, fee calculation sheets, checklists and other related materials are available at the Conservation Commission's office and/or Conservation Commission's section of the City's website: [www.beverlyma.gov](http://www.beverlyma.gov)**

**Article I**  
General Provisions

**§ 565-1. Authority.**

These regulations are promulgated under the authority of the Home Rule Amendment, Article LXXXIX (89) of the amendments of the Constitution of Massachusetts, 1966, as amended from time to time, and in accordance with the City of Beverly Wetlands Protection Ordinance, Chapter 287 of the Revised Ordinances of the City of Beverly and shall be effective upon fulfillment of all legal requirements.

**§ 565-2. Purpose.**

- A. The purpose of the Beverly Wetlands Protection Ordinance (hereafter referred to as the "ordinance") is stated in Chapter 287, § 287-1. These regulations are promulgated to ensure fairness, to create uniformity of process, and to clarify and further define the provisions of the ordinance, administered by the Beverly Conservation Commission (hereafter called the "Commission").
- B. Wetlands contribute to a wide array of public interests and are therefore protected by the ordinance. Interests protected by the Wetlands Protection Act (hereinafter called the "Act") include: public and private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, fisheries, land containing shellfish, and protection of wildlife habitat, and are hereby incorporated by reference and made part hereof. The ordinance identifies five additional public interests not recognized by the Act and they include: the prevention and control of erosion and sedimentation, the protection of rare plant and animal species habitat, the protection of agriculture, the protection of aquaculture and the protection of recreation. Any permit issued under the ordinance must therefore not adversely affect these public interests, as well as those recognized by the Act.

**§ 565-3. Jurisdiction.**

- A. The areas subject to protection under the ordinance differ from those protected by the Act in that the ordinance protects additional wetland resource areas, as well as additional interests as described above. Wetland resource areas protected by the ordinance include:
  - (1) Any Isolated Vegetated Wetland.
  - (2) Any Vernal Pool (certified or uncertified).
  - (3) Any vegetated wetlands bordering on any creek, river, stream, pond or lake.
  - (4) Any bank, beach, freshwater or saltwater marsh, wet meadow, bog or swamp.
  - (5) Any land under any creek, river, stream, pond or lake.
  - (6) Any 100-foot buffer zone of wetland areas (1) through (5) listed above ("Buffer Zone").
  - (7) Any land subject to storm flowage or flooding by groundwater or surface water.

- (8) The 200-foot Riverfront Area.
- (9) The ocean, including land under ocean.

B. Water bodies located in Beverly, and their contiguous 200-foot riverfront areas, have been identified by the Commission and include, but are not limited to, the following: Bass River, Danvers River, Lawrence Brook, Chubbs Brook, and Centerville Creek.

**§ 565-4. Fee schedule.**

**A. Request for Determination of Applicability (RDA).**

- (1) Standard Filing Fee. A fee of \$50 shall be submitted with each RDA application.

**B. Abbreviated Notice of Resource Area Delineation (ANRAD).**

- (1) Standard Filing Fee. ANRADs submitted under the Act and the ordinance shall be subject to the filing fees as outlined in MassDEP's Wetland Fee Transmittal Form, as well as an additional \$100 plus \$1/linear foot for each resource area.

**C. Notice of Intent (NOI) or Abbreviated Notice of Intent (ANOI).**

- (1) Standard Filing Fee. NOI's and ANOI's submitted under the Act and the ordinance shall be subject to the filing fees mandated by state regulations [310 CMR 10.03(7)] as well as an additional fee for each activity under review by the Commission as follows:

- (a) Category 1: \$110 for each activity
- (b) Category 2: \$500 for each activity
- (c) Category 3: \$1,050 for each activity
- (d) Category 4: \$1,450 for each activity
- (e) Category 5: \$4/linear foot, not less than \$100 or more than \$2,000.
- (f) Category 6: \$100 plus \$1/linear foot for each resource area. For each resource area delineation, the fee shall not exceed \$200 for activities associated with a single family house or \$2,000 for all other activities.

- (2) Additional Fees for NOIs and ANOIs.

- (a) An additional \$300 fee shall be paid if the project requires wetland replication as a result of direct wetland impacts or requires filling of Land Subject to Flooding.
- (b) Septic Systems: An additional \$50 fee shall be paid for new septic systems or repairs to existing septic systems that do not meet Title V requirements for setbacks to wetlands.
- (c) The following activities shall be subject to a filing fee of 1.5 times the otherwise applicable fee(s) as listed above:
  - (i) Activities proposed within the 25-Foot No-Disturbance Zone or 100-Foot No-Disturbance Zone for Vernal Pools that are subject to the applicable performance standards for those zones.

(ii) Buildings or structures proposed within the 50-Foot No-Build Zone that are subject to § 565-10D(3)(A).

**D. Order of Conditions (OOC).**

- (1) Minor Modification or Amendment. A fee of \$100 shall be submitted with the first requested Minor Modification or Amendment (requiring a public hearing), as well as an additional \$50 for each additional Minor Modification or Amendment (for example: 1<sup>st</sup> Minor Modification = \$100, 2<sup>nd</sup> = \$150, 3<sup>rd</sup> = \$200, 4<sup>th</sup> = \$250, etc...).
- (2) Certificates of Compliance (COC). A fee of \$100 shall be submitted with each request for a COC if before the expiration date or \$150 if after expiration. If the first request has been denied, there shall be a charge of \$75 for each additional request.
- (3) Extension Permit. A fee of \$100 shall be submitted with each request for an extension Permit of an Order of Conditions.

**E. Emergency Certification.**

- (1) Standard Filing Fee. A fee of \$50 shall be submitted with each request for an emergency certification.

**F. Minor Project Permit and Tree Removal Permit.**

- (1) Standard Filing Fee. A fee of \$25 shall be submitted with each request for a Minor Project Permit or for a Tree Removal Permit.

**G. After-The-Fact Filings:** All Permit applications filed after the work has begun shall pay a filing fee two times (2x) the otherwise applicable fee as provided above.

**H. Waivers of Filing Fees:** The City of Beverly and its departments shall be exempt from paying a filing fee. The Commission may also, in its sole discretion, waive or reduce the filing fee for any applicant that demonstrates an unjust disproportionality to the subject application or for a Permit application filed by a city, town, state or federal entity or land trust.

**§ 565-5. Conservation Commission and Outside Consultants.**

A. Officers. There shall be a Chair and a Vice-Chair of the Conservation Commission, who shall be elected by a majority vote of the Commission members. Their terms of office shall be one year, commencing and ending with the second regular Commission meeting following the end of the calendar year. In the event of a vacancy in either position, a new Chair or Vice-Chair shall be elected by a majority vote of the eligible Commission members.

B. Members.

- (1) New Commission members shall be appointed by the Mayor and approved by the City Council. The Commission may, through its Chair, offer its views to the Mayor on the qualifications and suitability of potential candidates.

- (2) A quorum consists of a majority of the Commission members who are serving in office at the time a vote is taken by the Commission. A majority vote of a quorum of the Commission shall constitute the decision of the Commission.
  - (3) The Commission members shall have such powers as are vested in them by law, regulation, custom, and practice.
- C. Committees. There shall be such committees as the Commission may decide are necessary for the efficient execution of its duties.
- D. Outside Consultants.
- (1) The Commission may, by vote at any public meeting, appoint consultants to the Commission as allowed in Chapter 287, § 287-8, and in MGL c. 40, § 8C. Such consultants shall not have the right to vote, nor to represent themselves as official members of the Commission, but shall have the right to advise the Commission, as the Chair may designate upon the advice and consent of the Commission.
  - (2) As provided by MGL c. 44, § 53G, the Beverly Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Commission pursuant to the requirements of the Wetlands Protection Act (MGL c. 131, § 40), the Beverly Wetlands Protection Ordinance (Chapter 287 of the City Code), Commission Act (MGL c. 40, § 8C) or regulation, as they may be amended or enacted from time to time.
    - (a) Funds received by the Commission pursuant to these rules shall be deposited with the City Treasurer, who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Commission without further appropriation as provided in MGL c. 44, § 53G. Expenditures from this account shall be made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant.
    - (b) Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. The consultant shall be chosen by, and report only to, the Commission and/or its Administrator.
    - (c) The Commission shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application request is withdrawn within five days of the date notice was given.
    - (d) The fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new

information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within 10 business days of the request for payment shall be cause for the Commission to deny the permit.

- (e) The applicant may appeal the selection of the outside consultant to the City Council, who may disqualify the outside consultant selected only on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the City Council and a copy received by the Commission, so as to be received within 10 days of the date consultant fees were requested by the Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

**§ 565-6. Burden of Proof.**

- A. The applicant shall have the burden of proof by a preponderance of credible evidence as to any issue before the Commission, including, but not limited to, the following:
  - (1) To demonstrate that an activity proposed in a Notice of Intent will not cause adverse impacts, immediately or cumulatively, to any of the interests and values intended to be protected by the ordinance or the Act;
  - (2) To overcome any presumptions of significance;
  - (3) To demonstrate the presence or the absence of resource areas or to demonstrate the extent of the resource areas;
  - (4) To demonstrate compliance with applicable performance standards;
  - (5) To demonstrate the applicability of exemptions or to establish facts warranting a waiver.
- B. Failure to provide the Commission adequate evidence to meet the applicant's burden of proof or for the Commission to make the necessary determination shall be sufficient cause for the Commission to deny the requested approval, or to impose conditions that the Commission deems reasonable, necessary, or desirable to carry out the purposes of the ordinance, or to postpone or continue the hearing to another date certain to enable the applicant and others to present additional evidence, upon such terms and conditions as deemed by the Commission to be reasonable.

**Article II**  
**Definitions**

**§ 565-7. Terms defined.**

MGL c. 40, § 8C, and MGL c. 131, § 40 (hereafter referred to as the "Act"), as well as 310 CMR 10, Wetlands Regulations, are hereby incorporated by reference and made part hereof, except as otherwise modified by the Beverly Wetlands Protection Ordinance and the regulations promulgated herein and any subsequent amendments. The definitions provided in the state regulations, 310 CMR 10.04, shall apply to the ordinance and regulations except as otherwise modified below:

**ABUTTER** — An owner of land in any direction sharing a common boundary or corner with the property of the proposed activity, including any land located across a street, way, river,

stream, brook, channel, pond or diagonally across from an intersection of roads, and an owner of land within 300 feet of the property line of the proposed activity. An owner of land located more than 300 feet across a body of water shall not be considered an abutter.

ALTER — Includes, without limitation, the following actions when undertaken in areas subject to the ordinance:

- A. Changing the preexisting drainage characteristics, sedimentation patterns, flow patterns or flood retention characteristics.
- B. Placement of fill, excavation, or regrading.
- C. Destruction of or adverse impact to plant life, including mowing, cutting, removal and/or stockpiling of trees and shrubs.
- D. Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water.
- E. Any activities, changes, or work which pollutes or causes displacement of any body of water or groundwater.
- F. Any activities, changes or work that cause negative impact or loss of wildlife habitat.
- G. Driving of piles, erection or repair of buildings or structures of any kind that involves ground disturbance.

BORDERING LAND SUBJECT TO FLOODING — An area which floods from a rise in a bordering waterway or water body (i.e., surface water). [See 310 CMR 10.57(2)(a) for definition, critical characteristics and boundaries for this resource area.]

BUFFER ZONE or 100-FOOT BUFFER ZONE — The resource area which extends 100 feet from the edge of those wetland resource areas identified in § 565-3A(1) through (5). The 100-Foot Buffer Zone may overlap with other resources (e.g., Riverfront Area and Land Subject to Flooding). The following are within the 100-Foot Buffer Zone:

- A. 25-FOOT NO-DISTURBANCE ZONE — That portion of the buffer zone which extends 25 feet from the edge of those wetland resource areas identified in § 565-3A(1), (3), (4), (5). Disturbance of any kind is prohibited within this Zone including but not limited to grading, landscaping, vegetation removal, pruning, cutting, filling, excavation, roadway construction and/or driveway construction, except as provided in § 565-10D(2)(a).
- B. 50-FOOT NO-BUILD ZONE - That portion of the buffer zone which extends 50 feet from the edge of those wetland resource areas identified in § 565-3A(1), (3), (4), (5). Most buildings and structures are prohibited from this area, except as provided in § 565-10D(3).
- C. 100-FOOT NO-DISTURBANCE ZONE FOR VERNAL POOLS — The land area that extends 100 feet from the edge of any Vernal Pool that is located in an upland area or, in the case of a wetland resource area that encompasses the pool [§ 565-3A(1), (3), (4), (5)], within 100 feet from the edge of the said wetland resource area. Disturbance of any kind is prohibited within this zone, including but not limited to grading, landscaping,

vegetation removal, pruning, cutting, filling, excavating, shading, roadway construction and/or driveway construction. The Commission may change the extent and location of this 100-Foot No-Disturbance Zone for Vernal Pools based on the results of a biological and/or habitat evaluation, which may be required to determine the migratory pathways and other important habitat usage of Vernal Pool breeders.

**EMERGENCY PROJECT** — An activity undertaken to provide immediate protection to public health, safety and welfare.

**EXTENDED DROUGHT** — Coincides with an "advisory" or more severe drought as declared by the Massachusetts Drought Management Task Force in accordance with a statewide drought management plan.

**GROWING SEASON** — The period from March 15 to October 15.

**ISOLATED LAND SUBJECT TO FLOODING** — An isolated depression or a closed basin which serves as pond area for surface runoff (i.e., storm flowage) or high groundwater which has risen above the ground surface. [See 310 CMR 10.57(2)(b) for definition, critical characteristics and boundaries of this resource area.]

**ISOLATED VEGETATED WETLAND** — Defined in §§ 565-3 and 565-9.

**MINOR MODIFICATION** — A project change that the Commission determines will not result in an adverse impact to wetland resource area(s) and/or the interests protected under the Act and/or this ordinance and that the Commission otherwise deems not to be of sufficient magnitude in its nature, scope or impact to warrant a public hearing, pursuant to § 565-24(B).

**NORMAL MAINTENANCE OF LAND IN AGRICULTURAL USE** — Defined under these regulations the same as it is in 310 CMR 10.04 (Agriculture).

**PERMITS** — Collectively refers to Orders of Conditions, Determination(s) of Non-Significance, Enforcement Order(s), Determinations of Applicability, Orders of Resource Area Delineation, Minor Project Permits, Minor Modifications or Amendments to Order of Conditions, Tree Removal Permits and any other approval decision issued by the Commission.

**POND** — Any open body of fresh water, either naturally occurring or man-made, with a surface area observed or recorded within the last 10 years of at least 5,000 square feet, and which is never without standing water due to natural causes, except during periods of Extended Drought, as defined above.

**PUBLIC HEARING(S)** — A formal meeting open to the public, subject to statutory requirements, at which the Commission allows members of the public to ask questions and provide comments. A public hearing is required for a Notice of Intent, Abbreviated Notice of Intent, Abbreviated Notice of Resource Area Delineation, and Amendments to Orders of Conditions under the Act and the ordinance.

**PUBLIC MEETING(S)** — Meetings open to the public but at which the Commission is not legally required to accept questions or comments from the public. Requests for Determination of Applicability, Requests for Extension, Minor Modifications, Requests for Certificate of Compliance and Minor Project Permits are reviewed and determined at public meetings.

RECREATION — Passive recreation activities that do not conflict with or diminish other wetland values and functions. Examples include, without limitation, bird watching, nature studies, walking, hiking, and canoeing.

REVOCATION — To officially rescind or annul an Order of Conditions or other Permit issued under the Act and ordinance.

RIVER — Any natural flowing body of water that empties to any ocean, lake, pond or other river and which flows throughout the year. Rivers include streams (see 310 CMR 10.04, Stream) that are perennial because surface water flows within them throughout the year. [See 310 CMR 10.58(2) et seq. for what constitutes a perennial stream.]

VERNAL POOL — Defined in §§ 565-3 and 565-8 of these regulations.

WETLAND RESOURCE AREA or RESOURCE AREA — Those areas subject to protection under the Act, the ordinance and these regulations.

WILDLIFE HABITAT — Those areas subject to the ordinance which, due to their plant community composition and structure, hydrologic regime or other characteristics, provide food, shelter, or areas for migration, overwintering, breeding nursing or rearing for wildlife.

### Article III

## **Additional Wetland Resource Areas Protected Under Wetland Protection Ordinance**

### **§ 565-8. Vernal Pools and 100-Foot No-Disturbance Zones.**

- A. Vernal Pools and their associated habitat, including the 100-Foot No-Disturbance Zone (as defined above), are significant to the protection of wildlife habitat and rare plant and animal habitat. Vernal Pools constitute a unique and increasingly rare type of wetland that is inhabited by many species of wildlife, some of which are totally dependent on Vernal Pools and their associated habitat for their survival. Areas in the immediate vicinity of the Vernal Pool (including, but not necessarily limited to, the 100-Foot No-Disturbance Zone) and the airspace above provide these species with important non-breeding habitat functions, such as migratory pathways, feeding, shelter, and overwintering sites. Many species utilize Vernal Pools and their associated 100-Foot No-Disturbance Zone for breeding and non-breeding functions, although they are not restricted to this type of wetland. The protection of Vernal Pools and their associated 100-Foot No-Disturbance Zone are essential for the survival of wildlife species that depend on these unique and threatened resource areas. The ordinance and these Regulations protect all Vernal Pools whether or not they have been certified as such by the Massachusetts Division of Fisheries and Wildlife and whether or not they are regulated under 310 CMR 10.57(2).
- B. Definition, Critical Characteristics and Boundary: Vernal Pools exhibit a tremendous variation in physical, dimensional, geographic, hydrologic and vegetative conditions, and therefore, for the purposes of this ordinance, a Vernal Pool is a freshwater body that, in most years (or all years in some cases), holds water for a minimum of two (2) months and that is free of established, reproducing fish populations, and meets either of the following criteria:

- (1) The vernal pool contains evidence of the presence of any one or more of the following obligate indicator species: Spotted Salamander, Blue-Spotted Salamander, Jefferson Salamander, Marbled Salamander, Wood Frog or Fairy Shrimp;
- (2) In the absence of evidence of the presence of any obligate indicator species, the Vernal Pool contains evidence of two (2) or more of any of the following facultative indicator species: Spring Peeper, American Toad, Green Frog, Pickerel Frog, Gray Tree Frog, Four-Toed Salamander, Spotted Turtle, Caddisfly larvae or cases of Caddisfly larvae, Dragonfly or Damselfly larvae or shed skins (exuvia) of Dragonfly or Damselfly larvae, adults, juveniles or shells of either Fingernail Clams or Amphibious, air-breathing Snails, Isopods.

C. Evidence Collection.

- (1) Timing: Many of the indicators of Vernal Pool habitat are seasonal. For example, certain salamander egg clusters are only found between late March and late May. Wood Frog chorusing only occurs between late March and late May, and then typically at night. Consequently, failure to find evidence of breeding or the presence of the indicator species specified above only has evidentiary value if the investigation is conducted during those periods in which breeding is likely to occur or when the indicator species are likely to be present. The Commission may require that the pool be investigated at least two (2) times during these months, but not two consecutive days in a row.
- (2) Should any area that the Commission believes may function as a Vernal Pool contain any of the following characteristics when dry, the area shall be presumed to contain a Vernal Pool and shall be reinvestigated in the spring during vernal pool breeding season as described above:
  - i. Stained leaves in a depression;
  - ii. Water stains or siltation marks on surrounding tree trunks or vegetation;
  - iii. Trees with buttressed trunks or stilt trunks;
  - iv. Wetland plants or sphagnum moss growing in a dry depression;
  - v. Wetland or hydric soils;
  - vi. Cases of caddisfly larvae (*Trichoptera*);
  - vii. Adults, juveniles or shells of either freshwater clams (*Pisidiidae*) or amphibious, air breathing snails;
  - viii. Shed skins or exuvia of dragonfly or damselfly larvae on vegetation along the edge of the dry depression.
- (3) To overcome the presumption of significance provided for in § 565-8D, the Commission may require that the determination be postponed until evidence is compiled during the appropriate time period as described above. The Commission may also require its own site visits as necessary to confirm any evidence presented to it.
- (4) The Commission may accept and consider evidence that is not in strict compliance with these requirements if it deems the evidence to be credible and relevant.

D. Presumptions of significance. Where a proposed activity involves the removing, filling, dredging, or altering of a Vernal Pool, its 100-Foot No-Disturbance Zone, or the

airspace above the Vernal Pool or 100-Foot No-Disturbance Zone, the Commission shall presume that the Vernal Pool and its 100-Foot No-Disturbance Zone are significant to the protection of wildlife habitat and rare plant and animal habitat. This presumption may be overcome by the applicant's presentation of evidence sufficient to demonstrate, by a preponderance of credible evidence, that the Vernal Pool or its 100-Foot No-Disturbance Zone (or some portion of it) does not play a role in the protection of said interests. In the event the presumption is deemed by the Commission to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

E. Performance standards. For areas in which the presumption set forth in § 565-8(D) of these Regulations is not overcome, the following standards shall apply to Vernal Pools and their 100-Foot No-Disturbance Zones:

- (1) **Vernal Pool and 100-Foot No-Disturbance Zone for Vernal Pools:** No activity shall be permitted within or above (1) the Vernal Pool, (2) the 100-Foot No-Disturbance Zone for Vernal Pools, or (3) in the case of a Vernal Pool located within another wetland resource area [§ 565-3A(1), (3), (4), (5)], the area extending 100 feet of the delineated edge of that wetland resource area. Prohibited activities include, but are not limited to, grading, landscaping, vegetation control, pruning, cutting, filling, excavation, shading, roadway construction and/or driveway construction. It is the opinion of the Commission that due to the uniqueness of Vernal Pool resource areas, protecting the associated 100-Foot No-Disturbance Zone for Vernal Pools is necessary to protect wildlife and rare plant and animal habitat. As noted in the definition of the 100-Foot No Disturbance Zone for Vernal Pools in § 565-7, the Commission may change the regulated extent and location of this No-Disturbance Zone based on the results of a biological and/or habitat evaluation, which may be required to determine the migratory pathways and other important habitat usage of Vernal Pool breeders. These performance standards also do not apply to those portions of the 100-Foot No-Disturbance Zone for Vernal Pools that the Commission has determined under § 565-8D are not significant to the protection of wildlife habitat and rare plant and animal habitat.
- (2) **100-Foot Septic System Setback:** Components of subsurface sewage disposal systems shall not be permitted within 100 feet of the delineated edge of a Vernal Pool or the delineated edge of the encompassing wetland resource area when the proposed system is located up-gradient of the Vernal Pool.
- (3) **No-Disturbance Zone Demarcation:** To maintain the perpetual integrity of the 100-Foot No-Disturbance Zone for Vernal Pools and to ensure that there will be no encroachments into this Zone by the applicant or future owners of the subject property, the Commission may require the No-Disturbance Zone to be marked on the ground, at the applicant's expense, with permanent markers. These markers shall be made of weather resistant material (i.e. granite or concrete), and the Commission shall determine their number, location and size. The Commission may require one or more of these markers to bear, on their upland side, writing (i.e. a permanent plaque or engraving) that shall read "No Disturbance Beyond This Point By Order Of The Beverly Conservation Commission."
- (4) **Migratory Pathway of Vernal Pool Breeders:** Work or final project elements shall not be allowed that obstruct the migratory pathways of Vernal Pool breeding species.

## § 565-9. Isolated Vegetated Wetlands.

- A. Isolated Vegetated Wetlands are likely to be significant to the interests identified in 310 CMR 10.55(1) that are supported by Bordering Vegetated Wetlands and other interests identified in the ordinance, including protection of private and public water supply and groundwater, flood control, storm damage prevention, prevention of pollution, protection of fisheries, wildlife habitat, erosion and sedimentation control, and rare plant and animal habitat.
- B. Definition, Critical Characteristics, and Boundary. Isolated Vegetated Wetlands protected under the ordinance are freshwater wetlands, of at least 1,000 square feet in area, that do not border on creeks, rivers, streams, ponds or lakes and that do not qualify as a Vernal Pool under § 565-8 (in which case the area will be regulated as a Vernal Pool). The types of isolated vegetated wetlands include, but are not limited to, wet meadows, marshes, swamps and bogs. In addition to the minimum size requirement, isolated vegetated wetlands must also meet at least two of the following three criteria:
- (1) The vegetation community of an Isolated Vegetated Wetland consists of 50% or more wetland indicator plants. Wetland indicator plants are classified in the following categories: facultative, facultative +, facultative wetland -, facultative wetland, facultative wetland +, or obligate wetland (source: U.S. Fish & Wildlife Service); or
  - (2) Other indicators of hydrology, including site inundation or saturation, water marks, drift lines, sediment deposits, oxidized rhizospheres, water-stained leaves, shallow root systems, buttressed tree trunks, and recorded hydrologic data (stream gauge, aerial photo, or other); or
  - (3) Presence of hydric soils.
- C. Presumption of Significance: Where a proposed activity involves the removing, filling, dredging, or altering of an Isolated Vegetated Wetland or land within the 100-Foot Buffer Zone to an Isolated Vegetated Wetland, the Commission shall presume that the Isolated Vegetated Wetland is significant to the interests specified in § 565-9(A) of these Regulations. This presumption may be overcome by the applicant's presentation of evidence sufficient to demonstrate, by a preponderance of credible evidence, that the Isolated Vegetated Wetland does not play a role in the protection of said interests. If the Commission finds that this presumption has been overcome, it shall make a written determination to this effect, setting forth its grounds.
- D. Performance Standards. When the presumption set forth in Subsection C of this section is not overcome, any proposed work in the Isolated Vegetated Wetlands shall comply with the following performance standards:
- (1) **No Alteration or Impairment of Isolated Vegetated Wetland:** No activity is permitted within or above an Isolated Vegetated Wetland. No activity is permitted within the associated 100-Foot Buffer Zone that is likely to destroy or otherwise impair the Isolated Vegetated Wetland.
  - (2) **25-Foot No-Disturbance Zone:** Work within the area extending 25 feet from the edge of the Isolated Vegetated Wetland shall be subject to the 25-Foot No-Disturbance Zone standards and demarcation requirements set forth in § 565-

10(D)(2).

**§ 565-10. Buffer Zones.**

A. Buffer Zones are likely to be significant to the interests identified in the ordinance, including protection of private and public water supply and groundwater, flood control, storm damage prevention, prevention of pollution, protection of fisheries, wildlife habitat, prevention and control of erosion and sedimentation, and the protection of rare plant and animal species habitat, and recreation. Buffer Zones are protected resource areas under the ordinance because they play a vital role in protecting the adjacent resource areas and also provide their own important functions in many ways, including, but not limited to, the following:

- (1) Scattering sunlight and providing shade, thereby lowering water temperature within wetlands and adjacent areas;
- (2) Slowing water flow, thereby decreasing water velocities, allowing infiltration, and reducing the erosion potential of stormwater runoff;
- (3) Storing water, thereby helping to maintain stream base flow and provide water quality benefits during low flow periods;
- (4) Trapping and filtering sediment and other contaminants (i.e., pesticides, heavy metals etc...);
- (5) Producing leaf litter and biomass which increases the humus content of the soil and increases absorption and infiltration;
- (6) Providing essential habitat for wetland-associated species;
- (7) Reducing nutrient overloading by filtering nutrients bound to sediment in the surface flow and removing nutrients from groundwater through uptake in vegetation; and
- (8) Protecting adjacent resource areas.

Projects located in close proximity to a wetland have a high likelihood of resulting in adverse impacts to the wetland itself, either immediately as a consequence of construction or over time as a consequence of daily operation or maintenance of the completed project. Such adverse impacts typically result from activities including, but not limited to, extension of lawns, depositing/dumping of yard waste, over-grading, siltation, deposition of construction debris, unregulated filling, and clearing of vegetation.

B. Definition, critical characteristics, and boundary.

- (1) A Buffer Zone is the area of land extending 100 feet horizontally from the delineated edge of the following resource areas:
  - (a) Isolated Vegetated Wetland;
  - (b) Any vernal pool - although the Buffer Zone to a vernal pool is regulated under § 565-8;
  - (c) Vegetated wetlands bordering on any creek, river, stream, pond or lake;
  - (d) Bank, beach, freshwater or salt water marsh, wet meadow, bog, or swamp;
  - (e) Land under any creek, river, brook, stream, pond or lake;

(2) Note that Riverfront Area and Bordering and Isolated Land Subject To Flooding do not have a Buffer Zone.

C. Presumptions of Significance: Where a proposed activity involves the removing, filling, dredging, or altering of a Buffer Zone, the Commission shall presume that protection of the Buffer Zone as a resource area is significant to the interests specified in Chapter 287, § 287-1 and that the Buffer Zone is best left in an undisturbed and natural state. This presumption may be overcome by the applicant's presentation of evidence sufficient to demonstrate, by a preponderance of credible evidence, that the Buffer Zone or that portion of the Buffer Zone that will be altered by the project does not play a role in the protection of said interests. In the event that the Commission determines that the presumption has been overcome, it shall make a written determination to this effect, setting forth its grounds.

D. Performance Standards: When the presumption set forth in § 565-10(C) of these Regulations is not overcome, any work proposed in the Buffer Zone shall comply with the following performance standards:

(1) **No Alteration or Impairment of Adjacent Resource Area**: Except as otherwise provided in these Regulations, no activity is permitted in the Buffer Zone that will alter, impair or adversely impact the adjacent wetland resource areas, unless that alteration, impairment or impact complies with the applicable performance standard for the altered resource area and is approved by the Commission.

(2) **25-Foot No-Disturbance Zone**:

(a) Except as otherwise provided in these Regulations, no activity is permitted within or above the area within 25 feet of the delineated edge of the adjacent wetland resource areas. Prohibited activities include, but are not limited to, grading, landscaping, shading, vegetation clearing, mowing, cutting, filling, depositing/dumping of yard waste, excavating, road construction, and driveway construction. The 25-Foot No-Disturbance Zone shall remain unchanged from its pre-development project state. Notwithstanding the foregoing, the Commission may allow, in its discretion, without a waiver, (1) activities that it concludes will improve the 25-Foot No-Disturbance Zone or (2) temporary activities subject to specific time frames and conditions requiring the successful return of the Buffer Zone to its preexisting or improved state.

(b) **No-Disturbance Zone Demarcation**: To maintain the perpetual integrity of the No-Disturbance Zone and to ensure that there will be no encroachments into this Zone by the applicant or future owners of the subject property, the Commission may require the No-Disturbance Zone to be marked on the ground, at the applicant's expense, with permanent markers. These markers shall be made of weather resistant material (i.e. granite, or concrete), and the Commission shall determine their number, size and location. The Commission may require one or more of these markers to bear, on their upland side, writing (i.e. permanent plaque or engraving) that shall read "No Disturbance Beyond This Point By Order Of The Beverly Conservation Commission".

**(3) 50-Foot No-Build Zone:**

- (a) Except as otherwise provided in these Regulations, the following shall be prohibited from the area within 50 feet of the delineated edge of the adjacent wetland resource areas:
  - 1) Buildings/structures that require a building permit;
  - 2) Structures or other fixtures that do not require a building permit, including, but not limited to, swimming pools and pool decks, patios or decks, sports courts, parking lots/areas, driveways/roadways (except those allowed as limited projects), sheds, utility lines, stormwater outfalls, and the like, but excluding limited or minor accessory structures or items such as lawn furniture, sandboxes, swing sets or the like;
- (b) Notwithstanding the foregoing, the Commission may allow, in its discretion, without a waiver, (1) buildings/structures that it concludes will improve the 50-Foot No-Build Zone or (2) temporary buildings/structures subject to specific time frames and conditions requiring the successful return of the Buffer Zone to its preexisting or improved state.
- (c) Replacement of buildings, structures or fixtures that existed prior to the Commission's adoption of these 50-Foot No-Build Zone performance standards is exempt from these 50-Foot No-Building Zone performance standards so long as either (1) the replacement structure is within the same footprint as the original structure and will not otherwise result in a greater impact to the 50-foot buffer zone, or (2) the replacement structure is no larger than the existing structure, is located a greater distance from the boundary of the adjacent resource area, and will not otherwise result in a greater impact to the 50-foot buffer zone.

**(4) 100-Foot Buffer Zone:** The Commission has discretion to permit, condition, and prohibit work within the Buffer Zone as the specific situation warrants to ensure protection of the interests of the ordinance, taking into consideration the following factors:

- (a) Values and functions of the Buffer Zone and those particular areas of the Buffer Zone that will be impacted by the proposed project;
- (b) Pre-project characteristics of the Buffer Zone and the particular area to be impacted, including, but not limited to, ground slope, soil conditions, vegetation, and prior disturbances;
- (c) Availability of reasonable alternatives to the project as proposed that would avoid or further minimize or mitigate impacts to the Buffer Zone; and
- (d) The proposed project's likely short-term and long-term impacts to the Buffer Zone and/or adjacent resource areas.

Article IV  
**Stormwater Management<sup>1</sup>**

**§ 565-11. Stormwater Management Standards.**

The Commission has adopted as part of these regulations the Massachusetts Department of Environmental Protection's Stormwater Management Standards per 310 CMR 10.05(6)(k)(1) – (10), as those standards may be amended from time to time. The Stormwater Management Standards apply to industrial, commercial, institutional, residential subdivision, and roadway projects, including, but not limited to, site preparation, construction, redevelopment, and on-going operation of facilities. For projects of any size, direct discharge of untreated stormwater to wetland resource areas is prohibited and erosion and sedimentation control must be provided during construction. For projects of any size, peak rates of runoff shall not increase above those of pre-existing conditions.

Article V  
**Waivers and Mitigation**

**§ 565-12. Purpose; burden of proof; waiver decision.**

- A. The performance standards for wetland resource areas have been created to ensure that the interests of the Act and the ordinance are adequately protected. The Commission recognizes that, in certain situations, a waiver of certain performance standards may be appropriate for a particular project when the waiver is consistent with the intent and purpose of the ordinance and these Regulations.
- B. The applicant shall have the burden of proof with respect to any waiver requests, as described in § 565-6.
- C. The Commission shall act on the request for a waiver and shall provide to the applicant, either by certified mail or hand delivery, its written decision. The following section describes the standards for waivers and associated mitigation measures.

**§ 565-13. Waivers for 100-Foot No-Disturbance Zone for Vernal Pools.**

- A. The Commission may grant a waiver or partial waiver of the 100-Foot No-Disturbance Zone for Vernal Pools performance standard and impose such additional or substituted mitigation requirements as it determines are warranted or necessary, based on the applicant's presentation of evidence sufficient to demonstrate, by a preponderance of credible evidence, that:
  - (1) No Alternative: There are no feasible or practicable alternatives that would allow the project to proceed in full compliance with the applicable performance standards; and
  - (2) Impacts Minimized and Mitigated: Any adverse effects on any protected interests are minimized, by carefully considered and environmentally sensitive project design, and appropriately mitigated to offset any impacts such that the project will, including mitigation measures, protect the interests identified in the ordinance. The Commission shall require such mitigation measures as it determines necessary to

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<sup>1</sup> **Editor's Note: See also Ch. 249, Stormwater Management.**

offset impacts to the 100-Foot No-Disturbance Zone. For example, the Commission may require the permanent preservation of additional upland areas to compensate for the requested alterations, improvements to previously damaged areas on-site, invasive plant eradication, or monetary or other improvements to other, off-site public areas that would improve wetland resources elsewhere in Beverly

**§ 565-14. Waivers for 25-Foot No-Disturbance Zone and 50-Foot No-Build Zone.**

- A. The Commission may grant a waiver or partial waiver of the 25-Foot No-Disturbance Zone or 50-Foot No-Build Zone performance standards and impose such additional or substituted mitigation requirements as it determines are warranted or necessary, based on the applicant's presentation of evidence sufficient to demonstrate, by a preponderance of credible evidence, that:
- (1) No Alternative: There are no feasible or practicable alternatives that would allow the project to proceed in full compliance with the 25-Foot No-Disturbance Zone or 50-Foot No-Build Zone performance standards; and
  - (2) Impacts Minimized and Mitigated: Any alteration to the 25-Foot No-Disturbance Zone or 50-Foot No-Build Zone is (a) minimized, by carefully considered and environmentally sensitive project design and consideration of reasonably available alternatives, and (b) appropriately mitigated. The Commission shall require such mitigation measures as it determines necessary to offset impacts to the 25-Foot No-Disturbance Zone or 50-Foot No-Build Zone. For example, the Commission may require the permanent preservation of additional upland land to compensate for the requested alterations, improvements to previously damaged areas on-site, invasive plant eradication, or monetary or other improvements to other, off-site public areas that would improve wetland resources elsewhere in Beverly; and
  - (3) No Adverse Impacts to Adjacent Resource Area: The project, or its natural and consequential effects, will have no adverse impacts on the interests or values of the adjacent wetland resource area.

**§ 565-15. Waivers for Other Wetland Resource Areas.**

- A. Waiver Standards: The Commission may, in its discretion, grant a partial waiver of the performance standards for work within wetland resource areas to allow the alteration or temporary surface disturbance of up to a cumulative total no greater than 5,000 square feet of wetland resource area and impose such additional or substituted mitigation requirements as it determines are warranted or necessary, based on the applicant's presentation of evidence sufficient to demonstrate, by a preponderance of credible evidence, that:
- (1) No Alternative: There are no feasible or practicable alternatives that would allow the project to proceed in full compliance with the applicable performance standard; and
  - (2) Impacts Minimized and Mitigated: Any adverse effects on any protected interests are (a) minimized, by carefully considered and environmentally sensitive project design and consideration of reasonably available alternatives, and (b) appropriately mitigated to offset any impacts such that the project will, including mitigation measures, protect the interests identified in the ordinance. The Commission shall

require such mitigation measures as it determines necessary to offset impacts to the resource area(s). For example, the Commission may require the permanent preservation of additional upland land to compensate for the requested alterations, improvements to previously damaged areas on-site, invasive plant eradication, or monetary or other improvements to other, off-site public areas that would improve wetland resources elsewhere in Beverly.

- (3) Replication Areas: The Commission strongly discourages any plan that requires as mitigation resource replication as scientific reviews conclude that for the most part replications fail to reproduce the range of values – in quantity and quality – of the wetlands they ostensibly replace. However, there may be situations in which replication is appropriate to protect the interests of the Ordinance. The Commission may, in its discretion, credit resource replication when altered areas are replaced or restored according to the following criteria:
- a) Wetlands replication must be at least a 2:1 ratio (replicated wetland to altered wetland).
  - b) Replicated wetlands shall be made contiguous or hydrologically connected to existing wetlands unless the applicant is able to demonstrate that another location (adjacent to other resource areas) would have a greater ability to protect the interests of the Act and the ordinance.
  - c) Replicated areas must be constructed prior to other construction activity on site. The applicant shall have the burden of proving where this requirement may not be appropriate to the interests of the Act and the ordinance in certain instances.
  - d) Wetland soils from the altered wetland shall be excavated and kept intact to the greatest extent possible and used for the replicated wetland when these soils are suitable for such purpose.
  - e) A combination of natural re-seeding, transplanting, and new plantings shall be used to re-establish a vegetational community and structural diversity similar to the disturbed area.
  - f) At least 75% of the surface area of the replicated area must be established with native wetland plant species within two (2) Growing Seasons. If this condition is not met, the applicant must propose and implement corrective steps to be approved by the Commission.
  - g) Colonization of invasive species must be documented and controlled. Evidence of the spread of invasive species within a replication area shall require the development and implementation of a management/control plan.
  - h) A qualified wetland scientist chosen by the Commission and hired at the applicant's expense shall monitor replicated wetlands and submit written reports to the Commission at least twice per year (May and October unless otherwise required by the Commission).
  - i) An "Interim As-Built Plan" complete with one foot contours, spot elevations, surface area and cross sections of the replication area shall be prepared by a

Registered Professional Land Surveyor and submitted to the Commission within 30 days of completion of final grading of the replication area.

- j) Any replication or restoration work that creates a resource area on abutting properties shall require an easement from the abutting property owner covering the full extension of the resource area on that property prior to commencement of the work.

**§ 565-16. Additional waiver standards.**

- A. Roadways. The Commission may, in its discretion, grant a waiver from these regulations for the construction and maintenance of a new roadway or driveway of minimum legal and practical width consistent with the Planning Board dimensional requirements or any waivers granted by the Planning Board for reduced dimensions to provide a single means of access from an existing public or private way to an upland area of the same owner, where no such means of access would otherwise be available or would have been available across other land formerly held in common ownership with such upland area. The applicant is still bound by the maximum alteration limit of 5,000 square feet as described in § 565-15A, above. Replication of altered wetland resource areas, as described in the preceding section, shall be required by the Commission to minimize and mitigate adverse impacts and to protect the interests defined in the ordinance.
- B. Prohibited Wetland Alterations. Wetland alterations intended to make lands buildable, as by fulfilling septic system setback requirements, flood elevation requirements, or other minimum construction setback requirements, or to achieve minimum lot area requirements, are prohibited. Wetland alterations required to access upland parcels will not be allowed if that landowner, or a preceding owner, landlocked the parcel by selling upland access.
- C. Wildlife Habitat Evaluation. Where alterations exceed the maximum allowable thresholds described in the State Regulations 310 CMR 10.00 for bank, bordering vegetated wetland, land under a water body, bordering land subject to flooding or riverfront area, or where the alteration of a habitat of rare species is involved, or where vernal pool or the associated 100-Foot No-Disturbance Zone would be altered, a wildlife habitat evaluation shall be performed in accordance with 310 CMR 10.60. The Commission may also require a wildlife habitat evaluation to be conducted when the applicant proposes alterations to any wetland resource area that the Commission determines to be of exceptional value to the wildlife habitat interests of the ordinance.
- D. Upland Habitat. In siting proposed wetland replication areas, mature vegetated upland habitat shall be preserved to the fullest extent possible.
- E. Planning Board Waivers. The Commission may require the applicant to file a request for a waiver of certain Planning Board requirements in order to minimize resource area impacts (for example, waivers of pavement width requirements).

Article VI  
**Filing Procedures and Submittal Requirements<sup>2</sup>**

**§ 565-17. Request for Determination of Applicability.**

Any person or persons who desire a determination as to whether the Act or the ordinance applies to an area, or work to be performed in an area, shall submit a written Request for Determination of Applicability (“RDA”) to the Commission in accordance with Chapter 287, § 287-4.

- A. General filing requirements. All applications shall comply with the following, except to the extent the Commission modifies these requirements on a case-by-case basis or in its application forms or instructions.
  - (1) Nine copies (one original and eight copies) and an electronic copy of a RDA and accompanying plans, along with a check for the appropriate filing fee, shall be received eight business days prior to the anticipated hearing date by certified mail or hand delivery to the Conservation Commission at 3rd Floor, Planning Department, City Hall, 191 Cabot Street, Beverly, MA 01915.
  - (2) Upon receipt of an application, the Commission or Conservation Administrator will determine, within two business days, if the application meets the minimum submittal requirements identified in Subsection B below. Those applications that do not meet the minimum submittal requirements will be rejected until the necessary information is provided.
- B. General plan requirements. In addition to and in conformance with the requirements of 310 CMR 10.00, the following shall be submitted:
  - (1) An 8 1/2 by 11 inches copy of the USGS quadrangle map, or other locus map, with the area circled showing the location of the project.
  - (2) A plan of sufficient size and scale that completely and accurately depicts the existing conditions on the site, the proposed project, and all of the resource areas and associated buffer zones located on the site.
  - (3) When the RDA is for the verification of the delineation of a wetland resource area(s), the request shall be prepared by a professional wetland scientist accompanied by a field-surveyed plan depicting the existing conditions, the delineated boundary of the resource area(s) with flag numbers and elevations extending off the project site.
- C. Public meeting.
  - (1) The Commission shall hold a public meeting to consider the RDA and shall issue a written determination within 21 days upon receipt of such request. Prior to making a determination, the Commission may require the submission of additional information deemed pertinent to the determination.

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<sup>2</sup> Application forms, instructions, fee calculation sheets and checklists are available at the Conservation Commission’s office and/or Conservation Commission’s section of the City’s website: [www.beverlyma.gov](http://www.beverlyma.gov).

- (2) The Commission may continue the public meeting in the following instances:
  - (a) With the consent of the applicant, to an agreed-upon date which shall be announced at the meeting; or
  - (b) Without the consent of the applicant, to a specified date for the reasons stated at the meeting, including but not limited to additional information from the applicant or others.

**§ 565-18. Notice of Intent, Abbreviated Notice of Intent or Abbreviated Notice of Resource Area Delineation.**

Any person who desires review of a Notice of Intent (NOI), Abbreviated Notice of Intent (ANOI) or Abbreviated Notice of Resource Area Delineation (ANRAD) shall file with the Commission plans and specifications as required under MGL c. 131, § 40 and as further defined below. In order to demonstrate full compliance with this ordinance and these regulations, the applicant has the burden of proof to completely describe the site, the work, and its effect on resource areas and the interests they protect, and to otherwise meet its burden of proof pursuant to § 565-6. The applicant is obligated to demonstrate that the work subject to regulation under this ordinance and these Regulations can be carried out in a manner that meets all applicable performance standards and results in no impact to the wetland resource areas in question. Applicants are urged to retain the services of a qualified, experienced, professional consultant when filing a NOI, ANOI or ANRAD. Submission of incomplete or inadequate information or a failure to meet the burden of proof may result in delays and continuations in the review and approval procedure. Failure to provide adequate and credible documentation describing the impact of the project on resource areas may result in the issuance of a denial prohibiting the work.

Resource area boundary delineations, however requested, shall be reviewed only between April 15 and October 1 of each year, unless the Commission grants a waiver due to low probability of error on a particular site. Delineations may be reviewed at the sole discretion of the Commission between October 2 and April 14 and shall be reviewed only when site conditions are such that the Commission believes it can adequately review the relevant resource area indicators (e.g. soils, vegetation, hydrology).

- A. General filing requirements. All applications shall comply with the following, except to the extent the Commission modifies these requirements on a case-by-case basis or in its application forms or instructions.
  - (1) Nine copies (1 original and 8 copies) and an electronic copy of the NOI, ANOI or ANRAD, and accompanying plans, as well as any pertinent data, along with a check for the appropriate filing fee, payable to the City of Beverly, shall be received pursuant to the Commission's Meeting Dates and Filing Deadlines as published, by certified mail, or hand delivery to the Conservation Commission at 3<sup>rd</sup> Floor, Planning Department, City Hall, 191 Cabot Street, Beverly, MA 01915.
  - (2) Upon receipt of the application the Commission or Conservation Administrator will determine, within two (2) business days, if the application meets the minimum submittal requirements. A Notice of Intent Checklist is available at the Conservation Commission's office. Those applications that do not meet minimum submittal requirements will be rejected until the necessary information is provided.

- B. Abutter notification requirements. The applicant shall provide notification to Abutters within 300 feet of the property line (as defined in § 565-7) where the work is proposed. The notification shall include sufficient explanation of the proposed work and all information pertinent to the date, time and location of the public hearing, and shall be sent by certified mail. In addition, a copy of the “Abutters’ Guide to Beverly Conservation Commission Meetings and Process” shall be included with the notification to all Abutters. The applicant shall notify abutters simultaneously to filing the application with the Commission, in order to provide Abutters sufficient time to review the application and accompanying plans.
- C. Plan requirements. All applications shall include nine copies of detailed plans. Technical data should be submitted to support the plans and shall be in narrative form with calculations submitted as necessary to substantiate the designs proposed. The applicant, upon submission of a NOI, shall comply with the requirements of Chapter 287, §§ 287-4 and 287-5, and incorporate the following:
- (1) All drawings shall be drawn with the title designating the name of the project, location and the names of the person(s) preparing the drawings, and the date prepared, including the latest revision date. Drawings shall be stamped and signed by a duly qualified registered professional civil engineer and registered professional land surveyor of the Commonwealth of Massachusetts. For certain projects, including but not limited to additions to existing structures, the Commission may accept plans not drawn by a surveyor or civil engineer when these plans utilize a stamped plan as a "base map." In this case, the base map shall also be submitted or referenced.
  - (2) Plans depicting proposed drainage systems and/or a subsurface sewage disposal system must be stamped by a registered professional civil engineer of the commonwealth.
  - (3) An 8 1/2 by 11 inches photocopy of the USGS topographic quadrangle indicating the location of the proposed activity and the outline of the area in which the activity is located.
  - (4) Technical reports on both the engineering aspects of the project as well as the wetland resources of the project site shall accompany the NOI application.
  - (5) Source material for any plan submitted must be referenced on the new plan.
  - (6) If the applicant has submitted or anticipates submitting plans for the subject property to any other City board, he/she shall submit those plans to the Commission for its review.
- D. Existing conditions site plan(s).
- (1) The following standards and design specifications are intended to provide the Commission with the minimum amount of data necessary to determine the impact of a proposed project on wetland resource areas and/or the ability of said resource area to provide documented functions and values. The Commission may from time to time adopt and publish additional guidelines and minimum technical standards for plans, calculations, and environmental impact reports submitted with an application for a permit. The Commission may find it necessary to request

additional site-specific information to adequately determine the effect of the work on resource areas.

- (2) Existing conditions site plans shall incorporate the following information, as applicable:
  - (a) Property boundaries and abutters from the most recent information on record at the Assessor's office.
  - (b) Watershed Protection Overlay District boundaries from the most recent Zoning Map.
  - (c) Existing and proposed contours at two-foot intervals throughout the entire plan and the source for any data used to establish these contours.
  - (d) All existing natural and man-made features, including tree lines, rock outcrops, stone walls, fence lines, cart roads, footpaths, overhead and underground utilities, and drainage structures.
  - (e) The location of all surface water supplies, wells, and septic systems on the property, and on abutting properties, within 100 feet of proposed work.
  - (f) Elevations of all natural and man-made drainage structures, waterways, and wetlands (as defined by the Act and ordinance).
  - (g) All wetland resource areas, including the 100-foot buffer zone, 25-foot no-disturbance zone, 50-foot no build zone and the 100-foot no-disturbance zone for vernal pools.
  - (h) Flag numbers of all field-delineated wetland resource areas.
  - (i) One-hundred-year flood elevations of all natural and man-made waterways and water bodies as determined from the most current online FEMA Flood Insurance Rate Maps and Flood Boundary and Floodway Maps. Where the floodplain of wetlands and water bodies have not been mapped by FEMA, hydrologic and calculations may be required, prepared by a registered professional engineer, to determine the boundary of the 10-year and 100-year floodplain.
  - (j) Hydrologic calculations showing the full-flow capacity and velocity of all water courses, open and only sometimes closed channels, and storm drains flowing into, on and out of the property.
  - (k) Site plans shall be submitted at a scale of 1" = 10', 1" = 20', or 1" = 40'. Additional plans with greater or lesser detail may also be required if such plans would provide valuable information to the Commission in its review. The Commission may request a plan at a different scale for large properties or unique circumstances.

E. Wetland replication or restoration plans. A complete wetland replication or restoration plan shall be submitted with the permit application. Such a plan will meet all state and local performance standards and take all site-specific and Commission-directed issues

into consideration. The plan shall be prepared by an individual with demonstrated experience in wetland science and will include a description of the qualifications of the individual(s) who prepared the plan. In addition, this plan and report shall include the following information:

- (1) Proposed and existing species list using both common and genus/species identification, describing densities at each vegetative layer and discussion of vigor.
- (2) Depth to seasonal high groundwater.
- (3) Proposed contour elevations for the wetland resource replication areas (at 1" = 40') and cross-section profiles showing relationship to existing elevations. Discussion should be provided as to how the replication area will provide similar and adequate conditions to support the proposed replication vegetative community.
- (4) Current wetland resource area functions (including wildlife habitat) shall be identified with a description of how the replication area will provide these functions. The proposal shall identify if the replication is intended to be "in-kind" or "out-of-kind" (with a clear discussion of the particular appropriateness of that selected to this site) and if any of the existing vegetation in the replication area can be retained for replanting.
- (5) A plan of how the proposed topography for the replication area will meet the necessary hydrological conditions, including a diagram of a planting scheme and a cross section of the pre- and post-replication area.
- (6) The name and address of the firm and/or qualified individual experienced in wetland replication that will oversee the replication area construction and provide detailed monitoring reports to the Commission.
- (7) If additional soils or vegetation are required for augmentation, sources must be identified.

F. Public hearing. The Commission shall hold a public hearing to consider the Notice of Intent, Abbreviated Notice of Intent, or Abbreviated Notice of Resource Area Delineation and shall issue a written decision within 21 days after the close of the public hearing. Prior to the close of a public hearing, all data deemed pertinent to the decision must be submitted and reviewed by the Commission. The Commission may continue or adjourn a public hearing in the following situations:

- (1) With the consent of the applicant, to an agreed-upon date which shall be announced at the hearing; or
- (2) Without the consent of the applicant, to a specific date for the reasons stated at the hearing, including but not limited to receipt of additional information from the applicant or others.

G. Minor Modification or Amendment Applications. The requirements of § 565-18 shall also apply to an application for a Minor Modification or Amendment to an Order of Conditions or Order of Resource Area Delineation to the extent relevant to the Minor Modification or Amendment application as determined by the Commission. Applicants are encouraged to review the proposal and application requirements with the

Conservation Administrator prior to filing with the Commission.

**§ 565-19. Minor Project Permits**

- A. Some projects are simple, routine and involve very little activity or alteration within the Buffer Zone and pose no significant potential adverse impact on the resource area. The Commission may consider such projects to be minor in nature and is of the opinion that requiring an RDA or NOI would be unnecessary as long as certain conditions are adhered to.
- B. The Conservation Administrator or a member of the Commission shall have the authority to issue a Minor Project Permit, which shall be reviewed and approved by the Commission at a subsequent regularly scheduled meeting. The applicant may proceed with the project at his/her own risk pending the Commission's review and approval.
- C. The Minor Project Permit Application is available at the office of the Conservation Administrator sets forth the fees, parameters and conditions that qualify and govern a project for this expedited permitting process. The fees, parameters and conditions of the Minor Project Permit Application may be modified by a simple vote by the Commission at a regularly scheduled meeting.

**§ 565-20. Tree Removal Permits**

The Commission recognizes that dead, dying and compromised trees can pose safety and property damage issues in some situations. The Commission has established a "Tree Removal Request Protocol" to facilitate the Commission's prompt administrative review of these situations. In some situations, the Commission may approve tree removals administratively. In others, the Commission may decide that a more formal RDA or NOI is required. This administrative review process is optional and is not a prerequisite to the filing of a formal RDA or NOI. The Tree Removal Request Protocol is available at the office of the Conservation Administrator and may be modified by a simple vote by the Commission at a regularly scheduled meeting.

Article VII  
**Public Hearings and Public Meetings**

**§ 565-21. Combined meetings and decisions.**

Public hearings and public meetings on applications filed pursuant to the ordinance and regulations may be conducted simultaneously with public hearings and public meetings held pursuant to the Massachusetts Wetland Protection Act (MGL c. 131, § 40), as amended. Permit applications filed with the Commission shall include both the Act and ordinance under one cover. The decisions rendered by the Commission shall also include both the Act and ordinance under one cover.

Article VIII  
**Permits and Decisions**

**§ 565-22. Decisions.**

As part of a permit issued pursuant to the ordinance, the Commission shall impose such conditions as are necessary to protect the values of wetland resource areas under its jurisdiction. If the Commission deems that the interests stated in the ordinance are not

adequately protected under the terms of the applicant's proposal, the Commission may refuse to issue a permit. When the Commission votes to deny a permit, it shall issue a written decision supported by facts and findings explaining why the project has been denied and, as related to Notices of Intent, why the project may not be properly conditioned to meet the interests of the Act and the ordinance. The applicant shall have the burden of proof by a preponderance of credible evidence as to any issue before the Commission, as provided in § 565-6.

### **§ 565-23. Extension permits.**

The Commission may issue an Extension Permit for up to a period of one year, provided that a written request for an extension is filed at least 30 days prior to the expiration date of the Order of Conditions. The Commission may grant only two extension permits for an individual Order of Conditions. Extension permit requests must also meet all of the following conditions at the time of the written request:

- A. No request for an extension permit will be granted unless the wetland is either reflagged by a qualified wetland biologist or the original approved flagging is reestablished in the field by survey. The wetland delineation shall be verified by the Commission and/or its designated agent. The Commission may require a new filing, or the reopening of the public hearing, if the wetland delineation has changed from the original submittal.
- B. No request for an extension permit will be reviewed until the necessary filing fee is received by the Commission.
- C. No request for an extension permit will be granted for an expired Order of Conditions.
- D. At the time of the request for an extension permit, the project must be in compliance with the Order of Conditions and other permit requirements.

### **§ 565-24. Minor Modifications, Amendments and Revocation.**

#### A. Minor Modifications, Amendments and Revocation Generally

- (1) The Commission may modify, amend or revoke an Order of Conditions on its own initiative.
- (2) The Commission may, upon the petition of the applicant, modify or amend an Order of Conditions issued under the ordinance and these Regulations. The Commission shall first determine whether a proposed modification constitutes a “Minor Modification” or an “Amendment” and then proceed in accordance with subsections (B) and (C), below.
- (3) In connection with a minor modification or an amendment review process, the Commission may require that the wetland resource areas be re-flagged by a qualified wetland scientist or that the original flagging be re-established in the field by professional survey. The Commission may require a new filing or the reopening of the public hearing if the wetland delineation has changed since the Order of Conditions was issued, even in connection with requests for a Minor Modification.
- (4) If the scope or purpose of the proposed project has changed substantially or the

wetland interests identified in the Act and ordinance are not protected, the Commission shall require the applicant to file a new Notice of Intent.

- (5) Filing Requirements: The requirements of § 565-18 shall apply to an application for a Minor Modification or Amendment to an Order of Conditions or Order of Resource Area Delineation to the extent relevant to the Minor Modification or Amendment application as determined by the Commission. Applicants are encouraged to review the proposal and application requirements with the Conservation Administrator prior to filing with the Commission.

B. Minor Modification

- (1) A Minor Modification is a project change that will not result in an adverse impact to wetland resource area(s) and/or the interests protected under the Act and/or this ordinance and that the Commission otherwise deems not to be of sufficient magnitude in its nature, scope or impact to warrant a public hearing.
- (2) No public hearing is required for a Minor Modification to an Order of Conditions. However, the applicant must submit a written request fully explaining the proposed change. The applicant has the burden of proving that a proposed modification is a Minor Modification and that the proposed modification warrants approval.
- (3) A request for a Minor Modification will not be reviewed or considered under the following instances:
  - (a) If the appropriate filing fee is not submitted with the request to the Commission.
  - (b) If the Order of Conditions has expired.

C. Amendment

- (1) An Amendment, after a public hearing, is required when a change in a permitted project is proposed that the Commission deems of sufficient magnitude, in its nature, scope or impact, to potentially warrant the imposition of additional conditions or to otherwise warrant a public hearing. If the scope or purpose of the proposed project has changed substantially or the wetland interests identified in the Act and ordinance are not protected, the Commission shall require the applicant to file a new Notice of Intent.
- (2) A request for an Amendment will not be reviewed or considered under the following instances:
  - (a) If the appropriate filing fee is not submitted with the request to the Commission.
  - (b) If the Order of Conditions has expired.

D. Revocation

- (1) The Commission may revoke an Order of Conditions issued under the ordinance and these Regulations if any of the following circumstances occur:

- (a) The applicant and/or his/her successor's fail to comply with the terms of the Order; or
  - (b) New information relating to the project is obtained which indicates that previous information presented to Commission was inaccurate; or
  - (c) The project changes substantially after the completion of the Commission's review.
- (2) Prior to revoking an Order of Conditions, the Commission shall first notify the applicant through certified mail or hand delivery and shall hold a public hearing.

**§ 565-25. Certificates of Compliance.**

- A. Upon completion of the project, the applicant shall request in writing from the Commission a Certificate of Compliance (see also 310 CMR 10.05(9)). As-Built plans may also be required as noted in the Order of Conditions issued on the project. All as-built plans must be at the same scale as the plans submitted with the Notice of Intent. The applicant or his/her representative shall attend the scheduled meeting to answer any questions the Commission may have. If the Commission determines that the requirements of the Order have not been met the request for a Certificate of Compliance will be denied. The reasons for the denial shall be forwarded to the applicant within 21 days of the receipt of the request. The Commission may specify on the Certificate of Compliance that certain conditions of the Order of Conditions are imposed perpetually and do not expire with the issuance of the Certificate of Compliance. The person to whom the Certificate is issued shall forthwith record it in the Southern Essex Registry of Deeds or Land Court in the chain of title of the affected property and shall notify the Commission, in writing, that said recording has occurred, by sending a copy of the stamped recorded instrument to the Commission.
- B. The following additional requirements must be satisfied in order to receive a Certificate of Compliance:
- (1) A Certificate of Compliance can be granted for an expired Order of Conditions.
  - (2) When granted, a Certificate of Compliance will be issued to either the original applicant or the current landowner.
  - (3) The following information must be submitted to the Commission in writing, in addition to the requirements of the Order of Conditions, when requesting a Certificate of Compliance:
    - (a) The name and address of the current landowner.
    - (b) The name and address of the individual/trust or corporation to whom or which the certificate is to be granted.
    - (c) The street address and lot number for the project.
    - (d) The DEP file number.
    - (e) A statement certifying compliance with the Order of Conditions and the

approved plan.

(4) The person certifying compliance with the Order of Conditions must have inspected the site, read the Order of Conditions and all referenced documents, and reviewed the contents of the Commission's files on the project. Depending on the scope and complexity of the project, the Commission may require a certified professional engineer or land surveyor to certify compliance.

C. The Commission may withhold the issuance of a Certificate of Compliance if the project in question is part of (or related to) another project which is not currently in compliance.

**Article IX**  
**Performance Guarantees**

**§ 565-26. Security.**

The Commission may require the applicant to furnish a performance guarantee in the form of a deposit of money in an amount determined by the Commission to be sufficient to cover the cost of all or any part of the site alterations specified in the Permit and/or shown on the plans approved by the Commission. This security shall be deposited in the name of the City of Beverly. The standard agreement is included on the performance guarantee form, which can be obtained from the Conservation office. Security amounts will be set so that funds will be adequate to comply with the Permit, repair damage to wetlands and to permanently stabilize the work site and all soils. Security shall be determined on a site-by-site basis using these general guidelines:

<b>Project</b>	<b>Range of Security</b>
Single-family home	\$3,000 to \$10,000 per dwelling
Commercial/Industrial facility	\$10,000 to \$15,000 per building
Subdivision roadway	\$10,000 or more
Wetland replication	\$3 per square foot

**§ 565-27. Covenant.**

The Commission may require the applicant to secure the performance and observance of conditions imposed on the project 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 City whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

**§ 565-28. Reduction of security.**

The penal sum of any required performance guarantee, or the amount of any deposit held hereunder, may from time to time be reduced by the Commission and the obligations of their parties thereto released by the Commission in whole or in part. The release schedule(s) for the security may be proposed by the applicant and, if acceptable, approved by the Commission.

**§ 565-29. Release of performance guarantee.**

A. Upon completion of site alterations required in the permit, security for the performance of which was given by security, deposit or covenant, or upon the complete performance

of the covenants with respect to the site, the applicant may request and agree on the terms of release with the Commission.

- B. If the Commission determines that said alterations have been completed in compliance with the conditions of the permits, it shall release the interest of the City in such security and return the deposit to the person who furnished same, or release the covenant, if appropriate. If the Commission determines that said alterations have not been completed in compliance with the permit, it shall, within 45 days, specify to the applicant, in writing, the details wherein said alterations fail to comply with the permit.
- C. If the applicant fails to complete the work secured by this agreement by the above stated or extended deadline, the deposit of money may be applied in whole, or in part, by and upon a vote of the Commission for the benefit of the City of Beverly to the extent of the reasonable cost to the City of completing such construction or installation as specified in this agreement. Any unused money and the interest accrued on the deposit of money, unless said interest is used to complete such construction or installation, shall be returned to the applicant upon completion of such construction or installation by the City upon a vote of the Commission.

## Article X Administration and Enforcement

### **§ 565-30. Availability of regulations; cost.**

Copies of these regulations and the ordinance shall be made available for purchase from the Beverly Conservation Commission, for the price of \$15 in the form of a check payable to the City of Beverly.

### **§ 565-31. Amendments.**

These regulations may be amended from time to time by a majority vote of the Commission. Prior to taking a vote on an amendment, the Commission shall have held a public hearing on the proposed change(s).

### **§ 565-32. Policies.**

The Commission may issue policy statements that further support these regulations. These policies will be made available to any individual upon request. Persons seeking permits under the ordinance and these regulations should review the policy statements available in the Conservation office.

### **§ 565-33. Effective date.**

An advertised public hearing was held on these regulations on June 17, 2003. The Commission voted to adopt these regulations on June 17, 2003, effective immediately. All amendments shall be effective upon their adoption by the Commission following a public hearing and filing with the City Clerk, subject to Article 8-4 of the City Charter, which states that no rule or regulation adopted by a city agency shall become effective until seven days following the date said regulation is filed with the City Clerk. Such amendments, however, shall not apply to any Permit application filed prior to the first publication of notice of public hearing on the proposed amendments.

**§ 565-34. Severability.**

If any provision of these regulations or the application thereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or the application of any part of these regulations not specifically held invalid, nor shall it invalidate any order, permit, or determination which previously had been issued, and to this end the provisions of these regulations are declared to be severable.

**§ 565-35. Enforcement.**

The Commission may enforce these regulations, or an order, permit, or determination issued hereunder, in any manner consistent with Chapter 287, § 287-9, and all other laws. Enforcement orders (including stop-work orders) may be issued under the ordinance and the Act (310 CMR 10.08) for the following:

- A. Alteration of or activity or work within a wetland resource area or associated buffer zone without a valid Order of Conditions; or
- B. Violation of the terms of any Order of Conditions, determination, or permit; or
- C. Failure to complete a project if such failure has resulted in, or is likely to result in, an adverse impact to a wetland resource area.