

Great Barrington Wetland Protection Regulations

(Adopted 6/25/90)

(Amended 1/24/2024)

Preface

These Wetlands Protection Administration Bylaw Regulations (hereinafter referred to as the “Wetlands Regulations”) are promulgated by the Commission pursuant to the authority granted to it under Chapter 168 of the Code of the Town of Great Barrington (hereinafter the “Wetlands Bylaw”) as it may be from time to time amended. The Wetlands Bylaw was adopted by a vote at the Annual Town Meeting held in May, 1987, under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, independent of the Wetlands Protection Act, MGL c.131, §40 and the regulations thereunder.

Section 1. Purpose

The Wetlands Regulations will be used to implement and enforce the Wetlands Bylaw and are intended to be read together with the Wetlands Bylaw, which has many provisions that are not repeated in these Wetlands Regulations.

1.1 Incorporation

All of the definitions, resource area descriptions, procedures and requirements set forth in the Massachusetts Wetlands Protection Regulations at 310 CMR 10.00 et seq. are hereby incorporated and made a part of these Wetlands Regulations, except where they differ from or depart from these Wetlands Regulations. Where these Wetlands Regulations differ from the State regulations, these Wetlands Regulations will be applied in addition to the State regulations. In most instances, the applicant should first address the State regulations at 310 CMR 10.00 et seq. and then supplement them with these Wetlands Regulations.

1.2. Purpose and Protected Interests

The purpose of these Wetlands Regulations is to aid in the consistent and effective implementation of the Wetlands Bylaw by way of further definition. The Wetlands Bylaw protects the wetlands, related water resources, and certain adjoining land areas in the Town by providing for prior review and regulation of activities deemed to have significant or cumulative adverse effect upon wetlands values, including but not limited to the following interests:

1. protection of public and private water supplies and quality
2. protection of ground water supply and quality
3. flood control
4. storm damage prevention
5. erosion and sedimentation control
6. prevention of water and soil pollution
7. protection of fisheries
8. protection and preservation of wildlife habitat
9. recreation values, deemed important to the community
10. agriculture and aquaculture values

Section 2. Areas Subject to Protection and Regulation (Jurisdiction)

2.1 Resource Areas

The following areas, which are referred to as resource areas, are subject to protection under the Wetlands Bylaw:

- A. Freshwater wetland, lake, pond, marsh, wet marsh, wet meadow, intermittent stream, or any bog, beach, dune or flat;
- B. River or perennial stream, of any land under said waters, of any land within two-hundred foot distance of said river and perennial stream;
- C. Land subject to flooding, defined as “floodplain” by the Great Barrington Flood Boundary Map;
- D. Lake, river, pond or stream that is a public or private water supply, and land area within five-hundred-foot distance of said lake, river, pond or stream. See §217-14.5.
- E. Land area within a five-hundred-foot distance of the Green River upstream of the water supply gallery. See §217-14.5.

2.2 Buffer Zones

Any land within 100 feet horizontally outward from resource areas A and B protected by the Wetlands Bylaw shall be referred to as the “buffer zone”. (Riverfront Areas and Land Subject to Flooding do not have a buffer zone).

The purposes of protecting buffer zones include maintaining a continuous cover of locally indigenous vegetation that:

- 1. Reduces water pollution by providing a natural filter to absorb nutrients and chemicals contained in road runoff, fertilizers, pesticides and other contaminants.
- 2. Slows surface water runoff to reduce soil erosion and siltation of surface waters.
- 3. Maintains ambient shade conditions to preserve natural water temperature regimes, to protect indigenous aquatic amphibian and reptilian life.
- 4. Provides wildlife habitat and corridors for wildlife movement.
- 5. Acts as a filter zone to protect water supplies and prevent pollution.

2.3 Streams (Intermittent)

Intermittent streams are important for storm damage prevention, flood control, ground water protection, wildlife habitat, and recreation values. During spring, summer, and fall these streams disperse snow melt and storm runoff across the landscape thereby preventing dangerous volumes and flows from spilling over roadways and property. This broad dispersal also allows for larger volumes of water to infiltrate into the ground, recharging groundwater supplies.

Intermittent streams are an essential source of food and water for wildlife, and are often the only source of water in higher elevation areas of town. The moist soils that border intermittent streams are significantly richer in herbs and flowering/fruiting plants, the base trophic level of food, that surround upland areas.

During all seasons, but especially in winter and spring, intermittent streams act as essential corridors for animal movement when food is scarce. Some animals, such as pickerel frogs and eastern spotted newts, rely heavily on intermittent streams for movement.

For these reasons, the upland areas surrounding intermittent streams are heavily utilized by wildlife for living space, breeding, feeding, migrating, dispersal, and security.

Accordingly, these Wetlands Regulations protect intermittent streams of all forms and the adjacent buffer zone within 100 feet of those streams.

2.4 Rivers (Perennial Streams)

For the purposes of the Wetlands Bylaw, the protections afforded to Riverfront Areas under the 1996 amendment to the Massachusetts Wetlands Protection Act shall extend the reach of jurisdiction 200 feet from the Mean Annual High Water Line (MAHWL) of a stream or river as specified by the Act. Additional regulations apply to the Green River and its upstream tributaries; see §217-14.5.

Under these Regulations all flowing watercourses shall be considered to be perennial streams as described and defined in 310 CMR 10.58 (2).

2.5 Great Barrington Drinking Water Supply and Upstream Tributaries

The Town of Great Barrington recognizes that protection of its public and private water supplies is imperative to the quality of drinking water. This town policy is expressed through Section 9.2, “Water Quality Protection Overlay District,” of the Great Barrington Zoning Bylaws. The Commission will administer the Wetlands Bylaw and these Wetlands Regulations in concert with the requirements of the Stream and Lake Protection Zone of the Water Quality Protection Overlay District as defined in the Zoning Bylaw.

Section 9.2 of the Zoning Bylaws regulates work within a five-hundred-foot distance of the Green River and its upstream tributaries of the water supply gallery through a Special Permit process. The Commission is a recommending board to the Special Permit Granting Authority. Applicants should contact the Zoning Officer (Building Official) for more information regarding the Special Permit process. Accordingly, these Regulations protect the Great Barrington Drinking Water Supply and its upstream tributaries.

Section 3. Definitions

Abutter is any landowner, as determined by the most recent Assessor’s records, whose land abuts the property that is the subject of the Request for Determination or the Notice of Intent or whose land lies directly opposite on any public or private street or way and owners of land within three hundred (300) feet of the property line.

Agent or Administrator is anyone appointed or assigned by the Commission to serve as its representative.

Alter includes, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by these Wetlands Regulations:

1. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind.
2. Changing of preexisting drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics.
3. Drainage or other disturbance of water level or water table.
4. Dumping, discharging, or filling with any material which may degrade water quality
5. Placing of fill or removal of material which would alter elevation.
6. Driving of piles or erection or repair of buildings or structures of any kind.
7. Dredging or filling of land under water bodies.
8. Placing of obstructions or fixed objects in water.
9. Destruction of plant life, including cutting of trees.
10. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters.
11. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or ground water including, without limitation, any activity that may cause surface water runoff contaminated with sediments, chemicals, or animal wastes.
12. Application of pesticides or herbicides.
13. Storage of flood waters and storm water runoff waters.

Applicant. The individual or entity filing an application.

Bank. The land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the Mean Annual High Water Line, whichever is higher.

Bordering means touching.

Boundary means the boundary of area subject to protection under the Bylaw.

Buffer Zone. Any land within 100 feet horizontally outward from the edge of resource areas A and B described in §217-14.1 of these Wetlands Regulations.

Commission. The Great Barrington Conservation Commission.

Conditions. 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 an area subject to protection under the Wetlands Bylaw.

Direct Discharge includes, without limitation, any outfall of water that empties into the resource area or adjacent upland resource, including infiltration.

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

Erosion Control. The prevention or reduction of the detachment or movement of soil or rock fragments by water, wind, ice and/or gravity.

Existing shall mean existing in full on or after the effective date of these Wetlands Regulations, unless specified otherwise in the Wetlands Bylaw.

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

Flood Control. The prevention or reduction of flooding and flood damage.

Freshwater Wetland. Include bog, swamp, marsh, wet meadow, pond, or lake as defined in MGL, c.131, §40.

Ground Water Supply. Water below the earth's surface in the zone of saturation.

Land Subject to Flooding. As defined in MGL, c. 131, §40.

Land Under Water Bodies. The bottom of, or land under the surface of any lake, river, pond, stream, or watercourse.

Majority. More than half of the members of the Commission then in office.

Mean Annual High Water Line. The mean annual high water line (MAHWL) shall be the line represented by bankfull conditions when they occur above the first observable break in slope. If no break in slope exists, the MAHWL will be represented by other bankfull indicators as specified in 310 CMR 10.58.

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

Plans. Such data, maps, engineering drawings, calculations, specifications, schedules or other materials, if any, deemed necessary by the Commission to describe the site and the activity; to determine the applicability of the Wetlands Bylaw; or to determine the impact of the proposal upon the interests in the Wetlands Bylaw.

Pond. Any open body of fresh water with a surface area observed or recorded within the last ten years of at least 5,000 square feet. Ponds shall contain standing water except for periods of extended drought.

Private Water Supply. Any source of volume of surface or ground water demonstrated to be in any private use or demonstrated to have a potential for private use.

Protected Resource Area shall mean any bank, freshwater wetland, marsh, bog, wet meadow, or swamp bordering on any creek, river, stream, pond, or lake or any land under said waters, or any bordering thereon, or any land subject to flooding or inundation.

Public Water Supply. Any source or volume of surface or ground water demonstrated to be in public use or approved for public water supply in accordance with the Massachusetts Drinking Water Regulations under 310 CMR 22.02 and the Federal Safe Drinking Water Act.

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

River shall refer to perennial stream as defined in §217-14.4.

Sedimentation Control. The prevention or reduction of the collection or concentration of sand, soil, or rock fragments by the action of water, wind, ice, or gravity.

Significant. Plays a role. A resource area is significant to an interest identified in the Wetlands Bylaw when it plays a role in the provision or protection, as appropriate, of that interest.

Stream refers to a body of running water, including brooks and creeks, which move in a definite channel in the ground due to hydraulic gradient. An “intermittent stream” is a defined channel with a hydraulic gradient through which water flows during part of the year and which either flows out of, into, or within a wetland resource under the Wetlands Bylaw. A portion may flow through a culvert or under a bridge.

Upstream Tributaries to the Water Supply Gallery of the Green River. Include Alford Brook, Seekonk Brook, and Long Pond Brook.

Wildlife Habitat refers to areas having plant community composition and structure, hydrologic regime, or other characteristics sufficient to provide shelter, nutrient sourcing, growing conditions, nesting or breeding sites conducive to the propagation and preservation of wildlife.

Work. Means the same as activity, as defined at 310 CMR 10.04.

Section 4. Applications for Permits (Procedures)

Within 100 feet horizontally outward from the edge of a resource area, 200 feet horizontally outward from the mean annual high water line (MAHWL) of a river or perennial stream, and within 500 feet of the town water supply galleries at the Green River, Long Pond, and any other bodies of water utilized as Town Drinking Water, any activity proposed or undertaken, which, in the judgment of the Commission, alters an area subject to protection under the Wetlands Bylaw, is subject to regulation under the Wetlands Bylaw and requires the filing of a Notice of Intent (NOI). If the applicant is in any doubt as to whether an activity is subject to regulation, a Request for a Determination of Applicability (RDA) should be filed.

4.1 Timeframes for Submission of Documentation

All documentation including plans, maps, tables, charts, reports, etc. to be considered as part of a permit filing by the applicant must be submitted to the Commission in accordance with §217-18.1.

4.2 Request for Determination of Applicability (RDA or WPA Form 1)

The purpose of the Request for Determination of Applicability (RDA) is to allow the Commission to determine whether the proposed project will alter a resource area such that the filing of a Notice of Intent will be required.

4.3 Submission Requirements

It is the applicant's responsibility to provide all of the information required for this review. All forms used in the application and permit process under the Wetlands Bylaw may, at the discretion of the Commission, be the same as those forms used under the Massachusetts Wetlands Protection Act, MGL, c.131, §40 and 310 CMR 10.00. The form used for a Request for Determination of Applicability is WPA Form 1. Nine (9) copies of the RDA shall be hand delivered to the Town Clerk's Office or mailed to the Commission. The RDA shall be accompanied by a filing fee in the amount of \$120.00, payable to the Town of Great Barrington.

The applicant must complete all information on the RDA and:

Return the original plus 8 copies and an electronic PDF of the entire submission to:

Great Barrington Conservation Commission
Town Hall, 334 Main Street
Great Barrington, MA 01230

Include a plan that shows (at a minimum):

1. Structures on the lot
2. North arrow on lot plan, with locus map and street name
3. Location of proposed work, and distance to wetlands or other resource to be protected
4. General vegetation types
5. Drainage directions
6. Spot elevations or contours (if available)

4.4 Determination by Commission

Within twenty-one (21) days of the filing of the RDA, the site will be visited by the Commissioners and Agent, and the Commission will conduct a public hearing. This hearing will be advertised, by legal notice in a newspaper of general circulation in Great Barrington at least five (5) business days prior to the public hearing. That applicant shall give written notice by certified mail or via certificate of mailing, at least five (5) business days prior to the public hearing to all abutters, from a list certified as accurate by the Assessors according to their most recent records. The notice shall give the time, date, and location of the public hearing, briefly describe the Request, and shall state where copies of the Request may be examined. Notice of the public hearing may be given concurrently under both the Wetlands Protection Act and the Wetlands Bylaw.

Before the public hearing is opened, the applicant shall furnish to the Commission a copy of the Assessors' certified list of abutters and proof of mailing. If these items are not furnished to the Commission, the public hearing will not be opened and a new public hearing will be rescheduled within the next 21 days.

The hearing must be attended by the applicant or a representative of the applicant who has sufficient knowledge of the proposed activity and can therefore, answer any questions raised by the Commission. The applicant shall have the boundaries of the wetland area flagged prior to the site inspection with the Commission. The Commission may request that the boundary of a resource area be flagged by a biologist, botanist, or other qualified person who has demonstrated sufficient expertise in the identification of wetland vegetation. The vegetated limits of a bordering

vegetated wetland or of an isolated land subject to flooding, and the parameters used in delineating wetlands, shall be those described in MGL, c.131, §40, and regulations thereunder.

The Commission may, at its discretion, combine its public hearing under the Wetlands Bylaw with the hearing conducted under the Wetland Protection Act, MGL, c.131, §40. The public hearing shall not be closed until all material has been submitted to the Commission necessary for the Commission to make its determination.

The Commission shall, within twenty-one (21) days from the close of the public hearing, issue its Determination of Applicability. A Negative Determination means the proposed project will have a minimal impact on an area subject to protection, and the project is approved as presented or approved with written conditions. A Negative Determination is valid for three (3) years. A Positive Determination means the project may have more than minimal impact on a resource area or that the project area is determined to be in a resource area, in which case the submission of a Notice of Intent is required.

4.5 Quorum

Four members of the Commission shall be present at any meeting to conduct business and to hold a public meeting, constituting a quorum, as defined in §217-9.

4.6 Notice of Intent (WPA Form 3)

Any person who proposes to do work that will remove, fill, dredge, build upon, or alter any area subject to protection under the Wetlands Bylaw shall submit a Notice of Intent consisting of application materials required for a Notice of Intent under MGL c. 131, §40 and 310 CMR 10.00.

4.7 Notice of Intent Submission Requirements

The applicant will submit nine (9) complete copies of the Notice of Intent with Site Plans, supporting documentation, along with a check to the Town Clerk's Office and an electronic PDF of the entire submission. The filing fee for a Notice of Intent under the Wetlands Bylaw shall be as set forth in §217-6. The application fee shall be waived when the applicant is the Town of Great Barrington.

Return the original plus 8 copies and an electronic PDF of the entire submission to:
Great Barrington Conservation Commission
Town Hall, 334 Main Street
Great Barrington, MA 01230

Include plans that show (at a minimum):

1. Plans signed, dated and stamped by a Professional Engineer, land Surveyor or Landscape Architect.
2. Existing Conditions; including a north arrow, a scale, property boundaries, two foot topographic contours, borders of any wetland resource areas on or within 100 feet of applicant's property including buffer zones, Natural Heritage data (if applicable), high water mark for all water bodies.
3. Proposed Conditions; including work limits and location of erosion controls, areas where vegetation will be altered, proposed contours and amount of fill required to be added or removed if needed, construction details and sequence,

equipment access routes and storage/parking areas during proposed work if needed, all above-ground structures and all physical alterations proposed, existing natural drainage patterns and proposed alterations if needed, all below-ground alterations and structures, location, capacity and design details of on-site septic system, distance of proposed on-site leaching facility to wetlands, watercourses or other resource areas, location of all existing and proposed wells on property.

4.8 Determination by Commission for Review of Notice of Intent

Within twenty-one (21) days of the filing of the NOI, the site will be visited by the Commissioners and the Agent. The following markings and flagging must be in place before the field inspection, where applicable:

1. Edges of wetlands must be flagged with numbered flags, as reflected on submitted maps. The boundary of a wetland area shall be flagged by a biologist, botanist, or other qualified person who has demonstrated sufficient expertise in the identification of wetland vegetation. The limits of a vegetated wetland or of an isolated land subject to flooding, and the parameters used in delineating wetlands, shall be those described in MGL, c.131, §40, and regulations thereunder. (310CMR 10.55)
2. All proposed structures or additions, including decks, must be staked for identification purposes at all corners; stakes must be numbered and labeled.
3. Septic tank, leaching field, and well locations must be staked with labeled stakes.

The Commission shall open a public hearing within twenty-one (21) days of acceptance of a complete Notice of Intent. The hearing will be advertised, at the applicant's expense, by legal notice in a newspaper of general circulation in Great Barrington at least five (5) business days prior to the public hearing. The applicant shall give written notice by certified mail or via certificate of mailing, at least five (5) business days prior to the public hearing to all abutters, from a list certified as accurate by the Assessors according to their most recent records. The notice shall give the time, date, and location of the public hearing, briefly describe the Notice, and shall state where copies of the Notice may be examined.

Before the public hearing is opened, the applicant shall furnish to the Commission a copy of the Assessors' certified list of abutters and proof of mailing. If these items are not furnished to the Commission, the public hearing will not be opened and a new public hearing will be rescheduled within the next 21 days.

The hearing must be attended by the applicant or a representative of the applicant who has sufficient knowledge of the proposed activity and can therefore, answer any questions raised by the Commission. Any public hearing held under the Wetlands Bylaw, may be continued to a date, time, and place announced at the hearing, or may be continued to a specific date and time at the applicant's request, so as to allow the applicant sufficient time to produce supplemental information which the Commission deems necessary to make a decision. If the applicant does not consent to a continuance of the public hearing, the Commission may close the public hearing and consider only that material in the Notice of Intent obtained at the time of the close of the public hearing. Failure or refusal

of the applicant to produce additional information as requested by the Commission may be cause for denial of a Permit.

4.9 Permit

Within twenty-one (21) days of the close of a public hearing, the Commission shall issue a Permit approving the project, or deny approval of the project. The written decision shall be signed by a majority of the Commission. If the project is approved, the Commission shall impose such conditions as are necessary for the protection of the interests identified in the Wetlands Bylaw.

No work shall be undertaken until the Order has been signed by the Commission and then has been recorded by the Applicant in the Registry of Deeds or the land registration office of the Land Court for Southern Berkshire County, within the chain of title of the affected property. A copy of such filing shall be sent to the Commission, including the Book and Page or document reference numbers.

If work commences before the Permit is recorded, the Commission may issue an Enforcement Order.

The Commission must be notified when all erosion controls are in place to conduct a site visit. Under no circumstances shall work begin until the erosion controls are inspected and approved by a Commissioner or Agent.

Any change made or intended to be made in the plans shall require the applicant to file an Amended Notice of Intent or to inquire in writing of the Commission whether the change is so substantial as to require a new filing. The applicant shall not precede with any change until the Commission issues its written approval. The filing fee for amendments is \$50.00 payable to the Town of Great Barrington.

Under the Wetlands Bylaw, a permit shall prohibit any work or portion thereof that cannot be conditioned to protect said interests. If the permit is denied, it shall be for one or more of the following reasons:

- a. For failure to meet the requirements of the Wetlands Bylaw.
- b. For failure to submit necessary information or plans requested by the Commission.
- c. For failure to avoid or prevent unacceptable or cumulative effects upon the wetland interests protected by the Wetlands Bylaw.
- d. Where no conditions are adequate to safeguard the wetland interests protected by the Wetlands Bylaw.

A Permit shall be valid for three (3) years.

5.0 Extensions

The Commission may extend a permit twice for an additional one-year period. Requests for extensions shall be made to the Commission in writing at least thirty (30) days prior to the expiration of the permit. The filing fee for extensions is \$50.00 payable to the Town of Great Barrington.

The Extension Permit shall be signed by the Commission and recorded by the Applicant in the Southern Berkshire Registry of Deeds or land registration office of the Land Court. A copy of the recording shall be sent to the Commission, including the Book and Page or document number reference of the recording. If work is undertaken without the applicant so recording the Extension Permit, the Commission may issue an Enforcement Order.

If the applicant does not request an Extension for his project at the end of the three year period of the Order of Conditions, any work on the project must stop until after a new Notice of Intent has been filed with the Commission, and a new Order of Conditions duly issued and recorded.

Section 5 Certificate of Compliance

Upon completion of the work described herein, the applicant shall submit a written Request for a Certificate of Compliance; WPA Form 8A. The Commission shall act upon the request within 21 days. For projects completed according to plans stamped by an engineer or other registered professional, the request must include written indication (usually a letter) from such a professional that the work was completed substantially in compliance with the Permit, and explain any deviations, if any.

Prior to the issuance of a Certificate of Compliance, a site inspection shall be made by a Commissioner or Agent, in the presence of the applicant or a representative of the applicant.

If the Commission finds that all general and special conditions have been met, and the project has proceeded according to the approved plans, a Certificate of Compliance is issued.

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 Certificate of Compliance. A partial Certificate of Compliance may be issued for a portion of a project, as long as all work and mitigation for that portion have been completed.

If the Permit contains conditions which continue past the completion of the work, such as maintenance or monitoring, the Certificate of Compliance shall certify which, if any, of such conditions shall continue. The Certificate shall also specify to what portions of the work it applies, if it does not apply to all the work regulated by the Permit.

The Certificate of Compliance (including any continuing conditions) will be recorded by the applicant in the Southern Berkshire Registry of Deeds or land registration office of the Land Court. Certification of recording shall be sent to the Commission.

Section 6. Enforcement

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

The Commission shall have authority to enforce this chapter, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions.

Upon request of the Commission, the Board of Selectmen and the Town counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.

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

Any person who violates any provision of these regulations or permits issued thereunder shall, upon conviction, be punished by a fine of not more than three hundred dollars (\$300.00). Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the chapter, regulations or permit violated shall constitute a separate offense.

In the alternative to criminal prosecution, the Commission may elect to utilize the noncriminal disposition procedure set forth in MGL, c.40, §21D.

Section 7. Exceptions

Exemptions clearly stated in the Wetlands Protection Act and regulations thereunder are not extinguished by these Wetlands Regulations.

Section 8. Security

As part of a permit issued under these Wetlands Regulations, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured by a performance guarantee, as follows:

1. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission; or
2. By a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the town of Great Barrington whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

Section 9. Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable significant or cumulative effect upon the wetland values protected by the Wetlands Bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny the application for permit, along with any work or activity proposed herein.

The invalidity of any section or provision of the rules and regulations to the Wetlands Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

Section 10. Revisions and Effective Date of Wetlands Regulations

The effective date of these Wetlands Regulations will be the date on which these Wetlands Regulations are approved by vote of the Commission. These Wetlands Regulations will apply to all business of the Commission conducted after that date. These Wetlands Regulations were adopted in June 25, 1990 and amended in January 24, 2024.