

# RULES & REGULATIONS - TOWN OF FRANKLIN CONSERVATION COMMISSION

On January 27, 2011, the following members of the Franklin Conservation Commission voted to accept these Rules and Regulations as they apply to the Massachusetts Wetlands Protection Act and the Wetlands Protection Bylaw, Franklin Code at Chapter 181:

*Jeffrey Senterman Chair*  
*Christopher Botchis*  
*Ray Willis*  
*Jeff Livingstone*

*Andrew Tolland, Vice Chair*  
*Monique Allen*  
*Jon Fournier*  
*Regan Harrold. Associate Member*

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## **I - PARLIAMENTARY PROCEDURE**

The Commission shall be governed by Robert's Rules of Order Revised in all questions of parliamentary procedure not provided for by special rules or orders herein.

## **II - COMMISSION MEETINGS**

Regular meetings shall be held in the Town Council Chambers (in the Municipal building) on the first and third Thursday of each month, or as otherwise voted by the commission, convening at 7:15PM.

## **III - QUORUM**

A quorum shall consist of a majority of its members (4 of 7, irrespective of whether all 7 slots are filled by Town Council ratification). If at any time a meeting is called to order, or if during a meeting, less than a quorum is present, the Chair shall declare a recess of not more than 10 minutes, after which time, if a quorum is not present, the meeting shall be adjourned. Any member may call for a roll call on the question of the presence of a quorum. An Associate Member can not be considered when determining a quorum.

## **IV - PUBLIC POSTINGS**

By law, public notices of all Commission meetings, except in emergencies, must be posted with the Town Clerk a minimum of 48 hours before any meeting. The Town Clerk will ensure that the notice is posted on the Town Hall bulletin board. Meeting notice forms emanate from the Town Clerk's office and will include the name of the Commission and the date, time, and place of the meeting.

## **V - MINUTES**

A written record of each Commission meeting is required by law and becomes part of the public record. Minutes must contain the date, time and place of the meeting, members present or absent, all formal votes of the Commission, a reasonable summary of discussion, and the revision dates of any plans or forms submitted by applicants. Minutes must be formally accepted by the commission. Minutes of all Commission meetings must be placed on file in the office of the Town Clerk where they will be available for public inspection upon request. Minutes for hearings under the Town Wetlands Protection By-Law shall include a copy of a checklist indicating that all procedural and substantive issues have been addressed.

## **VI - THE CHAIRMAN - POWERS AND DUTIES**

The Chairman shall take the Chair at the hour appointed for the Commission to meet and shall immediately call the members to order. In the absence of the Chairman, the Vice Chairman shall assume the role of the Chairman pro tem. The Secretary or Agent will designate a presiding Chair by seniority in the event both the Chairman and Vice Chairman are absent.

No Chairman shall serve more than one consecutive one-year term.

The Chairman shall preserve decorum and order, may speak to points of order in preference to other members, shall decide all questions of order, subject to an appeal to the Commission, regularly seconded and no other business shall be in order until the question on the appeal has been decided.

The Chairman shall recognize members, applicants, and citizens in an order which best serves the interests of the Commission. Those interests are:

- Promoting conservation,
- Administering the State Wetlands Protection Act, MGLc.131 s.40,
- Administering the Town Wetlands Protection By-Law,c.181,
- Protecting the water resources of the town,
- Preparing and carrying out an Open Space Plan,
- Making recommendations to the Town Council regarding the Scenic Roads Protection By-Law, c.171, and educating citizens concerning conservation issues.

The Chairman may at any time declare a recess for not more than ten minutes, and such action shall not be subject to appeal, nor shall any motions apply thereto.

## **VII - ELECTION OF OFFICERS**

A majority of members ratified to serve on the Commission shall be required to elect a Chairman and Vice Chairman on an annual basis.

## **VIII -VOTING**

All questions shall be stated and put by the Chairman. The results of viva voce and/or raised hand votes shall be declared by the Chairman. Where the result of a viva voce vote is in doubt, the Chairman may, and on demand of any member shall, call for a raised hand vote.

## **IX - VOTE REQUIREMENTS**

All action taken by the Commission requiring a vote will be by a simple majority (majority of members present and voting) except as otherwise provided by Massachusetts General Laws, Home Rule Charter, By-Law, or as set forth herein.

In the event of a tie vote in any proposal, the proposal shall be considered lost.

A motion to elect a Chairman or Vice Chairman shall require a vote.

A motion to conduct separate hearings under the State Wetlands Protection Act, M.G.L. c.131 s. 40, and the town Wetlands Protection By-Law, chapter 181, shall require a vote.

A motion to close a public hearing shall require a vote.

A motion to decide a Request for Determination shall require a vote.

A motion to issue special Orders of Conditions for a permit to perform work per the State Wetlands Protection Act shall require a vote.

A motion to require an applicant to pay the fee of a consultant per the Town Wetlands Protection By-Law shall require a vote.

A motion to determine whether an applicant's presentation under the Town Wetlands Protection By-Law has satisfactorily demonstrated that proposed activities, either individually or cumulatively, are not likely to have a significant adverse effect upon the functions and characteristics of a resource area shall require a vote.

A motion to determine whether an isolated wetland subject to flooding is capable of satisfying the definition of a vernal pool per the Town Wetlands Protection By-Law shall require a vote.

A motion to issue Orders of Conditions for a permit to perform work per the Town Wetlands Protection By-Law separate from those issued per the State Wetlands Protection Act, or to deny a permit to perform work per the Town Wetlands Protection By-Law, shall require a vote.

A motion to require an applicant to provide a performance guarantee per the Town Wetlands Protection By-Law shall require a vote.

A motion to initiate civil and criminal enforcement actions per the Town Wetlands Protection By-Law shall require a vote.

A motion to amend, modify or suspend these rules and regulations shall require a vote. Such a vote shall require a majority of the full membership of the Commission (i.e. 4 of 7, irrespective of whether all 7 slots are filled by Town Council ratification).

## **X - HEARINGS**

The format for hearings under the State Wetlands Protection Act and under the Town Wetlands Protection By-Law shall include Presentation by Applicant & Questions and discussion by Commission and Public.

## **XI - CONFLICTS OF INTEREST**

No member shall vote on any matter where the member's private or family interest will conflict with the public's interest as set out in the State Conflict of Interest Law, MGL c.268A.

## **XII - OPEN MEETING LAW**

All meetings of the Commission shall be conducted in accordance with the State Open Meeting Laws, MGL c.39 s.23, MGL c.30A, s.18-25B and 940 CMR 29.

## **XIII - DEFINITION OF KEY TERMS IN TOWN WETLANDS PROTECTION BY-LAW.**

**Significant Adverse Effect** - Any activity, which is determined by a vote of the commission to be likely to result in a significant adverse effect of the functions and characteristics of a resource area.

**Alter** - Test pits for the purpose of preparing an application to the Commission are excluded from the definition of "Alter" set forth in the Town Wetlands Protection By-Law. Normal landscaping maintenance activities are excluded from the definition of "alter" set forth in the Town Wetlands Protection By-Law. Cutting of any woody plant greater than 1" at breast height, cutting any herbaceous plant greater than 1' height at maturity, and spreading pesticide, herbicide, or lawn fertilizer closer than 50' to a wetland shall not be considered normal landscaping maintenance. Changing the elevation of any area greater than 10 square feet by more than 1 foot shall be considered to satisfy the definition of "Alter" set forth in the Town Wetlands Protection By-Law.

**Disturbed Area** – An area may be determined by the Commission to be a Disturbed Area where natural vegetation has been removed or otherwise legally modified and the soil has been removed, altered or legally modified such as in a mining or gravel removal operation.

Modifications made to an area prior to July 18, 1972 (Enactment of Wetlands Protection Act) or after July 18, 1972 with a permit from the Conservation Commission are considered legally modified. Areas that have not been legally modified shall not be considered Disturbed Area for the purposes of the Town of Franklin Wetlands Bylaw and Wetland Bylaw Regulations.

Modified areas can include, but are not limited to areas such as parking lots, established lawn areas, non-native landscaped areas, patios and areas with active agricultural uses. Modified areas do not include areas where brush has been removed or limbs trimmed without any other modifications to the soil or the site.

The burden of proof is on the applicant to show, by a preponderance of evidence that the area meets the Commission's definition of Disturbed Area.

For the purposes of the Town of Franklin Wetlands Bylaw and Wetland Bylaw Regulations a Disturbed Area considered legally modified will cease to be legally modified Disturbed Area after three years of non-use or abandonment and will be considered non-disturbed area.

**Floodplain** - Any floodplain which satisfies the definitions of floodplain as set out in Mass DEP regulations 310 CMR 10.00. The resource area of a floodplain is limited to the area of the floodplain and does not include land within 100' of the floodplain.

**Information and plans** - Plans shall be scaled 40 feet/inch, or larger (e.g. 20'/in), indicating the location and extent of a resource area. Plans shall have initial and revision dates, and be plainly labeled to indicate the location and nature of proposed activities. Plans for new construction (i.e. not additions) shall include topographic contours of at least 2' intervals. This definition does not preclude the Commission from requiring other information such as drainage calculations, replication schedules, etc.

**Vernal Pool** - Any isolated wetland subject to flooding which is determined by a vote of the commission to be capable of satisfying the definition of a vernal pool as set forth in the Mass DEP Regulations 310, CMR 10.00.

## **XIV – PERFORMANCE STANDARDS**

### **A. MINOR BUFFER ZONE ACTIVITY**

**The Conservation Commission (Commission) shall presume that activity proposed to occur:**

1. Exclusively within a previously disturbed buffer zone; and
2. On a lot with a previously recorded Certificate of Compliance or was disturbed prior to the enactment of the Wetlands Protection Act and the Franklin Wetlands Protection Bylaw; and
3. The alteration is less than 1,000 Square Feet or 5% of the buffer zone on the lot, whichever is less; and
4. At a minimum, a 25 foot wide area is preserved between the activity and the resource area boundary; and
5. Stormwater is managed in accordance with current DEP standards; and
6. The buffer zone does not contain estimated wildlife habitat which is indicated on the most recent Estimated Habitat Map of State listed Rare Wetlands Wildlife; and
7. Erosion and sedimentation controls are provided at the limit of work to protect the resource areas;

**constitute minor buffer zone activities and is eligible for a Negative Determination of applicability with conditions.**

The Commission may determine that this presumption should not apply based on unusual circumstances such as steep slopes, the potential for negative impacts over time or that the proposed project would require oversight through continuing conditions. The Commission may waive any or all of the above requirements if they find that there is an emergency situation in which the filing of a Request for Determination or a Notice of Intent is not warranted. In order for the site to be declared an emergency, a vote of the Commission shall be required.

In order for a property owner to apply for an MBZA they must meet all of the above requirements plus provide a plan of the activity, a detailed project narrative and photographs of the project area. The distance between the proposed project and the wetlands must be noted on the plan and may require delineation if requested by the Commission, or their Agent. Additional items detailed on the MBZA form or requested by the Commission, or their Agent, may be required. The applicant is required to provide by a preponderance of the evidence that their proposed MBZA will not result in a negative impact to the wetlands.

The minor nature of these projects will not require the Commission to hold an advertised public hearing on the matter. The Agent shall review the application and may perform a site visit to confirm information provided in the plan, project narrative and photographs. The Agent may request additional information if they deem necessary. Upon review of the MBZA application, the Commission may issue a Negative Determination of Applicability (approval), with or without conditions, a Positive Determination of Applicability (denial) or require the applicant to provide further information. If a Positive Determination of Applicability is issued by the Commission, the applicant shall be required to file a Notice of Intent if they still wish to pursue the activity.

The work must conform to the plans submitted in the Request for Determination of Applicability or any conditions or modifications imposed by the Commission in the Determination. If the applicant fails to perform the work according to the approved plan or in conformance with the conditions of the Determination, the permit will be revoked and a Positive Determination of Applicability will be issued. Failure to conform to the plans and specifications shall constitute grounds for requiring a Notice of Intent and/or an Enforcement Action, including fines, by the Commission.

Upon completion of the project the applicant shall notify the Agent. The Agent shall inspect the work for and inform the Commission of the results.

## **XV - RULES FOR HIRING OUTSIDE CONSULTANTS UNDER GL CH. 44 § 53G**

1. As provided by GL Ch. 44 § 53G, the Franklin Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of the Wetlands Protection Act (GL Ch. 131 § 40), the Franklin non-zoning wetlands bylaw, Conservation Commission Act (GL Ch. 40 § 8C), or any other state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time.
2. Funds received by the Conservation Commission pursuant to these rules shall be deposited with the town treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriation as provided in GL Ch. 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.
3. 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 Agent(s).
4. The Conservation 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 or request is withdrawn within five days of the date notice is given. 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.
  - a. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to determine that the application is administratively incomplete (except in the case of an appeal). The Commission shall state such in a letter to the applicant, copied to the DEP. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee. OR
  - b. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to deny the permit application.
5. The applicant may appeal the selection of the outside consultant to the Town 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 Town Council and a copy received by the Conservation Commission, so as to be received within ten (10) days of the date consultant fees were requested by the Conservation Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

## **XVI – BUFFER ZONE PROTECTIONS**

### **Preamble:**

The Town of Franklin considers 100 feet from a defined/delineated resource area as the buffer zone and consequently an additional protected resource. Floodplains, lands within 100 feet of other resource areas and within 200 feet of rivers and perennial streams, and the resources areas, are presumed significant to the protection of functions and characteristics of these areas because activities undertaken in close proximity have a high likelihood of adverse impact upon them, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality and loss of wildlife habitat. Any person in Franklin that proposes a project that is within the 100 foot buffer zone resource area is required to submit a Notice of Intent or other applicable application such as a Request for Determination of Applicability to the Franklin Conservation Commission. If at all possible, an applicant may site all construction activities including grading beyond the 100 buffer zone resource area and not have to go through a public hearing and a possible permitting process.

Currently as established by precedent, the Franklin Conservation Commission (Commission) has instituted a 25 foot no disturb buffer zone from the defined/delineated resource area. These proposed regulations will codify this requirement. Extensive work in this zone, particularly clearing of natural vegetation and soil disturbance is likely to alter the physical characteristics of resource areas by changing their soil composition, topography, hydrology, temperature, and the amount of light received. Soil and water chemistry within resource areas may be adversely affected by work in the buffer zone. As a result of the buffer zone alterations, biological conditions in adjacent resource areas may include changes in plant community composition and structure, invertebrate and vertebrate biomass and species composition, and nutrient cycling. The affects from work in the buffer zone will most likely result in the disruption and erosion of soil, loss of shading, reduction in nutrient inputs, and changes in litter and soil composition that filters runoff, serving to attenuate pollutants and sustain wildlife habitat within resource areas. For these stated reasons, the Commission is codifying the requirement not to disturb the 0-25 foot buffer zone from the defined/delineated resource area.

These regulations will also characterize and provide regulatory guidance as to the type of projects that would most likely be acceptable to the Commission in the 25-50 foot buffer zone from the defined/delineated resource area as well as the 50-100 foot buffer zone from the defined/delineated resource area. In order to be consistent with the amendments to the

Massachusetts Wetland Protection Act found in 310 CMR 10.00 relative to a simplified review process, as well as protect the 50 foot buffer zone resource area where the functions and characteristics of the resource area are most critical, the Commission strongly encourages work in the 50-100 foot buffer zone resource area, if work in the buffer zone is necessary at all.

The Commission has in place regulatory criteria and a process for reviewing minor buffer zone projects that are less than 1,000 square feet of disturbance and avoid the 0-25 foot buffer zone resource area, if not previously disturbed. The intent of this regulatory amendment is to dovetail the minor buffer zone historical reviews with a new evaluation process that looks at these three buffer zones: 1) 0-25 foot buffer zone resource area; 2) 25-50 foot buffer zone resource area; and 3) 50-100 foot outer buffer zone resource area.

#### **A. 0 TO 25 FOOT BUFFER ZONE RESOURCE AREA**

1. An applicant shall demonstrate that no work/disturbance including grading activities is proposed within the 0-25 foot buffer zone resource area. Any applicant proposing a project within the 0-25 foot buffer zone resource area will have an irrefutable presumption of significant adverse impact to the functions and characteristics of the resource area, unless otherwise determined by the Commission under the minor buffer zone activity criteria set forth in Section XIV of these regulations, or as approved by the Commission by the variance procedures set forth in Section XVII of these regulations.

#### **B. 25 TO 50 FOOT BUFFER ZONE RESOURCE AREA**

1. Any applicant proposing a project within the 25-50 foot buffer zone resource area shall indicate that there are no structures including but not limited to, concrete, stone, or other impervious foundations and/or slabs for construction purposes that for all intents and purposes would significantly increase runoff. Alteration in the 25-50 foot buffer zone resource area is limited to grading, tree clearing, Stormwater management system components, lawns, gardens, and other low impact uses as determined by the Commission or as otherwise approved by the Commission by the variance procedures set forth in Section XVII of these regulations. Footings for building structures, such as a deck, as opposed to slabs or foundations, shall be used when technically feasible. The Commission may condition the applicant to use Best Management Practices (BMP's) for stormwater management consistent with the most recent version of the Town of Franklin Best Development Practice Guidebook. Stormwater management systems or individual components including drainage piping, and construction of detention/retention ponds shall be allowed by the Commission based on an alternative analysis and review of design and space limitations as indicated in the final approved plans.
2. Areas Disturbed Prior to June 29, 2006: When there is a pre-existing disturbance (disturbed as part of a previously recorded Certificate of Compliance or was disturbed prior to the enactment of the Wetlands Protection Act and the Franklin Wetlands Protection Bylaw), and the work proposed is entirely within this previously disturbed area, an applicant may propose impervious surfaces or other uses such as pools, buildings, porches, and sheds within the 25-50 foot buffer zone resource area. The Commission shall evaluate the

proposed uses based on the demonstration by the applicant that the functions and characteristics of the resource area will not be adversely impacted.

### **C. 50 TO 100 FOOT BUFFER ZONE RESOURCE AREA**

Alterations including structures are allowed in the 50-100 foot buffer zone resource area. The Commission may require additional mitigation offsets when the slope within the buffer zone is steeper than 10%. Additionally, mitigation offsets may be required by the Commission when the applicant proposes that more than 30% of the 50 to 100 foot buffer zone resource area is proposed to be impervious surface. Mitigation offsets may include but is not limited to plantings, conversion of impervious to pervious surfaces, and other practices consistent with the most recent version of the Town of Franklin Best Development Practice Guidebook.

## **XVII – VARIANCE PROCEDURE**

1. The Commission may grant a variance from these regulations upon a showing by the applicant that any proposed work, or its natural and consequential impacts and effects, will not have any adverse affect upon any of the interests protected in Chapter 181 of the Town of Franklin Wetlands Protection Bylaw. It shall be the responsibility of the applicant to provide the Commission in writing with any and all information, which the Commission may request, in order to enable the Commission to ascertain such adverse effects. The failure of the applicant to furnish any information, which has been requested, shall result in the denial of a request for a variance pursuant to the applicable subsection of this regulation.
2. The Commission may grant a variance from these regulations when it is necessary to avoid so restricting the use of the property as to constitute an unconstitutional taking without compensation. If the Commission receives an application for a variance pursuant to an applicable subsection of the regulation, the Commission may request an opinion from the Town Counsel as to whether the application of these regulations to a particular project will result in such a taking without compensation.
3. Variance process: To request a variance, the applicant shall submit a variance request in writing at the time of the application for the Notice of Intent or Request for Determination of Applicability. The request shall explain why the variance is needed and shall describe in detail how the project can be completed without significant adverse impacts on the functions and characteristics of the resource area. Such detail must include, but is not limited to, an alternatives analysis.

## **XVIII – SEPTIC SYSTEM EMERGENCY REPAIR**

In the unanticipated event that a septic system is located within the 25-50 foot buffer zone resource area or the 50-100 foot buffer zone resource area, emergency repair of the septic system shall be allowed if the applicant demonstrates to the Commission by a preponderance of evidence, that an emergency condition exists or as applicable to the Emergency provisions set forth in the Town of Franklin Wetland Protection Bylaw, Chapter 181 Section 14 D.

## **IXX – INSTRUCTIONS FOR FILING A NOTICE OF INTENT IN FRANKLIN**

Recent changes in the Massachusetts Wetland Protection Act Regulations (310 CMR 10.00) require the use of revised forms for the above permit application. In addition, under the Franklin Wetlands Protection By-law, Franklin Town Code Chapter 181 the following procedures and documentation are also required upon submission of permit applications.

### **PRE-FILING MEETING AND DISTRIBUTION**

**Applicants are STRONGLY ENCOURAGED to contact the Conservation Agent prior to submitting a NOI. Failure to do so may compromise the applicant's interests and result in an unnecessary denial of a permit, extra cost and time.**

A NOI is composed of a cover letter (Section 1) and the 16 other sections described herein. A complete NOI filing is composed of a NOI and a Notice of Distribution. The applicant shall provide the Town with an original, and 13 copies, of the NOI, each separately bound. The applicant shall deliver one of the 13 copies of the NOI to each of the four (4) departments listed in Exhibit 2. The department representative accepting the NOI shall indicate receipt by signing and dating the original copy of a Notice of Distribution (exhibit2 - Franklin Form 1). The applicant shall deliver the completed, original Notice of Distribution, the original NOI and the remaining 9 copies of the NOI to the Conservation Department for processing. A public hearing shall be scheduled by the Conservation Commission within 21 days of receipt of the NOI and completed Notice of Distribution.

### **SECTION 1 – COVER LETTER**

The Cover Letter shall contain the following information: (reference Exhibit 1 example):

- Application Type
- Applicant's Name
- Representative's Name
- Date Prepared

### **SECTION 2 - NOTICE OF INTENT**

- **Resource Area Impact Summary (Franklin Form 2, Exhibit 3)** – A narrative description of the proposed impacts to each of the resource areas on the property. Impact may be measured and reported in square feet (SF).
- **Application Form (BRP WPA Form 3, revised 2-08)**
- **State Filing Fee Calculation Worksheet**
- **Local Filing Fee Worksheet (Franklin Form 3, Exhibit 4)** – A separate check made payable to the Town of Franklin.
- **Advertising Fee - \$100.00** – A separate check made payable to the Town of Franklin.

- **Copies of Checks to DEP and Town**
  - **Stormwater Management Forms (if Applicable)**
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### **SECTION 3 - ABUTTER NOTIFICATION**

***THIS SECTION IS NOT REQUIRED TO BE PART OF THE PACKETS DELIVERED TO THE TOWN ADMINISTRATOR, THE BOARD OF HEALTH AGENT, THE TOWN ENGINEER IN CARE OF THE DPW DIRECTOR AND THE BUILDING COMMISSIONER; HOWEVER, THESE DOCUMENTS MUST BE INCLUDED IN THE TEN (10) PACKETS THAT ARE DELIVERED TO THE CONSERVATION DEPARTMENT.***

Section 3 of the NOI shall consist of the above documents bound in the following order:

1. Notification to Abutters (Form 4)
2. Affidavit of Service (Form 5)
3. Certified Abutters List from the Assessor's Office (do not recopy or rewrite the list)

The process of notifying the abutters to any proposed project requires that the applicant take the following steps (Exhibit 5):

- **Certified Abutters List**

Obtain a Certified Abutters List from the Assessors Office. Applicants are required to notify all abutting property owners within 300 feet of their property lines. The original certified copy must be submitted with the Notice of Intent Application.

- **Notification to Abutters - Franklin Form 4**

Complete the Notification to Abutters - Franklin Form 4. The Applicant may copy and fill out the Form modify it as depicted on the example attached as Exhibit 5. A copy of this notification must be sent either by Certified Mail, Return Receipt Requested (white receipts and green cards) or by hand delivery to each landowner on the Certified Abutters List.

- **Affidavit of Service- Franklin Form 5**

The Affidavit of Service, attached as Exhibit 6, is a required document under the Wetlands Protection Act. The Applicant may copy and fill out the Form or modify it as depicted on the example attached. The Affidavit evidences that the Applicant, in accordance with the law, has notified the abutters to the proposed project site.

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## **SECTION 4 - DEP FIELD DATA FORMS**

The Field Data Forms appear as Appendix G of the most recent revision of the Wetlands Delineation Manual published by DEP. Completed forms as well as a written report prepared by the wetlands delineator must be submitted with the Notice of Intent application.

A copy of the recorded Order of Resource Area Delineation (ORAD) may be substituted for the DEP Field Data Sheets if a determination has been issued by the Commission within the last three (3) years.

## **SECTION 5 - VERNAL POOL STATEMENT**

An affirmation by the applicant regarding the presence, or absence, on the subject parcel, or abutter parcels, of any registered or potential vernal pools that is based on the most recent version of the DEP/Mass GIS Potential Vernal Pool Sites. This information is available at the MassGIS website ([www.massgis.ma.us](http://www.massgis.ma.us)) or in the Franklin Conservation Department, located at 355 East Central Street, Franklin, MA.

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**PLEASE NOTE THAT THE NEXT SIX (6) SECTIONS (SECTION 6 THROUGH 12) SHALL BE INCORPORATED INTO ONE (1) DOCUMENT.**

## **SECTION 6 – PROJECT NARRATIVE**

The Project Narrative is a written statement of the existing site conditions and of all that the project entails. This includes, but is not limited to, a description of existing conditions, who is performing the work (contractor, pool company, tree service etc.), a detailed description of all of the activity within Conservation jurisdiction, how the activity will or will not affect the Functions and Characteristics of the resource area (see section 7), what the project site will look like after completion, when the proposed activity will be done and what measures will be used to mitigate any impacts to the Functions and Characteristics of the resource area. As noted above, the Project Narrative shall be incorporated into the same document with the Functions and Characteristics Statement, the Erosion and Sedimentation Plan and, if required, the Mitigation Plan, the Alternatives Analysis and the Replication Plan and Protocol.

## **SECTION 7 - FUNCTIONS & CHARACTERISTICS STATEMENT**

The purpose of the Franklin Wetland Protection bylaw is to regulate and control activities deemed to have a significant or cumulative effect on the functions and characteristics of floodplains and wetlands. In order to make this determination the Commission requires that the Applicant prepare a statement that describes whether the project will have an adverse effect on these functions and characteristics. It is the applicant's burden of proof to demonstrate that their proposed project/activity will not result in any significant individual or cumulative adverse effect to the functions and characteristics of resource areas, and that the functions and characteristics statement is the applicant's opportunity to do so. If the proposed project will have an effect on

one or more functions or characteristics then a mitigation plan must be prepared and submitted as Section 8 of the Notice of Intent. The functions and characteristics to address include but are not limited to the following:

1. **Public Water Supplies** – Distance from proposed project to nearest public well.
2. **Private Water Supplies** – Distance to nearest private wells.
3. **Groundwater** – Depth to groundwater as well as impacts associated with construction (i.e. digging or blasting) and operations (water use, use of toxic or hazardous materials and stormwater management).
4. **Flood Control** – Work within the 100-year flood plain must address compensatory storage.
5. **Erosion and Sedimentation** – This item must be addressed for both the construction and post construction conditions at the property.
6. **Storm Damage Prevention** – Address whether or not the project will have an adverse effect on the way that the wetland or flood plain will be able to minimize water and wind related impacts during large-scale storm events.
7. **Water Quality** - This item must be addressed for both the construction and post construction conditions at the property. This item will address the quality of the surface waters associated with the resource area being impacted by the project.
8. **Water Pollution Control** - This item must be addressed for both the construction and post construction conditions at the property.
9. **Fisheries** – Reserved for work taking place adjacent to ponds and perennial streams. The response must address both the construction and post construction conditions at the property.
10. **Shellfish** – Not Applicable in Franklin
11. **Wildlife Habitat** - This item must be addressed for both the construction and post construction conditions at the property.
12. **Rare Species Habitat** (including rare plant species) - This item must be addressed for both the construction and post construction conditions at the property.
13. **Agriculture** – This item must be addressed for both the construction and post construction conditions at the property.
14. **Aquaculture** – To date there are no aquaculture operations in Franklin
15. **Recreation** – This item must be addressed for both the construction and post construction conditions at the property and include both passive and active recreational uses.

## **SECTION 8 - MITIGATION PLAN**

This narrative shall be included in the NOI and will describe the application of the “avoid, minimize and mitigate calculus” during project planning. That is, Applicants must demonstrate that efforts have been made to avoid wetland impacts wherever possible, minimize the impacts when unavoidable, and mitigate these impacts by employing replication or restoration components in the proposed project plans.

When undisturbed areas within the Buffer Zone Resource Area are proposed for alteration, a separate narrative must be prepared describing the steps taken to mitigate for the impacts. This

may include the use of plantings from the Franklin Best Development Practices Guidebook (available from the Conservation Department or from the website ([www.franklin.ma.us](http://www.franklin.ma.us))) for wildlife habitat enhancement or other physical components that will compensate for the loss of resource area functions and characteristics.

## **SECTION 9 - EROSION & SEDIMENTATION CONTROL PLAN**

This is a plan that describes the measures that will be taken to properly install and maintain the erosion control devices used during the project. The plan must also include the names and phone numbers of all individuals that will be responsible for erosion control as well as the requirement that the erosion control be inspected weekly and after significant rain events. The individual responsible for inspection and maintenance shall keep a log of the inspections and maintenance and be prepared to show it to Conservation Staff and Commissioners upon request. ***The text from the Erosion & Sedimentation Control plan will also appear in the plan set, preferably on the sheet that depicts the erosion control location and detail.***

Please note that it is a requirement in Franklin that the engineering detail used on the project plan must depict hay bales installed with the baling string not in contact with the ground and double wooden staked. There will also be a Special Condition in the Orders, if issued, requiring that there be additional erosion control devices stored under cover on site in the event of an emergency. The Commission prefers the use of wattles whenever possible or practicable.

## **SECTION 10 - ALTERNATIVES ANALYSIS**

The following project types shall require the submission of an Alternatives Analysis narrative:

1. Riverfront Resource Area
2. Alteration of Riparian Zone
3. Septic System Components within the 100-Foot Buffer Zone Resource Area
4. Wetland filling up to 5,000 square feet
5. Structures proposed within the fifty foot (50') Buffer Zone Resource Area
6. Variance Requests

The Alternatives Analysis shall comply with the requirements as presented in 310 CMR 10.58 (4).

## **SECTION 11 - REPLICATION PLAN & PROTOCOL**

When wetland alteration is necessary, the Commission shall require that the Applicant replicate the altered wetland at a minimum 2:1 ratio (the replication area must be at least twice the square footage of the natural wetland area impacted). The plan submitted shall comply with the requirements as presented in the most recent revision of the DEP Wetland Replication Manual. ***The replication plan, protocol and schedule shall also appear in the approved plan set along with cross sections of altered and proposed replicated areas, ground water elevation data and planting lists and details.***

Franklin Form 6 – Wetland Functions & Values shall be used in the evaluation of the existing wetland with respect to functions and values for the wetland and wildlife habitat. The Form shall be completed and included in this section of the NOI if filling is proposed. It is the expectation of the Commission that Applicants will not only propose the replication of the wetland type impacted by the project, but also the functions & values of that resource area. This requirement does not apply to Buffer Zone Resource Areas.

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## **SECTION 12 - CONSTRUCTION SEQUENCE AND SCHEDULE**

A detailed sequence of activities proposed shall be depicted in the approved plan set and in the NOI application.

## **SECTION 13 - DRAINAGE CALCULATIONS**

If drainage calculations are required they must be submitted as a separate document from the NOI Application. Two (2) copies must be submitted to the Conservation Department and one to the Town Engineer in care of the Director of the Department of Public Works (DPW). Other Departments listed on the Notice of Distribution Form need not receive drainage calculations as part of their submittal.

## **SECTION 14 – MAPS**

A copy of the most recent revisions of the following maps must be submitted with the project locus depicted:

1. USGS Topographic Map
2. Natural Heritage Priority Habitats and Estimated Habitats Maps
3. FEMA Flood Plain Map

## **SECTION 15 - PLANS**

See General Instructions for completing a Notice of Intent issued by DEP. In addition, the Franklin Conservation Department requires the following:

1. All plans shall be drawn at a scale equal to or larger than 40'=1" (e.g. 20'=1")
2. Index of sheets on cover page if submitting more than one sheet
3. The North arrow must have a reference
4. Existing and Proposed topography
5. Existing vegetation, including turf lawn areas, cultivated herbaceous and woody plant areas, un-cultivated field, scrub and woodland areas and woody plants larger than 1" dbh proposed to be removed.
6. Proposed vegetation, including any changes to the existing vegetation and any mitigation
7. Existing structures, improvements and limits of disturbance

8. Each Resource Area identified and labeled (including 25', 50' and 100' Buffer Zones and 100' and 200' Riparian Zones)
9. Locations of erosion controls
10. Cross sections of impacted Bordering Vegetated Wetlands including ground water elevation information
11. Cross sections of proposed replication area(s)
12. Details of all permanent or temporary, structures or items either built or placed on the site with the exception of buildings, additions, porches, decks, sheds or swimming pools.
13. Planting list(s) with species recommended in the most recent revision of the Franklin Best Development Practices Guidebook
14. Construction Sequence and Schedule

## **SECTION 16 – PORTABLE DOCUMENT FORMAT (PDF) FILE**

All NOI filings require the submission of a PDF file containing both the NOI application as well as the plan. The file shall be submitted with the rest of the application, or sent via e-mail attachment to the Conservation Department on the same day as the NOI application is submitted.

## **SECTION 17 – ADDITIONAL INFORMATION**

Any other supplementary information that the Applicant determines to be relevant to the Commission reaching a decision on the proposed project may be included in this section of the application package.

If you need further assistance, please contact the Conservation Department at (508) 520-4929 or via our web site [www.franklin.ma.us](http://www.franklin.ma.us).

# **RULES & REGULATIONS - TOWN OF FRANKLIN CONSERVATION COMMISSION**

On January 27, 2011, the following members of the Franklin Conservation Commission voted to accept these Rules and Regulations as they apply to the Massachusetts Wetlands Protection Act and the Wetlands Protection Bylaw, Franklin Code at Chapter 181:

*Jeffrey Senterman Chair*  
*Christopher Botchis*  
*Ray Willis*  
*Jeff Livingstone*

*Andrew Tolland, Vice Chair*  
*Monique Allen*  
*Jon Fournier*  
*Regan Harrold. Associate Member*

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## **I - PARLIAMENTARY PROCEDURE**

The Commission shall be governed by Robert's Rules of Order Revised in all questions of parliamentary procedure not provided for by special rules or orders herein.

## **II - COMMISSION MEETINGS**

Regular meetings shall be held in the Town Council Chambers (in the Municipal building) on the first and third Thursday of each month, or as otherwise voted by the commission, convening at 7:15PM.

## **III - QUORUM**

A quorum shall consist of a majority of its members (4 of 7, irrespective of whether all 7 slots are filled by Town Council ratification). If at any time a meeting is called to order, or if during a meeting, less than a quorum is present, the Chair shall declare a recess of not more than 10 minutes, after which time, if a quorum is not present, the meeting shall be adjourned. Any member may call for a roll call on the question of the presence of a quorum. An Associate Member can not be considered when determining a quorum.

## **IV - PUBLIC POSTINGS**

By law, public notices of all Commission meetings, except in emergencies, must be posted with the Town Clerk a minimum of 48 hours before any meeting. The Town Clerk will ensure that the notice is posted on the Town Hall bulletin board. Meeting notice forms emanate from the Town Clerk's office and will include the name of the Commission and the date, time, and place of the meeting.

## **V - MINUTES**

A written record of each Commission meeting is required by law and becomes part of the public record. Minutes must contain the date, time and place of the meeting, members present or absent, all formal votes of the Commission, a reasonable summary of discussion, and the revision dates of any plans or forms submitted by applicants. Minutes must be formally accepted by the commission. Minutes of all Commission meetings must be placed on file in the office of the Town Clerk where they will be available for public inspection upon request. Minutes for hearings under the Town Wetlands Protection By-Law shall include a copy of a checklist indicating that all procedural and substantive issues have been addressed.

## **VI - THE CHAIRMAN - POWERS AND DUTIES**

The Chairman shall take the Chair at the hour appointed for the Commission to meet and shall immediately call the members to order. In the absence of the Chairman, the Vice Chairman shall assume the role of the Chairman pro tem. The Secretary or Agent will designate a presiding Chair by seniority in the event both the Chairman and Vice Chairman are absent.

No Chairman shall serve more than one consecutive one-year term.

The Chairman shall preserve decorum and order, may speak to points of order in preference to other members, shall decide all questions of order, subject to an appeal to the Commission, regularly seconded and no other business shall be in order until the question on the appeal has been decided.

The Chairman shall recognize members, applicants, and citizens in an order which best serves the interests of the Commission. Those interests are:

- Promoting conservation,
- Administering the State Wetlands Protection Act, MGLc.131 s.40,
- Administering the Town Wetlands Protection By-Law,c.181,
- Protecting the water resources of the town,
- Preparing and carrying out an Open Space Plan,
- Making recommendations to the Town Council regarding the Scenic Roads Protection By-Law, c.171, and educating citizens concerning conservation issues.

The Chairman may at any time declare a recess for not more than ten minutes, and such action shall not be subject to appeal, nor shall any motions apply thereto.

## **VII - ELECTION OF OFFICERS**

A majority of members ratified to serve on the Commission shall be required to elect a Chairman and Vice Chairman on an annual basis.

## **VIII -VOTING**

All questions shall be stated and put by the Chairman. The results of viva voce and/or raised hand votes shall be declared by the Chairman. Where the result of a viva voce vote is in doubt, the Chairman may, and on demand of any member shall, call for a raised hand vote.

## **IX - VOTE REQUIREMENTS**

All action taken by the Commission requiring a vote will be by a simple majority (majority of members present and voting) except as otherwise provided by Massachusetts General Laws, Home Rule Charter, By-Law, or as set forth herein.

In the event of a tie vote in any proposal, the proposal shall be considered lost.

A motion to elect a Chairman or Vice Chairman shall require a vote.

A motion to conduct separate hearings under the State Wetlands Protection Act, M.G.L. c.131 s. 40, and the town Wetlands Protection By-Law, chapter 181, shall require a vote.

A motion to close a public hearing shall require a vote.

A motion to decide a Request for Determination shall require a vote.

A motion to issue special Orders of Conditions for a permit to perform work per the State Wetlands Protection Act shall require a vote.

A motion to require an applicant to pay the fee of a consultant per the Town Wetlands Protection By-Law shall require a vote.

A motion to determine whether an applicant's presentation under the Town Wetlands Protection By-Law has satisfactorily demonstrated that proposed activities, either individually or cumulatively, are not likely to have a significant adverse effect upon the functions and characteristics of a resource area shall require a vote.

A motion to determine whether an isolated wetland subject to flooding is capable of satisfying the definition of a vernal pool per the Town Wetlands Protection By-Law shall require a vote.

A motion to issue Orders of Conditions for a permit to perform work per the Town Wetlands Protection By-Law separate from those issued per the State Wetlands Protection Act, or to deny a permit to perform work per the Town Wetlands Protection By-Law, shall require a vote.

A motion to require an applicant to provide a performance guarantee per the Town Wetlands Protection By-Law shall require a vote.

A motion to initiate civil and criminal enforcement actions per the Town Wetlands Protection By-Law shall require a vote.

A motion to amend, modify or suspend these rules and regulations shall require a vote. Such a vote shall require a majority of the full membership of the Commission (i.e. 4 of 7, irrespective of whether all 7 slots are filled by Town Council ratification).

## **X - HEARINGS**

The format for hearings under the State Wetlands Protection Act and under the Town Wetlands Protection By-Law shall include Presentation by Applicant & Questions and discussion by Commission and Public.

## **XI - CONFLICTS OF INTEREST**

No member shall vote on any matter where the member's private or family interest will conflict with the public's interest as set out in the State Conflict of Interest Law, MGL c.268A.

## **XII - OPEN MEETING LAW**

All meetings of the Commission shall be conducted in accordance with the State Open Meeting Laws, MGL c.39 s.23, MGL c.30A, s.18-25B and 940 CMR 29.

## **XIII - DEFINITION OF KEY TERMS IN TOWN WETLANDS PROTECTION BY-LAW.**

**Significant Adverse Effect** - Any activity, which is determined by a vote of the commission to be likely to result in a significant adverse effect of the functions and characteristics of a resource area.

**Alter** - Test pits for the purpose of preparing an application to the Commission are excluded from the definition of "Alter" set forth in the Town Wetlands Protection By-Law. Normal landscaping maintenance activities are excluded from the definition of "alter" set forth in the Town Wetlands Protection By-Law. Cutting of any woody plant greater than 1" at breast height, cutting any herbaceous plant greater than 1' height at maturity, and spreading pesticide, herbicide, or lawn fertilizer closer than 50' to a wetland shall not be considered normal landscaping maintenance. Changing the elevation of any area greater than 10 square feet by more than 1 foot shall be considered to satisfy the definition of "Alter" set forth in the Town Wetlands Protection By-Law.

**Disturbed Area** – An area may be determined by the Commission to be a Disturbed Area where natural vegetation has been removed or otherwise legally modified and the soil has been removed, altered or legally modified such as in a mining or gravel removal operation.

Modifications made to an area prior to July 18, 1972 (Enactment of Wetlands Protection Act) or after July 18, 1972 with a permit from the Conservation Commission are considered legally modified. Areas that have not been legally modified shall not be considered Disturbed Area for the purposes of the Town of Franklin Wetlands Bylaw and Wetland Bylaw Regulations.

Modified areas can include, but are not limited to areas such as parking lots, established lawn areas, non-native landscaped areas, patios and areas with active agricultural uses. Modified areas do not include areas where brush has been removed or limbs trimmed without any other modifications to the soil or the site.

The burden of proof is on the applicant to show, by a preponderance of evidence that the area meets the Commission's definition of Disturbed Area.

For the purposes of the Town of Franklin Wetlands Bylaw and Wetland Bylaw Regulations a Disturbed Area considered legally modified will cease to be legally modified Disturbed Area after three years of non-use or abandonment and will be considered non-disturbed area.

**Floodplain** - Any floodplain which satisfies the definitions of floodplain as set out in Mass DEP regulations 310 CMR 10.00. The resource area of a floodplain is limited to the area of the floodplain and does not include land within 100' of the floodplain.

**Information and plans** - Plans shall be scaled 40 feet/inch, or larger (e.g. 20'/in), indicating the location and extent of a resource area. Plans shall have initial and revision dates, and be plainly labeled to indicate the location and nature of proposed activities. Plans for new construction (i.e. not additions) shall include topographic contours of at least 2' intervals. This definition does not preclude the Commission from requiring other information such as drainage calculations, replication schedules, etc.

**Vernal Pool** - Any isolated wetland subject to flooding which is determined by a vote of the commission to be capable of satisfying the definition of a vernal pool as set forth in the Mass DEP Regulations 310, CMR 10.00.

## **XIV – PERFORMANCE STANDARDS**

### **A. MINOR BUFFER ZONE ACTIVITY**

**The Conservation Commission (Commission) shall presume that activity proposed to occur:**

1. Exclusively within a previously disturbed buffer zone; and
2. On a lot with a previously recorded Certificate of Compliance or was disturbed prior to the enactment of the Wetlands Protection Act and the Franklin Wetlands Protection Bylaw; and
3. The alteration is less than 1,000 Square Feet or 5% of the buffer zone on the lot, whichever is less; and
4. At a minimum, a 25 foot wide area is preserved between the activity and the resource area boundary; and
5. Stormwater is managed in accordance with current DEP standards; and
6. The buffer zone does not contain estimated wildlife habitat which is indicated on the most recent Estimated Habitat Map of State listed Rare Wetlands Wildlife; and
7. Erosion and sedimentation controls are provided at the limit of work to protect the resource areas;

**constitute minor buffer zone activities and is eligible for a Negative Determination of applicability with conditions.**

The Commission may determine that this presumption should not apply based on unusual circumstances such as steep slopes, the potential for negative impacts over time or that the proposed project would require oversight through continuing conditions. The Commission may waive any or all of the above requirements if they find that there is an emergency situation in which the filing of a Request for Determination or a Notice of Intent is not warranted. In order for the site to be declared an emergency, a vote of the Commission shall be required.

In order for a property owner to apply for an MBZA they must meet all of the above requirements plus provide a plan of the activity, a detailed project narrative and photographs of the project area. The distance between the proposed project and the wetlands must be noted on the plan and may require delineation if requested by the Commission, or their Agent. Additional items detailed on the MBZA form or requested by the Commission, or their Agent, may be required. The applicant is required to provide by a preponderance of the evidence that their proposed MBZA will not result in a negative impact to the wetlands.

The minor nature of these projects will not require the Commission to hold an advertised public hearing on the matter. The Agent shall review the application and may perform a site visit to confirm information provided in the plan, project narrative and photographs. The Agent may request additional information if they deem necessary. Upon review of the MBZA application, the Commission may issue a Negative Determination of Applicability (approval), with or without conditions, a Positive Determination of Applicability (denial) or require the applicant to provide further information. If a Positive Determination of Applicability is issued by the Commission, the applicant shall be required to file a Notice of Intent if they still wish to pursue the activity.

The work must conform to the plans submitted in the Request for Determination of Applicability or any conditions or modifications imposed by the Commission in the Determination. If the applicant fails to perform the work according to the approved plan or in conformance with the conditions of the Determination, the permit will be revoked and a Positive Determination of Applicability will be issued. Failure to conform to the plans and specifications shall constitute grounds for requiring a Notice of Intent and/or an Enforcement Action, including fines, by the Commission.

Upon completion of the project the applicant shall notify the Agent. The Agent shall inspect the work for and inform the Commission of the results.

## **XV - RULES FOR HIRING OUTSIDE CONSULTANTS UNDER GL CH. 44 § 53G**

1. As provided by GL Ch. 44 § 53G, the Franklin Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of the Wetlands Protection Act (GL Ch. 131 § 40), the Franklin non-zoning wetlands bylaw, Conservation Commission Act (GL Ch. 40 § 8C), or any other state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time.
2. Funds received by the Conservation Commission pursuant to these rules shall be deposited with the town treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriation as provided in GL Ch. 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.
3. 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 Agent(s).
4. The Conservation 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 or request is withdrawn within five days of the date notice is given. 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.
  - a. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to determine that the application is administratively incomplete (except in the case of an appeal). The Commission shall state such in a letter to the applicant, copied to the DEP. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee. OR
  - b. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to deny the permit application.
5. The applicant may appeal the selection of the outside consultant to the Town 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 Town Council and a copy received by the Conservation Commission, so as to be received within ten (10) days of the date consultant fees were requested by the Conservation Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

## **XVI – BUFFER ZONE PROTECTIONS**

### **Preamble:**

The Town of Franklin considers 100 feet from a defined/delineated resource area as the buffer zone and consequently an additional protected resource. Floodplains, lands within 100 feet of other resource areas and within 200 feet of rivers and perennial streams, and the resources areas, are presumed significant to the protection of functions and characteristics of these areas because activities undertaken in close proximity have a high likelihood of adverse impact upon them, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality and loss of wildlife habitat. Any person in Franklin that proposes a project that is within the 100 foot buffer zone resource area is required to submit a Notice of Intent or other applicable application such as a Request for Determination of Applicability to the Franklin Conservation Commission. If at all possible, an applicant may site all construction activities including grading beyond the 100 buffer zone resource area and not have to go through a public hearing and a possible permitting process.

Currently as established by precedent, the Franklin Conservation Commission (Commission) has instituted a 25 foot no disturb buffer zone from the defined/delineated resource area. These proposed regulations will codify this requirement. Extensive work in this zone, particularly clearing of natural vegetation and soil disturbance is likely to alter the physical characteristics of resource areas by changing their soil composition, topography, hydrology, temperature, and the amount of light received. Soil and water chemistry within resource areas may be adversely affected by work in the buffer zone. As a result of the buffer zone alterations, biological conditions in adjacent resource areas may include changes in plant community composition and structure, invertebrate and vertebrate biomass and species composition, and nutrient cycling. The affects from work in the buffer zone will most likely result in the disruption and erosion of soil, loss of shading, reduction in nutrient inputs, and changes in litter and soil composition that filters runoff, serving to attenuate pollutants and sustain wildlife habitat within resource areas. For these stated reasons, the Commission is codifying the requirement not to disturb the 0-25 foot buffer zone from the defined/delineated resource area.

These regulations will also characterize and provide regulatory guidance as to the type of projects that would most likely be acceptable to the Commission in the 25-50 foot buffer zone from the defined/delineated resource area as well as the 50-100 foot buffer zone from the defined/delineated resource area. In order to be consistent with the amendments to the

Massachusetts Wetland Protection Act found in 310 CMR 10.00 relative to a simplified review process, as well as protect the 50 foot buffer zone resource area where the functions and characteristics of the resource area are most critical, the Commission strongly encourages work in the 50-100 foot buffer zone resource area, if work in the buffer zone is necessary at all.

The Commission has in place regulatory criteria and a process for reviewing minor buffer zone projects that are less than 1,000 square feet of disturbance and avoid the 0-25 foot buffer zone resource area, if not previously disturbed. The intent of this regulatory amendment is to dovetail the minor buffer zone historical reviews with a new evaluation process that looks at these three buffer zones: 1) 0-25 foot buffer zone resource area; 2) 25-50 foot buffer zone resource area; and 3) 50-100 foot outer buffer zone resource area.

#### **A. 0 TO 25 FOOT BUFFER ZONE RESOURCE AREA**

1. An applicant shall demonstrate that no work/disturbance including grading activities is proposed within the 0-25 foot buffer zone resource area. Any applicant proposing a project within the 0-25 foot buffer zone resource area will have an irrefutable presumption of significant adverse impact to the functions and characteristics of the resource area, unless otherwise determined by the Commission under the minor buffer zone activity criteria set forth in Section XIV of these regulations, or as approved by the Commission by the variance procedures set forth in Section XVII of these regulations.

#### **B. 25 TO 50 FOOT BUFFER ZONE RESOURCE AREA**

1. Any applicant proposing a project within the 25-50 foot buffer zone resource area shall indicate that there are no structures including but not limited to, concrete, stone, or other impervious foundations and/or slabs for construction purposes that for all intents and purposes would significantly increase runoff. Alteration in the 25-50 foot buffer zone resource area is limited to grading, tree clearing, Stormwater management system components, lawns, gardens, and other low impact uses as determined by the Commission or as otherwise approved by the Commission by the variance procedures set forth in Section XVII of these regulations. Footings for building structures, such as a deck, as opposed to slabs or foundations, shall be used when technically feasible. The Commission may condition the applicant to use Best Management Practices (BMP's) for stormwater management consistent with the most recent version of the Town of Franklin Best Development Practice Guidebook. Stormwater management systems or individual components including drainage piping, and construction of detention/retention ponds shall be allowed by the Commission based on an alternative analysis and review of design and space limitations as indicated in the final approved plans.
2. Areas Disturbed Prior to June 29, 2006: When there is a pre-existing disturbance (disturbed as part of a previously recorded Certificate of Compliance or was disturbed prior to the enactment of the Wetlands Protection Act and the Franklin Wetlands Protection Bylaw), and the work proposed is entirely within this previously disturbed area, an applicant may propose impervious surfaces or other uses such as pools, buildings, porches, and sheds within the 25-50 foot buffer zone resource area. The Commission shall evaluate the

proposed uses based on the demonstration by the applicant that the functions and characteristics of the resource area will not be adversely impacted.

### **C. 50 TO 100 FOOT BUFFER ZONE RESOURCE AREA**

Alterations including structures are allowed in the 50-100 foot buffer zone resource area. The Commission may require additional mitigation offsets when the slope within the buffer zone is steeper than 10%. Additionally, mitigation offsets may be required by the Commission when the applicant proposes that more than 30% of the 50 to 100 foot buffer zone resource area is proposed to be impervious surface. Mitigation offsets may include but is not limited to plantings, conversion of impervious to pervious surfaces, and other practices consistent with the most recent version of the Town of Franklin Best Development Practice Guidebook.

## **XVII – VARIANCE PROCEDURE**

1. The Commission may grant a variance from these regulations upon a showing by the applicant that any proposed work, or its natural and consequential impacts and effects, will not have any adverse affect upon any of the interests protected in Chapter 181 of the Town of Franklin Wetlands Protection Bylaw. It shall be the responsibility of the applicant to provide the Commission in writing with any and all information, which the Commission may request, in order to enable the Commission to ascertain such adverse effects. The failure of the applicant to furnish any information, which has been requested, shall result in the denial of a request for a variance pursuant to the applicable subsection of this regulation.
2. The Commission may grant a variance from these regulations when it is necessary to avoid so restricting the use of the property as to constitute an unconstitutional taking without compensation. If the Commission receives an application for a variance pursuant to an applicable subsection of the regulation, the Commission may request an opinion from the Town Counsel as to whether the application of these regulations to a particular project will result in such a taking without compensation.
3. Variance process: To request a variance, the applicant shall submit a variance request in writing at the time of the application for the Notice of Intent or Request for Determination of Applicability. The request shall explain why the variance is needed and shall describe in detail how the project can be completed without significant adverse impacts on the functions and characteristics of the resource area. Such detail must include, but is not limited to, an alternatives analysis.

## **XVIII – SEPTIC SYSTEM EMERGENCY REPAIR**

In the unanticipated event that a septic system is located within the 25-50 foot buffer zone resource area or the 50-100 foot buffer zone resource area, emergency repair of the septic system shall be allowed if the applicant demonstrates to the Commission by a preponderance of evidence, that an emergency condition exists or as applicable to the Emergency provisions set forth in the Town of Franklin Wetland Protection Bylaw, Chapter 181 Section 14 D.

# **IXX – INSTRUCTIONS FOR FILING A NOTICE OF INTENT IN FRANKLIN**

Recent changes in the Massachusetts Wetland Protection Act Regulations (310 CMR 10.00) require the use of revised forms for the above permit application. In addition, under the Franklin Wetlands Protection By-law, Franklin Town Code Chapter 181 the following procedures and documentation are also required upon submission of permit applications.

## **PRE-FILING MEETING AND DISTRIBUTION**

**Applicants are STRONGLY ENCOURAGED to contact the Conservation Agent prior to submitting a NOI. Failure to do so may compromise the applicant's interests and result in an unnecessary denial of a permit, extra cost and time.**

A NOI is composed of a cover letter (Section 1) and the 16 other sections described herein. A complete NOI filing is composed of a NOI and a Notice of Distribution. The applicant shall provide the Town with an original, and 13 copies, of the NOI, each separately bound. The applicant shall deliver one of the 13 copies of the NOI to each of the four (4) departments listed in Exhibit 2. The department representative accepting the NOI shall indicate receipt by signing and dating the original copy of a Notice of Distribution (exhibit2 - Franklin Form 1). The applicant shall deliver the completed, original Notice of Distribution, the original NOI and the remaining 9 copies of the NOI to the Conservation Department for processing. A public hearing shall be scheduled by the Conservation Commission within 21 days of receipt of the NOI and completed Notice of Distribution.

## **SECTION 1 – COVER LETTER**

The Cover Letter shall contain the following information: (reference Exhibit 1 example):

- Application Type
- Applicant's Name
- Representative's Name
- Date Prepared

## **SECTION 2 - NOTICE OF INTENT**

- **Resource Area Impact Summary (Franklin Form 2, Exhibit 3)** – A narrative description of the proposed impacts to each of the resource areas on the property. Impact may be measured and reported in square feet (SF).
- **Application Form (BRP WPA Form 3, revised 2-08)**
- **State Filing Fee Calculation Worksheet**
- **Local Filing Fee Worksheet (Franklin Form 3, Exhibit 4)** – A separate check made payable to the Town of Franklin.
- **Advertising Fee - \$100.00** – A separate check made payable to the Town of Franklin.

- **Copies of Checks to DEP and Town**
  - **Stormwater Management Forms (if Applicable)**
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### **SECTION 3 - ABUTTER NOTIFICATION**

***THIS SECTION IS NOT REQUIRED TO BE PART OF THE PACKETS DELIVERED TO THE TOWN ADMINISTRATOR, THE BOARD OF HEALTH AGENT, THE TOWN ENGINEER IN CARE OF THE DPW DIRECTOR AND THE BUILDING COMMISSIONER; HOWEVER, THESE DOCUMENTS MUST BE INCLUDED IN THE TEN (10) PACKETS THAT ARE DELIVERED TO THE CONSERVATION DEPARTMENT.***

Section 3 of the NOI shall consist of the above documents bound in the following order:

1. Notification to Abutters (Form 4)
2. Affidavit of Service (Form 5)
3. Certified Abutters List from the Assessor's Office (do not recopy or rewrite the list)

The process of notifying the abutters to any proposed project requires that the applicant take the following steps (Exhibit 5):

- **Certified Abutters List**

Obtain a Certified Abutters List from the Assessors Office. Applicants are required to notify all abutting property owners within 300 feet of their property lines. The original certified copy must be submitted with the Notice of Intent Application.

- **Notification to Abutters - Franklin Form 4**

Complete the Notification to Abutters - Franklin Form 4. The Applicant may copy and fill out the Form modify it as depicted on the example attached as Exhibit 5. A copy of this notification must be sent either by Certified Mail, Return Receipt Requested (white receipts and green cards) or by hand delivery to each landowner on the Certified Abutters List.

- **Affidavit of Service- Franklin Form 5**

The Affidavit of Service, attached as Exhibit 6, is a required document under the Wetlands Protection Act. The Applicant may copy and fill out the Form or modify it as depicted on the example attached. The Affidavit evidences that the Applicant, in accordance with the law, has notified the abutters to the proposed project site.

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## **SECTION 4 - DEP FIELD DATA FORMS**

The Field Data Forms appear as Appendix G of the most recent revision of the Wetlands Delineation Manual published by DEP. Completed forms as well as a written report prepared by the wetlands delineator must be submitted with the Notice of Intent application.

A copy of the recorded Order of Resource Area Delineation (ORAD) may be substituted for the DEP Field Data Sheets if a determination has been issued by the Commission within the last three (3) years.

## **SECTION 5 - VERNAL POOL STATEMENT**

An affirmation by the applicant regarding the presence, or absence, on the subject parcel, or abutter parcels, of any registered or potential vernal pools that is based on the most recent version of the DEP/Mass GIS Potential Vernal Pool Sites. This information is available at the MassGIS website ([www.massgis.ma.us](http://www.massgis.ma.us)) or in the Franklin Conservation Department, located at 355 East Central Street, Franklin, MA.

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**PLEASE NOTE THAT THE NEXT SIX (6) SECTIONS (SECTION 6 THROUGH 12) SHALL BE INCORPORATED INTO ONE (1) DOCUMENT.**

## **SECTION 6 – PROJECT NARRATIVE**

The Project Narrative is a written statement of the existing site conditions and of all that the project entails. This includes, but is not limited to, a description of existing conditions, who is performing the work (contractor, pool company, tree service etc.), a detailed description of all of the activity within Conservation jurisdiction, how the activity will or will not affect the Functions and Characteristics of the resource area (see section 7), what the project site will look like after completion, when the proposed activity will be done and what measures will be used to mitigate any impacts to the Functions and Characteristics of the resource area. As noted above, the Project Narrative shall be incorporated into the same document with the Functions and Characteristics Statement, the Erosion and Sedimentation Plan and, if required, the Mitigation Plan, the Alternatives Analysis and the Replication Plan and Protocol.

## **SECTION 7 - FUNCTIONS & CHARACTERISTICS STATEMENT**

The purpose of the Franklin Wetland Protection bylaw is to regulate and control activities deemed to have a significant or cumulative effect on the functions and characteristics of floodplains and wetlands. In order to make this determination the Commission requires that the Applicant prepare a statement that describes whether the project will have an adverse effect on these functions and characteristics. It is the applicant's burden of proof to demonstrate that their proposed project/activity will not result in any significant individual or cumulative adverse effect to the functions and characteristics of resource areas, and that the functions and characteristics statement is the applicant's opportunity to do so. If the proposed project will have an effect on

one or more functions or characteristics then a mitigation plan must be prepared and submitted as Section 8 of the Notice of Intent. The functions and characteristics to address include but are not limited to the following:

1. **Public Water Supplies** – Distance from proposed project to nearest public well.
2. **Private Water Supplies** – Distance to nearest private wells.
3. **Groundwater** – Depth to groundwater as well as impacts associated with construction (i.e. digging or blasting) and operations (water use, use of toxic or hazardous materials and stormwater management).
4. **Flood Control** – Work within the 100-year flood plain must address compensatory storage.
5. **Erosion and Sedimentation** – This item must be addressed for both the construction and post construction conditions at the property.
6. **Storm Damage Prevention** – Address whether or not the project will have an adverse effect on the way that the wetland or flood plain will be able to minimize water and wind related impacts during large-scale storm events.
7. **Water Quality** - This item must be addressed for both the construction and post construction conditions at the property. This item will address the quality of the surface waters associated with the resource area being impacted by the project.
8. **Water Pollution Control** - This item must be addressed for both the construction and post construction conditions at the property.
9. **Fisheries** – Reserved for work taking place adjacent to ponds and perennial streams. The response must address both the construction and post construction conditions at the property.
10. **Shellfish** – Not Applicable in Franklin
11. **Wildlife Habitat** - This item must be addressed for both the construction and post construction conditions at the property.
12. **Rare Species Habitat** (including rare plant species) - This item must be addressed for both the construction and post construction conditions at the property.
13. **Agriculture** – This item must be addressed for both the construction and post construction conditions at the property.
14. **Aquaculture** – To date there are no aquaculture operations in Franklin
15. **Recreation** – This item must be addressed for both the construction and post construction conditions at the property and include both passive and active recreational uses.

## **SECTION 8 - MITIGATION PLAN**

This narrative shall be included in the NOI and will describe the application of the “avoid, minimize and mitigate calculus” during project planning. That is, Applicants must demonstrate that efforts have been made to avoid wetland impacts wherever possible, minimize the impacts when unavoidable, and mitigate these impacts by employing replication or restoration components in the proposed project plans.

When undisturbed areas within the Buffer Zone Resource Area are proposed for alteration, a separate narrative must be prepared describing the steps taken to mitigate for the impacts. This

may include the use of plantings from the Franklin Best Development Practices Guidebook (available from the Conservation Department or from the website ([www.franklin.ma.us](http://www.franklin.ma.us))) for wildlife habitat enhancement or other physical components that will compensate for the loss of resource area functions and characteristics.

## **SECTION 9 - EROSION & SEDIMENTATION CONTROL PLAN**

This is a plan that describes the measures that will be taken to properly install and maintain the erosion control devices used during the project. The plan must also include the names and phone numbers of all individuals that will be responsible for erosion control as well as the requirement that the erosion control be inspected weekly and after significant rain events. The individual responsible for inspection and maintenance shall keep a log of the inspections and maintenance and be prepared to show it to Conservation Staff and Commissioners upon request. ***The text from the Erosion & Sedimentation Control plan will also appear in the plan set, preferably on the sheet that depicts the erosion control location and detail.***

Please note that it is a requirement in Franklin that the engineering detail used on the project plan must depict hay bales installed with the baling string not in contact with the ground and double wooden staked. There will also be a Special Condition in the Orders, if issued, requiring that there be additional erosion control devices stored under cover on site in the event of an emergency. The Commission prefers the use of wattles whenever possible or practicable.

## **SECTION 10 - ALTERNATIVES ANALYSIS**

The following project types shall require the submission of an Alternatives Analysis narrative:

1. Riverfront Resource Area
2. Alteration of Riparian Zone
3. Septic System Components within the 100-Foot Buffer Zone Resource Area
4. Wetland filling up to 5,000 square feet
5. Structures proposed within the fifty foot (50') Buffer Zone Resource Area
6. Variance Requests

The Alternatives Analysis shall comply with the requirements as presented in 310 CMR 10.58 (4).

## **SECTION 11 - REPLICATION PLAN & PROTOCOL**

When wetland alteration is necessary, the Commission shall require that the Applicant replicate the altered wetland at a minimum 2:1 ratio (the replication area must be at least twice the square footage of the natural wetland area impacted). The plan submitted shall comply with the requirements as presented in the most recent revision of the DEP Wetland Replication Manual. ***The replication plan, protocol and schedule shall also appear in the approved plan set along with cross sections of altered and proposed replicated areas, ground water elevation data and planting lists and details.***

Franklin Form 6 – Wetland Functions & Values shall be used in the evaluation of the existing wetland with respect to functions and values for the wetland and wildlife habitat. The Form shall be completed and included in this section of the NOI if filling is proposed. It is the expectation of the Commission that Applicants will not only propose the replication of the wetland type impacted by the project, but also the functions & values of that resource area. This requirement does not apply to Buffer Zone Resource Areas.

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## **SECTION 12 - CONSTRUCTION SEQUENCE AND SCHEDULE**

A detailed sequence of activities proposed shall be depicted in the approved plan set and in the NOI application.

## **SECTION 13 - DRAINAGE CALCULATIONS**

If drainage calculations are required they must be submitted as a separate document from the NOI Application. Two (2) copies must be submitted to the Conservation Department and one to the Town Engineer in care of the Director of the Department of Public Works (DPW). Other Departments listed on the Notice of Distribution Form need not receive drainage calculations as part of their submittal.

## **SECTION 14 – MAPS**

A copy of the most recent revisions of the following maps must be submitted with the project locus depicted:

1. USGS Topographic Map
2. Natural Heritage Priority Habitats and Estimated Habitats Maps
3. FEMA Flood Plain Map

## **SECTION 15 - PLANS**

See General Instructions for completing a Notice of Intent issued by DEP. In addition, the Franklin Conservation Department requires the following:

1. All plans shall be drawn at a scale equal to or larger than 40'=1" (e.g. 20'=1")
2. Index of sheets on cover page if submitting more than one sheet
3. The North arrow must have a reference
4. Existing and Proposed topography
5. Existing vegetation, including turf lawn areas, cultivated herbaceous and woody plant areas, un-cultivated field, scrub and woodland areas and woody plants larger than 1" dbh proposed to be removed.
6. Proposed vegetation, including any changes to the existing vegetation and any mitigation
7. Existing structures, improvements and limits of disturbance

8. Each Resource Area identified and labeled (including 25', 50' and 100' Buffer Zones and 100' and 200' Riparian Zones)
9. Locations of erosion controls
10. Cross sections of impacted Bordering Vegetated Wetlands including ground water elevation information
11. Cross sections of proposed replication area(s)
12. Details of all permanent or temporary, structures or items either built or placed on the site with the exception of buildings, additions, porches, decks, sheds or swimming pools.
13. Planting list(s) with species recommended in the most recent revision of the Franklin Best Development Practices Guidebook
14. Construction Sequence and Schedule

## **SECTION 16 – PORTABLE DOCUMENT FORMAT (PDF) FILE**

All NOI filings require the submission of a PDF file containing both the NOI application as well as the plan. The file shall be submitted with the rest of the application, or sent via e-mail attachment to the Conservation Department on the same day as the NOI application is submitted.

## **SECTION 17 – ADDITIONAL INFORMATION**

Any other supplementary information that the Applicant determines to be relevant to the Commission reaching a decision on the proposed project may be included in this section of the application package.

If you need further assistance, please contact the Conservation Department at (508) 520-4929 or via our web site [www.franklin.ma.us](http://www.franklin.ma.us).