

Wetland Permitting with the Andover Conservation Commission – How the Process Works – An Applicant’s Guide

Wetlands and Applicable Regulations

“Wetlands are areas where water is the primary factor controlling the environment and the associated plant and animal life.” - William A. Niering



Wetlands (also known as wetland resource areas) and their corresponding buffer zones are protected by state law under the Massachusetts Wetlands Protection Act (WPA). Wetlands are also locally protected in the Town of Andover under the more stringent Andover Wetlands Protection Bylaw (Bylaw).

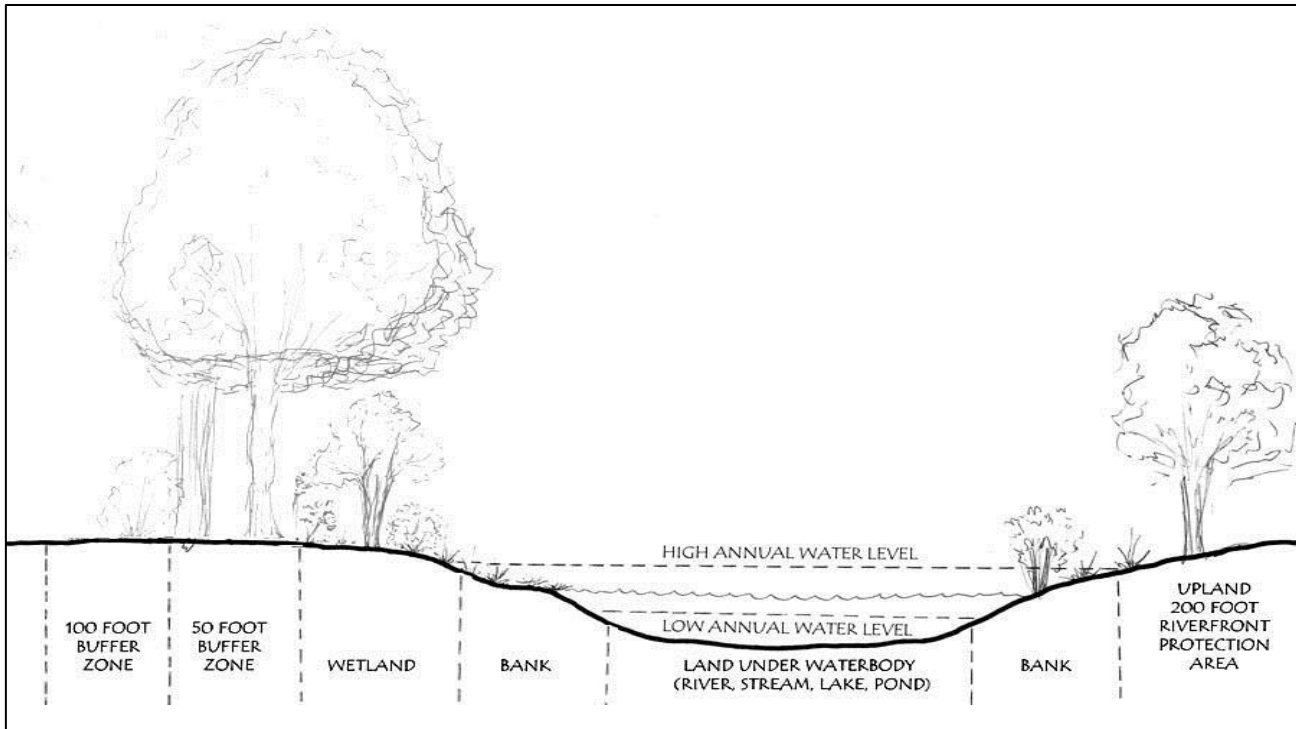
Activities that will remove, fill, dredge, or alter wetlands or buffer zones are prohibited under the WPA and the Bylaw without first obtaining a permit from the Andover Conservation Commission.

Regulated activities include, but are not limited to:

- Building/Construction/Land Development
- Backyard Improvements, Including Patios, Pools, Sports Courts, Fences, etc.
- Utility work
- Vegetation Removal
- Grading, Excavation, Earthwork of Any Kind
- Septic System Installation

Regulated wetland resource areas include wetlands (including ponds, lakes, rivers, and streams) and their associated buffer zone, which extends 100 feet beyond the boundary of the wetland resource area itself. Wetlands may be bordering on rivers or streams or may be isolated on the landscape. In addition, the Riverfront is a regulated resource area that extends 200 feet out from a perennial (flowing year-round) stream or river of any size. Examples of perennial streams in Andover include the Shawsheen River, Fish Brook, Husseys Brook, and Rogers Brook.

The Andover Wetlands Protection Bylaw (the Bylaw) provides greater protection than State law. Under the Bylaw, the inner (closest to the wetland) 25 feet of the wetland buffer zone is a No-Disturb Area and the inner 50 feet is a No-Build Area. Under the Bylaw, the 100-foot buffer zones as a whole are considered resource areas, so they are provided additional protection under the Bylaw. Wetland resource areas that are of critical importance for wildlife, such as vernal pools, are specifically protected under the Bylaw.



In addition, the Town of Andover's Watershed Protection Overlay District protects activities within the Haggetts Pond/Fish Brook Watershed. These water bodies contribute to the Town's drinking water supply. These additional watershed protection regulations are enforced – in part – by the Bylaw.

The Andover Conservation Commission

The Andover Conservation Commission is a seven-member volunteer board who are responsible for administering the WPA and the Bylaw in the Town of Andover. These volunteers are all Andover residents and come from a variety of backgrounds. The Conservation Commission meets biweekly on the first and third Tuesday of every month throughout the year; however, sometimes the timing of holidays impacts this schedule. Dates of Conservation Commission meetings are posted on the Town of Andover Conservation's website and are also located at the end of this document.

The Andover Conservation Department and Staff

The Andover Conservation Commission is supported by four full-time professional Staff who are all employees of the Town of Andover. These employees are Bob Douglas (Director of Conservation), Ben Meade (Conservation Agent), Lynn Viselli (Administrative Secretary), and Michael Murray (Land Manager). The Andover Conservation Department is located in the Community Development and Planning Office whose physical space is the ground floor of the Andover Town Offices at 36 Bartlet Street, Andover MA 01810.

The phone number for the Andover Conservation Department is (978) 623 8630. The email address for the department is cdpconservation@andoverma.us

Clarifying The Difference Between Wetlands and “Conservation Land”

Wetlands may be located on either private or public property. As discussed above, they are a natural feature on the landscape where the presence of water is a defining factor.

“Conservation land” refers to the land’s ownership status. In Andover, approximately 2,200 acres of land are held as permanently protected open space by the Town of Andover. These lands are known as “Conservation Lands,” “Conservation Areas” or “Reservations” and are held under the care and custody of the Andover Conservation Commission. In conjunction, other private or non-profit entities such as the Andover Village Improvement Society (AVIS), the Trustees of Reservations, and Essex County Greenbelt also own and maintain lands as open space for use by the public. Collectively, the Town of Andover is blessed with the extent and variety of these open spaces, which provide many benefits to the Town’s residents, wildlife, natural resources, passive recreationalists, and more.



The Wetland Permitting Process

What follows is an outline of the typical wetland permitting process, the timeline for filing, and brief descriptions of frequently used permit applications. Each project is unique, and you are encouraged to communicate with Andover Conservation Staff to discuss the details of your project.

1) Contact the Andover Conservation Office to discuss the project. Determine with Andover Conservation Staff if your project would be within a protected resource area and/or its buffer zone, and whether it would require permitting through the Andover Conservation Commission. If permitting is required, the WPA and/or the Bylaw will apply. If your project requires wetland permitting, the project cannot proceed until the wetland permitting process has been completed.

2) Types of Wetland Permit Applications. As organized in the framework set up by the state of Massachusetts's Department of Environmental Protection (DEP), there are three main types of wetland permit applications. These are a Request for Determination of Applicability (RDA), Notice of Intent (NOI), and Abbreviated Notices of Resource Area Delineation (ANRAD).

Additional information about these application types, their filing requirements, and other pertinent details are available on the Andover Conservation website. Please refer to the last page of this document for website listings and resources.

2A) Request for Determination of Applicability (RDA): Used for small projects typically located outside wetlands, where the applicant requests the Conservation Commission to determine if the WPA or the Bylaw is applicable to the proposed work or activity.

Note: RDA's are generally appropriate for projects such as house additions, decks, pools, septic systems, landscaping activities, invasive plant species management, and trail work/trail maintenance.

Note: RDA applications may be completed by homeowners or property owners. They are relatively straightforward applications. Assistance from professionals such as wetland scientists, engineers, or land surveyors is not always required, but may be helpful to assemble a complete application. Directions for filling out an RDA application and examples are available on the Andover Conservation website.

RDA submissions shall be made on the form (WPA Form 1) according to instructions required by State regulation in the WPA at 310 CMR 10.05 (3)(a)(b). A public meeting on requests under both Town and State regulations shall be held at the same time. The Conservation Commission will issue a positive or negative Determination of Applicability. A Positive Determination means the applicant must submit a Notice of Intent (NOI) and a Negative Determination means the applicant may proceed with work following conditions placed by the Commission. Once completed, a Satisfactory Completion of Work Certificate may be issued to close out the project. The Determination of Applicability must be recorded at the Essex County North Registry of Deeds in Lawrence, MA prior to commencement of work.

Determination of Applicability permits are valid for three years from the date of issuance.

2B) Notice of Intent (NOI): Typically used to permit large projects such as construction of new houses, major additions or house renovations, residential or commercial development, major utility projects, or other large projects that involve significant excavation and/or alteration of existing grades, soils and vegetation within a jurisdictional wetland area or buffer zone. The Notice shall be submitted on the form (WPA Form 3) according to instructions required by State regulation in the WPA at 310 CMR 10.05(4).

The Conservation Commission will approve or deny the project through the issuance of an Order of Conditions permit (OOC) that regulates how the project shall proceed in order to protect resource areas. The OOC must be recorded at the Essex County North Registry of Deeds in Lawrence, MA prior to commencement of work.

A Certificate of Compliance (COC) is the document an applicant or property owner receives from the Conservation Commission once all the work permitted under an OOC has been satisfactorily completed. When the OOC specifies, the applicant must also submit an As-Built plan and an engineer's certification that the work was completed in compliance with the OOC.

Orders of Conditions permits are valid for three years from the date of issuance and may be extended.

Note: NOI applications and their required supplemental materials are complex. Completion and filing of NOI's is best handled by professional(s) such as wetland scientists, engineers, land surveyors, or a combination of these professionals and others. Supplemental materials that may be required include a site-specific instrument survey, a wetland delineation, a plan drawn and stamped by a professional engineer, a stormwater management analysis, and/or other documents and information.

2C) Abbreviated Notice of Resource Area Delineation (ANRAD): ANRAD's allow an applicant to confirm and formalize the delineation(s) of wetlands and other resource areas on a given property. Once confirmed, these boundaries and delineations may be "locked in" for three years. The ANRAD process is helpful in understanding resource area boundaries for future site planning and are often filed prior to new development occurring on a given property.

ANRAD permits are valid for three years from the date of issuance.

Note: ANRAD applications and their required supplemental materials are complex. Completion and filing of ANRAD's are best handled by professional(s) such as wetland scientists, engineers, surveyors, or a combination of these professionals and potentially others. Supplemental materials that may be required include a site-specific instrument survey, a wetland delineation, a plan drawn and stamped by a professional engineer, a stormwater management analysis, and/or other documents and information.

3) Complete and submit the required application and materials. Please remember that involvement of professional(s) may be needed.

Note: A partial list of professionals – wetland scientists, engineers, and land surveyors that work in Andover – is available as a reference for applicants on the Andover Conservation website.

Note: Additional information about these application types, their filing requirements, and other pertinent details are available on the Andover Conservation website.

Note: Submittal deadlines for complete applications is noon two weeks in advance of the next Andover Conservation Commission meeting. The dates of Conservation Commission meetings and filing deadlines can be found on the Conservation page on the Town of Andover website.

4) Once the complete application is received by Andover Conservation Staff, a public hearing will be scheduled about your application and project with the Andover Conservation Commission. The hearing will take place at one of the regularly scheduled Andover Conservation Commission meetings.

5) Prior to your public hearing, Andover Conservation Staff will visit the area of the proposed work to make observations in order to advise the Andover Conservation Commission about the project. Staff will note items such as the distance of the project to the wetland, the location of the project on the property, current conditions, proposed conditions, etc. Photos may be taken that will be passed on to Commissioners to assist them in their review of the project.

6) The applicant and/or their representative(s) should plan to attend their public hearing at the Andover Conservation Commission meeting. The process of a hearing typically follows the following format:

6A) The Andover Conservation Commission chair will open the hearing.

6B) Andover Conservation Staff will summarize the project, their observations from their site visit, and will provide their recommendation as to how the Andover Conservation Commission should proceed.

6C) The Andover Conservation Commission will then deliberate, ask questions about the project, etc.

6D) The Applicant and/or their representatives should be prepared to answer questions about the project and/or provide a short presentation about the project.

6E) The Andover Conservation Commission chair will ask if anyone else would like to speak about the project (abutters, residents, supporters, others).

6F) Once the Commission is satisfied with the information presented, they will render a decision. This sometimes can require more than one hearing.

If an RDA has been filed, the result will be a Negative Determination (approving the project) or a Positive Determination (requiring the filing of a Notice of Intent).

If a Notice of Intent has been filed, the hearing will need to be closed prior to the Commission's issuance of the Order of Conditions permit. The Order of Conditions will either approve or deny the project.

If an ANRAD has been filed, the process is identical to the Notice of Intent process.

A permit will be issued within 21 days of the closure of your hearing. However, in most cases the permits will be issued sooner than that. The permits are mailed to the Applicant by Andover Conservation Staff via Certified Mail in accordance with the regulations required by the WPA and the Bylaw.

RDA permits, NOI permits, and ANRAD permits are valid for three years from the date of issuance.

Contents of a Permit Issued by the Andover Conservation Commission

Permits – whether an RDA, OOC, or ANRAD – contain Special Conditions that an Applicant needs to follow. Examples include the following:

- Before construction (i.e., calling the Andover Conservation Commission for a pre-construction site inspection of erosion controls, recording permit at the Registry of Deeds)
- During construction (i.e., maintaining your erosion controls, ensuring that any stockpiling of material is kept a certain distance away from wetlands)
- After construction and after the Conservation Commission has formally closed out the project with a Satisfactory Completion of Work Certificate or a Certificate of Compliance, all erosion controls may be removed and properly disposed of
- Perpetual Conditions – the Andover Conservation Commission sometimes includes ongoing conditions that continue after the permit expires (i.e. maintenance of stormwater systems, permanent maintenance of 25 foot No-Disturbance Zones, restrictions on vegetation removal, etc.)

Peer Reviews and Site Monitoring – Under state law and under the Bylaw, at its sole discretion the Andover Conservation Commission has the ability to authorize the engagement of consultant(s) to provide additional expertise for the purposes of third-party peer reviews (during the permitting phase of a project) and environmental site monitoring (during the construction phase of a project).

These consultants shall be paid for by the applicant; however, payment shall be through an escrow account system set up through the Town of Andover. If a peer review or site monitor is required, a proposal will be requested from the peer reviewer or site monitor that the Conservation Commission has chosen. The applicant will be asked to provide a check in the amount of the proposal. The check should be made out to the Town of Andover. Once the check is received, Conservation staff will set up the escrow account.

Consultants include individuals and firms specializing in fields such as wetland science, civil and environmental engineering, environmental regulation compliance, and stormwater management.

The involvement of qualified third-party peer reviewers and environmental site monitors provides a level of assurance to the Andover Conservation Commission that projects are properly designed, permitted, and constructed.

7) After pre-construction conditions have been satisfied, from the perspective of the Andover Conservation Commission your project may proceed. Other permitting authorities (Building Department, Zoning, Planning Department, etc.) may have separate requirements.

Note: The property owner is ultimately responsible for what happens on your property.

8) Upon completion of the project, submit a Request for Certificate of Compliance (NOI) or Satisfactory Completion of Work Certificate (RDA). In the case of a Certificate of Compliance, this needs to be applied for within 30 days of the completion of the project.

Typical Permitting Timeline

- Submit appropriate and fully complete permit application to Andover Conservation Staff. The project will then be placed on the next available Andover Conservation Commission meeting agenda.
- The deadline for application submission is two weeks before the Andover Conservation Commission meeting date. So, if the meeting date is Tuesday, 2/21/2023, the filing deadline for the 2/21/2023 meeting is Tuesday, 2/7/2023 at noon.
- The Conservation Commission will issue a decision (permit or denial) within 21 days of the close of the public hearing.
- There is a 10-day appeal period from the date of issuance of the permit for the applicant, abutter, DEP, or a ten-person resident group. Documentation to demonstrate previous participation is required. You may be restricted from beginning your project until the 10 day appeal period has passed.

For more information, please contact Andover Conservation Staff at (978) 623 8630 or cdpconservation@andoverma.us.

Online Resources

Andover Conservation Commission Website: [Andover Conservation Commission](#)

Andover Conservation Department Website: [Andover Conservation Department](#)

Andover Conservation Department – Wetland Permitting Resources Website:

[Andover Conservation Department - Wetland Permitting Resources](#)

- Includes applications, wetland regulations (including the Bylaw), a consultant reference list, and No-Disturbance Marker ordering information

Andover GIS mapping website, called Andover GIS Viewer: [Andover GIS Viewer](#)

- Provides helpful spatial information regarding parcels and the location of wetland resource areas

Northern Essex (County) Registry of Deeds: [Registry of Deeds](#)

1 Union Street, Suite #402, Lawrence, MA 01840

Recording hours: 8AM-4PM Monday through Friday

Massachusetts Department of Environmental Protection (DEP) Wetland Permitting Forms:

[DEP Wetland Permitting Forms](#)