

WETLANDS DEMYSTIFIED
Wetlands Permit Application Form
By Paul Hennen

On February 1, 2006 the Wetlands Commission approved several changes to our wetlands permit application form. The purpose of this article is to describe the more important changes made and to clarify other requirements listed in Parts One and Two of the form. We recognize that not everyone knows what a wetland or watercourse is. The expression “I know one when I see one” reflects ignorance more than anything else. Many wetlands can be used for certain activities during the dry part of the year or when the ground is frozen. Water bodies are obvious watercourses, but an intermittent stream as a watercourse may not be. To signal to us that an applicant for a permit is not sure, we have added an “uncertain” block to the form to let us know that he or she needs more information. Using the Geographic Information System (GIS) we can determine if a qualified Soil Scientist needs to be involved, since only a professionally recognized Soil Scientist can determine soil types and thus identify a wetlands exact location through on site analysis. Under site plan requirements we eliminated reference to the 150-foot project distance from a wetland or watercourse since our regulations now designate that activity in any area that may result in adverse impacts to a wetland or watercourse is considered a regulated activity that the Commission must review. Remember that distances from a wetland or watercourse are never absolute.

In Part One of our application form the applicant is required to describe alternatives he/she considered and why the particular alternative described in the application was chosen. It would seem apparent that the alternative chosen was what the applicant wanted to do, and in spite of the known potential impact on a wetlands or watercourse, the impact may not seem significant. Minimal as it may be, there is an impact nonetheless. That is why under Section 6 of our Regulations we have buffer requirements for certain activities. Furthermore, Section 10.2 of our Regulations requires us, among other things, to consider the environmental impact of the project on a wetland or watercourse. In addition, we must also consider any feasible and prudent alternatives for the project or land use that would cause less or no environmental impact to a wetlands or watercourse. Such alternatives may be to relocate construction, or change the design in some way. The fact that a project may not actually disturb a wetlands or watercourse directly does not negate this requirement as some applicants or their representatives have thought. There are always alternatives to reduce or eliminate such impacts. In fact, if the proposed activity is a “significant impact activity” we cannot approve the application if, in fact, we determine that there are feasible and prudent alternatives for the project or for land use that would reduce or have no adverse impact on a wetlands or watercourse.

We added a new requirement to Part One of the form. We incorporated in our revised Regulations the need for some applicants to submit to the Connecticut Department of Environmental Protection (DEP) a Connecticut Natural Diversity Data Base (NDDDB) Request Form. The purpose of this review is to ensure that there are no special interest, threatened or endangered species in the vicinity of the proposed project. If there are, then we would need to ensure that the proposed activity would not harm these species. Under the provisions Section 26-310 of the Connecticut General Statutes (CGS) any activity authorized by a state agency, including any activity issued a permit by the DEP, must not threaten the continued existence of any endangered or threatened species. If the applicant's project falls within a review area then he or she must provide the Wetlands Commission a copy of the DEP review. Our staff can provide you with additional information and you can obtain information from the DEP by accessing their website at www.dep.state.ct.us/gis/dataguides/dep/layers/nddb.htm. Other information can be obtained at www.dep.state.ct.us/cgnhs/info.htm. We will attempt to add the NDDDB map of Pomfret to our website in the near future. As of now not many applicants for a wetlands permit will be affected by this requirement, but it will apply to some as the database continues to expand.

We also addressed the applicant's responsibilities to post a cash bond, formally referred to as surety but now called security, when such a requirement is imposed as a condition of permit approval. In addition, we have included information concerning Section 19 and Appendix A of our Regulations which deal with fees and deposits. Appendix A has been added to the new application packet. As applicants know, once an application has been submitted, members of the Commission and its agents have a right to visit the site at any time. We changed the term agent(s) for the more correct term staff. Staff is now defined in our Regulations to mean municipal employees, consultants retained by us (at applicant's expense, of course) and members of any regional agency of which the Town is a member. We also inform the applicant that he or she must obtain all other permits and applicable project reviews before any work pursuant to a wetlands permit approval can begin, and we make clear that noncompliance will result in a Cease and Desist Order and a Notice of Violation.

In Part Two of our application, which comes into play if a public hearing is required, there were very few changes made. However, we have, hopefully, clarified some points. For example, the description of the ecological communities and their function in relationship to wetlands and watercourses and the activity's impact on these communities must be made by a professionally recognized Wetlands Scientist or a Wildlife Biologist. Soil Scientists are recognized by their professional affiliations such as membership in the Society of Soil Scientist of Southern New England. There is nothing similar in Connecticut that requires us to recognize a Wetlands Scientist or Wildlife Biologist. However, the DEP has advised us that we may insist that such experts justify and document their professional qualification in a manner satisfactory to us before being considered an expert witness in his or her field. We are required to determine in this case how the activity will change, diminish or enhance the ecological communities and

functions of the wetlands and watercourses involved and most importantly each alternative considered, and why each alternative considered was deemed neither feasible nor prudent under the circumstances. Only qualified ecologists can do this, and there should be no doubt that the Wetlands Commission will insist this be the case. Fortunately, most applicants for a wetlands permit are not required to complete Part Two of the application. But as I stated in the beginning, whether you directly disturb a wetland or watercourse or not, if your project could have any impact, you must consider alternatives that may eliminate this possibility. Otherwise your application will not be considered complete and could be denied for that reason.

Because it is a new requirement, I will discuss the Connecticut Natural Diversity Data Base in more detail in the May issue of the *Pomfret Times*. By then the peepers will be singing their song. Peepers are not now an endangered species, but there are others out there, silent or otherwise, that depend on our wetlands and are indeed threatened and will soon be even more so if we fail to protect our most important resources, our wetlands and watercourses.

My thanks to Katarina Rutkowski for her review of this article and comments.