

# Sunderland Wetlands Bylaw Regulations

## ***Section 1. General Provisions***

### Authority

These Wetland Protection Regulations (~~the Regulations~~) are promulgated by the Sunderland Conservation Commission (~~the Commission~~) pursuant to authority granted in the Wetlands Protection Bylaw of the Town of Sunderland.

### Purpose

The purpose of this Wetlands Protection Bylaw (~~the Bylaw~~) is to protect the wetlands, related water resources, and adjoining land areas in the Town of Sunderland by prior review and control of activities deemed by the Conservation Commission likely to have a significant or cumulative adverse effect upon wetlands values, which include but are not limited to the following: public and private water supplies, groundwater, flood control, erosion and sedimentation control, storm damage prevention, prevention of water pollution, fisheries, wildlife, wildlife habitat, recreation, and aesthetic values. The purpose of the Regulations is to complement and clarify the provisions of the Bylaw by establishing uniform standards, procedures and policies by which the Sunderland Conservation Commission will carry out its responsibilities. The Regulations shall have the force of law. The Regulations shall be interpreted and applied so as to be consistent with the Bylaw.

### Revisions

The Conservation Commission may amend these Regulations after public notice and public hearing as required by the Bylaw.

No Net Loss Policy: It is the policy of the Sunderland Conservation Commission to follow the "No Net Loss" guidelines set forth by the Massachusetts Department of Environmental Protection. Therefore, applicants who propose to alter resource areas under the Commission's jurisdiction must:

- a. demonstrate that there is no practicable alternative,
- b. minimize impacts where they are unavoidable,
- c. mitigate losses of wetland resource area, where applicable or appropriate, on at least a 1:1 basis. "Limited projects" are included in this requirement.

No Net Change in Stormwater Runoff Policy: It is the policy of the Sunderland Conservation Commission to require applicants to demonstrate that no significant change in off-site runoff will result from proposed work. Because increased runoff impacts land downstream and reduces natural groundwater recharge, the Commission may require measures such as stormwater detention basins to prevent increased runoff. Direct discharge of runoff into a Resource Area will not be allowed.

Resource Areas Protection: The Conservation Commission has determined that certain additional areas of jurisdiction are significant to the protection of interests identified in the Sunderland Wetlands Bylaw. The Commission presumes that the following additional resource areas are significant to those interests:

- a. isolated wetlands greater than 400 sq. ft.
- b. vernal pools of any size
- c. isolated land subject to flooding below 310 CMR 10.57 size thresholds
- d. intermittent streams

These presumptions are rebuttable and may be overcome upon a clear showing that said land does

not play a role in the protection of interests identified in the Bylaw.

Vegetated Buffer Strip Protection: Development proposed in the Buffer Zone can negatively impact the abutting Resource Areas(s). Negative impacts, from both the "construction" and "use" phases of the project can include erosion, siltation, loss of pollution attenuation, loss of groundwater recharge, reduced water quality and loss of wildlife habitat. A 50-foot-wide strip of continuous, undisturbed, indigenous vegetative cover along the Resource Area boundary within the 100-foot Buffer Zone shall be maintained, where practicable, in order to protect water quality, improve water recharge, reduce erosion and pollution of the adjacent wetland resource areas, and provide wildlife habitat.

Site Review, versus Request for Determination of Applicability, versus Notice of Intent: Many times applicants are confused regarding when to request a Site Review, and when to file a Request for Determination of Applicability or a Notice of Intent for work in the Buffer Zone. If the applicant is not sure if any of the work area or land is in the jurisdiction of the Conservation Commission, a Site Review Permit can be requested. A Site Review form is required for any proposed new buildings in Sunderland. If it is clear that there are resources areas within 100 feet of the work area or land in question, then a Request for Determination of Applicability or Notice of Intent can be filed at the discretion of the applicant. If a Request for Determination of Applicability is filed, the project can move forward if no resource areas are affected and a Negative Determination is issued. For a project to be issued a Negative Determination, the Commission must be assured that the potential for alteration of a Resource Area is so insignificant as to not require the oversight provided by an Order of Conditions and subsequent Certificate of Compliance. Therefore the Commission may typically consider issuing a Negative Determination to projects that meet the following minimum criteria that apply to the proposed project:

- no alteration of a wetland resource area
- less than 1,000 sq. ft. of alteration in the buffer zone to a resource area
- no work will occur within 50' of a wetland resource area or within 100' of a vernal pool
- a plan is included for permanent stabilization - including loaming, seeding, and mulching
- erosion control measures are maintained until permanent vegetation is established.

Typically, a Notice of Intent is filed for large projects or when impacts to Resource Areas are expected.

### Jurisdiction

Except as provided by this Bylaw or permitted by the Sunderland Conservation Commission, no person shall remove, fill, dredge, alter or build upon, or within one hundred (100) feet of, the following resource areas: any freshwater wetland, riverine wetland, marsh, wet meadow, bog or swamp, bank or beach, lake, river, pond, or stream, whether intermittent or continuous, natural or human-made; any land under aforesaid waters, land subject to flooding or inundation by surface or groundwater, storm flowage, seasonal wetlands, vernal pools, and isolated wetlands including kettle holes.

Exceptions. The application and permit required by this Bylaw will not be required for:

1. Maintaining, repairing or replacing, but not substantially changing or enlarging (by more than 50% of the structure area), an existing or lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone or other telecommunication services, town- maintained drainage ditches, sanitary sewers and storm sewers, and public roadways provided that:

- a. written notice has been given to the Commission at least 48 hours prior to the commencement of work,
  - b. the work conforms to performance standards found in these Regulations.
2. Emergency projects necessary for the protection of the health or safety of the public, provided that the work is performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, provided that:
  - a. advance notice, oral or written, has been given to the Commission prior to commencement of work, or within twenty-four (24) hours after commencement.
  - b. Conservation Commission or its agent has certified the work as an emergency project.
  - c. the work is performed only for the limited purposes necessary to abate the emergency.
  - d. within twenty-one (21) days of commencement of an emergency project, a permit application shall be filed with the Commission for review as provided by this Bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.
3. Work performed for the normal maintenance or improvement of lands in agricultural use, forestry done under an approved DCR forest cutting practices plan, or normal lawn and yard work done to maintain existing developed lots provided that said lawn and yard work does not constitute an alteration of a wetland resource area as defined in Section 1 of the Regulations.

## **Section 2. Definitions**

Except as specifically provided by the Bylaw and the Regulations, terms used in the Bylaw and Regulations have the meanings defined in the Wetlands Protection Act, M.G.L. Ch. 131, Section 40 (~~the Act~~) and in Regulations, currently codified at 310 CMR 10.0.

In addition, the following definitions shall apply in the interpretation and implementation of the Bylaw:

Alter shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw and causing significant and cumulative adverse effects to wetlands values:

- Removal, excavation or dredging of soil, sand, gravel, clay, minerals, or aggregate materials of any kind,
- Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics,
- Drainage, pumping, or other disturbance of water level or water table,
- Dumping, discharging, or filling with any material that may degrade water quality,
- Placing of fill, or removal of material that would alter elevation,
- Driving of piles, erection or repair of buildings, or structures of any kind,
- Placing of obstructions or objects in water,
- Destruction of plant life including cutting of trees,
- Changing water temperature, biochemical oxygen demand, or other physical, chemical or biological characteristics of surface or groundwater.
- Any activities, changes or work that may cause or contribute to pollution of any body of water or groundwater.

Buffer Zone shall mean land within 100 feet of any resource areas, including the resource areas

identified by the Wetlands Protection Act plus isolated wetlands greater than 400 square feet, vernal pools, isolated land subject to flooding, and intermittent streams. The Commission may issue conditions for, or deny approval for, any work in the buffer zone that in its estimation will alter one or more of those resource areas or does not meet the performance standards set forth in this bylaw.

Existing Developed Lot shall mean any real estate with a human-made structure used or intended for human use.

Structure shall mean a combination of materials that form an object intended for use, occupancy, or ornamentation, whether installed on, above, or below the surface of land or water.

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

Abutter is any landowner, as determined by the most recent assessor's records, whose land immediately abuts the property that is the subject of the notification, or whose land lies across a public or private traveled way or across any river, stream, pond, or lake or downstream to a distance of 500 feet.

Consultant(s) or consulting services shall include, but are not limited to, architects, biologists, soil scientists and other environmental experts, chemists, engineers, geologists, landscape architects, lawyers, sanitarians, and surveyors and the services they provide.

Delineation is the identification of the boundary distinguishing a wetland area from its adjacent uplands. The wetland area is defined by a predominance of hydrophytic vegetation and the presence of hydric soils, as required under 310 CMR 10.0.

Flood control means the prevention or reduction of flooding and flood damage.

Vernal pools shall mean confined basin depressions that contain water for at least two continuous months in the spring and/or summer during most years, that have no fish populations, and that serve as essential breeding habitat for certain amphibians as well as important habitat for other wildlife species. Vernal pools need not fall within resource areas protected under the Wetlands Protection Act. The boundary of a vernal pool habitat includes the area within 100 feet of the perimeter defined by the 100-year storm calculation in DEP Program Policy 85-2.

### ***Section 3. Procedures***

- A. Any person desiring to know whether a proposed activity or an area is subject to the Bylaw may request in writing a determination from the Commission. Such requests must be accompanied by data and plans describing the project and its potential impact on the resource area protected under this Bylaw. The Commission may accept as the request under this Bylaw the Request for Determination of Applicability filed under the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.
- B. Written application shall be filed with the Commission for any lot development. The Commission will determine if the activities regulated by this Bylaw will affect resource areas protected by the Bylaw. An application shall be deemed filed pursuant to the Bylaw only if it is completed in the

appropriate form, includes plans, wetland delineation and other information as required by these regulations, and is accompanied by the filing fee. The Commission may accept the Notice of Intent and plans filed under the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.

## C. Fees and Payments

### 1. Fee Schedule.

#### a. The fee for Request for Determination of Applicability applications shall include:

\$50 for the first five acres in the request  
\$25 for each additional five acres or part thereof.

#### b. The fee for Notice of Intent applications shall include:

\$50 basic fee (as required by M.G.L. Chapter 131, Sec. 40), **plus:**  
\$25 for each additional building lot in, or partially in, the buffer  
\$100 for any commercial or industrial project  
\$250 for each wetland replication project on site

#### c. The fee for Site Review shall include:

\$25 basic fee

d. A variable fee may be required by the Commission to pay the reasonable costs and expenses borne by the Commission for specific expert engineering and consultation services required during review of an application request. This fee shall be in the amount equal to **100%** of the actual costs, if any, to be incurred by the Commission to retain independent engineering, scientific or other advice deemed necessary by the Commission to review the application, grant or deny the permit and impose appropriate conditions.

### 2. Payment. The fixed fee shall be payable upon filing of the application. Failure to pay the fixed fee when due shall cause the application to be deemed incomplete. The variable fee shall be payable when the Commission engages independent consultants. Failure to pay the variable fee when due shall constitute sufficient cause to deny the permit.

### 3. The Commission may waive the filing fee and costs and expenses for an application of request filed by a government agency, or for reasons of financial hardship.

## D. Public Notice and Hearings

1. Any person filing a Request for Determination of Applicability with the Commission shall provide written notice thereof at the same time, by certified mail, Certificate of Mailing or hand delivery, at least five days prior to the scheduled hearing date to all abutters according to the most recent records of the assessors, including those across a traveled way or body of water. The notice to abutters shall be sent by certified mail or Certificate of Mailing, and shall state where the request or application, including any accompanying documents, may be examined or obtained. Proof of notification and a copy of an abutters list shall be supplied to the Commission at least five working days prior to the scheduled hearing.

2. Any person filing a Notice of Intent application with the Commission shall provide written notice thereof at the same time, by certified mail, Certificate of Mailing or hand delivery, at least five days prior to the scheduled hearing date, to the following parties:

- Planning Board
- Board of Health
- Building Inspector
- All abutters, according to the most recent records of the assessors, including those across a traveled way or body of water. The notice to abutters shall be sent by certified mail or certificate of mailing, and shall thereby state where the request or application, including any accompanying documents, may be examined or obtained. Proof of notification and a copy of an abutters list shall be supplied to the Commission five working days prior to the scheduled hearing.

3. Public hearings on any application or Request for Determination of Applicability shall commence within twenty-one (21) days from receipt of a completed application or request for determination. The applicant may request to extend the twenty-one (21) day time period by a written and signed request.

4. Public notification of the date, time, and place of such public hearings must be published in a newspaper of general circulation in the Town of Sunderland at least five (5) working days prior to the hearing. Costs for such public notification shall be the responsibility of the Commission.

5. The Commission shall have authority to continue the hearing to a certain date announced at the hearing or to an unspecified date, for reasons stated at the hearing, which may include the receipt of additional information offered by the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials notified by the applicant.

6. A date for public hearing continuation may be specified at the public hearing, and if not specified, the public hearing shall reconvene within twenty-one (21) days after submission of requested information, documents or plans, or the occurrence of a specific action. If date is not specified, the meeting date, time, and place shall be published in a newspaper of general circulation in the Town of Sunderland, at least five (5) working days prior to the continuation. Such public notification, including cost, shall be the responsibility of the applicant. Written notice shall be sent to any person who so requests in writing.

7. The Commission in an appropriate case may combine its hearings under this Bylaw with the hearing conducted under the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.

#### ***Section 4. Determination, Permits and Conditions***

- A. The Commission shall issue its permit or determination in writing within twenty-one (21) days of the close of the public hearing.
- B. If a permit is issued, the Commission may impose conditions that the Commission deems necessary or desirable to protect those values protected under the Bylaw, and all activities shall be done in accordance with those conditions.
- C. As part of a permit issued under this Bylaw, and in addition to any security required by any other municipal or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by a proper bond or deposit of money or negotiable securities or other undertakings of financial

responsibility judged sufficient by the Commission. The Commission may accept as security a conservation restriction, or other covenant enforceable in court of law, running with the land.

- D. The Commission is empowered to deny a permit for failure to meet the requirements of this Bylaw or Regulations, for failure to submit necessary information or plans requested by the Commission, for failure to meet design specification, performance standards, and other requirements in Regulations of the Commission, for failure to avoid or prevent significant or cumulative detrimental effects upon the wetland interests protected by this Bylaw and its Regulations, and for situations where no conditions are adequate to protect those interests.
- E. The Commission, for good cause, may revoke or amend a permit issued under this Bylaw and its Regulations after public notice and public hearing, and notice to the holder of the permit. Conditions for denial shall include but are not limited to the following:
  - 1. Where additional information, not given to the Commission at the time the Order was issued, indicates the Order is not adequate to protect the resource areas;
  - 2. Where work has been done in violation of the Order or these Regulations;
  - 3. Where work has caused damage to the resource areas; or
  - 4. Where work does not conform to the approved plans, or plans have been materially changed.
- F. Any permit issued shall expire three (3) years from the date of issuance. The Commission in its discretion may issue a permit expiring five (5) years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one-year period.
- G. The Commission in an appropriate case may combine the permit or other action on an application issued under this Bylaw with the Order of Conditions or other actions issued or taken under the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.

## ***Section 5. Plans and Engineering Information***

- A. General. For Determination of Applicability or Notice of Intent requests, plans shall be submitted that describe the proposed activity and its effects on the environment. All plans, drawings, sketches and calculations shall be dated and signed by the person responsible for their preparation. Plans shall be consistent with those submitted to or approved by other Town Boards, Commissions, or Committees and 310 CMR 10.99.
- B. Delineation. All Notices of Intent filed must include evidence that all relevant resource areas and buffer zones were delineated. Such delineation must be done by a person approved by the Conservation Commission as a competent wetland biologist, wetlands scientist, or other qualified person. Delineation of wetland boundaries may also be requested at the discretion of the Commission for Determination of Applicability requests.
- C. The purpose of the plans is to identify the site, resource areas and nearby features. Plans shall include, without limitation, the following features:
  - 1. Clear directions for locating the lot.
  - 2. An 8 1/2 x 11 inch cut out of a U.S Geological Survey Quadrangle showing the location of the proposed activity.
  - 3. Names of owners of abutting property.

4. Existing and proposed structures, including dimensions and location of the subject plot.
5. The location and description of all existing and proposed septic tanks and leaching areas, storm drain systems, underground utilities, and refuse and other waste disposal methods.
6. The location of driveways and paved surfaces.
7. The location and boundaries of the lot and adjacent streets or ways, and the location and owner's names of all abutting properties.
8. The location of wetlands, streams, water bodies, and drainage swales.

**D. Engineering Drawings and Information for Notice of Intent Application.**

The purpose of the engineering drawings and information is to describe the proposed activity and its impact. Engineering drawings may be required by the Commission to include, without limitation, the following features:

1. Present and proposed contours of the entire site and affected adjacent areas. Generally, 2-foot contours should be shown.
2. Present and proposed rights of way and easements.
3. For projects that involve substantial alteration of the land surface, location of proposed and existing water retention areas and all existing and proposed storm drainage pipes, ditches, structures, culverts, and outfalls, must be fully described with information on inverts, slopes, materials, entrance and outlet conditions, bedding in unstable soils, details of drainage structures and endwalls and other standard engineering data on such work.
4. Location of areas to be removed, dredged, filled, or altered within 100 feet of any resource area.
5. Erosion and sedimentation prevention plans both during and after construction.
6. Any additional calculations deemed necessary by the Commission for determining whether the proposal meets the performance standards described in the Act and Regulations.

**E. Construction Methods.** The applicant shall include a description of construction methods, and in particular, measures to minimize erosion, pollution, and damage to the resource area both within and without the actual construction area, including, but not limited to, the following:

1. Methods of erosion control during construction, including sedimentation ponds and slope protection.
2. Methods for closing stripped and cleared areas of the site during extended shutdown due to weather, economic conditions, or other cause.
3. Methods of stockpiling excavated spoil on the site or of transportation to offsite location, as applicable.
4. The proposed sequence and anticipated commencement and completion dates of construction of retention basins, settling basins, vegetation clearing and land filling, grading, or excavating.
5. Method for monitoring of erosion and pollution control devices and removal plans, if temporary structures.

**F. Other Information.** The requirements stated above are not definitive or exclusive. Some may be omitted in a particular case, and an applicant may be required to submit other or additional information deemed necessary by the Commission to determine compliance with this Bylaw. In an appropriate case the Commission may accept under this Bylaw the plans for the Notice of Intent filed under the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.



## ***Section 6. Performance Standards***

General. Except as otherwise specifically provided by these Regulations, the Commission shall apply the Performance Standards contained in the DEP Regulations, currently codified at 310 CMR 10.00, as they may be amended from time to time. Presumptions of significance contained in the Wetlands Protection Act and the Regulations hereunder shall extend to the interest protected by the Bylaw, where such interests are not protected by the Act.

A. The Performance Standards contained in 310 CMR 10.57 (4) (b) & (c) shall apply to Isolated Land Subject to Flooding, regardless of its size.

B. Buffer Zone Performance Standards:

Work within the Buffer Zone shall not alter a resource area unless the alteration meets the performance standards set forth in this bylaw. For small projects such as single-family lots, point discharge of surface runoff within or through a Buffer Zone shall be controlled to minimize increase in peak flow in the watercourse downstream of the discharge point for the runoff, and to cause no increase in flood elevations outside the project site. For large projects in which over an acre of disturbance occurs, Massachusetts stormwater management standards shall apply.

## ***Section 7. Burden of Proof***

The Applicant for a permit shall have the burden of providing by a preponderance of credible evidence that the proposed work will not have any significant or cumulative detrimental effect upon the wetland interests protected by this Bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

## ***Section 8. Reasons for Outside Experts***

The services of an outside expert or consultant may be deemed necessary at the discretion of the Commission in certain cases where additional technical assistance is needed for the Commission to make a determination or a permit decision. Said consultant or expert will be hired at the applicant's expense.

## ***Section 9. Enforcement and Penalties***

Any person who violates any provision of this Bylaw, Regulations hereunder, or permits issued hereunder, shall be punished by a fine of not more than three-hundred (\$300) dollars. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the Bylaw, Regulations, or permit violated shall constitute a separate offense. This fine may be in addition to any levied under the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.

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