

# TOWN OF SHUTESBURY, MASSACHUSETTS

## GENERAL WETLANDS PROTECTION BYLAW

*Voted by Shutesbury Conservation Commission on January 20, 1987*

*Bylaw passed by Shutesbury Town Meeting on May 2, 1987*

*Amendment: Non-criminal Enforcement MGL Ch.40, §21D, adopted by  
Shutesbury Town Meeting on May 5, 1990*

### SECTION 1: Purpose

The purpose of this Bylaw is to protect the wetlands, related water resources, and adjoining land areas in the Town of Shutesbury by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon wetland values, including but not limited to the following (collectively, the "wetland values protected by this Bylaw"):

- a. public or private water supply
- b. groundwater and groundwater quality
- c. surface water and surface water quality
- d. flood control
- e. erosion and sedimentation control
- f. storm damage prevention
- g. water pollution
- h. fisheries
- i. storm drainage
- j. runoff
- k. wildlife habitat
- l. recreation
- m. aesthetics
- n. historic values
- o. agriculture
- p. aquaculture

### SECTION 2: Jurisdiction

Except as permitted by the Conservation Commission or as provided in this Bylaw, no person shall remove, fill, dredge, build upon, or alter the following resource areas:

- a. any freshwater wetland, isolated wetland, marsh, wet meadow, bog or swamp; within 100 feet of any freshwater wetland, isolated wetland, marsh, wet meadow, bog or swamp;
- b. any lake, river, pond or stream (whether surface or subsurface); within 100 feet of any lake, river, pond or stream (whether surface or subsurface); any land under said waters;
- c. any land subject to flooding or inundation by groundwater, surface water, storm flowage, or within a 100-year flood plain.

## **SECTION 3: Exceptions**

### **a. Existing Structures or Facilities**

The permit and application required by this Bylaw shall not be required for maintaining, repairing, or replacing (but not substantially changing or enlarging), an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services; provided that all of the following conditions are met:

1. the structure or facility is not substantially changed or enlarged;
2. written notice has been given to the Commission prior to commencement of work;
3. the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

### **b. Emergency Projects**

The permit and application required by this Bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that all of the following Conditions are met:

1. the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof;
2. advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement;
3. the Conservation Commission or its agent certifies the work as an emergency project;
4. the work is performed only for the time and place certified by the Conservation-Commission for the limited purposes necessary to abate the emergency;
5. within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided in this Bylaw.

Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

### **c. Other Exceptions**

Other than stated in this section, the exceptions provided in the Wetlands Protection Act shall not apply.

#### **SECTION 4: Applications for Permits and Requests for Determination**

Written application shall be filed with the Commission to perform activities regulated by this Bylaw affecting resource areas protected by this Bylaw. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit issued pursuant to this Bylaw.

The Commission, at its discretion in an appropriate case, may accept as the application and plans under this Bylaw the Notice of Intent and plans filed under the Wetlands Protection Act (General Laws, Chapter 131, Section 40).

Any person desiring to know whether or not proposed activity or an area is subject to this Bylaw may in writing request a determination from the Commission. Such a Request for Determination shall contain data and plans specified by the regulations of the Commission.

At the time of an application or request, the applicant shall pay a filing fee specified in the Regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act (General Laws, Chapter 131, Section 40).

If, in the judgment of the Commission, consulting services are necessary or appropriate, the applicant, prior to a decision on the application or request, shall reimburse the Town for the full cost of such services. All such consultants shall be selected by the Commission. Failure to pay the filing fee, or failure to provide full reimbursement for consulting services, shall be sufficient grounds to deny the application or request.

The Commission may waive all or part of the filing fee and reimbursement for consulting services for an application or request filed by a government agency. The Commission shall waive the filing fee and reimbursement for consulting services for a Request for Determination filed by a person having no financial connection with the property which is the subject of the request.

#### **SECTION 5: Notice and-Hearings**

Any person filing an application or a Request for Determination with the Commission shall, at the same time, give written notice thereof (by certified mail with return receipt requested or by personal delivery in hand) 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 enclose a copy of the application or request, with plans. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any application or Request for Determination, with written notice given at the expense of the applicant, five working days prior to the hearing, in a newspaper of general circulation in the municipality.

The Commission shall commence the public hearing within 21 days from receipt of a completed application or Request for Determination.

The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon.

The Commission, at its discretion in an appropriate case, may combine its hearing under this Bylaw with the hearing conducted under the Wetlands Protection Act (General Laws, Chapter 131, Section 40).

The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and Plans required of the applicant deemed necessary by the mission in its discretion or comments and recommendations of boards and officials listed in Section 6. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the commission shall take action on such information as is available.

### **SECTION 6: Coordination with Other Boards**

Any person filing a permit application or a Request for Determination with the Commission shall provide a copy thereof at the same time (by certified mail with return receipt requested, or by personal delivery in hand) to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, and Building Inspector. The Commission shall not take final action until such boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any such comments and recommendations and to respond to them at a hearing of the Commission, prior to final action.

### **SECTION 7: Permits Determinations and Conditions**

If the Commission, after a public hearing determines that the activities which are the subject of the application are likely to have a significant or cumulative effect upon the wetland values protected by this Bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions, which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

The Commission is empowered to deny a permit for failure to meet the requirements of this Bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this Bylaw and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five 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, provided that a request for a renewal is received in writing by the Commission prior to expiration.

For good cause the Commission may revoke or modify a permit issued under this Bylaw after public notice and public hearing, and notice to the holder of the permit.

The Commission, at its discretion in an appropriate case, may combine the permit or other action on an application issued under this Bylaw with the order of Conditions issued under the Wetlands Protection Act.

### **SECTION 8: Regulations**

After public notice and public hearing, the Commission shall promulgate regulations to effectuate the purposes of this Bylaw. Failure by the Commission to promulgate such regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.

At a minimum these regulations shall define key terms in this Bylaw not inconsistent with this Bylaw.

### **SECTION 9: Definitions**

The following definitions shall apply in the interpretation and implementation of this Bylaw.

The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business, organization, trust, estate, the Commonwealth or political subdivisions thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, the Town of Shutesbury, and any other legal entity, its legal representatives, attorneys, agents, heirs, successors or assigns.

The terms "consultant(s)" or "consulting services" include, but are not limited to, architects, biologists and other environmental experts, chemists, engineers, geologists, landscape architects lawyers, sanitarians, and surveyors.

The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this Bylaw:

- a. Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- b. Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- c. Drainage or other disturbance of water level or water table;

- d. Dumping, discharging, or filling with any material which may degrade water quality;
- e. Placing of fill, or removal of material, which would alter elevation;
- f. Driving of piles, erection or repair of buildings, or structures of any kind;
- g. Placing of obstructions or objects in water;
- h. Destruction of plant life, including but not limited to cutting of trees;
- i. Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
- j. Any activities, changes, or work, which may cause or tend to contribute to pollution of any body of water or groundwater.

### **SECTION 10: Security**

As part of a permit issued under this Bylaw, 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 one or more of the methods described below:

- a. By a performance bond secured by surety, or deposit money or negotiable securities. Such bond or money or negotiable securities must be approved as to form and manner of execution by the Town counsel or counsel to the Commission. Any surety must be approved by the Commission;
- b. By a conservation restriction, easement or other covenant running with the land and enforceable in a court of law, duly executed by the record owner and recorded in the Franklin County Registry of Deeds (or in the case of registered land, with the recorder of the Land Court). Such covenant shall provide in part that the permit conditions shall be performed and observed before the land, or any lot or other part thereof, may be conveyed other than by mortgage deed.

### **SECTION 11: Enforcement**

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

The Commission shall have authority to enforce this Bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions. As part of a permit issued under this Bylaw, the Commission may provide that the applicant agrees to reimburse the Town for all enforcement expenses, including but not limited to court costs, attorney's fees and expert witness fees.

Upon request of the Commission, the Board of Selectmen and the Town Counsel (counsel to the Commission) shall take legal action for enforcement under civil law; upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

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

In the alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure set forth in General Laws, Chapter 40, Section 21D.

### **SECTION 12: Burden of Proof**

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application, will not have unacceptable significant or cumulative effect upon the wetland values protected by this Bylaw. Failure to provide evidence which is, in the opinion of the Commission, adequate to support this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

### **SECTION 13: Relation to the Wetlands Protection Act**

This Bylaw is adopted Under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, General Laws, Chapter 131, Section 40, and regulations thereunder.

### **SECTION 14: Severability**

If any section, paragraph, sentence, clause, provision, phrase, or work of this Bylaw shall be adjudged not valid, the adjudication shall apply only to the material so adjudged and the remainder of this Bylaw shall be deemed to remain valid and effective. Any such adjudication shall not invalidate any permit or determination which previously has been issued.

### **Amendment: Non-Criminal Enforcement per MGL Ch.40, §21D [to add at end of current SECTION 11. Enforcement]:**

For purposes of non-criminal enforcement procedures pursuant to Mass. General Laws, Chapter 40, Section 21D, each of the following actions, omissions or occurrences shall be considered a separate offense and each such offense shall be punished by a fine of \$50.00.

**1.** Altering any resource area protected by this Bylaw. The term "alter" includes all activities, as described in SECTION 9 a through j:

- a. Removal, excavation, or dredging of: soil, sand, gravels or aggregate materials of any kind;
- b. Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- c. Drainage or other disturbance of water level or water table;
- d. Dumping, discharging, or filling with any material which may degrade water quality;
- e. Placing of fill or removal of material, which would alter elevation;
- f. Driving of piles, erection or repair of buildings, or structures of any kind;
- g. Placing of obstructions or objects in water;
- h. Destruction of plant life, including but not limited to trees;
- i. Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
- j. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

**2.** Failure to file a written application with the Shutesbury Conservation Commission for permission to perform activities regulated by the Wetlands Protection Bylaw affecting resource areas described in SECTION 2 a through c:

- a. Any freshwater wetland, isolated wetland, marsh, wet meadow, bog or swamp; within 100 feet of any wetland, isolated wetland, marsh, wet meadow, bog or swamp;
- b. Any lake, river, pond or stream (whether surface or subsurface); within 100 feet of any lake, river, pond or stream (whether surface or subsurface); any land under said waters;
- c. Any land subject to flooding or inundation by groundwater, surface water, storm flowage, or within a 100-year floodplain.

**3.** Failure to follow any or all conditions of a permit issued by the Shutesbury Conservation Commission for activities within a resource area or buffer zone as described above. Each day or portion thereof during which a violation continues may constitute a separate offense. This Bylaw may be enforced pursuant to MGL Chapter 40, Section 21D by the Conservation Commission; or by a Town police officer, constable with jurisdiction, or the Selectboard, upon request from the Conservation Commission.