

# Town of Shutesbury, Massachusetts Regulations under the General Wetlands Protection Bylaw

## SECTION I: AUTHORITY AND PURPOSE

### I. A. Authority

These regulations shall be effective on and after July, 26 2000, and so remain until modified or amended by the Shutesbury Conservation Commission ("the Commission"). They are enacted by the Commission under authority granted by Section 8 of the Shutesbury General Wetlands Protection Bylaw. That Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, Massachusetts General Laws, Chapter 131, Section 40, and regulations thereunder.

### I. B. Purpose

These regulations are enacted to clarify and define the provisions of the Shutesbury General Wetlands Protection Bylaw, and to protect the wetlands values set forth in Section 1 of that Bylaw.

## SECTION II: FEES

### II. A. Procedures

1. Fees shall be paid to the Conservation Commission at the time of application, by check or money order made payable to "Town of Shutesbury." Fees are non-refundable.
2. In addition to the fees, reimbursement for consulting services may be required as provided in Section 4 of the Bylaw.
3. Fees may be waived by the Commission as provided in Section 4 of the Bylaw. As provided in Section 4 of the Bylaw, the Commission shall waive the filing fee and reimbursement for consulting services for a Request for Determination of Applicability filed by a person (such as an abutter) having no financial connection with the property which is the subject of the request.
4. As provided in Section 4 of the Bylaw, the fees specified below are in addition to fees required under the state Wetlands Protection Act.

### II. B. Fee Schedules

If more than one of the following schedules applies to any project, then the schedule providing the lower fee shall be applied to that project. Fees below are in addition to fees authorized by the Wetlands Protection Act (MGL Ch.131 S.40) and DEP regulations (310 CMR 4.00).

1. Notice of Intent or Request for Determination of Applicability for any project (a) not involving residential construction work, and (b) affecting less than 5,000 square feet of area within Commission jurisdiction under Section 2 of the Bylaw: \$25.00

- a. For each additional one thousand (1,000) square feet or portion thereof of such area affected by the project, the above fee shall be increased by: \$5.00
2. Notice of Intent or Request for Determination of Applicability for project involving one single family dwelling or one building lot: \$50.00
3. For each additional dwelling unit or each additional building lot, the above fee shall be increased by: \$50.00  
Examples:  
ANR (approval under subdivision law not required plan) showing two lots – \$100;  
Duplex with two dwelling units on one lot – \$100;  
Subdivision plan showing three lots – \$150.
4. Extension of time for permits: \$ 25.00

### SECTION III: DEFINITIONS

- III. A. "**Bogs**" shall be defined as set forth in the Wetlands Protection Act, Massachusetts General Laws, Chapter 131, Section 40, Paragraph 6.
- III. B. "**Bylaw**" shall mean the Town of Shutesbury General Wetlands Protection Bylaw.
- III. C. "**Commission**" or "Conservation Commission" shall mean the Conservation Commission of the Town of Shutesbury, Massachusetts.
- III. D. "**Freshwater Wetlands**" shall be de-fined as set forth in the Wetlands Protection Act, Massachusetts General Laws, Chapter 131, Section 40, Paragraph 8.
- III. E. "**Isolated Wetland**" shall be defined as any area of one thousand square feet or more which meets all standards for vegetated wetlands under state law or regulations, except for the "bordering" requirement.
- III. F. "**Marshes**" shall be defined as set forth in the Wetlands Protection Act, Massachusetts General Laws, Chapter 131, Section 40, Paragraph 11.
- III. G. "**Swamps**" shall be defined as set forth in the Wetlands Protection Act Massachusetts General Laws, Chapter 131, Section 40, Paragraph 9.
- III. H. "**Wet meadows**" shall be defined as set forth in the Wetlands Protection Act, Massachusetts General Laws, Chapter 131, Section 40, Paragraph 10.
- III. I. Definitions set forth in Section 9 of the Bylaw are incorporated herein by reference.

**III. J.** Definitions set forth in Section 310 CMR (Code of Massachusetts Regulations) 10.04 are incorporated herein by reference, provided however, that definitions set forth in the Bylaw or these Regulations shall take precedence in the event of any conflict.

## **SECTION IV: ADMINISTRATION**

### **IV. A. Waiver of Compliance**

Strict compliance with the requirements of these rules and regulations may be waived when, in the judgment of the Commission, such action is in the public interest and not inconsistent with the intent of the Shutesbury Wetlands Protection Bylaw. In waiving strict compliance, the Board may require such alternative conditions as will serve substantially the same objective as the standards or regulations waived.

### **IV. B. Reimbursement for Consulting Services**

Failure to pay any reimbursement for consulting services provided in the Bylaw or these regulations at the stated time, or within thirty (30) days following mailing of an invoice, whichever is earlier, shall be sufficient grounds for the Commission to disapprove or rescind its approval of any application or permit. All reimbursements shall be made by certified check or money order payable to "Town of Shutesbury, Massachusetts". No security provided under Section 10 of the Bylaw shall be released until after all reimbursements have been paid.

### **IV. C. Reduction and Release of Security**

1. The penal sum of any bond, or the amount of any deposit held pursuant to Section 10 of the Bylaw may, from time to time, be reduced by the Commission and the obligations of the parties thereto released by the Commission in whole or in part, upon receipt of a written request from the person to whom the permit was issued or the person providing the security.
2. Upon completion of work provided in the permit, security for the performance of which was given pursuant to Section 10 of the Bylaw, the applicant may request (in writing) and agree on terms of release with the Commission.
3. If the Commission determines that said work has been completed in compliance with the terms and conditions of the permit, it shall release the interest of the Town of Shutesbury in such bond or deposit, and return the bond or deposit to the person who furnished same, or release the covenant, as the case may be.
4. If the Commission determines that said work has not been completed in compliance with the terms and conditions of the permit, it shall, within forty-five (45) days after receipt of a written request for release of security, specify to the applicant the details wherein said work fails to comply with the terms and conditions of the permit.

### **IV. D. Severability**

If any section, paragraph, sentence, clause, provision, phrase, or word of these regulations shall be adjudged not valid, the adjudication shall apply only to the

material so adjudged and the remainder of these regulations shall be deemed to remain valid and effective. Any such adjudication shall not invalidate any permit or determination, which previously has been issued.

#### **IV. E. Amendments**

These regulations or any portion thereof may be amended, supplemented or repealed from time to time by the Commission, on its own motion or by petition, after public notice and a public hearing as provided by Section 8 of the Bylaw.

#### **IV.F. Invalidation by State Law or Local ByLaw**

Any part of these regulations subsequently invalidated by a new state law or town bylaw or modification of an existing state law or town bylaw shall be automatically brought into conformity with the new or amended law or bylaw, and shall be deemed to be effective immediately, without recourse to a public hearing, the customary procedures for amendment or repeal of such regulations.

#### **IV.G. Forms**

Unless otherwise specified by the Conservation Commission, the forms set forth by the Department of Environmental Protection Regulations shall serve also as the forms to be used under the Town of Shutesbury General Wetlands Protection Bylaw.

Additional or different forms for the administration of these regulations and the Town of Shutesbury General Wetlands Protection Bylaw may be adopted and revised from time to time by the Conservation Commission by administrative action of the Commission apart from Section IV.E. In the event of such administrative action, sample forms shall be appended to these regulations or made available by the Commission.

#### **IV.H. Notices and Hearings**

Unless otherwise specified by the Conservation Commission, the procedures for notices and hearings set forth in the Wetlands Protection Act and in the Department of Environmental Protection Regulations shall serve also to fulfill the provisions of Section 5 of the Town of Shutesbury General Wetlands Protection Bylaw.

#### **IV.I. Enforcement and Penalties**

1. Criminal Complaint: As provided by Section 11 of the Bylaw, and authorized by Massachusetts General Laws, Chapter 40, Section 21, any person who violates any provision of the Bylaw or these regulations, or permits issued under the Bylaw or these regulations, may be punished by indictment or an complaint brought in the District Court. Except as may otherwise be provided by law, and as the District Court may see it to impose, the maximum penalty or any violation of the Bylaw, regulations or permit shall be three hundred dollars (\$300.00) for each offense. 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.
2. Non-Criminal Disposition: As provided by Section 11 of the Bylaw and authorized by Massachusetts General Laws, Chapter 40, Section 21D, any

person who violates any provision of the Bylaw or these regulations, or permits issued under the Bylaw or these regulations, may, in the discretion of the Commission or any police officer (or of any person, department, agency or consultant designated by the Commission as its agent) be penalized by a non-criminal complaint in the District Court. The Commission or any police officer (or any person, department, agency or consultant designated by the Commission as its agent) shall be the enforcing persons. For the purpose of this provision the penalty to apply in the event of a violation shall be as follows: twenty five dollars (\$ 25.00) for the first offense; fifty dollars (\$50.00) for the second offense; one hundred dollars (\$100.00) for the third offense; and two hundred dollars (\$200.00) for the fourth and each subsequent offense. 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.