
General References

Chapter 122, WETLANDS BY-LAW

[HISTORY: Adopted 4-27-1990 ATM, Art. 32. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning -- See Ch. 125.

Building standards -- See Ch. 152.

Flood hazard areas -- See Ch. 157.

Subdivision of land -- See Ch. 194.

§ 122-1. Purpose.

The purpose of this chapter is to protect the wetlands, related water resources and adjoining land areas of the Town of Sunderland by prior review and control of activities deemed by the Conservation Commission likely to have significant or cumulative effect upon wetland values, including but 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 (collectively to be known as the "wetlands protected by this chapter").

§ 122-2. Prohibited acts.

Except as provided by this chapter 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, any bank or beach, any lake, river, pond or stream, whether intermittent or continuous, natural or man-made, any land under aforesaid waters, any land subject to flooding or inundation by surface or ground water, storm flowage and isolated wetlands, including kettle holes and seasonal wetlands.

§ 122-3. Exceptions to permit requirement.

A. The application and permit required by this chapter shall not be required for maintaining, repairing or replacing, but not substantially changing or enlarging [more than fifty percent (50%) of structure area], an existing or lawfully located structure or facility used in the service of the public to provide electric, gas or water, telephone, telegraph or other telecommunication services, town-maintained drainage ditches, sanitary sewers and storm sewers, provided that the structure or facility is not substantially changed or enlarged, provided that written notice has been given to the Commission at least forty-eight (48) hours prior to commencement of work and provided that the work conforms to performance standards in regulations adopted by the Commission.

B. The application and permits required by this chapter shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that 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, provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within twenty-four (24) hours after commencement, provided that the Conservation Commission or its agent certified the work as an emergency project, provided that the work is performed only for the time and place certified by the Conservation Commission for the limited

purposes necessary to abate the emergency and provided that within twenty-one (21) days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided in this chapter. 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.

C. The application and permit required by this chapter shall not be required for work performed for the normal maintenance or improvement of lands in agricultural use, forestry done under an approved DEM forest cutting practices plan or normal lawn and yard work done to maintain existing developed lots.

§ 122-4. Delineation of boundaries.

The delineation of wetland boundaries must be done by a person approved by the Conservation Commission as a competent wetlands biologist, wetlands scientist or other qualified person.

§ 122-5. Requests for determination of applicability.

A. Any person desiring to know whether a proposed activity or an area is subject to this chapter may request, in writing, a determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission. When the Commission determines that the activity proposed in an application represents only a portion of a plan or project, it may require information describing the entire project and its potential impact.

B. The Commission, in an appropriate case, may accept as the request under this chapter the request for determination of applicability filed under the Wetlands Protection Act, MGL c. 131, § 40.

§ 122-6. Application.

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

B. The Commission, in an appropriate case, may accept as the application and plans under this chapter the notice of intent and plans filed under the Wetlands Protection Act, MGL c. 131, § 40.

§ 122-7. Fee.

At the time of an application 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, MGL c. 131, § 40. In addition, the Commission is authorized to require the applicant to pay the reasonable costs and expenses borne by the Commission for specific expert engineering and consultant services deemed necessary by the Commission to review the application. Said payment can be required at any point in the deliberations prior to a final decision rendered. Said services may include but are not limited to wetland survey and delineation, hydrogeologic and drainage analysis, wildlife evaluation and environmental/land use law. The terms and conditions under which an expert engineer or consultant may be hired at the applicant's expense shall be defined in the regulations adopted pursuant to this chapter. The Commission may waive the filing fee and costs and expenses for an application of request filed by a government agency and may waive the filing fee for a request for determination filed by a person having no financial connection with the property which is the subject of the request.

§ 122-8. Notice of intent.

Notices of intent under this chapter must include evidence that the wetland boundaries were delineated as required above.

§ 122-9. Public notice and hearing.

A. An application or a request for determination shall be hand delivered or sent by certified mail to the Commission. The applicant shall notify 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 state where the request or application, including any accompanying documents, may be examined or obtained. Proof of notification and a copy of a certified abutters list shall be supplied to the Commission within forty-eight (48) hours of said notification. 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 owners as well as to the person making the request.

B. 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 (5) working days prior to the hearing, in a newspaper of general circulation in the Town of Sunderland. The Commission, in an appropriate case, may combine its hearing under this chapter with the hearing conducted under the Wetlands Protection Act, MGL c. 131, § 40.

C. The Commission shall commence the public hearing within twenty-one (21) days from receipt of a completed application or request for determination, unless the applicant extends the twenty-one-day time period by a signed written waiver.

D. The Commission shall have the 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 or others, information and plans required of the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed below. If a date for continuation is not specified, the hearing shall reconvene within twenty-one (21) days after the submission of a specified piece of information or the occurrence of a specified action. The date, time and place of said continued hearing shall be published in a newspaper of general circulation in the Town of Sunderland five (5) working days prior to the continuation, at the expense of the applicant, and written notice shall be sent to any person who so requests in writing.

E. The Commission shall issue its permit or determination, in writing, within twenty-one (21) days of the close of the public hearing thereon.

§ 122-10. Coordination with other boards.

Any person filing a permit application or a request for determination with the Commission shall provide written notice thereof at the same time, by certified mail or hand delivery, to the Board of Selectmen, Planning Board, Zoning Board of Appeals, Board of Health, Highway Superintendent and Building Commissioner. The Commission shall not take final action until to file written comments and recommendations with the Commission, such boards and officials have had fourteen (14) days from receipt of notice 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.

§ 122-11. Powers and duties of Conservation Commission.

A. The Commission shall have the authority, after a public hearing, to determine whether a specific parcel of land contains or does not contain resource areas protected under this chapter. If the Commission finds that no such resource areas are present, it shall issue a negative determination.

B. If the Commission, after a public hearing on the permit application, determines that the activities which are the subject of the application are likely to have a significant or cumulative detrimental effect upon the wetland values protected by this chapter, the Commission, within twenty-one (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.

C. The Commission is empowered to deny a permit for failure to meet the requirements of this chapter, for failure to submit necessary information and plans requested by the Commission, for failure to meet the design specification, performance standards and other requirements and regulations of the Commission, for failure to avoid or prevent significant or cumulative detrimental effects upon the wetland values protected by this chapter and where no conditions are adequate to protect those values.

D. A permit shall expire three (3) years from the date of issuance. Notwithstanding the above, 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.

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

F. The Commission, in an appropriate case, may combine the permit or other action on an application issued under this chapter with the order of conditions or other action issued or taken under the Wetlands Protection Act, MGL c. 131, § 40.

§ 122-12. Rules and regulations.

A. After public notice and public hearing, the Commission shall promulgate rules and regulations to accomplish the purposes of this chapter. These regulations shall be consistent with the terms of this chapter. The Commission may amend the rules and regulations after public notice and public hearing.

B. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this chapter.

C. Unless otherwise stated in this chapter or in the rules and regulations promulgated under this chapter, the definitions, procedures and performance standards of the Wetlands Protection Act, MGL c. 131, § 40, and associated regulations, 310 CMR 10.00, as promulgated April 1983, shall apply.

§ 122-13. Definitions.

The following definitions shall apply in the interpretation and implementation of this chapter:

ALTER -- Includes, without limitation, the following activities when undertaken to, upon or within or affecting resource areas protected by this chapter:

A. Removal, excavation or dredging of soil, sand, gravel, clay, minerals or aggregate materials of any kind.

B. Changing of preexisting 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 or erection or repair of buildings or structures of any kind.
- G. Placing of obstructions or objects in water.
- H. Destruction of plant life, including cutting of trees.
- I. Changing water temperature, biochemical oxygen demand or other physical, chemical or biological characteristics of surface or ground water.
- J. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

EXISTING DEVELOPED LOT -- Any real estate with a human-made structure used or intended for human use.

PERSON -- Includes 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 bylaws, administrative agency, public or quasi-public corporation or body, this municipality and any other legal entity, its legal representatives, agents or assigns.

§ 122-14. Security bond; easements.

- A. As part of a permit issued under this chapter, 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 undertaking of financial responsibility sufficient in the opinion of the Commission.
- B. In addition or in the alternative, the Commission may accept as security a conservation restriction easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality and observed before any lot may be conveyed other than by mortgage deed.

§ 122-15. Enforcement.

- A. The Commission and its agents, officers and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under this chapter and may make or cause to be made such examinations, surveys or samplings as the Commission deems necessary.
- B. The Commission shall have the authority to enforce this chapter, its regulations and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions.
- C. Upon request of the Commission, the Selectboard and the Town Counsel will 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.
- D. Municipal boards and officers, including any police officer or other officer having police powers, shall have the authority to assist the Commission in enforcement.

§ 122-16. Violations and penalties.

Any person who violates any provision of this chapter, regulations thereunder or permits issued thereunder shall be punished by a fine of not more than three hundred dollars (\$300.) Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the chapter, regulations or permit violated shall constitute a separate offense. This fine may be in addition to any levied under the Wetlands Protection Act, MGL c. 131, § 40.

§ 122-17. Burden of proof.

The applicant for a permit shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application will not have any significant or cumulative detrimental effect upon the wetland values protected by this chapter. 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.

§ 122-18. Statutory authority.

This chapter is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, independent of the Wetlands Protection Act, MGL c. 131, § 40, and the regulations thereunder.