

**TOWN OF DUDLEY**  
**CONSERVATION COMMISSION**  
**BYLAW**

**SECTION 1: PURPOSE**

The purpose of this Bylaw is to protect the floodplains, wetlands and related water resources, riverfront areas and adjoining land areas in the Town of Dudley by prior review and control of activities deemed to have a significant effect upon wetland or resource area values, including, but not limited to, the following: public or private water supply, ground water, water quality, flood control, sedimentation and erosion control, storm damage prevention and flowage, water pollution control, wildlife and wildlife habitats, fisheries, fish and shellfish habitats, rare plant and animal species, agriculture, aquaculture and recreation values deemed important to the community (collectively, the “wetland values protected by the bylaw”). This bylaw is adopted under authority of Section 6, Article 89 of the Amendments to the Massachusetts Constitution, known as the Home Rule Amendment, and General Laws Chapter 40, Section 21.

All of the procedures and requirements set forth in the Wetlands Protection Regulations of 310 CMR 10.00 et. seq. are hereby incorporated and made a part of these regulations except where they differ from or depart from these regulations. Where these regulations differ from or depart from the state regulations, they shall take precedence over the state regulations. The applicant should first address the regulations at 310 CMR 10.00 et. seq. and then supplement them with the Dudley Wetlands Regulations.

Unless otherwise indicated in the bylaw or these regulations, definitions, timeframes, forms and procedures shall be the same as stated in the Massachusetts Wetlands Protection Act.

The Commission, its agents, officers and employees 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, subject to the constitutions and laws of the United States and the Commonwealth.

**SECTION 2: JURISDICTION**

**RESOURCE AREAS**

Except as permitted by the Dudley Conservation Commission or as otherwise provided in this bylaw, no person shall commence to remove fill, dredge, degrade, discharge into, alter or build upon the following resource areas: freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, reservoirs, lakes, ponds of any size, beaches, lands under water bodies, lands subject to flooding or inundation by ground water or surface water, any land bordering thereon. Bordering in this context shall mean either the greater of the following:

- 100 feet horizontally lateral from the bank of any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, reservoirs, lakes, ponds, and beaches
- 100 feet horizontally lateral from the water elevation of the 100-year storm
- 200 feet horizontally lateral from the mean annual high water elevation of any perennial stream or river
- Vernal pools whether or not certified by the state shall be considered a resource area. It is the policy of the Commission to protect vernal pools because they provide valuable and increasingly rare wildlife habitat. Because they do not contain water all seasons of the year, a vernal pool must be identified in order to be protected. This can be done as part of the Determination of Applicability or part of the Notice of Intent review, or prior to these processes by the landowner, the Conservation Commission or other qualified person. The Commission must be satisfied that the person identifying a vernal pool is qualified to do so.

In addition, it is the policy of the Commission to advise applicants on these non-regulated wetland resource areas:

- A. intermittent streams upgradient of wetland Resource Areas
- B. isolated land subject to flooding below 310 CMR 10.57 size thresholds
- C. isolated wetlands less than 5,000 sq. ft.

The Commission will make every effort to identify these areas at the site, will recommend locating them on the plans, will encourage applicants to avoid impacts to these areas, and will suggest possible measures to mitigate unavoidable impacts with respect to drainage and flood control.

### **Buffer Zone**

Development proposed in the Buffer Zone can negatively impact the abutting Resource areas(s). Negative impacts, both from the "construction" and "use" phase of the project can include erosion, siltation, loss of pollution attenuation, loss of groundwater recharge, reduced water quality and loss of wildlife habitat. A 25 foot 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 to the adjacent wetland resource areas, and provide wildlife habitat.

Nothing herein shall preclude the maintenance of an existing structure located within the buffer zone. The Conservation Commission may allow activities upon an express determination that the applicant has made a clear and convincing showing that the proposed work in the buffer zone and its natural and consequential impacts and effects will not adversely affect the wetland values.

### **SECTION 3: CONDITIONAL EXCEPTIONS**

The Order of Conditions 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, and other telecommunication services provided that written notice has been give to the Commission prior to the commencement of any work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

### **AGRICULTURAL WORK**

Any agricultural activity as defined by the Farm Assessment Act, MGL Chapter 61A, exempt from the provisions of the Wetlands Protection Act, MGL c. 131, s. 40, MGL c. 128 s.1A and from the Wetlands Protection Regulations 310 CMR 10.00 (normal maintenance or improvement of land in agricultural use) will also be exempt under the Dudley Bylaws.

Additionally, any agricultural activity as defined by the Farm Assessment Act, MGL Chapter 61A and on land not under the jurisdiction of the Mass Wetlands Protection Act and implementing regulations (310 CMR 10.00) will be exempt from all local jurisdiction. The application and Order of Conditions required by this bylaw shall not be required for work performed for normal maintenance or improvement of land.

### **EMERGENCY WORK**

The application and permit required by this bylaw shall not be required for emergency projects necessary for the protection of the health and 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 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project, a permit application shall be filed with the Commission for review. 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.

### **WAIVERS FROM RULES AND REGULATIONS**

Strict compliance with this bylaw may be waived when, in the judgment of the Commission, such action is in the public interest, and is consistent with the intent and purpose of the Bylaw. Any request for a waiver must be submitted to the Commission in writing stating why a waiver is desired or needed, is in the public benefit, and is consistent with the intent and purpose of the Wetlands Protection Act and this Bylaw. The Waiver(s) shall be presented at the time of filing.

## **SECTION 4**

### **ADVICE FROM TOWN STAFF**

Any advice, opinion, or information given to an Applicant by a Commission member, or by any agency, officer, or employee of the Town, shall be considered advisory only, and not binding on the Commission.

Any person who is proposing to undertake an activity and desires to know what is required of them may arrange a preliminary discussion by contacting the Conservation Office and arranging a time for consultation.

## **SECTION 5 - FEES**

### **FEE SCHEDULE**

In addition to the Wetlands Protection Act (General Laws Chapter 141, Section 40 and Regulations 310 CMR 10.00 et. seq.) filing fees, the applicant shall submit a Site Evaluation Fee of \$150.00 with submission of a Request for Determination of Applicability or a Notice of Intent. Fees are payable at the time of application and are non-refundable.

The Conservation Commission shall use such fees to implement this bylaw, the regulations promulgated hereunder, and any policies developed by the Conservation Commission, including but not limited to the employment of a Conservation Consultant. The responsibilities of the Conservation Consultant may include, but are not limited to: review of resource areas, performing site visits, briefing the Conservation Commission, serving as liaison between the Conservation Commission, applicants, abutters, consultants and other interested parties, drafting Determinations of Applicability and Orders of Conditions, verifying implementation of erosion control measures, facilitating Public Hearings, reviewing requests for certificates of compliance and enforcing the provisions of this Article, the regulations promulgated hereunder, and the policies developed by the Conservation Commission.

The Conservation Commission may waive the filing fee for a Notice of Intent application or a Request for Determination of Applicability filed by a government agency.

### **Wetland Consultant Fees**

In order to enforce the regulations promulgated hereunder, and the policies developed by the Conservation Commission to the extent consistent with Ch. 44, Section 53G of the M.G.L. and any other law pertaining thereto, or at any point during the review of an application until a Certificate of Compliance is issued, the Conservation Commission may find that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project or because the project may have a significant effect upon the values the Conservation Commission is authorized to protect. The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision.

In such instances where Consulting fees are required, the Commission shall notify the Applicant of this need and shall provide the opportunity for the application to be amended or withdrawn. Should an Applicant choose to proceed, the Commission shall require the Applicant to pay the fees for these consulting services. The consultant services may include, but shall not be limited to, ascertaining the extent of the Conservation Commission's jurisdiction, analyzing resource area functions and values, evaluating wildlife habitat, analyzing hydrogeologic and drainage conditions, providing assistance during appeal or litigation, researching environmental or land use law, and inspecting work to insure compliance. The Commission shall return any unused portion of the consultant fee to the applicant unless the Commission decides at a public meeting that other action is necessary.

For business, commercial and industrial filings, prepayment of the estimated wetland consultant's fee for the entire project including building construction, shall be required before the Public Hearing. For subdivisions, estimated wetland consultant's fee shall include the cost of reviewing land preparation, grading, placement of utilities, and construction of roads and drainage systems.

Outside consultants shall be chosen by the Commission. Any applicant aggrieved by the imposition of, or size of the consultant fee, or any act related thereto, may appeal to the Board of Selectmen, in accordance with the provisions of the MGL c.44 s.53G. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The standard of

qualification shall consist of Massachusetts certification or license in the field at issue or references mutually acceptable to the Commission and the applicant, showing expertise and experience in the field at issue. The required time limit for action upon an application by the Commission shall be extended by the duration of the administrative appeal.

## **SECTION 6 - FILING REQUIREMENTS AND PROCEDURES**

### **Timeframes for Submission of Documentation**

In order to insure adequate and proper review by the Commission, staff and the public, all permit application documentation -- including forms, narrative descriptions, plans, maps, tables, charts, reports, etc. -- must be submitted to the Conservation Commission no later than fourteen calendar days prior to the scheduled Public Hearing, or its continuation. Documentation submitted by the Applicant thirteen calendar days or less before the public hearing may be excluded from said hearing or held for discussion at a subsequently scheduled hearing. Submission of material by the Applicant thirteen calendar days or less before the Public Hearing will constitute a constructive request by the Applicant for a continuation of the hearing if, in the opinion of the Commission, the Commission, staff or public has not had adequate or sufficient time to properly consider said material.

### **Request for Determination of Applicability Wetlands Protection Act Form 1**

The Request for Determination of Applicability shall include sufficient information to enable the Commission or its consultant to find and view the area and to determine whether the proposed project will alter an Area Subject To Protection. The information shall include, at a minimum:

Form 1 (Wetland Protection Act, M.G.L. Chapter 131, s. 40);

Such Plans, prepared and stamped by a Registered Professional Engineer and Registered Professional Land Surveyor, as are needed to locate and inspect the area and to determine whether the proposed work may significantly alter an Area Subject To Protection. The requirement that Plans be stamped by a registered professional engineer and registered professional land surveyor may be waived by the Commission or its agent if it is deemed unnecessary. These Plans shall show:

- All Wetlands that are within 100 feet of the edge of Activity;
- Riverfront Areas including inner and outer riparian zones
- Wetland Protection Setbacks
- The 100 foot Buffer Zone;
- Erosion and sedimentation control/prevention devices and method of maintenance;
- The edge of disturbance, if different from the erosion control/prevention devices;
- Location of stockpiled materials, if any.

The Request for Determination of Applicability shall be sent by certified mail or hand-delivered to the Dudley Conservation Commission. If necessary, the Commission and/or its agent may require that additional information be submitted to aid in the evaluation. If all data required by the Commission and/or its agent is not received, the filing shall not be considered complete, a Public Meeting shall not be scheduled and the Applicant shall be notified.

It is the responsibility of the Applicant to advertise the Public Meeting Notice in a newspaper of general circulation in the municipality no less than 7 calendar days prior to the Public Meeting.

At the Public Meeting, the Commission will determine:

- Positively: that the area or Activity is subject to the jurisdiction of the WPA and Commission and requires the filing of a Notice of Intent; or
- Negatively: that the area or Activity is not subject to the jurisdiction of the Commission, or that the interests protected by the WPA and Bylaw are fully protected by the project as proposed.

### **Notice of Intent Wetlands Protection Act Form 3**

Written or typed Wetlands Protection Act Notice of Intent applications shall be filed with the Commission to perform Activities regulated by the Wetlands Protection Act or the Bylaw affecting Resource Areas. The application shall include such information and plans as are deemed necessary by the Commission to describe

proposed Activities and their effects on Areas Subject to Protection. No Activities shall commence prior to issuance of a file number by the Massachusetts Department of Environmental Protection, receipt and recording of the Order of Conditions issued. When a person filing is other than the owner, the Applicant shall provide all forms, plans, and meeting notices to the owner by hand delivery or Certified Mail.

The filing shall at a minimum include:

- Two copies of the Wetlands Protection Act Form 3 (Notice of Intent);
- Such plans and specifications as are required of an Applicant under the Wetlands Protection Act as specified in the regulations including:
  - all Wetlands within one hundred (100) feet of the edge of Activity shall be marked with flagging tape, which will correspond to the edge of Wetlands indicated on the plans
  - placement of siltation control devices
  - locations of fill storage and spoils area (if requested), subject to the approval of the Commission
- The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative effect upon the resource area values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny or grant an Order of Conditions.
- The Commission requires 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.
- List of Abutters certified by the Dudley Board of Assessors
- Signed green cards and Certified Mail Receipts for unclaimed/unreturned green cards. If proof of said notification is not presented to the Commission, the Public Hearing shall not be opened.
- Detailed sequence of construction
- Detailed plan of Wetland Replication or restoration if the project proposes a Wetland Alteration
- Payment of State and Local fees. Estimated wetland consultant's fees, if applicable, shall be paid prior to the scheduled Public Hearing
- Proof of legal advertisement. It is the responsibility of the Applicant to place the Public Hearing Notice in a newspaper of general circulation in the municipality not less than 7 calendar days prior to the scheduled Public Hearing.
- The Applicant filing a Notice of Intent shall also notify by certified mail, all Abutters of the Notice of Intent filing using the Notification to Abutters Form. Such Notice shall clearly identify the land on which the project is to be done and describe the general nature of the project. Notice shall include the date, place, and time of said public hearing, and where Plans may be reviewed. The Notification of Abutters should be sent not less than eight (8) business days prior to the scheduled Public Hearing.
- **Rare Species** - Where the project site warrants, the Applicant may be required to submit quantitative habitat analysis. In areas under the jurisdiction of the Natural Heritage and Endangered Species Program, the Applicant must obtain a written decision from the Natural Heritage and Endangered Species Program indicating the presence, or lack thereof, any protected or endangered species.

## **SECTION 7 – NOTIFICATION TO OTHER TOWN OFFICIALS, BOARDS AND COMMISSIONS**

The Applicant 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 and Building Inspector. The Commission shall not take final action until such boards and officials have had seven (7) days from receipt of notice to file written comments and recommendations with the Commission. The Commission shall take into account any comments or recommendation, but they 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 the Public Hearing, prior to final action.

## **SECTION 8 – PUBLIC HEARINGS, PERMITS AND CONDITIONS**

### **Public Hearing**

The Commission shall have the authority to continue the Public Hearing to a date announced at the Hearing; for reasons stated at the Hearing, which may include receipt of additional information from the applicant or others, deemed necessary by the Commission in its discretion, or comments and recommendations of Town Board and Officials. 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.

### **Orders of Conditions Wetlands Protection Act Form 5**

If the Commission, after a Public Hearing, determines that the activities which are subject to the permit application or the land and water uses which will result are likely to have a significant individual or cumulative effect upon the resource area values, the Commission, within 21 days of the close of the hearing, shall issue or deny an Order of Conditions for the activities requested. If it issues an Order of Conditions, the Commission shall impose conditions which are deemed necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities permitted and exempt, and foreseeable future activities.

The Commission is empowered to deny an Order of Conditions for failure to: meet the requirements of the Order of Conditions; submit necessary information and plans requested by the Commission; meet the design specifications, performance standards and other requirements in regulations of the Commission; avoid or prevent unacceptable significant adverse effects upon the resource area functions and characteristics; and where no conditions are adequate to protect those functions and characteristics. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the Public Hearing.

To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible, shall minimize wetlands alteration and where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

It is the responsibility of the Applicant to record the Order of Conditions at the Registry of Deeds within fifteen (15) calendar days of receipt or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies. Failure to record the Order of Conditions within fifteen (15) days will declare it null and void. The Applicant will then be required to start the filing process from the beginning including all forms, fees, plans, Public Hearing, legal notices and notification to abutters.

Posting of DEP file number, hay bales, silt fence and filings pit, as required by the Conservation Commission shall be in place prior to commencement of any work.

For good cause, the Commission may revoke or modify an Order of Conditions issued after Public Notice and Public Hearing, and written notice to the holder of the Order of Conditions.

An Order of Conditions shall expire three years from the date of issuance. Any Order of Conditions may be renewed twice for an additional one to three year period, provided that a request for a renewal is received in writing by the Commission prior to expiration. An Order of Conditions may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.

### **EXTENSIONS Form 7 – Extension Permit for Order of Conditions**

The Commission may extend an Order of Conditions twice for a period of one to three years for each extension. Written requests for an Extension shall be made not less than thirty days prior to the expiration of said Order of Conditions.

The Commission may deny a request for Extension under the following circumstances:

- where no work has begun on the project, except where such failure is due to unavoidable delay, such as appeals in obtaining other necessary permits;
- where new information, not available at the time of original permanent filing, has become available and indicates the Order of Conditions is insufficient to protect the Areas Subject to Protection;
- where incomplete work is causing damage to the Areas Subject to Protection;

The Extension shall be recorded in the Registry of Deeds by the Applicant within 15 days of receipt or the Extension will be declared null and void.

### **CERTIFICATES OF COMPLIANCE**

- A request for a Certificate of Compliance shall be made in writing on the appropriate form to the Commission (Form 8A).
- Prior to issuance of the Certificate of Compliance, a site inspection shall be made by the Commission and/or its agent.
- If the Commission determines after review and inspection that the work has not been done in compliance with the Order, it shall refuse to issue the Certificate of Compliance and specify the reasons for denial in writing to the Applicant.
- If the Certificate of Compliance does not apply to all work regulated by the Order of Conditions, it shall state to what portions of the Work it applies.
- The Certificate of Compliance, if issued, shall be recorded by the Applicant at the Registry of Deeds.

### **SECTION 9 – VIOLATIONS AND ENFORCEMENT**

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter protected resource areas, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued.

#### **Identification of Violations**

Violations are identified by three primary means: observations by the Conservation Commissioners, Conservation Consultant and citizens. Reports of violations are always confidential; Commissioners and staff may not reveal the source of any report of possible violations.

When possible violations are reported, a Commissioner or the Wetland Consultant will determine whether a violation exists and if an Enforcement Order is necessary. The Wetland Consultant may consult with the Commission Chairman and other members as necessary, but if time or other constraints exist, may proceed employing best judgment. Any Enforcement Order issued by any individual must be ratified by the Commission at a public meeting.

#### **Violations**

If a Commissioner or the Wetland Consultant confirms or strongly suspects a violation, an Enforcement Order will be issued. Enforcement Orders will direct the property owners and contractors to (1) stop work, (2) identify resource areas on the site, (3) install erosion controls, and (4) meet with the commission to discuss the violation.

If a wetland line has been previously approved by the Commission, its location will be the basis for evaluation of the Violation. If a wetland line has not been established or approved by the Commission, then the Commission or Enforcement Order may require the owner, developer, and contractor to employ a wetland scientist to identify wetland resource areas with flagging within a time frame not longer than two weeks from the date of the Enforcement Order. All Enforcement Orders will be maintained in the Conservation database and placed on file.

At the subsequent meeting, the Commission will consider the following aspects of the violation:

- Value of the area to the statutory interests
- Harm of the damage
- Immediacy of the harm
- Value of restoration

- Feasibility of restoration
- Potential legal outcomes
- Potential financial burden to the Town of Dudley

The Commission shall have authority to enforce its regulations and permits by the issuance of Enforcement Orders, administrative orders and the initiation of civil and criminal court actions. Any person who violates the provisions may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, fined, or both. The enforcing officers in the noncriminal disposition procedure shall be members of the Conservation Commission or its agents.

Upon request of the Commission, the Town Administrator and the Town Counsel 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.

As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the non-criminal disposition procedures set forth in G.L. 40, s. 21D.

In addition to any other remedies available under any law or this bylaw, any person who violates any provision of this bylaw, regulation, permit or administrative order issued may be fined according to the fine schedule below.

- The fine for filling in a wetland or resource area shall be \$75.00 per square foot per day. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense with each provision of the bylaw, regulations, permits or administrative order(s) violated shall constitute a separate offense.
- For all other violations, each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw, regulations, permits or administrative order(s) violated shall constitute a separate offense.

In a specific case, the Commission may issue the following penalties for wetland violations (not including filling of wetlands) after initial notification by the Dudley Conservation Commission or its agents:

- First day of offense: \$100.00
- Second day of offense: \$200.00
- Third day and all subsequent days of offense: \$300.00

## **SECTION 10 - CONSTRUCTION STANDARDS AND RESTRICTIONS**

### **Sequence of Construction**

The Applicant shall provide a detailed sequence of construction to the Commission as part of the standard filing requirements, detailing in what order the project's construction will follow. Said sequence shall be followed by the Applicant, unless amended and approved by the Commission.

### **Wetland Setbacks for New Activities**

In order to protect and preserve the public interests and values of the wetlands and waterways of the Town of Dudley, activities in Wetland and Buffer Zone Resource Areas should be avoided to the full extent practicable. The following are the minimum distances (setbacks) of activity from the edge of Wetlands or Vernal Pools. These setbacks are the minimum and may be extended further if deemed necessary for the protection of the interests of the Bylaw by the Commission.

The setbacks shall be as follows:



- 0-foot setback for wetland-dependent structures (drain outfalls, weirs, etc.), fences, and structures necessary for upland access where reasonable alternative access is unavailable.
- 50-foot setback of undisturbed natural vegetation.
- 75-foot no-build setback to the edge of driveways, roadways, and structures.
- 50-foot chemical free area, within which no fertilizers, herbicides, pesticides or other chemical maintenance substances shall be used.
- 100-foot setback for underground storage of gasoline, oil, or other fuels and hazardous materials.
- 100-foot setback of undisturbed natural vegetation to the mean high water line for vernal pools.

### **Wetland Setbacks for Existing Structures**

No new activity shall be commenced and no new structure shall be located closer to the edge of a Wetland Resource Area than existing non-conforming like Activities or structures, but the Commission may permit new like Activity or structures as close to the Wetland Resource Area as the existing like Activity or structure if it finds such Activity or structure will not affect more adversely the interests provided for under the Wetlands Protection Act or in the Bylaw than the existing Activity or structure.

### **Erosion Prevention**

The purpose of installing a silt prevention barrier (hay bales and silt fence) between the proposed limit of disturbance and the edge of Wetlands is to intercept sediment-laden runoff by reducing runoff velocity and allowing suspended sediments to "settle out" before entering the Wetlands Resource Area. Such sediments shall be removed and sediment barriers monitored and replaced when necessary by the Applicant, or when required by the Commission or its agent.

Proposed location of the silt prevention devices, silt fence and hay bales, shall be shown on the Plan submitted in the Wetland filing furnished by the Applicant for Commission review and approval. Erosion prevention devices shall be installed prior to the commencement of Activities on the site.

### **Storage of Fill**

If any Fill is to be stored on site, it shall be stored outside of the Buffer Zone and/or it shall be surrounded by hay bales and silt fencing to prevent erosion. The location of said Fill shall appear on any Plans submitted to the Commission with the Notice of Intent. If the Commission determines that the proposed location of Fill threatens the Areas Subject to Protection, it may require the Applicant to store said Fill in a different location or to remove it completely from the site.

### **Construction Debris or Spoils Area**

There shall be no disposal or burial of construction debris (i.e. scrap lumber, metals, concrete, asphalt, piping, logs, stumps, etc.) within 100' of a Wetland. Illegal disposal of said debris shall result in a stop work order, fine, required removal of said debris, or all of the above. The Commission may allow the creation of a spoils area, which would be required to be designated on the project PLANS, if it is proven that it will not harm Areas Subject to Protection.

### **Wetlands Replication**

It is the policy of the Dudley 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:

- demonstrate that there is no practicable alternative,
- minimize impacts where they are unavoidable,
- mitigate losses of wetland resource area, where applicable or appropriate, on at least a 1:1.5 basis. "Limited projects" are included in this requirement.

### **Wetlands Replication Requirements**

Projects involving Wetlands Filling and/or permanent Alterations shall meet the requirements of 310 CMR 10.60(3) and 10.55(4) and the following Requirements of the Commission:

- The proposed Replication area design must be submitted to the Commission for approval as part of the submittal of the project Notice of Intent. Applicants are advised to appear before the Commission for preliminary discussion, comments and review prior to submittal of the Replication Plan with the Notice of Intent.
- The Replication area must be shown to sufficiently duplicate the functions of the Wetland proposed to be Altered;
- The Replication area shall be constructed, to the extent possible, immediately after Alteration of the existing Wetland and during the same growing season;
- The proposed Replication area must be clearly flagged for Commission site inspection before the Notice of Intent filing shall be considered complete, and said flagging shall correspond to flagging shown on the Plans.
- The Notice of Intent submittal for a Replication area shall include a detailed of Replication showing:
  - cross-section with indication of Groundwater level, soil profile and thickness of organic soil in the existing and proposed Wetlands;
  - plant species detail, including species found in the area to be Altered, and number, types and locations of species to be introduced into the Replication area;
  - detail of stabilization Plans for Replication area Banks;
  - Wildlife Habitat diversity plan.
- Construction of the Replication area shall follow all requirements as set forth by the Commission.

If, after three growing seasons, the Commission determines that the Replication area has not satisfactorily developed into a Wetland, the Applicant or owner may be required to submit new Plans to successfully replace the Wetland. No Certificate of Compliance shall be issued until the Commission has determined that a satisfactory Replication area has been completed at the end of the three year period.

#### **SECTION 11 – APPEALS**

A decision of the Commission shall be reviewable in the Superior Court in accordance with GL Ch. 249, Sec. 4.

#### **SECTION 12 – SEVERABILITY**

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any Order of Conditions or determination which previously has been issued.

#### **SECTION 13 – REGULATIONS**

After Public Notice and Public Hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw. Failure by the Commission to promulgate such rules and regulations or a legal declaration of the invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

The Dudley Conservation Commission may, from time to time, adopt such other and further definitions. Regulations, fees and performance standards as it may deem necessary to protect the interest and/or intent of this Bylaw. Said definitions, regulations, fees and performance standards shall become effective upon publication following a Public Hearing advertised in a local newspaper.

At a minimum these regulations shall define key terms in this bylaw and establish basic performance standards not inconsistent with the bylaw and procedures governing the amount and filing of fees.

#### **SECTION 14 – DEFINITIONS**

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

**Alter** shall include, without limitation, the following activities when under-taken to, upon, within or affecting resource areas protected by this bylaw:

- Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind

- Change of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics
- Drainage or other disturbance of water level or water table
- Dumping, discharging or filling with any material which may degrade water quality
- Placing of fill or removal of material, which 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 temperature, biochemical oxygen demand or other physical, biology, or chemical characteristics of any waters
- Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater
- Incremental activities, which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw

**Abutter** is any landowner, as determined by the most recent assessor's records, whose land immediately abuts the property which is the subject of 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 100 feet. In particular cases, the Dudley Conservation Commission can add persons to the list of abutters to be notified.

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

**Rare Species** shall include, without limitation, all vertebrate and invertebrate animals and plant species listed as endangered, threatened, or of special concern by the Mass. Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

**Vernal pool** shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Mass. Division of Fisheries and Wildlife.

**Stream** includes any body of running water moving in a channel in the ground, including intermittent streams and headwaters of streams above the point where there are wetlands adjoining them.

**Wetlands** under this bylaw, includes wet meadows, marshes, bogs and swamps of all kinds, regardless of whether they border on surface waters.

Except as otherwise provided in this bylaw or in regulations of the Commission, the definitions of terms in this bylaw shall be as set forth in the Wetlands Protection Act (GL Ch. 131, Sec. 40) and Regulations (310 CMR 10.00).